



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



## DIRECTOR'S ORDER NO. 210, Amendment 1

Subject: Administrative Actions to Strengthen U.S. Trade Controls for Elephant Ivory, Rhinoceros Horn, and Parts and Products of Other Species Listed Under the Endangered Species Act (ESA)

This amends Director's Order 210 (February 25, 2014) as follows:

(1) Revises the following criterion in Section 2, subsections b(3), (4), and (5) of the Order as shown below:

- "Has not subsequently been transferred from one person to another person for financial gain or profit since ~~February 26, 1976~~ February 25, 2014;"

(2) Revises Appendix 1, items 1, 3, 6, and 8 as follows:

***The title and the first three bullets under item 1 are revised to read:***

### 1. How will the Service enforce ~~What is~~ the antique exception to the prohibitions of the ESA?

- The ESA Amendments of 1978 amended the 1973 Act (16 U.S.C. 1539 (h)) to allow the importation and other activities without an ESA permit of an antique article (referred to as an "ESA antique") that:
  - A. Is not less than 100 years of age;
  - B. Is composed in whole or in part of any endangered species or threatened species listed under section 1533 of the Act;
  - C. Has not been repaired or modified with any part of any such species on or after December 28, 1973; and
  - D. Is entered at a port<sup>1</sup> designated for the import of ESA antiques.
- The prohibitions under 16 U.S.C. 1533(d) and 16 U.S.C. 1538 (a) and (c)<sup>1</sup> will not be enforced against items that meet elements A, B, and C above but not element D and were imported prior to September 22, 1982, or were created in the United States and never imported. do not apply to an article that meets all of the above criteria. Therefore, articles that meet the ESA antique exception ~~upon import~~ may be sold in interstate commerce, imported, exported, and used in other ways that would otherwise be prohibited under the ESA, without an ESA permit.
- The exception requires that any person who wants to import an ESA antique must submit documentation to establish that the article meets the exception. All activities must be consistent with other applicable laws, such as import and export under the African

Elephant Conservation Act, the Marine Mammal Protection Act, and the Wild Bird Conservation Act.

**The last bullet under item 3 is revised to read:**

- The exporter must prove that the antique article ~~had been previously imported and meets all of the criteria for import~~ under the ESA antique exception.

**Item 6 is revised to read:**

**6. How does the U.S. exporter or seller within the United States document that their article meets the ESA exception for antiques?**

The burden of proof is on the exporter or seller to show that the antique article ~~was previously imported and meets all of the criteria under the ESA exception. See Section 2 above for the requirements to import an article made from an ESA listed species and the type of documentation that was required upon import.~~ Notarized statements or affidavits by the exporter or seller, or a CITES pre-Convention certificate alone, are not adequate proof that the article meets the ESA exception.

**Item 8 is revised by removing the 5<sup>th</sup> and 7<sup>th</sup> bullets and revising the title:**

**8. What articles do not qualify for the antique exception under the ESA or the Service's enforcement discretion under this guidance?**

- Articles that are less than 100 years old.
- Articles that are not composed in whole or in part of an ESA-listed species.
- Articles with repairs or modifications made on or after December 28, 1973, to the specific part or component of the article that is made of the ESA-listed species regardless of the age or origin of the parts used to repair or modify the specimen.<sup>2</sup>
- Articles that have been repaired with the addition of any part of the ESA-listed species or modified with the addition of any part of the ESA-listed species on or after December 28, 1973, regardless of the age or origin of the parts used to repair or modify the specimen.
- ~~Articles that were imported prior to the creation of designated parts for ESA antiques (September 22, 1982).~~
- Articles that are, or were, imported on or after September 22, 1982, at a port that was not designated for ESA antiques.
- ~~Articles that were created in the United States and never imported.~~



DIRECTOR

**MAY 15 2014**

Date: