

## African Elephant Conservation Act of 1989

16USCS 4201 African Elephant  
16 USCS 4203 African Elephant Conservation Act

**4201. Statement of purpose** The purpose of this title is to perpetuate healthy populations of African elephants.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, 2002, 102 Stat. 2315.)

**4202. Congressional** The Congress finds the following:

- (1) Elephant populations in Africa have declined at an alarming rate since the mid-1970's.
- (2) The large illegal trade in African elephant ivory is the major cause of this decline and threatens the continued existence of the African elephant.
- (3) The African elephant is listed as threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its continued existence will be further jeopardized if this decline is not reversed.
- (4) Because African elephant ivory is indistinguishable from Asian elephant ivory, there is a need to ensure the trade in African elephant ivory does not further endanger the Asian elephant, which is listed as endangered under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and under Appendix I of CITES.
- (5) In response to the significant illegal trade in African elephant ivory, the parties to CITES established the CITES Ivory Control System to curtail the illegal trade and to encourage African countries to manage, conserve, and protect their African elephant populations.
- (6) The CITES Ivory Control System entered into force recently and should be allowed to continue in force for a reasonable period of time to assess its effectiveness in curtailing the illegal trade in African elephant ivory.
- (7) Although some African countries have effective African elephant conservation programs, many do not have sufficient resources to properly manage, conserve, and protect their elephant populations.
- (8) The United States, as a party to CITES and a large market for worked ivory, shares responsibility for supporting and implementing measures to stop the illegal trade in African elephant ivory and to provide for the conservation of the African elephant.
- (9) There is no evidence that sport hunting is part of the poaching that contributes to the illegal trade in African elephant ivory, and there is evidence that the proper utilization of well-managed elephant populations provides an important source of funding for African elephant conservation programs.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, 2003, 102 Stat. 2315.)

**4203. Statement of policy** *It is the policy of the United States—*

- (1) to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat; and
- (2) to provide financial resources for those programs.

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16 USCS 4211 African Elephant  
16 USCS 4212

**4201. Statement of purpose** HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, 2004, 102 Stat. 2316.)

**4211. Provision of assistance**

- (a) In general. The Secretary may provide financial assistance under this part [16 USCS 4211 et seq.] from the African Elephant Conservation Fund for approved projects for research, conservation, management, or protection of African elephants.
- (b) Project proposal. Any African government agency responsible for African elephant conservation and protection, the CITES Secretariat, and any organization or individual with experience in African elephant conservation may submit to the Secretary a project proposal under this section. Each such proposal shall contain--
  - (1) the name of the person responsible for conducting the project;
  - (2) a succinct statement of the need for and purposes of the project;
  - (3) a description of the qualifications of the individuals who will be conducting the project;
  - (4) an estimate of the funds and time required to complete the project;

(5) evidence of support of the project by governmental entities of countries within which the project will be conducted, if such support may be important for the success of the project; and

(6) any other information the Secretary considers to be necessary or appropriate for evaluating the eligibility of the project for funding under this title.

Project review and approval. The Secretary shall review each project proposal to determine if it meets the criteria set forth in subsection (d) and otherwise merits assistance under this title. Not later than six months after receiving a project proposal, and subject to the availability of funds, the Secretary shall approve or disapprove the proposal and provide written notification to the person who submitted the proposal and to each country within which the project is proposed to be conducted.

(d) Criteria for approval. The Secretary may approve a project under this section if the project will enhance programs for African elephant research, conservation, management, or protection by—

(1) developing in a usable form sound scientific information on African elephant habitat condition and carrying capacity, total elephant numbers and population trends, or annual reproduction and mortality; or

(2) assisting efforts—

(A) to ensure that any taking of African elephants in the country is effectively controlled and monitored;

(B) to implement conservation programs to provide for healthy, sustainable African, elephant populations; or to enhance compliance with the CITES Ivory Control System.

(e) Project reporting. Each entity that receives assistance under this section shall provide such periodic reports to the Director of the United States Fish and Wildlife Service as the Director considers relevant and appropriate. Each report shall include all information requested by the Director for evaluating the progress and success of the project.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title II, Part I, 2101, 102 Stat. 2316.)

#### 4212. African Elephant Conservation Fund

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16 USCS 4212(a) 16 USCS 4211 African Elephant

16 USCS 4221 (a)(1)

**4201.** (a) Establishment There is established in the general fund of the Treasury a separate account to be known as the "African Elephant Conservation Fund", which shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

(b) Deposits into Fund. The Secretary of the Treasury shall deposit into the Fund--

(1) subject to appropriations, all amounts received by the United States in the form of penalties under section 2204 [16 USCS 4224] which are not used to pay rewards under section 2205 [16 USCS 4225];

(2) amounts received by the Secretary of the Interior in the form of donations under subsection (d); and

(3) other amounts appropriated to the Fund to carry out this part [16 USCS 4211 et seq.].

Use

(1) In general. Subject to paragraph (2), amounts in the Fund may be used by the Secretary, without further appropriation, to provide assistance under this part [16 USCS 4211 et seq.].

(2) Administration. Not more than three percent of amounts appropriated to the Fund for a fiscal year may be used by the Secretary to administer the Fund for that fiscal year.

(d) Acceptance and use of donations. The Secretary may accept and use donations of funds to provide assistance under this part [16 USCS 4211 et seq.]. Amounts received by the Secretary in the form of such donations shall be transferred by the Secretary to the Secretary of the Treasury for deposit into the Fund.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 1, 2102, 102 Stat. 2317.)

#### **4213.** *Annual reports*

The Secretary shall submit an annual report to the Congress not later than January 31 of each year regarding the Fund and the status of the African elephant. Each such report shall include with respect to the year for which the report is submitted a description of—

(1) the total amounts deposited into and expended from the Fund;

(2) the costs associated with the administration of the Fund;

(3) a summary of the projects for which the Secretary has provided assistance under this part [16 USCS 4211 et seq.] and an evaluation of those projects; and

(4) an evaluation of African elephant populations and whether the CITES Ivory Control System is functioning effectively to control the illegal trade in African elephant ivory.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 1, 2103, 102 Stat. 2317.)

**4221. Review of African elephant conservation programs**

(a) In general. Within one month after the date of the enactment of this title [enacted Oct. 7, 1988], the Secretary shall issue a call for information on the African elephant conservation program of each ivory producing country by—

(1) publishing a notice in the *Federal Register* requesting submission of such information to the Secretary by all interested parties; and

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16 USCS 4221(a)(2) African Elephant

16 USCS 4222(b)(2)

**4201.**

(2) submitting a written request for such information through the Secretary of State to each ivory producing country.

(b) Review and determination.

(1) In general. The Secretary shall review the African elephant conservation program of each ivory producing country and, not later than one year after the date of the enactment of this title [enacted Oct. 7, 1988], shall issue and publish in the *Federal Register* a determination of whether or not the country meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

(2) Delay in issuing determination. If the Secretary finds within one year after the date of the enactment of this title [enacted Oct. 7, 1988] that there is insufficient information upon which to make the determination under paragraph (1), the Secretary may delay issuing the determination until no later than December 31, 1989. The Secretary shall issue and publish in the *Federal Register* at the time of the finding a statement explaining the reasons for any such delay.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 11, 2201, 102 Stat. 2318.)

**4222. Moratoris**

(a) Ivory producing countries.

(1) In general. The Secretary shall establish a moratorium on the importation of raw and worked ivory from an ivory producing country immediately upon making a determination that the country does not meet all the criteria set forth in section 2201(b)(1) [16 USCS 4221(b)(1)].

(2) Later establishment. With regard to any ivory producing country for which the Secretary has insufficient information to make a determination pursuant to section 2201(b) [16 USCS 4221(b)], the Secretary shall establish a moratorium on the importation of raw and worked ivory from such country not later than January 1, 1990, unless, based on new information, the Secretary concludes before that date that the country meets all of the criteria set forth in section 2201 (b)( 1 ) [16 USCS 4221 (b)( 1 )]. :

(b) Intermediary countries. The Secretary shall establish a moratorium on the importation of raw and intermediary country immediately upon making a determination that the country--

(1) is not a party to CITES;

(2) does not adhere to the CITES Ivory Control System;

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16 USCS 4222(b)(3) African Elephant  
16 USCS 4223(3)

- (3) imports raw ivory from a country that is not an ivory producing country;
- (4) imports raw or worked ivory from a country that is not a party to CITES;
- (5) imports raw or worked ivory that originates in an ivory producing country in violation of the laws of that ivory producing country;
- (6) substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this title during the first three months of that moratorium; or
- (7) imports raw or worked ivory from a country that is subject to a moratorium under this title after the first three months of that moratorium, unless the ivory is imported by vessel during the first six months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium

(c) Suspension of moratorium. The Secretary shall suspend a moratorium established under this section if, after notice and public comment, the Secretary determines that the reasons for establishing the moratorium no longer exist.

(d) Petition.

(1) In general. Any person may at any time submit a petition in writing requesting that the Secretary establish or suspend a moratorium under this section. Such a petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(2) Consideration and ruling. The Secretary shall publish a notice of receipt of a petition under this subsection in the *Federal Register* and shall provide an opportunity for the public to comment on the petition. The Secretary shall rule on such petition not later than 90 days after the close of the public comment period.

(e) Sport-hunted trophies. Individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota. The Secretary shall not establish any moratorium under this section, pursuant to a petition or otherwise, which prohibits the importation into the United States of sport-hunted trophies from elephants that are legally taken by the importer or the importer's principal in an ivory producing country that has submitted an ivory quota.

(f) Confiscated ivory. Trade in raw or worked ivory that is confiscated by an ivory producing country or an intermediary country and is disposed of pursuant to the CITES Ivory Control System shall not be the sole cause for the establishment of a moratorium under this part if all proceeds from the disposal of the confiscated ivory are used solely to enhance wildlife conservation programs or conservation purposes of CITES. With respect to any country that was not a party to CITES at the time of such confiscation, this subsection shall not apply until such country develops appropriate measures to assure that persons with a history of illegal dealings in ivory shall not benefit from the disposal of confiscated ivory.

HISTORY: (Oct. 7., 1988, P.L. 100-478, Title 11, Part 11, 2202, 102 Stat. 2318.)

#### **4223. Prohibited acts**

Except as provided in section 2202(e) [16 USCS 4222(e)], it is unlawful for any person--

- (1) to import raw ivory from any country other than an ivory producing country;
- (2) to export raw ivory from the United States;
- (3) to import raw or worked ivory that was exported from an ivory producing country in violation of that country's

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16 USCS 4223(3)(Cont.) African Elephant  
16 USCS **4241** laws or of the CITES Ivory Control System;

- (4) to import worked ivory, other than personal effects, from any country unless that country has certified that such ivory was derived from legal sources; or
- (5) to import raw or worked ivory from a country for which a moratorium is in effect under section 2202 [16 USCS 4222].

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 11, 2203, 102 Stat. 2320.)

#### **4224. Penalties and enforcement**

(a) Criminal violations. Whoever knowingly violates section 2203 [16 USCS 4223] shall, upon conviction, be fined under title 18, United States Code, or imprisoned for not more than one year, or both.

(b) Civil violations. Whoever violates section 2203 [16 USCS 4223] may be assessed a civil penalty by the Secretary of not more than \$ 5,000 for each such violation.

(c) Procedures for assessment of civil penalty. Proceedings for the assessment of a civil penalty under this section shall be conducted in accordance with the procedures provided for in section 11 (a) of the Endangered Species Act of 1973 (16 U.S.C. 1540(a)).

(d) Use of penalties. Subject to appropriations, penalties collected under this section may be used by the Secretary of the Treasury to pay rewards under section 2205 [16 USCS 4225] and, to the extent not used to pay such rewards, shall be deposited by the Secretary of the Treasury into the Fund.

(e) Enforcement. The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the CoastGuard is operating shall enforce this part [16 USCS 4221 et seq.] in the same manner such Secretaries carry out enforcement activities under section 11 (e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)). Section 11 (c) of the Endangered Species Act of 1973 (16 U.S.C. 1540(c)) shall apply to actions arising under this part [16 USCS 4221 et seq.].

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 11, 2204, 102 Stat. 2320.)

#### 4225. *Rewards*

(a) In general. Upon the recommendation of the Secretary, the Secretary of the Treasury may pay a reward to any person who furnishes information which leads to a civil penalty or a criminal conviction under this title.

(b) Amount. The amount of a reward under this section shall be equal to not more than one-half of any criminal or civil penalty or fine with respect to which the reward is paid, or \$ 25,000, whichever is less.

(c) Limitation on eligibility. An officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his or her official duties shall not be eligible for a reward under this section.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title II, Part 11, 2205, 102 Stat. 2320.)

#### 4241. *Relationship to Endangered Species Act of 1973*

The authority of the Secretary under this title is in addition to and shall not affect the authority of the Secretary under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or diminish the Secretary's authority under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

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16 USCS 4242 African Elephant  
16 USCS 4244(10)

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title II, Part 111, 2302, 102 Stat. 2321.)

#### 4242. *Certification under Pelly Amendment*

If the Secretary finds in administering this title that a country does not adhere to the CITES Ivory Control System, that country is deemed, for purposes of section 8(a)(2) of the Act of August 27, 1954 (22 U.S.C. 1978), to be diminishing the effectiveness of an international program for endangered or threatened species.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 111, 2303, 102 Stat. 2322.)

#### 4243. *Effectiveness of CITES*

Within 3 months after the completion of the 8th Conference of the Parties to CITES, the Secretary shall determine whether this title, together with the CITES Ivory Control System, has substantially stopped the importation of illegally harvested ivory into the United States. If the Secretary determines that the importation of illegally harvested ivory has not been substantially stopped, the Secretary shall recommend to the Congress amendments to this title or other actions that may be necessary to achieve the purposes of this title, including the establishment of a complete moratorium on the importation of elephant ivory into the United States.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 111, 2304, 102 Stat. 2322.)

#### 4244. *Definitions*

In this title—

- (1) the term "African elephant" means any animal of the species *loxodonta africana*;
- (2) the term "CITES" means the Convention on the International Trade in Endangered Species of Wild Fauna and Flora;
- (3) the term "CITES Ivory Control System" means the ivory quota and marking system established by CITES to curtail illegal trade in African elephant ivory;
- (4) the term "Fund" means the African Elephant Conservation Fund established by section 2102 [16 USCS 4212];

- (5) the terms "import" and "importation" have the meanings such terms have in the Endangered Species Act of 1973(16U.S.C. 1531 et seq.);
- (6) the term "intermediary country" means a country that exports raw or worked ivory that does not originate in that country;
- (7) the term "ivory producing country" means any African country within which is located any part of the range of a population of African elephants;
- (8) the term "ivory quota" means a quota submitted by an ivory producing country to the CITES Secretariat in accordance with the CITES Ivory Control System;
- (9) the term "personal effects" means articles which are not intended for sale and are part of a shipment of the household effects of a person who is moving his or her residence to or from the United States, or are included in personal accompanying baggage;
- (10) the term "raw ivory" means any African elephant tusk, and any piece thereof, the surface of which, polished

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16 USCS 4244(10)(Cont.) African Elephant  
16 USCS 4245 or unpolished, is unaltered or minimally carved;

- (11) the term "Secretary" means the Secretary of the Interior;
- (12) the term "United States" means the fifty States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and
- (13) the term "worked ivory" means any African elephant tusk, and any piece thereof, which is not raw ivory.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part III, 2305, 102 Stat. 2322.)

*4245. Authorization of appropriations*

There are authorized to be appropriated to the Fund and to the Secretary a total of not to exceed \$5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998 to carry out this title, to remain available until expended.

HISTORY: (Oct. 7, 1988, P.L. 100-478, Title 11, Part 111, 2306, 102 Stat. 2323; Oct. 23, 1992, P.L. 102-440, Title 111, 302, 106 Stat. 2234.)

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