

5-1-2014

Elephant Ivory

Kristie Lauren Trifolis

Follow this and additional works at: http://scholarship.shu.edu/student_scholarship

Recommended Citation

Trifolis, Kristie Lauren, "Elephant Ivory" (2014). *Law School Student Scholarship*. Paper 433.
http://scholarship.shu.edu/student_scholarship/433

ELEPHANT IVORY

Kristie Trifolis

TABLE OF CONTENTS

I. Introduction	3
II. Background	4
III. International Law	7
A. CITES	7
IV. United States Law	10
A. Lacey Act	10
B. Endangered Species Act	12
C. African Elephant Conservation Act	13
V. Evaluation and Opinion	19

I. INTRODUCTION

During the 1970s and 1980s, a substantial decline in the elephant population in Africa rose concern. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) took action in July of 1989 after the elephant population in Africa fell from 1.3 million¹ to 600,000.¹ The reason for the harsh decline was the rise of poachers' interest in African elephant ivory. African elephants are the primary target because both males and females have tusks as opposed to the Asian elephant where only some males have tusks and females never do.² The United States itself passed the African Elephant Conservation Act in 1990, along with several other important acts along the way.

I was drawn to this topic because while I was researching about elephants in entertainment, I came across an article that was titled "Will Your Children Know What an Elephant Is?". Interested by the title, I continued reading. I realized I was extremely unaware of the harsh decline that has quickly arisen in the elephant population due to their ivory. I immediately wanted to find out more for my own knowledge, and decided I also wanted to share it through my paper.

What this paper will do is first explain the reasons for African elephant depopulation and then analyze the regulations set in place by CITES and by the United States and discuss thoroughly whether they are effective or not. The end of the paper will focus on my own thoughts and considerations on how we could and should improve this situation, as well as statistical data regarding the CITES international ban and how successful it has been.

¹ Jeffrey Hays, Endangered Elephants: Ivory and Poaching (last modified 2012), <http://factsanddetails.com/Asian.php?itemid=2464&catid=68&subcatid=431> (last visited Dec. 5 2012).

² Elephant Encyclopedia, What are the Differences Between African and Asian Elephants?, http://www.upali.ch/differences_en.html (last visited Dec. 4, 2012).

We will begin with a look at the background of the African elephant and why this species has become such an interest to poachers and researchers alike.

II. BACKGROUND

The African elephants are the heaviest land animals and the second tallest in the animal kingdom.³ Male African elephants are larger than females and can reach a height of 12-14 feet and weigh up to 7 tons.⁴ Throughout the animal's life, its incisor teeth continuously grow and eventually become tusks.⁵ A tusk can grow up to eight feet long and each one can weigh over one hundred and thirty pounds!⁶ Both males and females grow tusks, but the males' are almost always longer and heavier.⁷

Elephants are found in 37 countries in sub-Saharan Africa.⁸ Throughout the years, the price of uncarved ivory has increased exponentially. Uncarved ivory was worth \$2.50 a pound in 1969, \$34 a pound in 1978, and more than \$90 a pound in 1989.⁹ Currently, ivory is worth approximately \$95 per pound.¹⁰

³ International Elephant Foundation, African Elephant (2010), <http://www.elephantconservation.org/elephants/african-elephants> (last visited Dec. 4, 2012).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Andrew M. Lemieux, Ronald V. Clarke, International Ban on Ivory Sales and its Effects on Elephant Poaching in Africa, 49 *Brit. J. Criminol.* 451 (2009).

⁹ Kent Messer, The Poacher's Dilemma: The Economics of Poaching and Enforcement, 17 *End. Spec.* 50-6 (2000).

¹⁰ Reference, <http://www.reference.com/motif/reference/how-much-is-ivory-worth-in-us-dollars> (last visited Dec. 4, 2012).

Because bigger tusks obviously meant bigger profits, male bull elephants whose tusks weigh six or seven times more than females' tusks became the main target of poachers.¹¹ What this led to was disproportionate sex ratios in some herds.¹² Disproportionate sex ratios called into question the elephants long-term survival due to lack of adequate mating.¹³ It also meant more female elephants were killed to meet the weight demands of the international ivory market as the number of bulls declined.¹⁴

Once the poachers get their hands on the ivory, it is shipped overseas and sold to craftsmen and wholesalers where it is usually then carved into items such as piano keys and chess sets.¹⁵ The poachers themselves consist of some of Africa's most notorious armed groups, including, but not limited to, the Shabab and Danfur's Janjaweed.¹⁶ They are hunting the elephants down and then using the ivory to buy weapons in order to fund their anarchy.¹⁷ Organized crime groups around the world also set up trades with these groups in order to move the ivory through "porous borders and corrupt officials from sub-Saharan Africa to China."¹⁸ These are not the only groups considered poachers. Some of the African armies have members, trained and supported by the American government, who have been caught poaching elephants and dealing in ivory as well.¹⁹

The United States was the first country to ratify CITES in 1975. The purpose and content of CITES will be explained in detail below. The Endangered Species Act implements CITES in

¹¹ Lemieux and Clarke, *supra*, note 8, at 453.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 454

¹⁶ Jeffrey Gettleman, Elephants Dying in Epic Frenzy as Ivory Fuels Wars and Profits, N.Y. Times, Sept. 4, 2012, at A1.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. all on same page of newspaper article???

the United States, with the Department of the Interior's Fish and Wildlife Service as the key agency ensuring its implementation.²⁰ The Fish and Wildlife Service also contains the Offices of Management Authority and Scientific Authority, as well as the Division of Law Enforcement.²¹ The former oversees and regulates the issuance of permits, the enforcement of CITES regulations, and the compilation of the U.S. annual reports for the CITES Secretariat, while the latter reviews and regulates permit applications, and advises on listing amendments.²² The third party involved is the investigative branch which oversees wildlife shipments to enforce CITES regulations.²³

The basis for CITES regulations in U.S. law is the Lacey Act, which upholds the wildlife laws of the country of origin, and, therefore, enables the prosecution of violators.²⁴ The Lacey Act is also discussed in detail below. On June 5, 1989, President Bush authorized a moratorium on all ivory imports into the United States.²⁵ The African Elephant Conservation Act, also discussed in detail below, was passed by Congress on June 9, 1989 and restricted the importation of ivory from CITES Parties, or from those countries not engaged in illegal ivory trading.²⁶ This was followed by the international CITES ban later that year.²⁷ There are currently 176 parties to CITES.²⁸

²⁰ Id.

²¹ TED Case Studies, Elephant Ivory Trade Ban, <http://www1.american.edu/ted/elephant.htm> (last visited Dec. 4, 2012).

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ CITES, Member Countries, Convention on International Trade in Endangered Species and Wild Fauna and Flora, <http://www.cites.org/eng/disc/parties/index.php> (last visited Dec. 4, 2012).

In March 1992, the Bush Administration reversed its earlier support of the ivory trade ban, in anticipation of the CITES meeting of the Parties in Lausanne.²⁹ Why? When the conference voted in favor of retaining the ban, the United States supported it, and it remains in effect today, as does the African Elephant Conservation Act.³⁰ The conference consisted of over one hundred represented countries.³¹

To begin our analysis of the laws set in place to protect the African elephant, we must first briefly look at international law and the CITES ban, and then go through a detailed examination of the laws of the United States including, but not limited to, the Endangered Species Act, the Lacey Act, the African Elephant Conservation Act, and some state laws, followed by an evaluation of how successful these bans are.

III. INTERNATIONAL LAW

A. CITES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora came into effect on July 1, 1975.³² CITES was put in place as an international treaty to protect animals who face possible extinction.³³ More specifically, CITES controls the trade of parts of animals that face extinction.³⁴ The regulation of the elephant ivory trade is a main concern of CITES and has been addressed on several occasions. Initially, fifty-six countries signed the

²⁹ TED, *supra*.

³⁰ *Id.*

³¹ CITES, *Seventh Meeting of the Conference of the Parties*, <http://www.cites.org/eng/cop/07/E07-List-of-Participants-Parties.pdf> (last visited Dec. 5, 2012).

³² Trade Measures in CITES, *IUCN Report* (2000). ???

³³ *Id.* at 48.

³⁴ *Id.*

Convention.³⁵ By 1992, over 115 States had formally signed onto the CITES, which made it the largest wildlife conservation agreement in existence.³⁶

CITES regulates species using three appendices. Appendix I lists species threatened with extinction. “Commercial trade in these species is strictly prohibited, while other trade—largely in the form of hunting trophies or for scientific and educational purposes—is tightly controlled.”³⁷ Appendix II lists species not necessarily threatened with extinction, but still the trade of said species must be controlled in order to ensure their survival.³⁸ Appendix III contains a list of species for which trade is regulated in the specific countries that that species needs to be regulated.³⁹

The question of whether to place the African elephant in Appendix I was debated and decided in 1989.⁴⁰ The complete ban on the ivory trade came into effect on January 18, 1990.⁴¹ This action meant that poached ivory could no longer be traded on the international market, and was a large step in controlling the ivory market.⁴²

Along with being a large step in controlling the ivory market, this was also the first step in attempting to deal with the threat of the extinction of the African elephant. This was effective in some ways and ineffective in others. Kenya publicly burned 2,000 pounds of confiscated

³⁵ TED, supra.???

³⁶ Id.

³⁷ R. Reeve, Wildlife Trade Sanctions and Compliance, Lessons from the CITES Regime, 82 Int. Affairs 881–97 (2006).

³⁸ CITES, How CITES Works, Geneva: CITES Secretariat, www.cites.org/eng/disc/how.shtml (last visited Dec. 5, 2012).

³⁹ TED, supra.

⁴⁰ Id.

⁴¹ Id.

⁴² R. Leakey and V. Morell, Wildlife Wars: My Fight to Save Africa's Natural Treasures, St Martin's Press (2001).

elephant tusks, which was an event that was estimated to have 850 million viewers worldwide.⁴³ This sent a strong message that the trade of ivory was not going to be tolerated. However, there were some African countries that disagreed with moving the African elephant from Appendix II to Appendix I.⁴⁴ These countries had strong elephant conservation programs in place, and believed and argued that a total ban on selling confiscated ivory would hurt their abilities to fund conservation.⁴⁵

Because of these countries, another conference was held to find a resolution. During this conference, when elephant populations of certain countries were allowed to be given an Appendix II listing if it was necessary under a series of restrictions.⁴⁶ The result of this was that, instead of solving the problem, it created a loophole allowing poached ivory to reenter the market.⁴⁷ In 2002, CITES approved the auctioning of ivory in four African countries with the promise that there would be a system to monitor poaching and that Japan and China, the buyers, would control its use and prevent its reexport.⁴⁸ The four countries CITES agreed upon were Botswana, Namibia, and South Africa to hold another round of auctions, and eventually Zimbabwe.⁴⁹ CITES denied initial requests by Zimbabwe and Zambia, determining that those countries had not done enough to cut down on poaching.⁵⁰ However, Zimbabwe was eventually

⁴³ Id.

⁴⁴ H. Kiyono, *Japan's Trade in Ivory after the Tenth Conference of the Parties to CITES*, Traffic Online Report Series No. 6 (2002).

⁴⁵ Daniel Stiles, *The Ivory Trade and Elephant Conservation*, 31 *Cambridge J.* 309-21 (2004), available at journals.cambridge.org (last visited Dec. 6, 2012).

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Denis Cummings, *African Ivory Auctions Draw Criticism: Background: Ivory Trade Ban and On-Off Auctions*, (Oct. 30, 2008 10:24 AM) <http://www.findingdulcinea.com/news/environment/Sept-Octo/African-Ivory-Auctions-Draw-Criticism.html>.

⁵⁰ Id.

given permission.⁵¹ CITES determined that only Japan and China would be allowed in these auctions because they were the only two countries sufficiently committed and able to stop illegal ivory exportation.⁵²

An analysis of whether or not this approach is working will come after the next section in which we will move away from the international aspect of the elephant ivory trade and discuss elephant ivory in the United States and what laws and regulations have been set in order to control it. We will take a comprehensive look into the African Elephant Conservation Act of 1989 and its laws.

IV. UNITED STATES LAW

A. LACEY ACT

The Lacey Act, 16 U.S.C. §§ 3371-3378, protects both plants and wildlife by creating civil and criminal penalties for a wide array of violations.⁵³ “Under this law, it is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law”.⁵⁴ The Act underscores all other federal, state, and foreign laws protecting wildlife by making it a separate offense to take, possess, transport, or sell wildlife that has been taken in violation of those laws.⁵⁵

⁵¹ Id.

⁵² Id.

⁵³ Robert S. Anderson, The Lacey Act: America’s Premier Weapon in the Fight Against Unlawful Wildlife Trafficking, 16 Pub. Land Law Rev. 27 (1995), available at <http://www.animallaw.info/articles/arus16publlr27.htm> (last visited Dec. 6, 2012).

⁵⁴ Digest of Federal Research Laws, Lacey Act Amendments of 1981, <http://www.fws.gov/laws/lawsdigest/LACEY.HTML> (last visited Dec. 5, 2012).

⁵⁵ Id.

The law covers all fish and wildlife and their parts or products, and plants protected by the Convention on International Trade in Endangered Species and those protected by State law. Commercial guiding and outfitting are considered to be a sale under the provisions of the Act.⁵⁶

The Lacey Act is enforced on a strict liability basis.⁵⁷ When a violation occurs involving imports or exports, or violations of a commercial nature in which the value of the wildlife is in excess of \$350, felony criminal sanctions are provided.⁵⁸ There is also a misdemeanor violation established, with a fine of up to \$10,000 and imprisonment of up to 1 year, or both.⁵⁹ When the Act was first set in place civil penalties up to \$10,000 were provided.⁶⁰ “However, the Criminal Fines Improvement Act of 1987 increased the fines under the Lacey Act for misdemeanors to a maximum of \$100,000 for individuals and \$200,000 for organizations”.⁶¹ The maximum fines for felonies were also increased to \$250,000 for individuals and \$500,000 for organizations.⁶² The Lacey Act also authorizes rewards for those individuals who provide information leading to, for example, arrests, criminal convictions, and penalties.⁶³

The Act also prohibits the falsification of documents for most shipments of wildlife, which is considered a criminal penalty, and prohibits the failure to mark wildlife shipments.⁶⁴ The Act is administered by the Departments of the Interior, Commerce, and Agriculture through their respective agencies.⁶⁵

⁵⁶ Id.

⁵⁷ Anderson, supra note 53.

⁵⁸ Digest, supra, note 54.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Anderson, supra note 53.

⁶⁵ Id.

The Lacey Act was first introduced by Iowa Congressman John Lacey in the House of Representatives in the spring of 1900 and was signed into law by President William McKinley on May 25, 1900.⁶⁶ The original Act was directed more at the preservation of game and wild birds by making it a federal crime to poach game in one state with the purpose of selling the bounty in another.⁶⁷ It was also concerned with the potential problems of the introduction of non-native, or exotic species of birds and animals into native ecosystems as it could be harmful to those native species and plants.⁶⁸ Finally, it sought to support state laws already in existence for the protection of game and birds.⁶⁹

The Lacey Act now stands as one of the broadest and most comprehensive forces in the federal arsenal to combat wildlife crime. With increasing activity in international and domestic wildlife trafficking, the Act has evolved to become an important weapon to protect animals domestically and abroad.⁷⁰

As an example of a violation of The Lacey Act, there was a recent charge against A-440 Pianos, Inc. and its top executive for illegally shipping protected elephant ivory into the United States.⁷¹ They are facing \$35,000 in fines and three years of probation.⁷²

B. ENDANGERED SPECIES ACT

The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the U.S. Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service (NMFS). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id. where are the pages for all of these ids.

⁷⁰ Id.

⁷¹ Environmental Resources: Lacey Act, <http://www.graphiccommunications.com/resource-center/environmental-resources/lacey-act/> (last visited on Dec. 4, 2012).

⁷² Id. could be more on this!

of NMFS are mainly marine wildlife such as whales and anadromous fish such as salmon.⁷³

Under the ESA, species may be listed as either endangered or threatened.⁷⁴ “Endangered” means a species is in danger of extinction throughout all or a significant portion of its range, while “threatened” means a species is likely to become endangered within the foreseeable future.⁷⁵ All species of plants and animals, are eligible for listing as endangered or threatened.⁷⁶

C. AFRICAN ELEPHANT CONSERVATION ACT

In the United States, exportation of elephant ivory is illegal and been banned since the passing of the African Elephant Conservation Act of 1989.⁷⁷ However, it is legal to buy and sell African elephant ivory that was already within the United States borders before the Act was set in place as long as it meets state laws and ESA requirements.⁷⁸ This section will take an in-depth look at the African Elephant Conservation Act. In my opinion, it is the single most important law set in place in the United States, alongside CITES, to regulate the trade and treatment of elephant ivory.

The US passed the African Elephant Conservation Act of 1989. In creating this Act, Congress made the following nine legislative findings: (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

⁷³ Endangered Species Act, Overview, <http://www.fws.gov/endangered/laws-policies/index.html> (last visited Dec. 4, 2012).

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ US Fish and Wild Life Service, US Efforts to Control Illegal Elephant Ivory Trade and Internal Markets, (2008) <http://www.fws.gov/international/pdf/factsheet-us-efforts-to-control-illegal-elephant-ivory-trade-2008.pdf> (last visited Dec. 4, 2012).

⁷⁸ Id.

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, and (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.”⁷⁹ As a direct quote these points should be blocked off .

With these findings in mind, Congress announced that it is the policy of the United States to assist in the conservation and protection of the African elephant by supporting the

⁷⁹ 16 USCS § 4202 (1989).

conservation programs of African countries and the CITES Secretariat, and, importantly, to provide financial resources for those programs.⁸⁰

Under 16 USCS 4211, what is that? the US gave the Secretariat permission to provide financial assistance from the African Elephant Conservation fund.⁸¹ The purpose of the fund is to provide financial assistance to support projects that will enhance sustainable conservation programs to ensure effective, long-term conservation of African elephants.⁸²

Under this section, 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 Secretariat a project proposal.⁸³ Each such proposal must contain information regarding the person who will conduct the project, the purpose of the project, and an estimate of the funds that will be needed in order to support the project.⁸⁴

In regard to project proposals, the Act makes it the job of the Secretariat to review each project proposal to determine if it meets the proper criteria and otherwise merits assistance under this title.⁸⁵ Not later than six months after receiving a project proposal, and subject to the availability of funds, the Secretariat approves or disapproves the proposal and provides written notification to the person who submitted the proposal and to each country within which the project is proposed to be conducted.⁸⁶

The Secretary may only approve a project under this section if it will do one of the following: is this a quote?: (1) enhance programs for African elephant research, conservation,

⁸⁰ Id.

⁸¹ 16 USCS § 4211 (1989).

⁸² African Elephant Conservation Fund, Program Information, <https://www.cfda.gov> (last visited Dec. 5, 2012).

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

management, or protection by 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) assist efforts to ensure that any taking of African elephants in the country is effectively controlled and monitored; or (3) to implement conservation programs to provide for healthy, sustainable African, elephant populations; or (4) to enhance compliance with the CITES Ivory Control System.⁸⁷

Also under this statute, each entity that receives assistance must provide periodic reports to the Director of the United States Fish and Wildlife Service, as determined by the Director to be relevant and appropriate.⁸⁸ Each report must include all information requested by the Director for evaluating the progress and success of the project, a critical step in the process of determining whether or not the United States is succeeding in enhancing African elephant conservation.⁸⁹

16 USCS 4211 also established that in the general fund of the treasury, a separate account will exist, known as the “African Elephant Conservation Fund”, discussed above, which consists of amounts deposited into the Fund by the Secretary of the Treasury. The deposits into the Fund consist of all amounts received by the United States in the form of penalties under section 2204⁹⁰ not used to pay rewards under section 2205⁹¹ amounts received by the Secretariat in the form of donations under subsection,? Confusing and other amounts appropriated to the Fund to carry out this part. The Secretariat may accept and use donations of funds to provide assistance under this part. Amounts received by the Secretary in the form of such donations shall be transferred by the

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ 16 USCS § 4224 (1989). Is this section the AEC or some other federal law? explain

⁹¹ 16 USCS § 4225 (1989).

Secretariat to the Secretary of the Treasury for deposit into the Fund.⁹² In 2005, \$1.4 million was given to the Fund in support of thirty crucial elephant conservation projects in Africa.⁹³

The next part of this statute that is critically important, in my opinion, is? making sure that this system is followed by publishing essential information in the *Federal Register*.⁹⁴

Basically:

The Secretary reviews the African elephant conservation program of each ivory producing country and issues and publishes in the *Federal Register* a determination of whether or not the country meets the following criteria: The country is a party to CITES and adheres to the CITES Ivory Control System; 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; The country's ivory quota is determined and reflects the amount of ivory which is confiscated or consumed domestically by the country.; 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.⁹⁵ 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).⁹⁶

Also under this title, individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota.⁹⁷ It is also unlawful for any person to import raw ivory from any country other than an ivory producing country; to export raw ivory from the United States; to import raw or worked ivory that was exported from an ivory producing country in violation of that country's; to import worked ivory, other than personal effects, from any country unless that country has certified that such ivory was

⁹² Id.

⁹³ African Elephant Conservation Fund, supra note 82.

⁹⁴ 16 USCS § 4201(b) (1989).

⁹⁵ Id.

⁹⁶ 16 USCS § 4221(b)(1) (1989).

⁹⁷ 16 USCS § 4223(3)(e) (1989).

derived from legal sources; or to import raw or worked ivory from a country for which a moratorium is in effect under section 2202.⁹⁸

The third most important part of this Act⁹ is the penalties and enforcement section. This is important for obvious reasons, and it is likewise important to let citizens know that this situation with the African elephant needs to be taken seriously. The penalties and enforcements are found in section 16 USCS 4224. In summary, whoever knowingly violates section 2203⁹⁹ shall, upon conviction, be fined under title 18, United States Code, or imprisoned for not more than one year, or both. These penalties are⁹ for criminal violations. For civil violations, a person may be assessed a civil penalty by the Secretary of not more than \$ 5,000 for each such violation. Proceedings for the assessment of a civil penalty under this section are conducted in accordance with the procedures provided for in section 11 (a) of the Endangered Species Act of 1973.¹⁰⁰

This section of the title also addresses the Fund because penalties collected may be used by the Secretary of the Treasury to pay rewards under section 2205¹⁰¹ and, to the extent not used to pay such rewards, the money will be deposited by the Secretary of the Treasury into the Fund. Section 16 USCS 4225¹⁰² of this Act discusses rewards. In general, upon the recommendation of the Secretariat, 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.

The last few sections of this title discuss the relationship of 16 USCS 4222 to the Endangered Species Act of 1973. It explains that this title is an addition to the ESA and does not

⁹⁸ 16 USCS § 4222 (1989).

⁹⁹ 16 USCS § 4223 (1989).

¹⁰⁰ 16 USCS § 1540(a) (1989).

¹⁰¹ 16 USCS § 4225 (1989).

¹⁰² Id.

affect the authority of the Secretary or diminish the Secretary's authority under the Lacey Act Amendments of 1981.¹⁰³

V. EVALUATION AND OPINION

The CITES ban can be, and has been, evaluated in several ways. There have been several studies conducted in an attempt to evaluate it. The best way would be by determining and comparing the level of poaching pre and post ban and measuring them against the number of elephants found without tusks.¹⁰⁴ Unfortunately, this data is not available for any of the African countries.¹⁰⁵ Because of this, researchers have gone through many different alternative strategies to evaluate the effectiveness.¹⁰⁶ These include, but are not limited to, economic modeling of the ban's likely effects, analyses of ivory seizures, observational studies of ivory markets, detailed case studies of particular countries and longitudinal analyses of elephant population data.¹⁰⁷

The economic studies conducted have taken a variety of approaches to overcome the lack of data, as well as the impossibility of obtaining accurate data. One study conducted used illegal poaching (an estimated number of animals killed) and enforcement effort (how much money the US has put into enforcement efforts) as hypothetical variables for determining whether the ban would increase or decrease the number of elephants.¹⁰⁸ Using data from one sub-Saharan country, which one? these researchers concluded that the ban in fact was helping to conserve elephants, but that for many countries, current elephant populations were actually higher than

¹⁰³ U.S.C.S. § 4222 (1989).

¹⁰⁴ Lemieux and Clarke, *supra*, at 455.

¹⁰⁵ Stiles, *supra* note 45.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ E.H. Bulte and G. van Kooten, G. C., Economics of Antipoaching Enforcement and the Ivory Trade Ban, 81 *Amer. J. of Agricultural Econ.* 453-66.

economically optimal.¹⁰⁹ What this research meant was that while some countries were suffering exponentially from illegal poaching, other countries were unaffected and actually overpopulated with elephants.

In a second paper by the same economic researchers, they concluded that banning the ivory trade had definitely halted the extinction of elephants, but that perhaps the international ban was unnecessary in countries with adequate law enforcement.¹¹⁰ This goes back to countries such as China and Japan who were chosen by CITES as the two countries that could still be involved in ivory auctioning. Do we trust China and Japan to do the right thing?? What these researchers were suggesting is that there should be more countries grouped with China and Japan so long as they can control the auctioning of ivory effectively and efficiently. In my opinion, in order for more countries to be grouped with China and Japan, they have to clearly establish that they are capable of maintaining proper enforcement of the laws and should be monitored regularly. If not, grouping these countries with China and Japan could create more loop-holes and porous borders.

Interestingly, along with the types of studies above, researchers have actually posed as buyers of ivory in an effort to collect data from markets on the number of outlets selling ivory, the number of carvers that are employed, and the price of the ivory for sale.¹¹¹ I found this type of study to be the most interesting and perhaps the most accurate. However, this type of research only determined that some markets are decreasing in sales while others are increasing.¹¹² In my opinion, I think more studies like this would prove beneficial in addressing how easily ivory is

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Stiles, supra, note 45, at??.

¹¹² Id.

moved across borders and illegally sold. If this could be determined, then perhaps these holes in the system could be determined and closed. Should the US play a role?

The most successful study done used changes in elephant population data in an attempt to examine the effectiveness of the CITES ban.¹¹³ The primary focus of the study was the relationship between ivory markets and local elephant populations.¹¹⁴ There were three stages taken during this analysis. First, changes in country-level elephant populations between 1979 and 1989 were calculated in an attempt to determine the amount of suffering before the ban was placed on them.¹¹⁵ Second, elephant populations were calculated during the post-ban years of 1989-2007 in an attempt to see which countries benefitted most and least from the ban.¹¹⁶ The third stage compared post-ban losses with the presence of a regulated or an unregulated market, the number of bordering unregulated markets, the degree of corruption, and whether or not the country was involved in a civil war.¹¹⁷

These studies came out with some extremely interesting results. First, they showed that while poaching was happening all throughout Africa, the elephant population was not being affected quite as much as what was thought before the ban.¹¹⁸ Twenty countries in Africa saw a decline in their elephant population before the ban, while fifteen saw no change at all.¹¹⁹ However, the decline in those twenty countries totaled nearly one million elephants in the 1980's, the years before the ban was set in place.¹²⁰ What is the time span for this??

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Lemieux and Clarke, *supra*, note ____, at 457.

¹¹⁷ Id.

¹¹⁸ Id. at 458.

¹¹⁹ Id. at 463.

¹²⁰ Id.

The study continued to compare post-ban population changes to pre-ban population changes. The same type of results occurred in which some countries gained elephants, while others declined.¹²¹ There were three conclusions drawn from this study. First, it appeared that the ban helped to increase the overall number of elephants in Africa by about 140,000 between 1989 and 2007 by making it harder for poachers to kill elephants and sell their ivory; and, also, it was found that eighteen countries had increases in their populations post ban, one third of which added more than 10,000 animals each.¹²² Secondly, the ban was found to also have slowed down the continued loss of elephants; for example? the loss of 60,000 elephants between 1989 and 2007 in one country was only one-fifth of the number of elephants lost during the pre-ban period.¹²³ The Appendix I listing of the African Elephant in 1989 appears to have reduced the levels of poaching of many populations.¹²⁴ It was also found, however, that the international ban has not yet benefitted every African country, and a few of the countries, as in the pre-ban years, are accounting for much of the total loss of the continent.¹²⁵

In relation to regulated and unregulated markets, four countries with regulated markets saw larger increases in their elephant population than the 24 without.¹²⁶ The average increase in regulated markets was 194%.¹²⁷ Countries that bordered regulated markets also benefitted compared to those countries that did not.¹²⁸ Countries with unregulated markets had an average

¹²¹ Id. at 459.

¹²² Id.

¹²³ Id.

¹²⁴ CITES, Trade Measures in Multilateral Environmental Agreements,

<http://www.cites.org/common/prog/economics/iucn-trademeasuresinCITES.pdf> (last visited Dec. 5, 2012).

¹²⁵ Lemieux and Clarke, supra, at 459.X

¹²⁶ Id.

¹²⁷ Id. at 460.

¹²⁸ Id.

of 58% decline.¹²⁹ With the exception of one country, every country with an unregulated market saw a decline in their elephant populations from 1989 to 2007.¹³⁰

Interestingly, the study concluded that countries bordering on one or two unregulated markets were not significantly related to a change in the population of African elephants in that country; however, countries that bordered three or more of these markets were significantly affected.¹³¹ This is because unregulated markets are not highly controlled and regulated.

Therefore, the unregulated what? Elephant from regulated countries slip across ? seeps through their borders and affects markets that should be regulated.

The studies final conclusions indicated that the CITES ban on the international trade of ivory had succeeded in reversing the decline in the elephant population.¹³² However, despite these short term gains, the long term outlook for the elephant is not as clear.¹³³ Management of elephants requires considerable revenue expenditure throughout elephant,?? yet spending on conservation has been decreasing in real terms.¹³⁴ Also, the ban did not benefit every country in the same way as it benefitted others.¹³⁵ The study also found that poachers had greater access to unregulated markets for ivory and that unregulated markets have left a “loop hole” for the poachers, traders, and carvers alike.¹³⁶ For this reason, there is an urgent need to close unregulated markets.¹³⁷

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Id. at 464.

¹³³ CITES, supra note 125.

¹³⁴ Dublin, Milliken, and Barnes, Four years after the CITES ban: illegal killing of elephants, ivory trade and stockpiles, IUCN/SSC African Elephant Specialist Group.

¹³⁵ Lemieux and Clarke, supra, at 464.

¹³⁶ Id.

¹³⁷ Id.

In my opinion, CITES should be revised so as to place all? African elephant to Appendix I and leaving them there?? confusing unanimously across the board for all countries would have been the best way to begin to alleviate the problem. There should have been no leeway given to other countries regardless of their promises. Allowing auctioning of ivory immediately allows a market for ivory to open back up and entices poachers to illegally capture the ivory.

The countries who argued that a total ban on selling ivory would hurt their abilities to fund conservation would have been forced to find other, safer ways to fund conservation. Instead, they were given a “loophole” and an easy way out. Having unanimously regulated countries in Africa would reward countries for their continuous cooperation by funding their conservation efforts, and, in return, having their continued support for the international embargo. This would be the first step in the ultimate goal of eliminating poaching and preserving the African elephant species.

Unregulated markets have the opposite effect. They endanger the elephant populations of neighboring countries because of their weak border controls.¹³⁸ These markets also enable poachers from neighboring countries to sell their ivory in these unregulated markets, and there are not any types of border control that can stop the elephants from crossing country lines and increasing their risk of getting killed in an unregulated market.¹³⁹

Regulated markets have a positive effect on the elephant population of Africa, as opposed to unregulated markets which have the opposite effect because they increase poaching incentives as well as the ability to trade ivory on a domestic and international level.¹⁴⁰ The inability of

¹³⁸ Id. at 455.

¹³⁹ Id.

¹⁴⁰ Id.

CITES to control domestic markets must therefore be considered when examining the effectiveness of the 1989 ban.¹⁴¹

From the studies, it is clear that unregulated markets affect the population of African elephants not only in their own country, but also in surrounding countries, in a negative way. This is exactly why there should no longer be unregulated markets.

Overall, the CITES international agreement was obviously a step in the right direction. However, it was weakly enforced when it came to what Appendix the elephants would be placed in in certain African countries. Thus, I do not agree with the committee's decision to individually decipher what category the African elephant falls into within each specific country of Africa. The bottom line is that elephants roam freely in Africa, cross countries' borders, and a population in one country can change daily. A unanimous, highly-enforced agreement should have been made that kept Africa as a whole and not as individual countries. In order to enforce agreements between countries, sanctions need to be set in place in order to deter countries from not following suit.

The most important step the United States has taken so far is to enact the African Elephant Conservation Act. The Act itself is extremely thorough and laid out extremely well so as to coordinate with CITES. Understanding that CITES is on an international level and the AECA is on a national level, it still has been extremely successful. The African Elephant Conservation Act is still in effect today and works with CITES when it comes to Appendix II

¹⁴¹ Id.

nations. Appendix I nations are strictly banned from any trade in elephant ivory. Appendix II countries must have approval from CITES and can only sell ivory limitedly.¹⁴²

I feel as though the United States has set forth strict punishments which will deter illegal trading of African elephant ivory which is very important. The United States has also put in progress rewards for those who further CITES and the African Elephant Conservation Act which is also very important for retaining cooperation. Working together with CITES, the United States has progressed the future of the African elephants to a great degree through its continued cooperation. African countries are now using their Conservation Funds to facilitate projects to help African elephants.

In conclusion, the CITES ban is proving to be more effective than not. With some changes that should be made, it could be even more effective. The United States has made giant leaps working with CITES to be able to implement a program which instills the fact that the African elephant ivory trade will not be tolerated.

The move towards making sure the African elephant continues to roam our world today is certainly moving forward and can only be improved. I believe the next step in ensuring this has to be for CITES to move the African elephant to Appendix I for all countries, not just for some, with no exceptions. With this set in place, as explained above, there will no longer be unregulated markets which negatively affect the elephant population and affect neighboring countries as well. After this occurs, I believe not only will the elephant population grow, but poachers will be deterred from illegal activity resulting in a decline in the illegal ivory trade and a steady African elephant population.

¹⁴² International Elephant Foundation, [African Elephant](http://www.elephantconservation.org/elephants/african-elephants), (2010)
<http://www.elephantconservation.org/elephants/african-elephants> (last visited on Dec. 4, 2012).

There also needs to be laws and acts set forth in other countries besides the United States. Clearly, what the United States has done so far has been extremely effective. Many European countries followed the United States' example.¹⁴³

The European Union (EU) in 1989 and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1990 prohibited commercial imports of raw and worked ivory. The EU allows the import of ivory antiques, defined as items manufactured prior to June 1, 1947, and raw and worked ivory can be exported from EU countries subject to the destination country issuing CITES certificates authorizing the import. The domestic trade in raw and worked ivory is legal, subject to strict EU and national regulations based primarily on European Council Regulation 338/97.¹⁴⁴

A survey done in Europe found that the majority of ivory that is being sold today in Germany, the UK, France, Spain and Italy pre-dates the CITES ivory trade bans.¹⁴⁵ Because of this, the sale of this ivory is technically legal and does not affect elephant populations as it is not the result of recent poaching.¹⁴⁶

Although this is good news, this is still not enough. More countries need to follow suit. Also, based on my research, the ban on the elephant ivory trade was evaluated shortly after it was set in place, yet research on this topic has not been as evident in recent years. Although the elephant populations have been steady, this topic should not get put on the backburner in the future. In order to ensure that the bans and acts set in place are still working today there needs to be some type of constant regulation and continued concern for the African elephant population.

¹⁴³ Allison Sperry, Laws for Ivory Elephant Tusks, http://www.ehow.com/list_6853996_laws-ivory-ivory-tusks.html (last visited Dec. 5, 2012).

¹⁴⁴ Daniel Stiles and Esmond Martin, Ivory Markets of Europe, (2005) available at <http://www.savetheelephants.org/files/pdf/publications/2005%20Martin%20&%20Stiles%20Ivory%20Markets%20of%20Europe.pdf> (last visited Dec. 6, 2012).

¹⁴⁵ Id.

¹⁴⁶ Id.

Much better than first draft. Still heavy reliance on a couple of sources. Unclear whether the recommendations are any different than what those sources have previously suggested.

Should be more on Europe. Footnotes are often not proper. A little sloppy.

Grade: B+