will increase the availability to students in the United States of information about the cultures, actions, and policies of other nations so that these students might make more informed judgments with respect to the international policies and actions of the United States.

(b) The assistance provided under this part is subject to the applicable provisions of Subchapter A of this Chapter, pertaining to fiscal, administrative, and other matters (General Provisions for Office of Education Programs, 45 CFR Part 100a).

(20 U.S.C. 512a.)

§ 146a.2 General authority.

The Commissioner may award grants and contracts for projects to stimulate locally designed educational programs to increase the understanding of students in the United States about the cultures, actions, and policies of other nations in order to allow them to better evaluate the international and domestic impact of major policies of the United States and other nations. The Commissioner may make these grants and contracts for projects at all levels of education including community, adult, or continuing educational levels.

(20 U.S.C. 512a.)

§ 146a.3 Definitions.

"Student" means any person enrolled in an educational program.

(20 U.S.C. 512a.)

§ 146a.4 Eligible applicants.

(a) Any public or private non-profit agency or organization, including but not limited to, institutions of higher education, State and local educational agencies, professional associations, educational consortia, and organizations of teachers is eligible to receive a grant or contract under this part. A profit-making organization is eligible to receive a contract.

(b) If an educational consortium applies for this assistance, is must include in its application (1) a description of the role of each member of the consortium in carrying out the project and (2) a written commitment from each participating member stating that it will perform the activities ascribed to it.

(20 U.S.C. 512a).

§ 146a.5 Applications.

(a) Eligible applicants that wish to apply for a grant or contract must file their applications with the Commissioner before the established closing date for such applications. Each application must contain (1) a description of the proposed activities and (2) sufficient information to enable the Commissioner to evaluate the application on the basis of the criteria set out in § 146a.7 and to determine whether the applicant will satisfy the project requirements set out in § 146a.6.

(b) Each applicant must assess the local need for the proposed project.

(20 U.S.C. 512a.)

§ 146a.6 Project requirements.

(a) Funds under this part may be used to carry out the following activities:

(1) The in-service training of teachers and other educational personnel with regard to the cultures, actions, and policies of other nations;

(2) The compilation of existing information and resources about other nations in forms useful to various types of educational programs; or

(3) The dissemination of information and resources pertaining to the cultures, actions, and policies of other nations to educators and education officials upon their request.

(b) Costs that are reasonably related to carrying out the activities listed in paragraph (a) (1), (2), and (3) of this section will be permitted. These costs may include: (1) Funds for salaries, supplies, travel and related expenses; and (2) Funds used for library acquisition and for the use of computer hardware or software.

(c) Funds may not be used for the development of new curriculum or the acquisition of equipment or remodeling of facilities.

(20 U.S.C. 512a.)

§ 146a.7 Evaluation criteria.

(a) In addition to evaluation on the basis of the criteria found in the Office of Education's General Provisions Regulations, 45 CFR 100a (26(b)), the Commissioner will also evaluate applications under this part on the basis of the following criteria:

(1) The extent to which appropriate segments of the local community were consulted on the development of the application;

(2) The degree to which the proposed project or program provides specifically for cooperation with appropriate segments of the local community; and

(3) The commitment of the agency or organization to the establishment and operation of the program as evidenced by maximum use of non-Federal resources (including financial support). Non-Federal resources include components of the proposed program, such as teaching personnel committed to and available for the project for whom Federal reimbursement is not requested, existing library resources and facilities, volunteer services, and other on-going activities of the applicant agency or organization which demonstrate a commitment to the additional activities proposed for Federal funding.

[FR Doc. 78-12972 Filed 5-11-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21481; RM-2899]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Stations in Dickinson and Williston, N. Dak. and Glendive, Mont.; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns, and reserves for educational use, an additional VHF television channel to Williston, N. Dak.; substitutes television channels in Dickinson, N. Dak., and Glendive, Mont. By making these changes, most of the people in North Dakota would be assured of receiving noncommercial educational television service.

EFFECTIVE DATE: June 19, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER.—PROCEEDING TERMINATED

Adopted: May 5, 1978.

Released: May 10, 1978.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Dickinson and Williston, N. Dak. and Glendive, Mont.), Docket No. 21481, RM-2899.

1. On November 14, 1977, at the request of Prairie Public Television, Inc. ("petitioner"), licensee of noncommercial educational television Stations KFME, Channel 13, Fargo, N. Dak., and KGEE, Channel 2, Grand Forks, N. Dak., the Commission adopted a Notice of Proposed Rulemaking, 42 FR 59766, proposing the assignment of television Channel 4 and its reservation for noncommercial educational use at Williston, N. Dak. The proposal requires substitution and reservation of Channel 9 for reserved Channel 4 at Dickinson, N. Dak., and of Channel 13 for Channel 9 at Glendive, Mont. Supporting comments were filed by petitioner. Opposing comments were filed by Meyer Broadcasting Co. ("Meyer"), licensee of television Station KUMV-

TV, Williston, N. Dak., and television translator Station K09JY Channel 9, Glendive, Mont., and the Association of Maximum Service Telecasters, Inc. ("MST").

2. Williston, N. Dak. (pop. 11,280), seat of Williams County (pop. 19,301),[1] is located in northwestern North Dakota, about 32 kilometers (20 miles) east of the Montana border and 177 kilometers (110 miles) west of Minot, N. Dak. It has three television assignments: Channel 8 (KUMV-TV); Channel 11 (KXMD-TV); and Channel *15 (unoccupied and unapplied for).

3. Dickinson, N. Dak. (pop. 12,405), seat of Stark County (pop. 19,613), is located in southwestern North Dakota, about 96 kilometers (60 miles) east of the Montana border and 153 kilometers (95 miles) west of Bismarck, N. Dak. It has three television assignments: Channel 2 (KDIX-TV); Channel *4 (unoccupied and unapplied for); and Channel 7 (pending application (BPCT-4910), filed by Meyer Broadcasting Co.).

4. Glendive, Mont. (pop. 6,305), seat of Dawson County (pop. 11,269), is located in east central Montana about 48 kilometers (30 miles) west of the North Dakota border. It has three television assignments: Channel 5 (KXGN-TV); Channel 9 (occupied only by a 100 watt translator (K09JY) licensed to Meyer Broadcasting Co.); and Channel *16 (unoccupied and unapplied for).

5. Petitioner states it wants to bring noncommercial educational television service to the entire State of North Dakota, and if Channel *4 in Williston and Channel *9 in Dickinson were assigned as proposed, and its applications granted for all four channels[2], it would accomplish this purpose.

6. Channel 4 could be assigned to Williston provided the transmitter site is located at least 5 kilometers (3 miles) southeast of the community so as to meet the spacing requirement to Station CBKMT, Channel 4, Moose Jaw, Saskatchewan. In order to assign the substitute Channel 9 to Dickinson, the transmitter site must be located at least 7.3 kilometers (4.5 miles) southwest of the community to meet the spacing requirement to Station CKX-TV-02, Channel 9, Melita, Manitoba. In Glendive, Mont., Channel 13 could be substituted for Channel 9 in conformity with the spacing requirements provided the transmitter site is located 32 kilometers (20 miles) southwest of Glendive. Though a maximum facility television station could provide the requisite city-grade coverage from that distance, the translator station would not be able to serve the city from that site. K09JY's continued operation at its present site on Channel 13, would involve short-spacings. However, the extent of the separations [266 kilometers (166 miles) to KXMC-TV, Channel 13, Minot, N. Dak., and 300 kilometers (186 miles) to KSPD-TV, Channel 13, Eagle Butte, S. Dak.], indicate that no interference would be predicted to either station. Rather, any impact would be on the translator which has agreed to the change in channels if required not to move from its present operating location.

7. In comments, Meyer states it does not oppose the granting of petitioner's proposal provided Meyer's translator license at Glendive is amended to specify operation on Channel 13 and a waiver is granted so that it may continue to operate at its present location or continue to operate on Channel 9 at its present site. It asserts that it has provided the Glendive community with a valuable broadcast service which would not otherwise be available to the community. Meyer contends that any Commission action requiring it to relocate its translator to a different site, or to expose it to a competing application, would jepardize the continuation of this service to Glendive.

8. In reply, MST contends that it does not oppose the assignment of television channels provided the use of each channel is consistent with all distance separation requirements. In this case, it asserts, the operation of a high-powered translator on either Channel 9 or Channel 13 at the present Station K09JY location in Glendive would entail major short separations. It argues that, if Meyer wishes to continue a high-powered translator at Glendive, it could apply for a 1,000 watt UHF translator on Channel *16, which is assigned to Glendive and involves no short separation, or it can petiton for rulemaking to assign an unreserved UHF channel. MST notes that petitioner has indicated agreement with either Meyer proposal, and has even advocated a waiver of the rules for continued operation of a high-powered Channel 9 translator. However, MST asserts that private parties should not be permitted to waive the public's right to television service free from interference which the Commission's own standards would hold to be objectionable, citing *United Television, Inc.* 48 FCC 2d 265 (1974). MST asserts that the Table of Assignments should not be amended in anticipation of the grant of a waiver since such a procedure not only prejudges the waiver request but could provide precedent for other short-spaced assignments on the basis of subsequent waivers of the translator rules. MST has no objection to the assignment. Finally, MST urges that if the proposed assignments and substitutions of channels are made, the Commission should decline to modify the license of Station K09JY and should instead specifically state that a site must be selected to meet all distance separation requirements for new stations or new translator locations for existing stations on any of the assigned and affected channels.

9. We have carefully considered the record in this proceeding and conclude that it would be in the public interest to assign Channel 4 for noncommercial educational use at Williston, N. Dak., and to substitute and reserve Channel 9 for Channel 4 at Dickinson, N. Dak.; and Channel 13 for Channel 9 at Glendive, Mont. By making these changes, the petitioner would be provided with an opportunity to bring noncommercial educational television service to important portions of the State of North Dakota. As stated in the Notice, the only impact these changes might have would be on translator Station K09JY operating on Channel 9 in Glendive. It has agreed to the change in channels, if not required to move from its present operating location. That, however, is not a matter which can properly be resolved through rulemaking. Rather, it should be raised in connection with the application translator Station K09JY needs to file as a result of our decision to substitute Channel 13 for Channel 9 at Glendive. The granting of waiver is not a prerequisite for the channel change as translators represent a secondary channel use which must yield as necessary to permit regular television operations. Finally, in this regard, even if waiver is granted for a short-spacing, this has no bearing on the use of the channel for a full fledged operation, as any television broadcast station that would operate on Channel 13 at Glendive, must comply with the mileage separation requirements. Likewise, any station on Channel 9 in Dickinson must also comply with the mileage separation requirements.

10. The concurrence of the Canadian Government has been obtained on all of the proposals.

11. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules: *It is ordered* That effective June 19, 1978, the Television Table of Assignments, § 73.606(b) of the Commission's rules, is amended for the cities listed below to read as follows:

City	Channel No.
Dickinson, N. Dak.	2+, *9−, 7
Williston, N. Dak.	*4, 8−, 11−, *15−
Glendive, Mont.	5+, 13+, *16−

[1]Population figures are taken from the 1970 U.S. Census.

[2]Petitioner also intends to file applications for construction permits for new noncommercial educational television stations on Channel 3 at Bismark and Channel 6 at Minot, N. Dak.

12. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-13007 Filed 5-11-78; 8:45 a.m.]

[Docket No. 21511; RM-2752]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station Harrison, Ark.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns a Class A FM channel to Harrison, Ark. The channel assignment provides for a second FM station which could provide a third local aural broadcast service to the community.

EFFECTIVE DATE: June 19, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: May 5, 1978.

Released: May 8, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Harrison, Ark.), Docket No. 21511, RM-2752.

1. The Commission has before it the *Notice of Proposed Rulemaking,* 42 FR 1513, proposing the assignment of Channel 244A to Harrison, Ark., as its second FM assignment. The proceeding was instituted on the basis of a petition filed by Charles E. Bowman and Don E. Loveland ("petitioners"). Supporting comments were filed by petitioners reaffirming their intention to file for the channel, if assigned, and their willingness to compete under such circumstances. No oppositions were received.

2. Harrison (pop. 7,239), in Boone County (pop. 19,073),[1] is located in northwestern Arkansas, 176 kilometers (110 miles) northwest of Little Rock. It presently receives local service from Station KHOZ-FM (Channel 275), and daytime-only AM Station KHOZ, both licensed to Harrison Broadcasting Corp.

3. Petitioners state that Harrison's population has increased 23 percent during the last 5 years. They assert that the area's economy depends on agriculture, light manufacturing and leisure industry. Petitioners note that food processing, wood products, apparel, electrical, and plastic manufacturing are the major industries. In support of its proposal, petitioners have submitted letters from local officials and citizens indicating their support for the proposed assignment.

4. Petitioners show that there is no Class C channel available for assignment to Harrison, but they state that the proposed Class A FM channel could be used to provide a second FM and second nighttime aural service to 10,800 persons residing in an area of 15,000 square kilometers (580 square miles). Preclusion would occur only on Channel 244A, affecting a small area in which Harrison is located.

5. While the proposed assignment would contravene the usual policy of avoiding intermixture of a Class A with a Class C channel in a particular community, we have deviated from this policy when there is no Class C channel available for assignment and there is a demand for a Class A channel and there is a willingness to compete under such circumstances. Yakima, Wash., 42 FCC 2d 548, 550 (1973); Key West, Fla., 45 FCC 2d 142, 145 (1974). There is no Class C FM channel that could be assigned to Harrison, and petitioner has expressed a desire to apply for Channel 244A at Harrison in spite of the intermixture situation. We believe it is in the public interest to make the assignment which would provide a second local FM service to the community.

6. In view of the foregoing: *It is ordered,* That effective June 19, 1978, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended to read as follows for the community listed below:

City and Channel No.
Harrison, Ark.; 244A, 275.

7. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

8. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).)

FEDERAL COMMUNICATIONS COMMISSION.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-13008 Filed 5-11-78; 8:45 am]

[1] Population figures are taken from the 1970 U.S. Census.

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Listing of the African Elephant as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the African elephant (*Loxodonta africana*) to be a Threatened species. Special regulations are issued for importation of and interstate commerce in this species. These regulations represent a modified and more restrictive version of Option II of the Service's proposed rulemaking of January 16, 1978. Ivory and other African elephant products will be able to enter the U.S. only if exported under specified conditions from countries that are parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. A review of the status of the African elephant has shown that it is declining in may parts of its range and that illegal poaching for ivory is a factor in the decline. It is anticipated that this rule will provide additional protection to the species.

DATE: This rule will become effective on June 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The African elephant has a long history of conflict with and exploitation by man. Even during the era of the Romans some elephant populations were depleted through the taking of animals for ivory or entertainment purposes. In modern times, elephants were exterminated in large parts of their range by ivory hunters and pressure from growing human populations. After passage of the Endangered Species Act of 1973, the Service came to consider the African elephant as a possible candidate for listing in the new Threatened category provided by the Act. The Service has been especially concerned about reports that the species was declining rapidly in some

areas, partly because of intensified killing for ivory.

On August 18, 1977, the Service was petitioned by the Fund for Animals (1765 P Street NW., Washington, D.C. 20036) to "protect the African elephant as an endangered species." The Service decided that this petition presented insufficient data on which to base an immediate proposed rulemaking, and also rejected the idea that the status of the species was so desperate as to warrant listing in the highly restrictive Endangered category. The best available information indicates that there are at least 1.3 million of these animals still in existence, and that there still are some large, apparently well-protected populations.

On November 23, 1977, the Service telegrammed Dr. Iain Douglas-Hamilton, Chairman of the Elephant Specialist Group of the International Union for Conservation of Nature and Natural Resources (IUCN). Dr. Douglas-Hamilton has completed two years of a three-year survey of the African elephant, sponsored by the IUCN and World Wildlife Fund. He is a highly respected authority on the biology and conservation of the species, and is in continuous contact with numerous other experts. Through detailed correspondence and his own field investigations, he has assembled an immense amount of information, covering all major parts of the range of the elephant. The Service considers him to be the best available source for data on the general status of the species. On December 8, 1977, Douglas-Hamilton cabled a summary of his data to the Service, and subsequently, at the expense of the U.S. Government, he personally traveled to Washington, D.C., to present information to the House Merchant Marine and Fisheries Committee, and to the staff of the Service's Office of Endangered Species. On the basis of this information and the Service's own review of pertinent literary references, the African elephant was proposed for listing as a Threatened species in the FEDERAL REGISTER of January 16, 1978 (43 FR 2193-2196). New information and comments received following the proposal have not altered the Service's view that this classification is warranted for the elephant, because of its history of exploitation, considerable loss of habitat and range, and recent drastic declines in some areas.

In its proposal, the Service stated that it recognized "that the conservation of the elephant is intimately associated with the ivory trade. It would be advisable to carefully control commercial activity for the welfare of the species, and quite possibly for the ultimate benefit of the trade itself. Nevertheless, it may not be advisable to completely stop commerce or, insofar as can be accomplished by the Service, importation into the United States. Substantial amounts of ivory are collected from elephants that die of natural causes or are killed legally to protect human life or property. A limited number of elephants can be killed each year, and their ivory used, without detriment to overall populations. The sale of such ivory could result in extra funds for conservation programs, or at least could provide an economic incentive for such programs. On the other hand, legal sales may stimulate poaching, and it may be impossible to determine how a particular product was obtained."

Because of the difficulty in formulating appropriate conservation measures, the Service issued a series of options that could be considered by the public, scientific community, government officials, and commercial interests. The Service indicated that in any final rulemaking it might issue a variation of one or more of these options, or other reasonable measures that were in accord with sound conservation principles.

Option I simply would have applied all the standard prohibitions (and permit exceptions) for Threatened species to the African elephant, and so essentially would have ended legal commercial import of ivory and other elephant products into the United States. Option II would have allowed importation and other utilization of elephant products from nations that were party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Option III would have allowed importation only from nations providing satisfactory certification and evidence that exports to the United States were consistent with effective conservation programs for the elephant. Option IV would have provided for importation from countries meeting the criteria of Option II or III, and from countries that might not have elephant populations, but which could demonstrate that the product involved originated in a nation meeting the criteria of Option II or III.

SUMMARY OF COMMENTS

Approximately 580 of the persons who responded to the proposal during the designated comment period supported Option I or even more restrictive measures for the protection of the African elephant. Approximately 207 persons indicated that their livelihood was totally or partly dependent on ivory, and that they were opposed to a complete ban on its importation and interstate movement. Almost all of these persons, however, observed that they did not consider their business to be detrimental to the elephant, and that they would favor measures to insure that only ivory taken legally and in accordance with sound conservation practices could be imported; about 155 of these persons indicated support for Option III. Approximately 90 other parties also supported Option III. In addition, about 50 persons wrote to express concern that a ban on ivory importation would adversely affect the economic status of some people, but did not indicate that they were referring to themselves, and did not express support for a particular option. Approximately 35 parties suggested that any ban on importation of elephant products should not apply to trophies taken legally by big game hunters. Approximately 50 persons expressed the view that the elephant was not Endangered or Threatened, and did not indicate that they preferred any particular option for regulation.

Among the parties supporting Option I, or comparative measures, were the Defenders of Wildlife; Earthforce Environmental Society (which, based on extensive interviews with authorities in Kenya, Tanzania, and Zambia, recommended a total ban for six months, followed by implementation of Option II); Elsa Wild Animal Appeal; Fund for Animals; Natural Resources Defense Council; Mr. Thomas O. Nicholson, Director of the American Museum of Natural History; Mr. R. Marlin Perkins, Acting Director of the Wild Canid Survival and Research Center; U.S. Representative Anthony C. Beilenson of California; U.S. Representative G. William Whitehurst of Virginia; State Senator George Rogers of New Bedford, Massachusetts; and the following member organizations of the Monitor Consortium: Fund for Animals, Animal Welfare Institute, Humane Society of the United States, Rare Animal Relief Effort, National Parks and Conservation Association, Society for Animal Protective Legislation, Let Live, Washington Humane Society, International Primate Protection League, Committee for the Preservation of the Tule Elk, Massachusetts Audubon Society, and Connecticut Cetacean Society. Most of these parties pointed out that any option, other than Option I, might allow opportunity for considerable smuggling and other abuse of the regulations. Congressman Beilenson, for example, wrote that the basic problem with the other options "arises from the difficulty in obtaining satisfactory documentation showing that the product came from an elephant killed legally in an exempt country of origin. Efforts to enforce a selective prohibition on imports would depend entirely on the ability of Customs and the U.S. Fish and Wildlife Service inspectors to determine the authenticity and accuracy of the required documents * * *. The enforcement officials feel that there is a much higher incidence of falsified or inaccurate documents than they can

uncover. Thus, efforts to implement regulations requiring documentation are difficult, and the difficulties may be insurmountable". Congressman Beilenson, however, also recommended "that the Department establish a procedure under which African nations with legitimate claims of hardship can petition for an exemption. These can then be dealt with on a case-by-case basis, and precise quotas for direct shipment of ivory and other products could be established in line with those nations' conservation programs."

Such an approach would seem to be a modified version of Option III, and would involve U.S. analyses and approval or disapproval of the conservation programs of foreign nations. As stated above, there is no established mechanism for such procedures, and the Service does not consider them to be necessary at this time.

Although nearly all African nations, and several of the major ivory reexporting countries, were officially notified of the proposal, responses were received from only eight foreign governments. Liberia, noting that the elephant had become rare because of poaching, favored Option I. Botswana, Mozambique, and Rhodesia stated that the elephant was not endangered or threatened in their territory, that they had effective conservation programs for the species, and that a ban on ivory export would be detrimental to their economies. Support for Option II was received from the following parties in the Republic of South Africa: Secretary for Planning and the Environment, National Parks Board of Trustees, and Kruger National Park. Tanzania, which reported a large, adequately protected elephant population, indicated preference for both Options II and III, and noted that it would very soon ratify the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Zambia stated that it had a large elephant population that could sustain a considerable annual take for ivory, and that Option III would be most suitable. Hong Kong supported Option IV, observing that its ivory carving industry provided employment for 3,000 craftsmen and had sent 30 percent of its $24,000,000 of exports in 1977 to the United States.

Option IV also was supported by the Endangered Wildlife Trust (Republic of South Africa), the American Association of Zoological Parks and Aquariums, and the IUCN Elephant Specialist Group. The comments of the latter party, submitted by Dr. Iain Douglas-Hamilton, explained that it would be preferable for the United States to remain involved with the ivory trade, and so have the means of helping to regulate and control such trade.

The National Wildlife Federation suggested that the United States limit its importation of ivory to raw ivory directly from the country of origin, and accompanied by export permits and documentation showing that such export would not be detrimental to the population. It was pointed out that whole tusks, unlike manufactured products, can be easily traced and their movement controlled. It also was explained that such tusks often became available through natural death, necessary cropping, or confiscation, and that their sale could provide funds for conservation measures. The Service understands this position, but considers that any plan involving required documentation for a conservation program essentially involves a version of Option III, which has been rejected for reasons set forth above. Limitation of import to whole tusks may indeed make enforcement easier, but the Service is not at this time prepared to state that a ban on manufactured products is in itself necessary for the conservation of the elephant. Reexporting nations, that are willing to follow the provisions of the International Convention, as implemented by the regulations issued herewith, in their own importation and utilization of ivory, should not be denied the opportunity to trade with the United States, unless specific circumstances warrant a change in policy.

The National Rifle Association of America opposed the proposed listing measure, because of the following given reasons: (1) the proposal allegedly stated that the ivory trade was the principal reason for the decline of the elephant, when actually other major factors were involved; (2) the proposal did not present substantial evidence warranting a threatened listing; (3) the draft impact assessment prepared in conjunction with the proposal was inadequate, and an environmental impact statement was required; (4) the Service did not prepare a "regulatory analysis" as was allegedly required by a Proposed Executive Order issued November 18, 1977; and (5) all four of the published options were defective as a matter of law or should be rejected as a matter of policy. In response, the Service considers that the information contained in the proposal, and in this rulemaking, adequately supports the listing measures, and makes it clear that the ivory trade is not the only major factor of concern. The Service feels that all requirements of law have been met in the preparation of the final rulemaking, and that the regulations selected are both legally appropriate and meaningful to the conservation of the elephant. The points made by the National Rifle Association have been considered in the preparation of the final version of the impact assessment.

The Safari Club International, the Safari Club International Conservation Fund, and the American Hunters' Educational and Legal Protection Fund submitted a joint response. A total ban on importation of elephant products was opposed as being detrimental to the economies of several African countries and unnecessarily restrictive to American trophy hunters. Legitimate sport hunting was not considered a threat to the elephant and was said to actually be beneficial to the species by providing an economic incentive to maintain populations and a means of guarding against poaching. It was proposed that the elephant be listed as threatened only in certain African countries where the situation reportedly warranted such a measure, and that export from such countries be allowed in the case of legitimate trophy hunters, nations that had ratified the International Convention, and nations that provided certification of adequate conservation programs. The Service appreciates the effort involved in preparing this detailed plan, but does not consider it more advantageous than that published herein. The Service prefers to deal with the African elephant as a single entity and to determine a classification expressing its overall status. The history and current problems of the species call for a threatened listing. The International Convention provides a mechanism for controlling the export of the elephant, and so long as this mechanism is functioning properly, there is no call for the United States to set up more, or less restrictive measures.

The American Ivory Importers Association, one concern of which is the movement of ivory products from Hong Kong, opposed Options I and II as being unnecessary and possibly detrimental to the conservation of the elephant, and as adversely affecting the economic interests of some African countries. The Association suggested a modified version of Option III, which would add provisions for reexport. There would be an initial U.S. evaluation of the conservation programs of African nations, and export would be allowed only directly from those countries approved, or from reexporting nations that could demonstrate that the product involved had originated from an approved African country. It was suggested that certificates of origin be issued by the U.S. consulate in the source country, and that all manufacturers and importers be required to maintain detailed records to facilitate investigation. The Service appreciates the interest of the Association in insuring that ivory exports are not detrimental to elephant populations, but considers that the existing control mechanism of the International Convention would be more advantageous than newly imposed measures. The suggestion that manufacturers and importers maintain adequate rec-

ords could just as well apply to an Option II situation.

Mr. Kenneth N. Enright, managing director of Midwest Distributors of Urbana, Ill., a firm involved in the importation of raw ivory, submitted a detailed response stating that the African elephant was not seriously threatened and that claims of the detrimental effects of the ivory trade had been greatly exaggerated. He pointed out that warnings of the imminent extinction of the elephant, because of the take for ivory, had been made nearly a century ago, but that the species was still abundant and even increasing in some areas. The utilization of ivory was said to have actually declined in recent years, and since the 1960's many firms involved in the trade reportedly had left the business. Within the United States, however, there still were about 3,170 persons said to be "engaged, wholly or in part, in the manufacture of articles, artwork or jewelry based on raw ivory." Mr. Enright disputed widely circulated statements that the price of ivory had increased tenfold in recent years, and stated that the Service should not have based its proposal on such a factor. He presented documentation suggesting that the average price paid by his own firm had increased only about fourfold since the late 1960's, and noted that part of the increase had been caused by such factors as rising taxes and transport costs, rather than higher profits for suppliers. Although acknowledging that there were problems in some parts of the elephant's range, he stated that the amount of ivory being used in the trade was not excessive. He recommended that the U.S. continue to allow the importation of legally taken whole tusks from African nations, and from those reexporting nations that had ratified the International Convention. He observed that it would be easy to control commerce in whole tusks, but that there should be a temporary ban on the importation of manufactured goods from reexporting countries.

The Service is impressed with the effort that undoubtedly went into Mr. Enright's response, but disagrees with the suggestion, to which much of this response is devoted, that the proposed rulemaking was based mainly on the belief that rising prices were jeopardizing the African elephant. The proposal and this final rulemaking make it clear that the elephant is considered threatened because of a decline in numbers and distribution resulting from a variety of factors, among which is exploitation for ivory. The price being paid for the ivory is an incidental factor and is not in itself a major reason for listing. The Service continues to hold that available evidence shows that exploitation for ivory has been and is a problem for some elephant populations, and that it is advisable to place controls on commercial activity involving the United States.

Conclusion

The Service has decided to reject Option I, considering that a total ban on international and interstate commercial activity in ivory and other products is not in itself necessary for the conservation of the African elephant. If such factors as natural mortality and the need to relieve excessive population pressures in certain areas are taken into account, there seems no doubt that a substantial amount of ivory and other products, and a certain number of big game trophies could be taken on a regular basis without being detrimental to the overall status of the species. The Service recognizes that problems could develop in verifying that the particular items to be imported or sold were taken in accordance with proper conservation programs, and that there may be some basis for the argument that merely allowing the ivory trade to function will encourage some poaching and ill-advised exploitation. No substantive basis, however, has been presented to show that such problems, particularly if mitigated by the regulatory measures herewith provided, would be insurmountable or would result in significant declines of elephant populations. The Service also has considered the argument that some commercial and sporting take gives an economic incentive for the maintenance of the species. While not yet convinced that such a position is fully valid, the Service is willing to allow the benefit of the doubt, within the scope of the regulations now being issued.

Option III, and the several variations thereof suggested by respondents, also have been rejected. Option IV likewise has been rejected, because it incorporated the provisions of Option III. No mechanism has been established to implement such measures, and they would have put the United States in the difficult position of evaluating and passing judgement on the conservation and law enforcement policies of foreign nations. The comments of some respondents, including certain African governments, suggest that the Service did not sufficiently explain the implications of Option III. This measure would not have required simply a certificate stating that export of a particular item was in accord with an effective conservation program, but probably would have involved detailed U.S. investigation of the involved program. It is likely that the immediate effect of Option III would have been a total ban on importation of elephant products. Individual nations then would have had to provide evidence to the Service, which could have been used for an assessment and decision on whether import could be allowed. The Service now thinks that such measures would not be practical, and would not be necessary since the means of receiving certification of the effectiveness of foreign conservation and legal policies already exists in the form of the International Convention.

The Service has decided to adopt a modified version of Option II, which will allow importation to the U.S. of African elephants and products thereof which have originated in the wild in a country that is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and have been exported from such country of origin, and in any case of reexportation have been reexported, in accordance with Article IV of such Convention (compliance with Article VII, Paragraphs 2 or 3 of such Convention will not constitute compliance with this provision); and have remained in customs control and in an unaltered condition in any country not a party to such Convention that they enter while in transit to the United States. A special purpose permit may be issued in accordance with the provisions of 50 CFR 17.32 authorizing any activity otherwise prohibited with regard to the African elephant, upon submission of proof that such wildlife was already in the United States on the effective date of this rulemaking, or was imported into the United States in accordance with the above provisions.

The African elephant is on Appendix II of the Convention, which means that when exported from a member nation a permit must be issued certifying that the item involved was taken legally and that its export is not detrimental to the survival of the species. Article IV, however, does more than merely require issuance of a written certificate. It calls for the establishment of a scientific authority in the nation of origin, which is to advise on whether export is detrimental, and for the establishment of a management authority to determine that the laws of the nation are followed.

The regulations issued herewith take advantage of the mechanism established by the Convention. Moreover, these regulations specify that the original export and any subsequent reexports must comply with Article IV. A nation that is a party to the Convention may reexport elephant products to the United States, but only if the involved material had been derived from an African country that had wild elephants and that was party to the Convention, and had been exported from such country of origin in accordance with Article IV. No ivory should enter the United States that is not derived from elephants living wild in nations that are party to the Con-

vention. In the case of African elephants and products thereof that enter the U.S. in accordance with these provisions, or which already are in the U.S. on the effective date of this rulemaking, permits may be issued to allow interstate commerce or any activity otherwise prohibited.

The Service is aware that there have been questions regarding the validity and substance of some export permits issued relative to the Convention. At this time, however, there is no basis for restricting the importation of elephant products from any current or future Convention member, so long as the provisions of the regulations are followed. The Service considers that the pledges made by a sovereign nation, when entering into an agreement with fellow countries for the common good of all, are not to be taken lightly, and that any member nation must be assumed to intend to comply fully with the obligations imposed by Article IV and the other portions of the Convention.

It is not the intent of the Service to either deny commerce to any particular nation that is not a Convention member, or to attempt to pressure any nation to become a member. The Service does encourage all nations to consider membership and establishment of the regulatory bodies called for by the Convention. The immediate objective of the Service, however, is only to find a practical means of insuring that the entry of African elephant products into the United States is not detrimental to the survival of wild populations. The Convention, through its provisions for an international framework of control, the establishment of a common system of regulatory authorities in all member nations, and pledges made at the highest level of Government to numerous fellow nations, now appears to offer the best method.

Summary of Factors Affecting the Species

Section 4(a) of the Act states that the Secretary of the Interior may determine a species to be Endangered or Threatened because of any of five factors. These factors, and their application to the African elephant, are listed below.

1. *The present or threatened destruction, modification or curtailment of its habitat or range.* The African elephant originally occupied all of Africa, except for extremely dry areas, and it probably inhabited the territory of every existing nation on the continent. Its range once included the Mediterranean coast, the lower Nile Valley, and possibly parts of southwestern Asia, but it probably had been exterminated in these areas by about 2,000 years ago. More recently, the species has disappeared in the countries of Afars and Issas, Gambia, Guinea-Bissau, Lesotho, Swaziland, and Western Sahara. The elephant still occurs in all other African countries to the south of the Sahara Desert, but its range has been restricted considerably in most of them. This is especially true in western and southern Africa, where the species has held out in remote border areas or in small, isolated patches of suitable habitat. Throughout nearly its entire remaining range, however, the elephant is progressively losing habitat to the expanding human population and associated agricultural development. Many elephants are killed directly because they are considered a threat to man and his crops and settlements, and others die because remaining habitat cannot support them. Certain elephant "population explosions" have received much publicity, but these often are associated with forced crowding imposed by man, and, in any case, represent only a small percentage of the overall range of the species.

According to information provided by Douglas-Hamilton, the African elephant is known to be declining in 18 of 33 countries where it still survives, and in five of these the decrease is rapid. In two other countries, with comparatively small remaining populations, there is a decline in some areas, but an increase in others. Of the other countries, no data are available for eight, populations are reportedly stable in four (though three of these have only small remnant populations), and numbers are increasing in one (Somalia).

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Because of its ivory, the African elephant is among the world's most commercially valuable animals. The species has been hunted for this purpose since ancient times, but exploitation greatly increased as Africa was opened to the outside world in the nineteenth and twentieth centuries. According to Douglas-Hamilton, ivory hunting, mainly illegal, is the greatest immediate threat to the species. For example, poaching appears to have been largely responsible for a drastic reduction of elephants in Uganda, and for eliminating about half of the elephants in Kenya, since the early 1970's. The still substantial populations in eastern and central Africa are threatened with further reduction, and the remnant populations in western Africa could be entirely wiped out, if large scale poaching continues.

3. *Disease or predation.* Not major factors in current situation.

4. *The inadequacy of existing regulatory mechanisms.* It always has been difficult for most African nations to enforce wildlife laws, because of a lack of funds and trained personnel, and because of the vast, remote areas that are involved. With a considerable rise in the price of ivory in the early 1970's, there was a greater incentive for many more people to carry out illegal hunting and trade, and local enforcement measures became ineffective in some areas. In addition, there seems to be little regulation of international commerce. Large quantities of illegally taken ivory apparently have been sent out of African countries and purchased overseas. According to Douglas-Hamilton, the ivory trade is not well understood and is in need of extensive investigation. He states that strict application of the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora would be helpful. Relatively few of the major ivory exporting and importing countries, however, are now members of the Convention. If through the Convention or other procedures, means could be found to insure that only lawfully taken ivory could be imported by other countries, the incentive for poaching would be greatly reduced.

5. *Other natural or manmade factors affecting its continued existence.* None now known to be significant.

Effects of the Rulemaking

This rulemaking designates the African elephant as a threatened species, and promulgates a special regulation applying the provisions of 50 CFR 17.31, and additional provisions relative to the importation and utilization of elephant products. The prohibitions of 50 CFR 17.31, with respect to foreign species, are essentially the same as those for endangered species, as set forth in Section 9(a)(1) of the Act and implemented by 50 CFR 17.21. These prohibitions, in part, will make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species (except as provided in the regulation). It also will be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. In accordance with 50 CFR 17.32, permits for threatened wildlife are available for scientific purposes, enhancement of propagation or survival, economic hardship, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Economic hardship permits could, under certain conditions, allow persons who had already contracted to perform an otherwise prohibited action to carry out the terms of their contract.

The prohibition against importation incorporated into 50 CFR 17.31 will not apply to African elephants and products thereof which have originated in the wild in a country that is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; *and* have been

exported from such country of origin, and in any case of reexportation have been reexported, in accordance with Article IV of such Convention (compliance with Article VII, Paragraphs 2 or 3 of such Convention will not constitute compliance with this provision); *and* have remained in customs control and in an unaltered condition in any country not a party to such Convention that they enter while in transit to the United States. A special purpose permit may be issued in accordance with the provisions of 50 CFR 17.32 authorizing any activity otherwise prohibited with regard to the African elephant, upon submission of proof that such wildlife was already in the United States on the effective date of this rulemaking, or was imported into the United States in accordance with the above provisions.

Therefore, the rulemaking provides for possible interstate commerce and other use of future imports, as well as for continued utilization of existing ivory stocks and other products now in the United States. There will be no effect on importation of African elephants and products thereof that originated in nations that are party to the Convention, provided that exportation from such nations complied with Article IV of the Convention. Reexporting countries that are Convention members will be able to continue to send products to the United States, if it can be demonstrated that such products had originated in the wild in a country that is a party of the Convention, and that the original export had been in accordance with Article IV.

These exemptions, none of which are expected to adversely affect wild elephant populations, will allow continued importation of ivory and hunting trophies under prescribed conditions. It is likely, however, that there will be an initial reduction in the amount of raw and worked ivory entering the United States, because some of the major exporting and reexporting nations are not Convention members. The only nations with populations of African elephants, that are Convention members, are Nigeria, Republic of South Africa, Niger, Ghana, Zaire, Senegal, and Botswana. Tanzania, however, has informed the Service that it will ratify the Convention very soon. When it does, two of the three countries (Tanzania, Zaire, Zambia) with the largest elephant populations will be eligible to export to the United States. As additional African nations join the Convention, the potential supply of exports would increase. Hong Kong, which is covered by the Convention through the membership of the United Kingdom, is currently the largest reexporter of ivory to the United States.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rulemaking. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours. The assessment is the basis for a decision that this rulemaking is not a major Federal action which would significantly affect the quaility of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rulemaking is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, 202-343-7814.

Regulations Promulgation

Accordingly, Subparts B and D of Part 17, Title 50 of the Code of Federal Regulations, are amended as set forth below:

1. Section 17.11 is amended by adding, in alphabetical order under "MAMMALS," the following to the List of Endangered and Threatened Wildlife and Plants:

§ 17.11 Endangered and threatened wildlife.

Species		Range					
Common name	Scientific name	Population	Known distribution	Portion endangered	Status	When listed	Special rules
Mammals:							
•	•	•	•	•	•	•	•
Elephant, African.	*Loxodonta africana*	N/A	Africa	Entire	T		17.40(e)

2. Section 17.40 is amended by adding a new paragraph (e) which reads as follows:

§ 17.40 Special Rules—Mammals.

* * * * *

(e) African elephant (*Loxodonta africana*)—(1) Except as provided in subparagraphs (2) or (3) of this paragraph, the prohibitions incorporated into § 17.31(a) shall apply to any African elephant, alive or dead, and to any part, product, or offspring thereof.

(2) The prohibition against importation referred to in paragraph (e)(1) of this section shall not apply to any such wildlife which:

(A) Has originated in the wild in a country that is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, TIAS No. 8249; and

(B) Has been exported from such country of origin, and, in any case of reexportation has been reexported, in accordance with Article IV of such Convention: *Provided that:* Neither compliance with Article VII, Paragraph 2 of such Convention nor compliance with Article VII, Paragraph 3 of such Convention shall constitute compliance with this subparagraph (2)(B); and

(C) Has remained in customs control and in an unaltered condition in any country not a party to such Convention that it enters while in transit to the United States.

(3) A special purpose permit may be issued in accordance with the provisions of § 17.32 authorizing any activity otherwise prohibited with regard to such wildlife, upon submission of proof that such wildlife was already in the United States on June 11, 1978 or that such wildlife was imported into the United States in accordance with subparagraph (2).

Dated: May 8, 1978.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

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