regarding competition and diversity in the video marketplace are best addressed through these measured structural constraints, which are readily applied and enforced. Moreover, we believe that these measures will mitigate the need for adopting broad behavioral measures to prevent potential abuses by network-cable owners because their incentives to pursue discriminatory practices would be greatly reduced. Nonetheless, in the event that such practices should occur, we will consider complaints from local broadcast stations that claim to have experienced competitive harm by a network-owned cable system with respect to non-carriage or channel repositioning. Where we find that anticompetitive conduct has occurred, we will take remedial action, including ordering the cable operator to carry the station, or to carry it on a given channel, as necessary.

III. Significant Alternatives Considered and Rejected

The Commission considered all the alternatives presented in the Second FNPRM and considered all the comments directed to the various issues in the Second FNPRM. Alternatives proposed by commenters that were less burdensome on network-cable operators, and which would not detract from the Commission's goal of ensuring that quality service is provided to the public, were adopted.

18. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981)).

Ordering Clauses

19. Accordingly, *It is ordered* That, pursuant to sections 2(a), 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303(r), part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth below, effective August 31, 1992.

20. *It is further ordered* That MM Docket No. 82–434 is terminated.

List of Subjects in 47 CFR Part 76

Cable Television.

Rule Changes

Part 76 of chapter I of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 76 continues to read as follows:

Authority 47 U.S.C. 154, 303.

2. Section 76.7 is amended by adding a new sentence to the end of paragraph (e) to read as follows:

§ 76.7 Special relief.

* * * * *

(e) * * * With respect to petitions filed relating to discontinuance of carriage of a broadcast signal, or repositioning a signal to another channel, by parties subject to § 76.501(b)(1), comments or opposition filings shall be due within fifteen (15) days and replies thereto within seven (7) days.

* * * * *

3. A new § 76.63 is added to read as follows:

§ 76.63 Notification.

Where the signal of a local television broadcast station, as described in § 76.5(gg)(1–3), is carried by a cable television system that is subject to the provisions of § 76.501(b)(1), the operator of such cable system shall provide written notice to the licensee of a local television station at least 30 days prior to either discontinuing carriage of the station's broadcast signal or carrying that signal on a different cable channel.

4. Section 76.501 is revised to read as follows:

§ 76.501 Cross-ownership.

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(b)(1) A cable television system (including all parties under common control) may directly or indirectly own, operate, control, or have an interest in a national television network (such as ABC, CBS, or NBC) only if such a system does not pass more than:

(i) 10 percent of homes passed on a nationwide basis when aggregated with all other cable systems in which the network holds such a cognizable interest, and

(ii) 50 percent of homes passed within any one ADI, except that a cable television system facing a competing system will not be counted toward this 50-percent limit.

(2) The requirements of paragraph (b)(1) of this section are applied at the acquisition date, except that a party with no prior attributable interests in a broadcast network or cable systems may exceed these limits in connection with a purchase of these operations from a party with such existing network-cable interests. Paragraph (b) will not be applied so as to require divestiture of existing facilities.

(3) For purposes of paragraph (b) of this section:

(ii) "Homes passed" is defined as the number of homes to which cable service is currently available whether or not a given household subscribed to the service.

(ii) "ADI" is defined as the Arbitron Area of Dominant Influence.

(ii) A "competing system" is faced by a network-owned cable system where the cable system provides service in the same area as another independently owned, multichannel video delivery system, as specified in § 76.33(a)(2)(ii). In order to be counted, such multichannel competitor must be capable of providing a package of local broadcast signals integrated within the service.

(c) Effective date. The provisions of paragraph (a) of this section are not effective until November 8, 1987, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970, (e.g., if franchise were in existence on or before July 1970), and will be applied to cause divestiture as to ownership interests proscribed herein only where the cable system is directly or indirectly, owned, operated, controlled by, or has an interest in a non-satellite television broadcast station which places a principal community contour encompassing the entire community and there is no other commercial non-satellite television broadcast station placing a principal community contour encompassing the entire community.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18121 Filed 8–7–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 332 and 333

Acquisition Regulation; Incremental Funding and Protests

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), title 48, Code of Federal Regulations, chapter 3, to make two administrative changes.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Senior Procurement Analyst, Division of Acquisition Policy, telephone (202) 690–7590.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to clarify and update the policy regarding the application of the concept of incremental funding, and to correct an erroneous reference concerning protest procedures. The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that neither amendment in this rule will have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations, and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 332 and 333

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated: August 3, 1992.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for parts 332 and 333 continues to read as follows:

Authority: 5 U.S C. 301; 40 U.S.C. 486(c).

PART 332—[AMENDED]

332.702 [Amended]

2. Section 332.702 is amended by revising paragraph (a) to read as follows:

332.702 Policy.

* * * * *

(a) Incremental funding may be applied to cost-reimbursement type contracts for the acquisition of research and development and other types of nonpersonal, nonseverable services. It shall not be applied to contracts for construction services, architect-engineer services, or severable services. Incremental funding allows nonseverable cost-reimbursement contracts, awarded for more than one year, to be funded from succeeding fiscal years.

* * * * *

PART 333—[AMENDED]

333.103 [Amended]

3. Section 333.103 is amended by correcting the reference in paragraph (a)(4) to read "333.103(a)(3)."

[FR Doc. 92–18823 Filed 8–7–92; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Retention of Threatened Status for the Continental Population of the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service announces its final decision on a February 16, 1989 petition requesting that all populations of the African elephant (*Loxodonta africana*) be elevated to endangered status under the U.S. Endangered Species Act. The Service has determined, based on the most current data available, that the most appropriate classification of the continental population of the African elephant is that it remain listed as threatened. The Service has also modified the current special rule to prohibit the import of African elephant ivory into the United States (this effectively reenforces the June 9, 1989 moratorium on the importation of African elephant ivory into the United States under authority of the African Elephant Conservation Act); to not prohibit the possession of or interstate commerce in legally imported elephants or their products or parts; and to allow the importation of sport-hunted elephant trophies into the United States under prescribed conditions.

EFFECTIVE DATE: September 9, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703–358–1708, FAX 703–358–2276).

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) was petitioned by Fund for Animals on August 18, 1977, to list the African elephant (*Loxodonta africana*) as endangered under the Endangered Species Act (Act), based primarily on the threat resulting from the commercial trade in elephant ivory. The Service, in response to that petition, conducted a status review and published a final rule on May 12, 1978 (43 FR 20499–20504) determining that the African elephant more appropriately met the criteria for a threatened species. The Environmental Impact Assessment prepared for that final rule stated that even though "the African elephant had been eliminated from much of its original range and is subject to severe overexploitation, there still are relatively large populations, some of them stable and well protected. An endangered classification thus would not accurately express the situation of this species * * *" A special rule provided for the importation of African elephants and products thereof into the United States, for primarily commercial purposes, in accordance with an ivory control system established under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The continental elephant population at that time was believed to total about 1.3 million animals with some populations stable and well-protected. Elephant populations in west Africa were considered fragmented, as populations occurred in remote border areas and/or in small isolated patches of suitable habitat. Elephant populations throughout the rest of Africa were

considered to be progressively losing land to expanding human populations and associated agricultural development. The offtake of elephants in 1978 clearly exceeded recruitment and the continental elephant population was diminishing. Few elephant management plans were developed or implemented and elephant protection and the ivory marketing control mechanisms were clearly inadequate.

The Service was again petitioned, on February 16, 1989, by the Humane Society of the United States, Animal Welfare Institute, International Wildlife Coalition, Animal Protection Institute, Society for Animal Protective Legislation, Friends of Animals, Inc., with support from other organizations, to reclassify the African elephant from threatened to endangered. The petition described continued declines in elephant populations because of continued illegal killing of elephants for the ivory trade and argued that the African elephant was endangered because of the continued threats resulting from that trade.

A variety of conservation efforts to curtail the illegal killing of elephants were initiated before and shortly after the petition was filed. Those actions, described below, included increased efforts by individual range countries to curtail poaching; ivory importation moratoria imposed by the United States, much of western Europe and Japan; and the transfer of the African elephant to CITES appendix I, which became effective in January 1990 and continues in effect.

The Service, in response to the February 1989 petition, conducted a status review and published a proposed rule (56 FR 11392–11401, March 18, 1991) stating that most populations of the African elephant (except for those in Botswana, South Africa and Zimbabwe, which remained as threatened) appeared endangered. Based on information available to the Service during its initial status review, the Service determined in the proposed rule that overutilization of the African elephant for commercial purposes was of sufficient threat to warrant reclassification of most populations to endangered. The Service evaluated this threat on a state by state basis, even though it was well-understood that elephants were not confined to political boundaries, because the level of protection provided to elephants and consequently the likelihood of overutilization varied between range states. The proposed rule indicated that the illegal killing of elephants to satisfy a worldwide demand for ivory severely impacted and endangered many elephant populations. Both elephant population and tusk weight data indicated or suggested population declines, although it was pointed out that many data sets were anecdotal accounts of former populations and somewhat precise statements of present populations. Records of ivory commerce indicated that the kill of elephants in the 1970s and 1980s was at levels that could not be sustained by the continental elephant population. It was pointed out that overutilization was both a cause for placing a population in an endangered status and a factor which if controlled could result in that population being retained in a threatened status.

A second major threat identified in the proposed rule was the inadequacy of existing regulatory mechanisms within the range states. It was pointed out that the establishment and implementation of elephant conservation plans to help develop management and enhance the protection of elephants would benefit many populations. The Service additionally acknowledged that information describing the effects of the most recent actions to control the ivory trade was not available at the time that the status review was conducted, and that the Service required additional information about those effects before preparing the final rule. The Service indicated that if substantial new information became available during the comment period the final rule could be substantially different from the proposed rule. In order to facilitate this process, the comment period on the proposed rule was extended, and because substantial conflicts existed in the newly acquired information, the Service extended the 12-month deadline for making the final determination on the proposed rule.

During the extended comment period, over 50,500 comments were received including: Extensive new information from African elephant conservation plans and the African Elephant Conservation Review of elephant management in 30 range states; extensive materials provided by several African range states; updated editions of the African Elephant Database; current information about the extent of the illegal killing of African elephants after enhanced elephant protection measures and the January 1990 CITES international ivory trade ban were implemented; and reports of the CITES Panel of Experts on the African Elephant on their evaluation of the management of the species in southern Africa.

The final rule is different from the proposed rule. Foremost, the elephant population is considered on a continental basis and it is determined that its most appropriate classification is threatened. In 1992, the continental elephant population totals about 600,000 but the critical factor of overexploitation seems to be controlled because of: (1) Enhanced anti-poaching activities, (2) the CITES appendix I listing, and (3) various ivory import moratoria. There is substantial evidence that the illegal offtake of elephants on a continent-wide basis is significantly reduced and is probably somewhat less than recruitment. At present, several elephant populations remain stable and well-protected and other elephant populations seem to be increasing and perhaps are beginning to recolonize their former range. Elephant conservation plans have been developed for most range states and some plans are presently being implemented. Elephant protection has been enhanced in many areas and the ivory control mechanisms in the form of import moratoria and the control of international trade through CITES is determined to be functional and adequate. Generally, the same habitat threats exist in 1992 as existed in 1978 and continue to threaten the continental population of the African elephant. The west African elephant populations remain fragmented in isolated habitats and habitat loss still occurs throughout the remainder of the elephant's range because of expanding human populations and the increasing encroachments of agricultural development. Although elephant populations in 1992 are less than half those of 1978, a substantial elephant population of 600,000 still exists and the protection and management of those elephants is superior in 1992 to the conditions that existed in 1978, when the species was classified as threatened, and in 1989, when the Service was petitioned to reclassify. Just as in 1978, an endangered classification would not accurately express the situation of this species.

Summary of Comments and Recommendations

The initial 90-day comment period in the proposed rule published on March 18, 1991 (56 FR 11392–11401) was extended for 13 months (56 FR 33241, July 19, 1991; 57 FR 658–659, January 8, 1992; and 57 FR 9681–9682, March 20, 1992), to allow for receipt of information for development of a final rule and to resolve issues of conflicting data. State Department cables were sent to

American embassies in 26 range countries asking that the appropriate agencies in the range countries be officially notified of the proposed rule and requesting official comments. Copies of the proposed rule were also sent to each range country by diplomatic pouch. Representatives from 19 range countries in attendance at the African Elephant and Rhino Specialist Group Meeting in Gaborone, Botswana, on July 2–5, 1991, were also personally notified about the proposed rule.

A total of over 50,500 comments were received about a variety of issues pertinent to elephants. Most comments expressed concern and requested that the Service: (1) Provide endangered status for all populations of the African elephant (13,020 comments); (2) retain the importation ban on ivory and ivory products into the United States (17,625); (3) provide endangered status for all populations of the African elephant and keep the species on appendix I of CITES at the March 1992 CITES Conference (9,570); (4) retain the importation ban on ivory and ivory products and keep the species on appendix I of CITES (1,415); (5) provide endangered status for all populations of the African elephant and retain the importation ban on ivory and ivory products (270); (6) retain legally imported pre-ban (June 9, 1989) ivory in unrestricted interstate commerce and pre-empt individual states from enacting more restrictive regulation than those of the Federal government (630); (7) not place further restrictions on captive elephants (105); (8) retain threatened status for all populations of the African elephant (185); and (9) provide for the legal sport-hunting of African elephants (105). In addition, the Service received over 7,500 comments on the unrelated issue of retaining the African elephant on Appendix I at the March 1992 CITES Conference of Parties. The specific issues of interest varied through time. For example, the preponderance of responses received 2–4 months after publication of the proposed rule addressed listing preferences for the African elephant under the Act while most responses received eight or more months after the publication of the proposed rule addressed listing preferences for the African elephant under CITES.

A second and much smaller group of comments provided biological information that could be used in formulating this final rule (they are identified in References Cited) or which raised specific issues that required individual responses. The format of the final rule is substantially different from that of the proposed rule and many comments that pertained to the logic used to develop the assessment process or the assessments made for individual countries in the proposed rule are only generally addressed in the following responses.

Comment 1.—Several comments criticized the proposed rule because it treated elephant populations as if they were contained within the borders of individual range states when in fact populations frequently move to or within two or more range states. They further argued that the Service should treat the continental elephant population as a single entity and provide a single classification that best represents the overall status of the elephant. The continental elephant population was said to face common threats and should be evaluated with regard to those threats.

Service Response.—The Service agrees the elephant population should be considered at the continental level. The proposed rule treated elephant populations on a range state by range state basis because the extent of exploitation and the quality of regulatory mechanisms varied among range states. It was an attempt to emphasize differences that existed at that time between states. Best data available at the time of the proposed rule indicated that only Botswana, South Africa and Zimbabwe had sufficient capabilities to control the overexploitation of elephants. Best data currently available suggest that overexploitation generally is controlled throughout the continent. Elephant conservation plans have been developed for most range states and have been implemented in varying degrees throughout the continent.

There is precedent for treating the African elephant on a continental basis. The 1978 final rule (43 FR 20499–20504), for example, treated the continental population as a single entity and found a threatened classification for the continental African elephant population. An additional reason for treating the African elephant as a single population is that controversy still exists about the systematics of the African elephant. For example, Smithers (1983) reviews taxonomic opinions on African elephants that variously describe (1) the forest elephant (*L. cyclotis*) as specifically distinct from the savannah, or bush, elephant (*L. africana*); (2) the two forms as conspecific because intergrading occurs where distributions overlap; and (3) a single species of African elephant with two subspecies, *L. a africana* and *L. a. cyclotis*. Ansell (1971) states there may be five surviving subspecies of *L. africana*. These are *cyclotis* in the forested areas of central Africa and four subspecies of the *L. africana* section: *africana* in southern Africa, *knochenhaueri* in eastern Africa, *orleans* which may still occur in Ethiopia, and *oxyotis* south of the Sahara and north of the equatorial lowland forest zones where *cyclotis* occurs. The Service, because of the imprecision in defining the range of individual elephant populations, the dissention about the taxonomy of the African elephant, and the new information available since the publication of the proposed rule, has assessed the African elephant as a single entity within the African continent.

Comment 2.—Several commentators questioned the accuracy of population estimates and the stated population levels within individual range states.

Service Response.—The Service used the best information available to develop the proposed rule. Significant new information has since become available and has been used to develop the final rule. The Service has, in the final rule, relied on data from the African Elephant Database (GRID, 1991; Douglas-Hamilton *et al.*, 1992) and from the conservation plans for individual range states for numerical estimates of populations. The African Elephant Database is coordinated by the European Commission African Elephant Survey and Conservation Project, in collaboration with the United Nations Environment Programme, the African Elephant Specialist Group and the World Conservation Monitoring Centre at Cambridge. The elephant conservation plans for individual states were produced with assistance from the African Elephant Conservation Coordinating Group with financial assistance from the U.S. Agency for International Development, the European Commission, the World Wildlife Fund and the U.S. Fish and Wildlife Service. It is generally accepted that these data sources are the best estimates of elephant populations currently available.

Comment 3.—The final rule under the Endangered Species Act should be consistent with the CITES classification.

Service Response.—The CITES appendix I listing for the African elephant was determined by an international vote under rules governing an international trade agreement. Appendix I status was maintained at the Kyoto, Japan, meeting in March 1992 because it did not seem possible, to a majority of the voting members, to market elephant products in a manner

that would not cause endangerment to the species. The listing of the African elephant under the Act is a biological assessment of the present threats to the species. CITES and the Endangered Species Act listings are not necessarily joined actions. The African elephant is being retained as threatened under the Act partly because of the effectiveness of the CITES appendix I listing in reducing pressures causing overexploitation of the African elephant resource.

Comment 4.—Several comments questioned the finding in the proposed rule that elephant populations in Botswana, South Africa, and Zimbabwe were threatened.

Service Response.—The elephant population in the three southern African countries was found to be threatened in the proposed rule using the best information then available. Since the publication of the proposed rule, the CITES Panel of Experts on the African Elephant (1991) found the South African elephant population to be viable, stable and under no current threat. The elephant population in Kruger National Park was acknowledged as one of the best monitored elephant populations in Africa and the resources and measures deployed to combat the illegal killing of elephants were found to be effective. The CITES Panel of Experts on the African Elephant (1992) found that Botswana's elephant population was viable and the panel identified no specific risks. Botswana was additionally found to have an acceptable population sampling system, a low level of poaching activity, and current anti-poaching measures that successfully kept poaching at low levels. Botswana's past and intended levels of offtake were found to be sustainable and the current illegal offtake was found to be negligible. Zimbabwe's national elephant population was also considered viable and the potential risks to that population were negligible (CITES Panel of Experts on the African Elephant, 1992). The panel found that Zimbabwe's Department of National Parks and Wild Life Management had a qualified staff and its aerial survey techniques were of high quality. Zimbabwe's current anti-poaching measures were considered the best in the region. Their effectiveness is indicated by the generally low numbers of elephants reported illegally killed over the last few years. The continuing stability of the southern African elephant populations and the reduced levels of overexploitation in other elephant populations are basic to the decision to retain the current continental elephant population as threatened.

Comment 5.—Comments in petition forms were received from Zimbabwe and South Africa to delist the populations of African elephants within their borders.

Service Response.—The Office of the Solicitor has determined that petitions received on a species during an open comment period established for that species should be treated as comments. Consequently, the Service utilized the substantial information submitted about the status of elephants in Zimbabwe and South Africa in the formulation of the final rule but made no individual listing decision for elephants within those two range states. The Service has chosen not to evaluate populations in individual range countries in this finding. This action is consistent with the Service position described in response to Comment 1.

Comment 6.—The continental elephant population should be classified as endangered because it may only be about one half of that which existed in 1978 when the continental population was listed as threatened and/or its current range is only about 25 percent of its historic range.

Service Response.—About six hundred thousand elephants still occur on over 5 million square kilometers (2 million square miles) of suitable habitat, there is no substantial evidence that current offtake on a continental basis exceeds rates of elephant recruitment, and elephant management in individual range states varies from inadequate to very good across the continent. Populations with these characteristics are best classified as threatened.

Comment 7.—Some comments opposed the retention of a domestic United States interstate trade in legal pre-ban ivory.

Service Response.—The Service has no evidence that the continued interstate trade within the United States of legally imported African elephants and their parts and products will lead to ivory smuggling into the United States or fuel elephant poaching in Africa. The lack of a prohibition against interstate commerce does not imply support by the Service either for the resumption of the import of ivory into the United States or for the resumption of ivory trade in the world market.

Comment 8.—No sale of elephant products should be considered beneficial to conservation because realized funds are usually returned to the general treasury rather than directly applied to elephant management.

Service Response.—The most beneficial use of funds generated from the sale of any elephant product is their direct application to elephant management. Benefits also accrue to conservation, however, if monies returned to the general treasury cause governments to support effective elephant management in order to generate needed foreign exchange.

Comment 9.—The Service should support the nonconsumptive use of elephants throughout Africa by promoting ecotourism.

Service Response.—The Service supports both non-consumptive uses of African elephants as well as certain carefully regulated consumptive uses of African elephants as mechanisms for attaining revenues to enhance elephant and wildlife management throughout the African continent.

Comment 10.—Endangered species status is necessary because any other listing will lead to a reopening of the world trade in elephant products, especially ivory, which will lead to the extinction of the species. A threatened status would encourage the international trade in elephant products.

Service Response.—Maintaining threatened status for the African elephant under the Act effectively prohibits the importation of ivory or any elephant product into the United States unless an exception to that prohibition is provided by a special rule. The importation of worked or raw elephant ivory (except for sport-hunted trophies) into the United States is specifically prohibited by the moratorium established under the African Elephant Conservation Act (54 FR 24758–24761) and the present final rule creates no exceptions to the import prohibition. Neither a threatened nor an endangered listing under the Act would have any direct impact on international commerce that is not under United States jurisdiction. International commerce in African elephant products is regulated by the CITES appendix I listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened on the basis of one or more of the five following evaluation factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) over utilization for commercial, recreational,

scientific, or educational purposes; (c) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

The following assessment is largely based on new information that has become available to the Service since the publication of the proposed rule.

A. Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range.

Elephant range may at one time have extended over 21,250,000 square kilometers (8,202,500 square miles) of the African continent. This assumes that the 9,000,000 square kilometers (3,475,000 square miles) of Sahara Desert was never elephant habitat but assumes that all other land areas of the continent could have been elephant habitat. Ansell (1971) states that within the last three centuries the species occupied virtually all of sub-saharan Africa except the very dry sub-desert steppe of the Sudanese Arid zone, the desert and sub-desert parts of the Somali Arid zone and the coastal desert of the South West Arid Zone. The petitioners note (Humane Society of the United States *et al.*, 1989:29) that by the Middle Ages elephants had been exterminated from their habitats in North Africa by ivory hunters. Ansell (1971) states that the species became extinct north of the Sahara by the sixth century A.D. Douglas-Hamilton (1987) states that most elephants were eradicated from West Africa in the early years of the twentieth century. The ivory trade may have caused a population crash in west Africa by 1914. These conditions for northern and western Africa also existed in 1978 when the continental population of the African elephant was classified as threatened. The present elephant range is estimated to be about 5,188,000 square kilometers (2,002,500 square miles) (Douglas-Hamilton *et al.*, 1992) so the present elephant range is about 25 percent of the range that existed before the sixth century A.D. The present elephant range is still a vast area, nearly the size of the 39 states ranging from North and South Dakota, Wyoming, Colorado, Oklahoma and Texas east to the eastern coast of the United States. This is an area elephants can be expected to occur, not the bounds of an area containing fragments of habitats suitable for elephants. This vast area also contains a variety of cover types used by elephants. For example Douglas Hamilton *et al.* (1992) state that forest and forest-grasslands are the dominant habitat types in central Africa, bushland-thicketed mosaic and miombo woodlands predominate in eastern Africa, miombo woodland and woodland mosaics predominate in southern Africa and Sudanian woodland and forests predominate in west Africa.

Cumming *et al.* (1990) describe the history of the elephant in Africa and link the historical decline of the elephant to the following three major factors: (1) The demand for ivory, which has often been at a level that is totally unsustainable; (2) desertification which has clearly been a major cause for the disappearance of the species in North Africa and the Sahara and continues to impact the small remaining populations in the Sahel; and (3) conflicts between elephant and humans for the use of the land. Although factor 3 may ultimately come to limit elephant populations, it is the ivory trade that historically has had the greatest impact on elephants.

Any assessment of the habitat of the continental population of the African elephant must consider the question of scale. Types of impacts are discussed below but often no quantifiable mention is made of the extent of an impact. The inability to discuss rates and extent of deforestation or rates and extent of habitat loss to agriculture, etc., further justifies evaluating the status of the African elephant on a continental basis. The discussion indicates that man's impact on the environment and elephant habitat is widely evident. Still, habitat destruction, modification or curtailment does not presently endanger the continental population of the African elephant. Expanded elephant populations could and probably would be tolerated in many African habitats.

East Africa

Seven eastern African countries presently have an estimated 96,000–134,000 elephants on about 1.1 million square kilometers (about 425,000 square miles) of habitat (Douglas-Hamilton *et al.*, 1992). A significant portion of this extensive habitat is in National Parks, Game Reserves and other protected areas.

Perhaps 2,000–2,450 elephants occur on about 119,000 square kilometers (46,000 square miles) of habitat mostly in forested areas in southwestern Ethiopia (AECCG Ethiopia, 1991). Elephants were widely distributed until the turn of the century so the present distribution is much reduced from historical levels. Problems of land-use conflicts between people and elephants are complicated by rapidly increasing human populations, poverty, civil unrest, inadequate protection and management of elephants, and a lack of public awareness of the need for conservation. Land degradation has occurred because the dense human populations have put extensive pressures on natural resources and because of outdated agricultural practices.

About 25,800 elephants (Poole, 1992) presently occur in Kenya on about 413,000 square kilometers (159,000 square miles) of habitat. Elephants in some areas may become confined in Parks and Reserves surrounded by cultivation so that some populations may eventually have to be regulated (AECCG Kenya, 1991). Elephant range is extensive in Kenya and several communal lands, National Parks and Game Reserves provide important habitats for elephants. A new Community Wildlife Program has been initiated to enhance acceptance and management of wildlife species on private lands and communal lands around parks and Reserves. Kenya can probably support an elephant population twice the present population without adversely impacting available habitats or rural Kenyans.

National parks and reserves occupy more than 10 percent of the land area of Rwanda (AECCG Review, 1991). GRID (1991) lists the total protected area as about 2,700 square kilometers (about 1,050 square miles) and the Elephant Conservation Plan for Rwanda lists an elephant population of 80–100 animals. Rwanda is one of the most densely populated countries in Africa. The pressure of human populations and demands for cultivatable lands threaten the security of protected lands and the long term future of elephants in Rwanda.

Somalia represents the eastern extremity of the range of the African elephant. Elephant range has been significantly reduced since 1979 so that elephants now occur in about 56,000 square kilometers (21,600 square miles) of habitat in southern Somalia (AECCG Somalia, 1991). The surviving population of elephants numbering between 1,000–2,000 animals live within a 100 km-wide strip along the Kenyan border. The present range includes four dry season concentration areas and the swampy creeks of Bush Bush National park. This part of Somalia still contains sizeable areas of good habitat with adequate forage, water and shade that can support far larger elephant populations than presently occur.

Sudan is the largest country in Africa with 2.5 million square kilometers (965,000 square miles) of desert, savanna, bush, forest, mountain and swamp (AECCG Sudan, 1991). Sudan has a population of 27 million people and an elephant population that is variously estimated at 22,000–44,600. Several set-aside areas are protected by

remoteness, harsh climate and rugged terrain. Other areas are impacted by grazing, firewood harvesting, agriculture and general human encroachment. Sudan still provides extensive habitat for elephants, has ample set-aside areas that could be useful for elephant protection and management, and remains a potentially important habitat for elephants and other wildlife in the northern portion of Africa.

Elephant range presently occupies about 50 percent (501,000 square kilometers or 193,400 square miles) of the land area of Tanzania. About 25 percent of the total land area (245,000 square kilometers, 94,560 square miles) is designated to provide some degree of protective status to wildlife species like elephants (AECCG Tanzania, 1991). The growth of human populations and of agricultural developments around conservation areas have led to increased levels of human-elephant interactions and crop depredation which in turn directly leads to elephant mortality. The present elephant population in Tanzania is estimated at 44,000–57,000. The Wildlife Division believes it is appropriate to manage about 70,000 elephants in Tanzania (Mlay, 1992).

The political and conservation situation in Uganda has improved significantly since 1986 and efforts are being made to restore protected areas and the tourist industry based on those protected areas (AECCG Uganda, 1991). The Ugandan elephant population is believed to number 1,200–1,900 animals and to include both savanna and forest elephants. The preservation of habitat for the two forms will preserve habitat for many species. The intended policy of the government is to transfer the ownership of wildlife outside of reserves to the local people so they may manage their wildlife, with government advice, along the tenets of Zimbabwe's CAMPFIRE program.

Central Africa

About 268,000 elephants (Douglas-Hamilton *et al.*, 1992) are estimated to occur in Central Africa. GRID (1991) lists 1.7 million square kilometers of forest habitat and 1.2 million square kilometers of savanna habitat within the 7 countries of central Africa, a total habitat area equal to about 1.12 million square miles. More current data (Douglas-Hamilton *et al.*, 1992) indicate that the total elephant habitat in Central Africa is 2,560,000 square kilometers (988,000 square miles). Central Africa presents great potential but poses some serious problems for elephant management. Barnes (1991a) states that in the long term, threats to forest elephants include: The expansion of roads, railways and pipelines; commercial plantations; logging; mining; and an expanding human population with its subsistence agriculture. Barnes (*op. cit.*)states that all these activities destroy potential elephant habitat, compete with elephants for land, fragment elephant habitats or provide access for poachers into otherwise inaccessible habitats. He considers the elephant to be a vital part of the forest ecosystem because it influences the structure and floristic composition of the forest and promotes biological diversity within the forest.

Cameroon has an area of 475,000 square kilometers (183,000 square miles) and a human population of 11.6 million (AECCG Cameroon, 1991). About 7,000 savanna elephants (Douglas-Hamilton *et al.*, 1992) may dwell in the thorny wooded savannas of middle Cameroon and in the grasslands of the floodplain south of Lake Chad in northern Cameroon. Perhaps 20,000 forest elephants (Douglas-Hamilton *et al.*, 1992) inhabit the dense, humid evergreen forest of extreme western Cameroon and the dense humid Congo forest of southern Cameroon. The evergreen Atlantic zone of low and mid-level forests in extreme western Cameroon has been extensively impacted by logging and human population pressures which have fragmented elephant habitats and reduced elephant populations. The evergreen cameroon-congolese zone of medium altitude forest in southern and southeastern Cameroon which covers about 111,000 square kilometers (42,800 square miles) remains a stronghold for a substantial population of forest elephants.

Information about the status of the elephant in the Central African Republic (CAR) is fragmentary. The CAR contains 304,000 square kilometers (117,300 square miles) of savanna habitat and 40,000 square kilometers (15,500 square miles) of suitable forest habitat (GRID 1991). That publication lists an estimated elephant population of 14,500 in the CAR. Douglas-Hamilton *et al.* (1992) lists a population of 18,500. The CAR is subject to the same habitat problems as are other states in central Africa.

Elephant range formerly extended throughout much of southern Chad. Chad is one of the more northerly limits of present elephant habitat in Africa and shares savanna elephant populations with northern Cameroon and the Central African Republic. Fewer than 2,500 elephants are estimated to occur in 202,000 square kilometers (78,000 square miles) of potential habitat. Human population pressures and desertification associated with the southward extension of the Sahara have pushed agriculture into southern Chad where human-elephant conflicts are increasing (AECCG Review, 1991).

The elephant historically occurred throughout the Congo but at present is found is only about 40 percent of the country. The present elephant population is estimated at about 49,000 animals and perhaps 40,000 of these are forest elephants that occur in the northern forest massif bordering Gabon, Cameroon and Zaire (AECCG Review, 1991). Human populations are low and concentrated along communication corridors in the dense, humid, evergreen forest. Principal threats to elephants in the Congo include growing human populations in the south and timber exploitation and habitat fragmentation associated with oil exploration and development. Timber exploitation is not now a threat but logging is increasing and could become a threat in the future.

Equatorial Guinea is a small country of 28,000 square kilometers (10,800 square miles) with a sparse human population (350,000) living within dense forest habitats. Most persons depend on traditional agricultural activities with major commercial products being cocoa, coffee, palm oil, cassava and timber. The country lies within the Congo rainforest and much of the forest remains intact as logging has not yet made serious impacts on forest resources (AECCG Equatorial Guinea, 1991). Elephants are concentrated in southern Equatorial Guinea in areas of primary forest. Elephants have shifted from the northern portion of the country because of agricultural practices and logging activities which have modified elephant habitat and created disturbances. The elephant population is listed at about 600 animals by Douglas-Hamilton *et al.* (1992).

Gabon probably has one of the largest populations of elephants (50,000–87,000) in Africa (AECCG Gabon, 1991). Approximately 85 percent of Gabon's 267,000 square kilometers (103,000 square miles) is covered in tropical forests. Lahm and Barnes (1991) state that elephants are found in large forested blocks unpopulated by humans in the center of the country. The vast forests are largely uninhabited by man because the sparse human population is concentrated along the main roads. The forests have a potential to support a very large elephant population. Deforestation rates are very low (<0.1 percent per annum) and Gabon is expected to lose a smaller portion of its forested area than will any other

African country within the next 50 years.

The construction of the trans-Gabon railway has opened up virgin forests for logging, and planned or actual mineral and oil exploitation activities have introduced roads and human disturbances into areas that were formerly isolated and uninhabited. Slash and burn agricultural practices minimally impact protected areas and overall habitat. Rural human population densities are low so community oriented elephant management programs have been slow to evolve.

Zaire formerly was the most important habitat of the African elephant on the continent. Even today this country may provide 600,000 square kilometers (231,000 square miles) of habitat for the savanna elephant and 866,000 square kilometers (334,000 square miles) of habitat for the forest elephant (GRID 1991). The AECCG Review (1991) lists 25,000 elephants occurring in savanna habitats and 65,000 elephants living in forest habitats. That plan also states that these population figures may grossly underestimate the elephant population of Zaire because the elephants in the forest habitats have been little studied. On the other hand, Douglas-Hamilton *et al.* (1992) quote studies that suggest Zaire's total elephant population may only be 63,000. Barnes (1991a) states that the greatest threats to the extensive habitats of Zaire are forest fragmentation and deforestation caused by logging activities.

Southern Africa

Eight southern African countries provide 1,300,000 square kilometers (502,000 square miles) of elephant range and support between 169,000 and 245,000 (Douglas-Hamilton *et al.*, 1992).

Angola is one of the largest countries in sub-saharan Africa and is presently in a transition mode from civil war to democratic government (AECCG Angola, 1991). Wildlife habitats are varied, ranging from lowland rainforests, deserts, and miombo woodlands phasing into forest-savanna in the north and mopane woodlands in the south. Angola possesses great biotic diversity and is in the paradoxical situation of possessing one of the richest and most varied, yet least well known wildlife resources in Africa. Angola is the only elephant range in Africa to include desert and rainforest biomes and the savanna, forest and rare desert-dwelling elephant. Information about elephants in Angola is indirect, crude and unreliable. This is reflected in estimates of elephant range as between 200,000–400,000 square kilometers and of the elephant population as being between 10,000 and 50,000. Habitat loss or conflicts over land-use are not expected to be near-future threats to Angola's elephants.

The major elephant range in Botswana encompasses an area of 80,000 square kilometers (30,800 square miles) north of latitude 20 degrees (Department of Wildlife and National Parks, Botswana, 1991). This area contains an elephant population estimated at 54,600 (46,000–63,000) which is about 99 percent of the country's total African elephant population. Seventy-five percent of the population withdraws into about 16 percent of this northern range during the dry season. These dry season core areas contain riverine habitats which are the rarest and most diverse habitats in the country. These elephant concentrations may produce sufficient foraging pressures to cause significant habitat damage. Botswana believes it is necessary to pursue the active management of elephants so that important habitats will not be destroyed.

Botswana's elephant management policy is to maintain elephants at their 1990 population level (about 55,000), maintain the quality of elephant habitat at an acceptable state, preserve biodiversity within major habitats and to reduce conflicts between elephants and humans. Botswana may develop watering points to try and lure elephants from riverine habitats and to reduce habitat degradation.

Malawi's elephant range is about 9,000 square kilometers (3,400 square miles) which is restricted to protected areas in national parks, game reserves and forest reserves (AECCG Malawi, 1991) Malawi has a rapidly increasing human population, a shortage of agricultural land and one of the highest human population densities in Africa. There is a growing conflict in Malawi over land-use, the major problem facing protected area management and elephant conservation. A sustainable population of perhaps 2,500 elephants could be maintained within the established protected areas if effective fencing was installed to separate elephant habitats and agricultural activities.

The total elephant population in Mozambique was estimated at perhaps 13,350 animals in 1990 (AECCG Mozambique, 1991). Potential elephant range is extensive and habitat is contiguous in large areas of Mozambique. All protected areas, however, have been severely impacted by the continuing civil conflict which has now lasted for 26 years. Negotiations are ongoing with South Africa to establish a large common national park that will include Kruger and a comparable area in the Limpopo Valley in Mozambique.

Elephants were formerly distributed throughout much of Namibia but agricultural settlements and unrestricted hunting in the late 19th century and agricultural developments in the early and mid-20th century forced elephant populations into their present distribution. The elephant populations and their distribution patterns have been largely unchanged in the last two decades (AECCG Namibia, 1991). More elephants occur outside protected areas than within and elephants generally move freely in and out of parks and reserves. The future of elephants outside parks and reserves and the key to enlarging protected areas lies in allowing local communities to utilize elephants or share in revenues from the harvest of elephants. The Ministry of Wildlife, Conservation and Tourism is striving to initiate a community outreach program to promote programs of sustainable utilization of wildlife. Habitats available to elephants can be substantially increased in the future by introducing elephants into suitable protected areas outside the present elephant range, by establishing additional areas of protection, and by allowing the introduction of elephants into privately owned nature reserves and game farms.

The Caprivi strip and northern and northeastern Namibia share borders and elephant populations with Angola, Zambia, and Botswana. Some elephant passage corridors in the Caprivi are protected and Namibia has already established regional coordination efforts with Botswana. The continued existence of the northeastern portion of Namibia's elephant population may well depend on the success of game management programs in neighboring countries.

Seventy-five percent of the elephant range and 85 percent of the elephants in South Africa are within Kruger National Park (National Parks Board of South Africa, 1991a). Other elephant ranges are composed of state and private lands located both near Kruger and in small scattered blocks elsewhere in South Africa. Range available to elephants has increased by about 3,900 square kilometers (1,500 square miles) since 1979.

Management for elephants in Kruger National Park has provided a water stabilization program by building dams on watercourses and providing wind driven water pumping devices. Facilities are in place to control wildfires and to

allow for controlled burning of vegetation. Kruger has an elephant proof fence along the boundary with Mozambique and a variety of cross fences and boundary fences to control movements and foraging pressures.

Zambia provides about 211,000 square kilometers (81,400 square miles) of elephant habitat and possess a population of 32,000 elephants (GRID 1991). The AECCG Zambia (1992) estimates the African elephant population to be less than 25,000 with 50 percent occurring within the National Parks in the Luangwa Valley. Most human-elephant conflicts center around agricultural areas, although mining also impacts elephant habitat. Recent efforts have indicated that wildlife management and the acceptance of wildlife as a legitimate land use are enhanced when local residents share in management responsibilities (Lewis *et al.*, 1990).

Zimbabwe provides 113,000 square kilometers (43,500 square miles) of elephant habitat and has an elephant population estimated at 51,700 (GRID 1991). The Zimbabwe Department of National Parks and Wild Life Management believes the present elephant population may be about 70,000 and has stated that their elephant management goal is about 43,000 animals (Nduku 1991). Douglas-Hamilton *et al.* (1992) list an elephant population of 49,700–68,400. Over 12 percent of Zimbabwe's surface area is dedicated to national parks, safari areas, sanctuaries, recreational parks, botanic reserves and botanic gardens. The management objectives in these lands are to: Manage wildlife species including elephants; preserve representative examples of Zimbabwe's aquatic and terrestrial flora and fauna and their physical environments; protect areas of scenic beauty and special interest; preserve rare, endangered and endemic species; conserve water catchments; and to provide opportunities for public education and the advancement of scientific knowledge. All significant physical developments in these areas require an environmental impact assessment, and careful environmental planning is undertaken to minimize environmental impacts when development is inevitable (Zimbabwe Department of National Parks and Wild Life Management, 1991).

An additional 20 percent of the surface area of Zimbabwe has become dedicated to wildlife management since 1980 because of the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). This program is an important new-political-economic-sociological institution that has developed an environmental ethic, restored the perception of wildlife as a valuable resource, advocated wildlife management as an adjunct to subsistence agriculture, and encouraged the conservation of natural ecosystems and wildlife habitats on tribal trust lands (Anon, 1990).

West Africa

An estimated 10,000–16,000 African elephants presently dwell in a series of highly fragmented habitats that are estimated to total about 229,000 square kilometers (88,400 square miles) throughout western Africa (Douglas-Hamilton *et al.*, 1992). Increasing human population pressures and declining natural productivity (two decades of drought) in dry savanna habitats have confined remaining elephant populations to isolated pockets of habitat largely in parks and other reserves (Cumming *et al.*, 1990). Douglas-Hamilton (1987) indicated that most elephants were eradicated from west Africa in the early twentieth century. The 1978 **Federal Register** notice (43 FR 20503) listing the continental African elephant population as threatened indicated that the elephant in west Africa occurred in remote border areas or in small isolated patches of suitable habitat. That is essentially the present condition.

Agricultural development and logging are serious agents of habitat destruction in Sierra Leone (AECCG Sierra Leone, 1991), Togo (AECCG Review, 1991), Liberia (AECCG Liberia, 1991), Guinea (AECCG Review, 1991), Ghana (AECCG Ghana, 1991), and the Ivory Coast (AECCG Review, 1991). The AECCG Review (1991) cites desertification as an important agent of habitat destruction in Burkina Faso, Mali and Niger. Drought and bush burning have adversely impacted habitats in northern Nigeria and deforestation and mineral exploitation have adversely impacted habitats in southern Nigeria (AECCG Review, 1991). That publication also states that habitat destruction is not considered the major limiting factor in Benin, Guinea Bissau and Senegal at this time. The small regional population of African elephants has apparently remained stable throughout most of this century and is not expected to increase in the foreseeable future. Habitat destruction and modification provide a greater threat to elephants in west Africa than to any other portion of the continental African elephant population.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The present estimate of the continental African elephant population is 549,000–652,000. The methods for estimating these elephant numbers are described in detail in GRID (1991) and by Douglas-Hamilton *et al.* (1992), and those authors have carefully expressed the reservations associated with different data sources. Some critics have suggested that the estimates of the continental elephant population are too high. Douglas-Hamilton *et al.* (1992) state that there are no better estimates of elephant populations that are based on field measurements than those recorded in the African Elephant Database. They indicate (Douglas-Hamilton *et al.*, 1992:7) that the lower estimates proposed by their critics seem to be pure guess-work. Douglas-Hamilton *et al.* (1992) acknowledge the problems associated with building the African Elephant Database. The vastness of the elephant range and the difficulty of assessing numbers in forest habitats and in range states with political unrest have made data collection arduous and expensive and have limited the quantity of high quality data available for analysis. The latest edition of the African Elephant Database (Douglas-Hamilton *et al.*, 1992) lists only 54 percent of the elephant numerical data entries as being of quality "1" or "2" (best or medium quality).

Elephant populations seem to have fluctuated wildly through time because man has periodically been a persistent and proficient predator. Ansell (1971) stated that the elephant was exterminated from north of the Sahara by the sixth century AD and Douglas-Hamilton (1987) stated that most elephants were eradicated from west Africa by 1914.

Populations in west Africa were reduced to fragments of their former size and range and they have remained stable since that time (Cumming *et al.*, 1990). An historical account of elephant numbers in South Africa (National Parks Board of South Africa, 1991a) indicates that elephants occupied much of present day South Africa, especially in the high rainfall areas, in the mid-seventeenth century. A hundred thousand elephants may have existed in the country in 1650. The decline in the elephant population between 1650 and 1790 is believed due to human settlement and population growth. Later declines from 1790 to 1870 were due to a massive elephant kill for the ivory trade, and from 1870–1920

were caused because occasional elephants were killed because of crop depredation. Possibly only 100 elephants remained in 1920 when protective and management policies were established and enforced. Elephant populations in South Africa have since recovered to the presently managed population of about 8,000 animals. Similar trends in elephant populations have occurred in other areas of Africa as well.

Cumming *et al.* (1990) indicate that the combination of legislation, a fall in the price of ivory, and a drop in the demand for ivory associated with World War I allowed elephant populations to recover. Elephant populations had substantially recovered, by mid-century, in eastern, central and southern Africa so that some culling had to be undertaken to prevent habitat damage and human-elephant conflicts. The ivory trade increased substantially in the early 1970s as demand and supply pressures soared so that ivory exports from Africa reached pre-1914 levels. Douglas-Hamilton (1988) stated that the wave of elephant killing for ivory in the 1970s and 1980s was the second of its kind in recorded history. The first essentially wiped out elephants in much of east Africa by the end of the nineteenth century. Douglas-Hamilton (1988) stressed that in 1990, when it was feared that the elephant would become extinct, game laws were enforced and populations began to increase.

There were several conservation efforts implemented in the 1970s when it was realized that the illegal killing of elephants was widespread and that many elephant populations, especially in east Africa, were in decline. The elephant was put on appendix II of CITES in 1977 and was classified as threatened by the Service in 1978 which at that time issued regulations that allowed the importation of ivory into the United States in accordance with the CITES ivory control system (43 FR 20499–20504). The elephant was also listed as vulnerable by the International Union for Conservation of Nature and Natural Resources (IUCN) in 1978. There conservation efforts were deemed as failures in the late 1980s when the illegal killing of elephants for ivory commerce was considered out-of-control. Many elephant populations were believed to be in substantial decline and alternative conservation measures were necessary when the petition to reclassify the African elephant as endangered was filed in February 1989. The petitioners identified the ivory trade as the single most important factor threatening the elephant. This was supported by Douglas-Hamilton (1988) who stated that even a very cautious scientist would (at that time) recognize that the elephant would become an endangered species if the offtake of ivory continued at the rate observed from the 1970s through his reporting period. His assessment was based on: (1) Population trends from throughout the continent (except in parts of southern and western Africa) that showed declines in elephant numbers coupled with high carcass counts; (2) ivory export curves that collapsed after the mid-eighties because elephants were becoming scarce which suggested overutilization; and (3) a diminished average tusk weight that also suggested overutilization. It seemed likely that one-half the elephant population, perhaps 700,000 animals, was lost in the decade 1979–1988.

Several conservation efforts to curtail the illegal killing of elephants were initiated in 1989. Individual range countries increased their efforts to protect elephants and the international community began to contribute substantially to anti-poaching campaigns. Tanzania organized Operation Uhai in 1989 to deal forcefully with elephant poaching activities and Kenya substantially reorganized its conservation agency into a more effective Kenya Wildlife Service in 1990. The United States, on June 9, 1989, established a moratorium on the importation of raw and worked African elephant ivory from all ivory producing and intermediary nations (54 FR 24758–24761). The action was taken under authority of sections 2202(a) and 2202(b) of the African Elephant Conservation Act. A number of other major ivory consuming nations, most notably those in western Europe and Japan, enacted similar legislation.

The African elephant was transferred from appendix II to appendix I at the seventh meeting of the Conference of Parties to CITES (October 1989). This occurred after a provision was approved that provided for a panel of experts to convene after a proposal had been received to transfer any elephant population back to appendix II. The panel of experts would recommend to the Parties whether specific biological and trade criteria were met for any populations later nominated for downlisting to appendix II. The change in status for the African elephant became enforceable on January 18, 1990 (55 FR 5847–5851, February 20, 1990; corrected March 5, 1990, 55 FR 7714–7716). The appendix I listing was continued by the Conference of the Parties to CITES that convened in Kyoto, Japan, in March 1992.

The Service based its proposed rule on the best information then available. Few data were available to judge whether the conservation actions undertaken in 1989–90 were effective. The 12-month finding (February 16, 1990) was made eight months after the United States ivory importation moratorium was imposed and one month after the elevation of the elephant to appendix I became enforceable. The proposed rule indicated that levels of protection and quality of management varied widely among individual range states and that most range state populations seemed best classified as endangered because they might still be subject to overutilization. New information available since publication of the proposed rule indicates that most populations of the African elephant presently are not being overutilized.

The following review is chronological and describes an increasing tendency toward control of the illegal killing of elephants throughout Africa. Many populations of the elephant are currently stabilized or perhaps are increasing. The steep rate of decline observed from the 1970s up to the mid-or late-1980s has been halted for most populations.

The several conservation activities that were implemented just before and just after the February 1989 petition was filed seem to be working as intended. The United States Government queried 33 American embassies in African range states in April 1990 to determine, among other things, if elephant poaching had slowed, increased or remained unchanged since the implementation of the CITES ban in January 1990. Embassy officials in May-July 1990, reported that elephant poaching was undiminished in Cameroon, Niger, Sudan and Zaire, while officials in Burundi, Ethiopia, Kenya and Zambia believe that poaching was diminished since the appendix I classification. Poaching may have increased but was still low in Botswana, and was low and remained so in Burkina Faso, Gabon, Liberia, Mali, Togo, Uganda and Zimbabwe. Poaching still occurred, but was likely more for meat than ivory, in Benin, Equatorial Guinea, Ghana, Cote d' Ivorie and Nigeria. No pertinent responses were received from other embassies.

O'Connell and Sutton (1990) state that although some illegal killing continued, elephant poaching seemed to be decreasing in many African countries because of a lack of financial incentives and an increased vigor and effectiveness of government anti-poaching activities. They further state that if these trends hold, depleted

populations can reasonably be expected to begin recovery.

Dougherty (1991) evaluated the status of elephant conservation in 10 African range states. Elephant poaching was never intense in Burkina Faso except near the borders with Ghana and the Ivory Coast where poaching may frequently be for meat. There is a prohibition against ivory commerce because elephant populations are fragmented and could be subject to extinction even under low poaching intensities. There are no reports of poaching where law enforcement is good but poaching may occur where protection is poor.

Elephant conservation in Cameroon varies by province. Overall, there was a significant decline in poaching in 1990. This trend is believed due to the reduced price for ivory. Elephants are still poached for ivory in extreme northern Cameroon but anti-poaching efforts may keep illegal killing below recruitment levels. The elephant is not in trouble where anti-poaching efforts are substantial.

There is no way to quantify and statistically compare poaching level before and after the ban in the Central African Republic (CAR). Improved conservation may be expected to occur in southwest CAR because of the strengthening of protection capabilities, new conservation initiatives stressing the sustained use of wildlife, and the ivory trade ban. The elephant appears safe where anti-poaching protection is good. Elephants in forest habitats may have fared better than those in savanna habitats although some poaching of elephants especially for meat still occurs within forest habitats. Large-scale conservation efforts, rural development and monitoring programs occur in northern CAR where poaching is presently under control.

The number of elephants in Ghana diminished in the past because of ivory poaching. Elephants is southwestern forests continue to be poached. The level of poaching within protected populations has dropped since 1988 and these elephant populations are currently slowly expanding.

Kenya's capability to conserve elephants is among the best in Africa. There is a general political stability which provides a good environment for the uninterrupted support of conservation, and wildlife and protected areas are perceived as important to the country's economy and balance of trade. The appendix I listing is believed responsible for the reduction in poaching, and elephants seem well protected from poaching at this time.

An ivory trade may still exist in Nigeria and poaching may still impact some populations especially those near the border with Chad.

Elephant poaching for ivory is now at insignificant levels throughout Tanzania. Operation Uhai was initiated in 1989 and was very effective. Present anti-poaching efforts also seem to be effective.

Poaching has been curtailed under the present government in Uganda and elephant numbers are slowly recovering.

Poaching has not stopped in Zaire but is possibly slowed.

More recently, Dublin and Jachmann (1992) evaluated the impact of the ivory ban on elephant poaching in six target states. Zambia experienced an overall decline in poaching in 1990–1991 compared to levels observed from 1987–1989. Although poaching rates were at the same rate or higher in some areas there have been significant reductions in poaching in the more important populations. These dramatic drops were due to increased law enforcement actions funded by external donors before the ban was established.

Dublin and Jachmann (1992) agreed with Dougherty (1991) that poaching in Tanzania was diminished because of Operation Uhai and because of an increased law-enforcement capability.

Illegal hunting decreased in three of seven, but increased in four of seven, conservation areas in Malawi. One significant cause of increased poaching may be the one million Mozambican displaced persons now living in southern Malawi. Illegal killing and culling of elephants for crop damage are harvesting some populations at unsustainable rates.

There has been a minor effect of the ban on the illegal killing of elephants in Cameroon. The illegal killing of elephants continues in the northern savanna zone because an ivory market remains in Nigeria. A domestic but limited ivory market may also exist in Cameroon. Poaching rates are somewhat reduced in the forest zone where most elephants occur in Cameroon.

The illegal hunting of elephants in savanna habitats in the Ivory Coast continues at the same low levels as during the pre-ban era. Poaching in that country's forest zone is probably reduced because of increased law enforcement efforts.

Elephant populations in Zaire have declined by about 75 percent since 1981 and the ivory harvested from that country was sufficient to supply 30–40 percent of the ivory on the world market during the decade of the 1980s. Elephant poaching is still a major problem in the unprotected savanna zones of Zaire. Elephant poaching was reduced to low levels in protected savanna areas by the mid-1980s. The poaching situation has improved substantially in some forest zones in the last two years. The infusion of substantial funds from external sources in the mid-1980s has resulted in a rapid but localized reduction in illegal activity. The present illegal hunting of elephants seems lower in the rainforest zone than in unprotected savanna areas.

A major co-signatory to the February 16, 1989, petition (Humane Society of the United States, 1992) provided comments on January 30, 1992, on proposals by several southern African range states to transfer their populations of the African elephant from CITES appendix I to II.

The Humane Society quoted sources that indicated that the poaching of elephants had been greatly reduced in Kenya, Tanzania, Chad, Gabon, Burkina Faso, Zaire and the Congo. They especially emphasized the very substantial reductions in illegal killing in Kenya and Tanzania. The Environmental Investigation Agency (1992) also reported that elephant poaching has steeply fallen in east and central Africa and that elephants have started to re-colonize their former ranges.

Douglas-Hamilton *et al.* (1992) indicated that Gabon has retained relatively undisturbed populations of forest elephants because organized poaching has never become a way of life in that sparsely populated country. They also state that recent censuses in Kenya, Uganda and Tanzania show an arrest in rates of population decline. Sightings of carcasses declined in Tsavo National Park which contains one-third of Kenya's elephants. Similarly, poaching levels are reported to have decreased since 1989 in Tanzania. The positive change in population trends is attributed to massive investments in security as well as a reduction in the demand for ivory following the appendix I listing. Elephant populations in west Africa could still be declining because of the encroachment into elephant habitat because of human population increases and the hunting of elephants for bush meat. Poaching for ivory has been a problem in the past but this stimulus to poaching seems reduced compared to years prior to 1989. Elephant populations in South Africa, Namibia, Botswana and Zimbabwe were believed to have been increasing even during the decade of the 1980s.

The CITES Panel of Experts on the African Elephant (1991, 1992) evaluated several southern African elephant populations. The African elephant populations in Botswana, South Africa,

and Zimbabwe were found to be viable, and potential risks or threats to those populations were found to be negligible. Malawi's elephant populations were found to be viable only in the short or medium term, and Namibia's elephant population was found to be subject to fluctuations as a result of natural mortality due to periodic drought and disease. The Panel found that Zambia's national elephant population had declined dramatically but three potentially viable sub-populations remained. The greater Luangwa Valley population numbering some 10,000 elephants shows no evidence of significant poaching over the past three years and its prospects are good if poaching remains contained. The other two sub-populations still have significant numbers of elephants but have experienced heavy poaching.

There is also a question of scale when evaluating Factor B. The fact that some legal and illegal killing of elephants continues to exist does not constitute overutilization of the species if total mortality does not exceed recruitment. Man has historically been the chief predator of elephants. Barnes (1991b) has pointed out that many rural Africans, especially in central Africa, are hunters and not pastoralists. Hunting is a cultural heritage of many native Africans. Opportunistic hunting often to provide meat or to protect agricultural crops can impact fragmented or local elephant populations but does not endanger the continental elephant population.

The Service finds that the present rate of utilization, because the several conservation measures instituted in 1989 and thereafter appear to be effective, does not endanger the continental population of the African elephant at the present time. This evaluation could change if a large scale illegal killing of elephants to satisfy an unregulated ivory trade once again occurred.

C. Disease or Predation

Some reports exist of lion predation on very young calves and of anthrax as an agent controlling some specific elephant populations, perhaps most notably the elephant population in Etosha National Park, Namibia. Namibia's elephant population may be considered to be subject to fluctuations as a result of natural mortality due to periodic drought and disease (CITES Panel of Experts on the African Elephant, 1992). Disease or predation, however, are not factors that threaten the continental population of the African elephant.

D. The Inadequacy of Existing Regulatory Mechanisms.

Information available to the Service at the time of the 12-month finding and of the publication of the proposed rule indicated that the management infrastructure in most range countries was inadequate to control the overutilization of the elephant. New information since the publication of the proposed rule indicates the increased effectiveness of enhanced anti-poaching activities and the effectiveness of the various ivory importation moratoria and of the CITES appendix I ban in dampening the international demand for elephant ivory. The African elephant is not being overutilized at the present time because of the adequacy of these international, continental, regional, and state regulatory mechanisms.

Most range countries have now developed elephant conservation plans. Five range countries (South Africa, Namibia, Zimbabwe, Botswana and Tanzania) have individually described a specific long-term population goal for elephants and determined planned actions to achieve those goals. The five countries are each members of CITES and believe they can eventually support a population that could total about 191,000 elephants without destroying agricultural based economies, habitat quality, or threatening human populations. These five countries already have substantial investments in wildlife management but will continue to need external aid to purchase additional elephant habitat; provide, improve and maintain anti-poaching equipment; improve salaries for wildlife personnel; and to generally improve the infrastructure associated with elephant management. These countries possess some of the greatest opportunities for consumptive and non-consumptive tourism in Africa.

The potential maximum elephant population in South Africa is about 13,000 if funds become available for purchasing additional habitats and improving present habitats (National Parks Board of South Africa, 1991b). Namibia has established a provisional elephant goal of 10,000 animals which will require the establishment of additional protected areas, the establishment of sustainable wildlife management programs with native persons, and perhaps the introduction of elephants into suitable habitats outside the present elephant range. Several thousands of the 10,000 animals could be seasonal visitors only, as is true for the present elephant herd in Namibia (AECCG Namibia, 1991). Zimbabwe could support 43,000 elephants and sustain a desired degree of woodland cover (Nduku 1991). Botswana's elephant management objectives include maintaining elephant populations at their 1990 levels which total about 55,000 animals (Department of Wildlife and National Parks, Botswana, 1991). Zimbabwe and Botswana could presently have elephant populations in excess of their respective management goals. Tanzania's elephant management goal is about 70,000 animals (May 1992).

A sixth country, Kenya, also has extensive regulatory mechanisms in place. Kenya is unwilling to commit to a numerical elephant management goal but seems to want to attain and maintain elephant numbers that are about double the present elephant population. Conflicts between people and elephants already exist in some areas of the country because of a rapidly growing human population (Poole, 1992). Kenya plans to maintain elephants at present levels where people and elephants coexist and to allow elephants to increase in numbers, especially in those protected areas where poaching severely reduced elephant numbers in the 1970s and 1980s.

Perhaps the most significant difference in an elephant management program in these six African range states and a big game management program in North America is that African elephant management programs are usually significantly underfunded. Otherwise the quality of management and science seems comparable.

The remaining range states may presently support about 400,000 elephants (Douglas-Hamilton *et al.*, 1992). Most of these states have established game departments, are developing an environmental ethic, and intend to develop wildlife conservation as a legitimate land use. Their management infrastructure suffers because of inadequate funding. Indeed, the under-funding of Africa's wildlife departments is the most pervasive and fundamental problem facing the elephant at the present time (AECCG Review, 1991).

Elephant management in most states in 1992 is equal or superior to that which existed in 1978 when the elephant was classified as threatened. The knowledge base about elephants and techniques for censuring and protecting elephants are superior to 1978 conditions. The recently developed conservation plans have helped range states develop their elephant management programs and to compete for funding from external donors. A fundamental priority within the elephant conservation plans is for

range states to increase their operating capability and their professional proficiency.

All legal international trade in elephant products virtually ceased as of January 1990. The global demand and the price of ivory has virtually collapsed (AECCG Review, 1991). Many range states outside of southern Africa favored retention of the elephant on CITES Appendix I because that action would lead to a diminished international demand for ivory and to reduced poaching pressures on elephants within their countries. More effective law enforcement has also had a great influence on the suppression of poaching (Dublin and Jachmann 1992). Financial support for wildlife departments to increase protective actions is considered an action that can go an enormous way towards curing Africa's wildlife conservation crisis, at least in the short and medium terms (AECCG Review, 1991).

Willdlife departments in several range states realize the need to further codify the traditional rights of rural people to make use of wildlife and to profit from its presence. A basic common deficiency in the enforcement of present status has been weak support from the judiciary and a lack of support from customs officials and the police (AECCG Review, 1991).

The short term aims in the elephant conservation plans are to protect elephants from illegal killing, to improve the management of protected areas and to strengthen the management capability of wildlife departments. The AECCG Review (1991) suggests these are feasible when political stability exists and if sufficient financial support arises. The long term goals are to balance wildlife and human needs. This requires that sufficient returns be realized from the sustainable utilization of wildlife so that wildlife conservation is easily perceived as an important land use. The CAMPFIRE program in Zimbabwe is an excellent example of a social program built on values obtained from the sustainable utilization of wildlife resources.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

The African elephant, like many terrestrial species, is adversely impacted by natural factors such as desertification and periodic drought. Desertification associated with the southward extension of the Sahara and periodic drought like that presently impacting many habitats in southern Africa may cause elephant mortality, limit recruitment, cause local or regional range contraction, and may increase competition among other wildlife species and man for dwindling resources. Civil unrest in several range states also adversely affects elephant populations. Both political unrest and environmental stresses may impact local or regional elephant populations but neither threatens the continental elephant population at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat.

If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Because the African elephant is presently listed as threatened, it is already fully covered by section 7(a), and no new requirements are added by the present listing action.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel, and assistance for research, conservation, management, or protection of the species.

These actions are also conducted under the authorization of section 2101 of the African Elephant Conservation Act (AECA) that provides, through the African Elephant Conservation Fund, a means to provide financial assistance for elephant conservation to African government agencies responsible for African elephant conservation and protection. This fund provides significant financial assistance to range states to develop scientific information for habitat conditions and elephant numbers and trends, to control the take of African elephants, and to implement conservation programs to provide for healthy and sustainable populations of African elephants.

Permits may be issued to carry out otherwise prohibited activities involving threatened species, including individuals, their parts and products thereof, under certain circumstances. Regulations governing permits for threatened species on CITES Appendices are listed in 50 CFR parts 13, 17, and 23, and must be met before the permit can be issued.

Revision of the Special Rule

The final revised special rule provides for basically the same prohibitions and exceptions as did the proposed revised special rule (56 FR 11399–11401). The current special rule (50 CFR 17.40(e)) provides exceptions which allowed for the import and export of raw and worked ivory and other parts from threatened populations for commercial and other purposes under certain conditions. These exceptions were superseded by the June 9, 1989 ivory moratorium (54 FR 23758) imposed under the AECA and the January 18, 1990 transfer of the African elephant to CITES appendix I. Neither the proposed revised special rule nor the final revised special rule have provided general exceptions to the prohibition against the import of raw and worked ivory into the United States. The Service believes the general prohibitions against the ivory trade can help reduce any future overutilization of the African elephant resource. The final revised special rule does contain limited exceptions that allow the import of ivory that is either bona fide antique, or that has first been registered with the U.S. Fish and Wildlife Service, legally exported, and is being legally reimported. No exception is granted to the prohibition against the export from the United States of any African elephant raw ivory for commercial purposes. The exception granted for the export of worked ivory requires that permit criteria in 50 CFR parts 13 and 23 be met.

The AECA specifically allows individuals to import sport-hunted elephant trophies that have been legally taken in an ivory producing country that has submitted an ivory quota, even if a moratorium on ivory imports from that country has been established under the

AECA. The Service notes that both this form of consumptive utilization, as well as forms of non-consumption utilization, as well as forms on non-consumptive utilization, provide important revenues for elephant conservation to range states. The proposed revised special rule allowed the import of sport-hunted elephant trophies from threatened populations if general Act permit procedures and CITES requirements were met. CITES requirements included a determination that the killing of elephants for sport-hunting enhances the survival of the species by providing financial support programs for elephant conservation. This requirement is retained in the final revised special rule for the import of sport-hunted trophies from threatened populations that are on CITES appendix I. A CITES appendix I import permit is required and can only be issued after the Service has determined that the import is non-detrimental to the species and that the killing of the animal whose trophy is intended for import would enhance the survival of the species. A separate permit under the Act is not required. No specific criteria for satisfying the CITES I import requirements are listed in the final revised special rule and the criteria listed in the proposed revised special rule have been deleted. The final revised special rule contains an exception to the import prohibition which allows the import of sport-hunted trophies when the following conditions have been met: (1) The trophy was taken in a country that has established a sport-hunting quota for the year of export; (2) a CITES appendix I import permit has been provided after all necessary requirements have been fulfilled; and (3) the trophy has been legibly marked. The sale or offer for sale of such trophies is prohibited by permit conditions.

The proposed revised special rule included an exemption from general prohibitions in the Act regarding interstate transactions in non-antique ivory from endangered populations. This was included because of the split-listing status that was proposed for the African elephant. The Service has no evidence that the continued interstate commerce within the United States in legally imported African elephant ivory contributes in any way to illegal killing and the overutilization of the African elephant resource. Consequently, the Service, in the final revised special rule, includes an exemption from the general prohibitions to allow the possession and interstate commerce of legally imported African elephants and their products and parts. This remains unchanged from the existing special rule, and includes not only ivory but also live animals and all African elephant parts and products that were legally imported.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 492440).

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Author

The primary author of this final rule is Dr. Henry L. Short, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

1. The Authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.40 is amended by revising paragraph (e) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) African elephant (*Loxodonta africana*)—(1) *Definitions.* For the purposes of this paragraph (e):

(i) *African elephant* shall mean any member of the species *Loxodonta africana*, whether live or dead, and any part or product thereof.

(ii) *Raw ivory* means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

(iii) *Worked ivory* means any African elephant tusk, and any piece thereof, which is not raw ivory.

(iv) *Lip mark area* means that area of a whole African elephant tusk where the tusk emerges from the skull and which is usually denoted by a prominent ring of staining on the tusk in its natural state.

(2) *Prohibitions.* Except as provided in the exceptions in paragraph (e)(3) of this section, it shall be unlawful for any person to:

(i) Import or export any African elephant,

(ii) Possess, sell or offer for sale, receive, deliver, transport ship, or export any African elephant which was illegally imported into the United States,

(iii) Sell or offer for sale any sport-hunted trophy imported into the United States in violation of permit conditions.

(3) *Exceptions.* (i) African elephants, other than sport-hunted trophies and raw and worked ivory, may be imported or exported provided all permit requirements of 50 CFR parts 13 and 23 have been complied with.

(ii) *Ivory.* (A) Raw or worked ivory (other than sport-hunted trophies) may be imported only if:

(*1*) it is a bona fide antique of greater than 100 years of age on the day of import, or

(*2*) It was exported from the United States after being registered with the U.S. Fish and Wildlife Service.

(B) Worked ivory may be exported in accordance with the permit requirements of 50 CFR parts 13 and 23.

(C) Raw ivory may not be exported from the United States for commercial purposes under any circumstances.

(iii) Sport-hunted trophies may be imported into the United States provided:

(A) The trophy originates in a country for which the Service has received notice of that country's African elephant ivory quota for the year of export;

(B) All of the permit requirements of 50 CFR parts 13 and 23 have been complied with;

(C) A determination is made that the killing of the animal whose trophy is intended for import would enhance survival of the species; and

(D) The trophy is legibly marked by means of punch-dies, under a marking and registration system established by the country of origin, that includes the following information: Country of origin represented by the two-letter code established by the International Organization for Standardization (see appendix A to chapter I) followed by the registration number assigned to the last two digits of the year of registration and the weight of raw ivory to the nearest kilogram. Any mark must be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark.

Dated: July 10, 1992.

John Turner,

Director.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 920402-2102]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Withdrawal of rule and issuance of new final rule.

SUMMARY: NMFS withdraws the rule published at 57 FR 33902 on July 31, 1992, and issues a new final rule prohibiting federally permitted U.S. vessels from fishing in the Central Bering Sea in an area called the "Donut Hole," and from possessing on board fish harvested from the Donut Hole as long as that vessel is in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). This rulemaking is necessary to reduce the further exploitation of the Aleutian Basin pollock stock (*Theragra chalcogramma*), which is found in both the Donut Hole and in the EEZ. The rulemaking will:

(1) Promote the goals and objectives of the North Pacific Fishery Management Council (Council) regarding the management of pollock stocks off Alaska, and (2) Further U.S. efforts regarding the negotiations with Japan, Poland, China, Korea, and the Russian Federation to establish an international conservation regime on the living resources of the Central Bering Sea.

EFFECTIVE DATES: The withdrawal of the rule published on July 31, 1992, beginning at 57 FR 33902 is effective August 10, 1992. The amendments made by this final rule are effective August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK, 99802, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION: On July 31, 1992, NMFS issued a rule at 57 FR 33902 to amend parts 672 and 675. That rule was to become effective on August 14, 1992. The rule as published at 57 FR 33902 was incorrect. It is therefore withdrawn and replaced by the issuance of a new rule.

The domestic and foreign groundfish fisheries in the EEZ of the GOA and the BSAI are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plans (FMPs) for Groundfish of the GOA and the BSAI. These FMPs were prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. *et seq.*) and are implemented by regulations at 50 CFR parts 611, 620, 672, and 675.

Two measures are implemented by this final rule. First, §§ 672.4 and 675.4, which govern the issuance of Federal fishing permits, are amended by prohibiting fishing in the Donut Hole by a federally permitted fishing vessel. Second, §§ 672.7 and 675.7, which govern general prohibitions, are amended to prohibit fishing in the Donut Hole by a U.S. fishing vessel and possession by such a permitted vessel in the EEZ of fish that were caught in the Donut Hole.

U.S. fishermen, who displaced foreign fleets of those nations that had a traditional fishery presence in the EEZ off Alaska, now fully utilize the groundfish resources of the EEZ off Alaska. Foreign fishermen have redirected their fishing effort to other fishing grounds, namely the Donut Hole. By the mid-1980s, catches in the Donut Hole were reported to exceed catches in the U.S. EEZ or the economic zone (EZ) of Russia. (Table 1.)

TABLE 1.—REPORTED POLLOCK CATCHES (1,000 S METRIC TONS (MT) IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA

Year	Donut hole	U.S. EEZ	Russian federation
1985	336	1,179	662
1986	1,061	1,189	871
1987	1,325	1,253	812
1988	1,396	1,229	1,327
1989	1,399	1,386	1,119
1990	876	1,353	814

The Donut Hole encompasses deep waters of the Aleutian Basin. The Aleutian Basin extends south into that part of the U.S. EEZ known as the Bogoslof District, defined at 50 CFR 675.2 as statistical area 518. Commercial fisheries data and scientific investigations on comparisons of age, size composition, size-at-age and genetic structure demonstrate that pollock found in the Donut Hole and the Bogoslof District are from the same Aleutian Basin stock.

The status of the Aleutian Basin pollock stock is depressed. Even though the abundance of this stock was estimated at about 5 million mt in 1987, it has declined to a low of about 0.5 million mt in 1990. The current low level of pollock abundance is consistent with catch per unit of effort (CPUE) information obtained from the commercial fishery, as well as from NMFS stock survey data.

The Secretary implemented specifications for acceptable biological catch and total allowable catch (TAC) amounts for pollock in the Bogoslof District for 1992 equal to 25,000 mt and 1,000 mt, respectively at 57 FR 3952 (February 3, 1992). The Secretary implemented these specifications as recommended by the Council at its December 1991 meeting in response to the decline in the Aleutian Basin pollock stock.

Notwithstanding this action in the U.S. EEZ to conserve the Aleutian Basin pollock stock, U.S. vessels might continue to over-exploit this stock by fishing in the Donut Hole. Because the Aleutian Basin pollock stock moves between the EEZ and the Donut Hole, fishing in both areas will expose this stock to greater fishing effort and result in overfishing. To protect the Aleutian Basin pollock stock from over-exploitation, the Council recommended that the Secretary prohibit federally permitted U.S. fishing vessels from (1) fishing in the Donut Hole and (2) possessing or retaining on board in the EEZ off Alaska, fish caught in the Donut Hole. Even though pollock comprise more than 90 percent of the total harvests in the Donut Hole, NMFS decided that to promote efficient enforcement, a federally permitted U.S. vessel should be prohibited from fishing in the Donut Hole.

On November 18, 1991, the Third Conference on the Central Bering Sea was held in Washington, DC. At that conference, delegations from the United States, the Russian Federation, the People's Republic of China, the Republic of Korea, Poland and Japan discussed measures relating to the conservation and management of living marine resources of the Central Bering Sea, and specifically the pollock resources. The United States indicated that it would take strict measures in 1992 to conserve the depressed Aleutian Basin pollock stock.

Unbridled exploitation in the Alaska pollock fishery in the "Donut Hole" by foreign vessels during the past few years has raised serious concerns about overfishing. Overfishing of the pollock resource not only adversely affects the U.S. commercial fishing industry, but also has far-reaching consequences for other valuable species that interact with pollock in the Bering Sea ecosystem. Because of the serious conservation and environmental problems posed by the

Donut Hole pollock fishery, Presidents Bush and Gorbachev issued a joint statement during the summit meeting held in June 1990 on behalf of the United States and the Soviet Union. This statement called for cooperative efforts in the development of international conservation and management measures for the Donut Hole area. In line with this statement, the United States and Russia are seeking agreement from the other fishing nations to a moratorium on such fishing. However, there are known to be U.S. vessels that have transferred, or will transfer, fishing effort to the "Donut Hole." In order to preserve its credibility during its negotiations with foreign nations on the joint U.S./Russian proposal for a moratorium, the United States must take appropriate action as quickly as possible to ensure that its vessels do not engage in fishing in the "Donut Hole." The United States reiterated its strong support for a proposal made at the Second Conference by the Soviet delegation that all countries agree to a moratorium on pollock fishing in the Central Bering Sea in 1992. At the Third Conference, the Soviet Union contended once again that a moratorium on further pollock fishing in the Donut Hole is urgently needed to conserve the Aleutian Basin pollock stock and indicated its readiness to reduce substantially the fishing effort on pollock in its EZ. Also noted at the Third Conference was the fact that continuation of the pollock fishery in the Central Bering Sea would lead to a further disastrous decline of the resource.

In keeping with the U.S. policy of a moratorium on Donut Hole fishing, NMFS is issuing this final rule. The delayed effective date is to provide time for a vessel with a 1992 Federal fisheries permit (permit) for the EEZ off Alaska to surrender it to NMFS if that vessel will continue or if it plans to fish in the Donut Hole, or to carry or transship Donut Hole resources in the EEZ off Alaska. Permit holders that surrender permits to NMFS prior to or on August 24, 1992, in order to (1) continue fishing operations in the Donut Hole, (2) begin fishing operations in the Donut Hole or (3) carry or transship Donut Hole resources in the EEZ will be permitted to do so. However, that vessel will not be permitted to fish in the EEZ groundfish fisheries off Alaska for the remainder of the 1992 fishing year. Permit holders who do not surrender their permit but continue or begin to conduct fishing operations in the Donut Hole or carry or transship Donut Hole resources in the EEZ after August 24, 1992, will be in violation of these regulations and subject to penalties authorized by the Magnuson Act.

Permits may be surrendered only during the time and in the manner specified in §§ 672.4(j) and 675.4(j). For the remainder of 1992 and subsequent fishing years, a U.S. fishing vessel that wishes to fish in, or possess in the EEZ fish harvested from, the Donut Hole must not apply for a permit for the Alaska groundfish fisheries.

NMFS anticipates that U.S. fishing vessels will fish for pollock in the Donut Hole during 1992 following the closure of the directed pollock fishery in the EEZ. Such U.S. vessels will be subject to the provisions of this rule.

Classification

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) because these regulations are issued with respect to a foreign affairs functions of the United States. This action is not subject to section 553 of the Administrative Procedure Act because it involves a foreign affairs function, and is, therefore, not subject to the provisions respecting a 30-day delay of its effective date.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **FOR FURTHER INFORMATION CONTACT**).

NMFS has determined that implementation of this rule is not likely to affect listed species in a manner or to an extent not already considered in formal consultations on these fisheries completed on April 19, 1991, June 5, 1991, and September 20, 1991. This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, and Recordkeeping requirements.

Dated: July 31, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the amendments to 50 CFR parts 672 and 675 published on July 31, 1992, beginning at 57 FR 33902 are withdrawn effective August 10, 1992; and parts 672 and 675 are amended effective August 24, 1992, as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2 the definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Donut Hole means the waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States, and seaward of the outer boundary of the economic zone of the Russian Federation.

* * * * *

3. In § 672.4, paragraph (j) is added to read as follows:

§ 672.4 Permits.

* * * * *

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit was issued. However, if a permit issued to a vessel in 1992 is surrendered in accordance with this section, that vessel may be used to fish in, or possess fish caught from, the Donut Hole. A permit issued in 1992 will be deemed to be surrendered only if all copies of it are mailed to, and received by, the Alaska Regional Director, NMFS, P.O. Box 21668, Juneau, AK 99802, on or before August 24, 1992. To surrender a vessel's 1992 permit prevents participation by that vessel in the groundfish fisheries in the EEZ off Alaska for the remainder of 1992.

4. In § 672.7, paragraphs (h) and (i) are added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) Fish in the Donut Hole while on board a vessel for which a permit has been issued under § 672.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such fishing if its 1992 permit has been surrendered to NMFS in accordance with § 672.4(j).

(i) Possess fish harvested from the Donut Hole while in the EEZ on board a vessel for which a permit has been issued under § 672.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such possession if its 1992 permit has been surrendered to NMFS in accordance with § 672.4(j).

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 11801 *et seq.*

6. In § 675.2 the definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Donut Hole means the waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States, and seaward of the outer boundary of the economic zone of the Russian Federation.

* * * * *

7. In § 675.4, paragraph (j) is added to read as follows:

§ 675.4 Definitions.

* * * * *

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit was issued. However, if a permit issued to a vessel in 1992 is surrendered in accordance with this section, that vessel may be used to fish in, or possess fish caught from, the Donut Hole. A permit issued in 1992 will be deemed to be surrendered only if all copies of it are mailed to, and received by, the Alaska Regional Director, NMFS, P.O. Box 21668, Juneau, AK 99802, on or before August 24, 1992. To surrender a vessel's 1992 permit prevents participation by that vessel in the groundfish fisheries in the EEZ off Alaska for the remainder of 1992.

8. In § 675.7, paragraphs (1) and (j) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) Fish in the Donut Hole while on board a vessel for which a permit has been issued under § 675.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such fishing if its 1992 permit has been surrendered to NMFS in accordance with § 675.4(j).

(j) Possess fish harvested from the Donut Hole while in the EEZ on board a vessel for which a permit has been issued under § 675.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such possession if its 1992 permit has been surrendered to NMFS in accordance with § 675.4(j).

[FR Doc. 92-18704 Filed 8-7-92; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish by vessels using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), August 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the Western Regulatory Area, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 2,000 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the Western Regulatory Area will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by operators of vessels using hook-and-line gear in the Western Regulatory Area, effective from 12 noon, A.l.t., August 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18877 Filed 8-5-92; 1:03 pm]
BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment, rescission of closure, request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that amounts of Pacific herring (herring) designated as the prohibited species catch (PSC) limit, and as fishery allowances specified for trawl fisheries of the Bering Sea and Aleutian Islands Area (BSAI), have been misspecified. NMFS is adjusting the size of the herring PSC limit, and redistributing the additional amounts among trawl fisheries, as needed. Revision of the herring allowance for the

yellowfin sole fishery necessitates rescission of a closure to the Herring Savings Areas (HSA) of the BSAI for directed fishing of yellowfin sole with trawl gear established earlier in 1992.

DATES: Effective 12 noon, Alaska local time (A.l.t.), August 3, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments are invited until August 20, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9100 Mandenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION:

Respecification of herring PSC limit

Regulations implementing the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI at § 675.21(a)(6) establish a PSC for herring of 1 percent of the annual Eastern Bering Sea herring biomass. In 1992, this amount is 956 metric tons (mt) (57 FR 3952, February 3, 1992. It is apportioned to certain BSAI target trawl fisheries, which are defined at § 675.21(g). Target fisheries, the herring PSC limit, and allowances to the target fisheries were subsequently modified by an emergency interim rule (57 FR 11433, April 3, 1992), which was further revised (57 FR 14667, April 22, 1992) and extended (57 FR 29223, July 1, 1992).

An inseason recalculation of herring biomass prepared in July 1992 by the Alaska Department of Fish and Game indicates that the original biomass estimate is substantially below 230,752 mt, the biomass estimate indicated by current scientific information. Based on this new information, NMFS finds that the herring trawl PSC limit for 1992 was misspecified. NMFS makes an inseason adjustment of the 1992 herring PSC limit for trawl gear in the BSAI to 2,308 mt, as authorized by regulations at § 675.20(e)(1)(iii). This adjustment satisfies required conditions under §§ 675.20(e)(2)(ii) and (e)(5) because the best available scientific information of herring biomass now shows that a limit of 956 mt is incorrect and a limit of 2,308 mt is appropriate.

Respecification of Trawl Fishery Allowances

Fishery categories established for the purpose of allocating herring PSC limits as bycatch allowances among trawl target fisheries were most recently defined in an extension of an emergency rule (57 FR 29223, July 1, 1992). Fisheries established include: midwater pollock, yellowfin sole, rocksole/other flatfish, Greenland turbot/arrowtooth flounder/sablefish, rockfish, Pacific cod, and non-midwater pollock/Atka mackerel/squid/"other species" ("other fishery"). These fishery categories were assigned allowances of the herring PSC limit in accordance with expected bycatch needs for 1992. Adjustment of the herring limit from 956 to 2,308 mt necessitates adjustment of trawl fishery allowances.

Of the five 1992 BSAI trawl fishery categories that have herring allowances, only those allowances for midwater pollock and yellowfin sole require adjustment, as many fisheries are closed, and remaining amounts of herring are deemed sufficient for others. At present, directed fisheries are closed to trawl gear in the BSAI for the remainder of 1992 for Greenland turbot, arrowtooth flounder, sablefish, Pacific cod, and for all rockfishes. The rock sole/other flatfish category is closed in Zones 1 and 2H. In the "other fishery," Atka mackerel and fishing for pollock with trawls other than pelagic trawls are closed. Remaining amounts of herring allowance specified for the "other fishery" and rock sole/other flatfish fishery categories are expected to be sufficient for the rest of the 1992 fishing year. Therefore, NMFS is apportioning the entire increase in herring PSC, 1,352 mt, to midwater pollock and yellowfin sole fisheries in the same proportion as existed in the specifications established in the emergency rule, as shown in Table 1.

Rescission of Closure

The herring allowance specified for the trawl yellowfin sole fishery in the emergency interim rule, 134 mt, was reached earlier in 1992. As required by regulations at § 675.21(h)(2), the directed fishery for yellowfin sole with trawl gear in the HSA of the BSAI was closed, effective June 29, 1992 (57 FR 29656, July 6, 1992). Because the herring allowance for this directed fishery is increased to 391 mt, the Regional Director finds that the directed fishery closure is no longer warranted. Therefore, NMFS rescinds the closure of the HSA to vessels participating in the directed fishery for yellowfin sole with trawl gear, effective 12 noon, A.l.t., August 3, 1992. The closure will be reimplemented if and when the respecified allowance for the yellowfin sole fishery is reached, later in 1992.

Classification

This action is taken under § 675.20(e)(iii) and (e)(5) and complies with Executive Order 12291.

This inseason adjustment is categorically excluded from the requirement to prepare an environmental assessment (EA) by NOAA Administrative Order 216–6. The environmental impacts of this action have already been analyzed in the EA for Amendment 16a to the BSAI FMP. Based on this analysis, the Assistant Administrator has determined that there will be no significant impact on the environment as a result of this action. A copy of the EA for Amendment 16a can be obtained from the Regional Director (see "**ADDRESSES**").

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior public notice and comment on the inseason adjustment or rescission of closure. Immediate effectiveness of this notice is necessary to prevent foregone revenue to the yellowfin sole fishery, which would otherwise be prevented from conducting operations in nearshore areas of the BSAI. Interested persons are invited to submit comments in writing (see "**ADDRESSES**") on or before August 20, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(**Authority:** 16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—RESPECIFICATION OF THE PACIFIC HERRING PSC LIMIT AND OF ALLOWANCES TO BSAI TRAWL FISHERIES FOR 1992

Trawl target	Previous allowance	Change this notice	New allowance
Midwater pollock	573	+1,095	1,668
Yellowfin sole	134	+257	391
Rocksole/O. Flatfish	0	0	0
G. turbot/arrowtooth/sablefish	0	0	0
Rockfish	10	0	10
Pacific code	29	0	29
Plck/Amck/other	210	0	210
Total	956	+1,352	2,308

[FR Doc. 92–18876 Filed 8–5–92; 1:03 pm]

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