

*Born Free U.S.A. v. Norton*, [278 F. Supp. 2d 5 \(D.D.C. 2003\)](#).

Location: Importation of elephants to the United States exported from Swaziland.

Applicable Laws: [National Environmental Policy Act](#) (NEPA) ([42 U.S.C. §§ 4321 et seq.](#))

Where Laws Apply: NEPA applies to U.S. federal actions within the United States and does not apply to actions of foreign government in a sovereign foreign nation.

Holding: A U.S. Fish and Wildlife Service (FWS) Environmental Assessment Finding of No Significant Impact satisfied the requirement of NEPA in the importation of elephants under the [Endangered Species Act](#) (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The FWS was not required to prepare an environmental assessment of the impacts to the environment in Africa. The court noted that a presumption against extraterritorial application of laws applies in this case where the foreign state is in control of the export determinations. The court noted the importance of the fact that the foreign government decided that it would either export the elephants or kill them. The court also stated that plaintiffs were not likely to succeed on their claims under the ESA and CITES in denying the request for an injunction.

*Overview:*

Plaintiffs, animal rights organizations and individuals, sued the U.S. Department of the Interior (DOI) Fish and Wildlife Service (FWS), challenging the FWS' decision to issue permits for the importation of eleven African elephants to U.S. zoos from Swaziland. The government of Swaziland had determined that the population of elephants was unmanageable and they were either going to export the elephants or kill them. The elephants were listed under Annex 1 of CITES and therefore Swaziland was required to issue export permits and the United States was required to issue import permits. There was also a claim under the ESA brought against the zoos.

Under NEPA, an agency must prepare an Environmental Impact Statement (EIS) for any proposed "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). The FWS determined that approval of the importation permits for the elephants was categorically exempt from NEPA requirements. Nonetheless, the FWS prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) for the importation of the elephants to the United States. Plaintiffs filed for an injunction seeking to require the FWS to prepare a full EIS for the exportation and importation of the elephants from Swaziland to the United States.

*Holding and reasoning:*

The Court found that the FWS EA/FONSI satisfied the requirements of NEPA. The court applied the presumption against extraterritorial application of U.S. laws in explaining why the FWS was not required to conduct an EA regarding exportation of the elephants from Swaziland

by a foreign sovereign nation. The government of Swaziland made its own valid, independent determination to proceed with the exportation of the species and complied with their obligations under CITES. The Court found that it was beyond FWS' control whether the elephants should be killed and the FWS was therefore not required to assess the effects of events taking place in Swaziland under the control of the government of Swaziland. However, the Court noted that the final EA did consider the impacts on the environment in Swaziland as well as the United States, concluding that the importation would alleviate the environmental problems caused by overpopulation of the elephants in Swaziland reserves and that the elephants were not going to be adversely impacted by the translocation.

The Court distinguished *Environmental Defense Fund, Inc. v. Massey*, [986 F.2d 528 \(D.C.Cir. 1993\)](#) and noted that it was "not dealing with environmental effects in a no-man's land such as Antarctica, where the United States has some real measure of control; rather, it [was] dealing with environmental affects in a foreign sovereign nation." (*Born Free U.S.A.*, 278 F.Supp. at 20). Swaziland independently decided to export the elephants under CITES after determining that the export would not harm the species and recognizing that the alternative would be to kill the elephants. The Court concluded that it would not require the FWS to conduct an EA to second-guess Swaziland's decision and that it is beyond the FWS' control whether Swaziland kills the elephants.