

Dated: January 10, 2005.

**Marshall P. Jones,**

Acting Director, U. S. Fish and Wildlife Service.

[FR Doc. 05-1669 Filed 1-31-05; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AT95

#### Endangered and Threatened Wildlife and Plants; Exclusion of U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of availability of a draft environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to amend the regulations promulgated under the Endangered Species Act (ESA or Act) (16 U.S.C. 1531 *et seq.*) to add a new subsection to govern certain activities with U.S. captive-bred populations of three antelope species that have been proposed for listing as endangered, should they become listed. These specimens are the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*). For U.S. captive-bred live specimens, embryos, gametes, and sport-hunted trophies of these three species, this proposed rule would authorize certain otherwise prohibited activities that enhance the propagation or survival of the species. International trade in specimens of these species will continue to require permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We have prepared a draft Environmental Assessment of the impact of this proposed rule under regulations implementing the National Environmental Policy Act of 1969 (NEPA). The Service seeks data and comments from the public on this proposed rule and the draft Environmental Assessment.

**DATES:** Written comments on the proposed rule and the draft Environmental Assessment must be submitted by April 4, 2005.

**ADDRESSES:** Submit any comments and information by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N.

Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703-358-2276; or by e-mail to [ScientificAuthority@fws.gov](mailto:ScientificAuthority@fws.gov). Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. You may also obtain copies of the November 5, 1991, proposed rule; July 24, 2003, proposed rule and notice to re-open the comment period; November 26, 2003, proposed rule and notice to re-open the comment period (68 FR 66395); and a copy of the draft Environmental Assessment from the above address.

#### SUPPLEMENTARY INFORMATION:

##### Background

Historically, the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) occupied the same general region of North Africa. The primary reason for the decline of all three antelope species in their native range is desertification, coupled with severe droughts, which has dramatically reduced available habitat. The growth of permanent farming in their native range has brought additional pressures, such as human habitat disturbance and competition from domestic livestock, which have restricted these antelopes to marginal habitat. Additional pressures from the civil wars in Chad and the Sudan have resulted in increased military activity, construction, and uncontrolled hunting.

Of the three antelope species, the scimitar-horned oryx is the most threatened with extinction. By the mid-1980s, it was estimated that only a few hundred were left in the wild, with the only viable populations known to be in Chad. However, no sightings of this species in the wild have been reported since the late 1980s, and the *2003 Red List of Threatened Species* shows that the status of the scimitar-horned oryx is "extinct in the wild" (World Conservation Union [IUCN] 2003). Captive-bred specimens of this antelope have been placed into large fenced areas for breeding in Tunisia. Once animals are reintroduced, continuous natural breeding is anticipated so that wild populations will be re-established.

It is believed that the addax was extirpated from Tunisia during the 1930s, and the last animals were killed in Libya and Algeria in 1966 and 1970, respectively. Remnant populations may still exist in the remote desert areas of Chad, Niger, and Mali, with occasional movements into Libya and Algeria during times of good rainfall. In the IUCN/SSC Antelope Specialist Group's *Global Survey of Antelopes*, the addax is considered to be "regionally extinct"

(Mallon and Kingswood 2001). The addax is listed as critically endangered in the *2003 Red List of Threatened Species* and probably numbers fewer than 250 in the wild (IUCN 2003).

The dama gazelle is able to utilize both semi-desert and desert habitats, and is smaller than the scimitar-horned oryx or addax. Of the three antelope species, the dama gazelle is the least susceptible to pressures from humans and livestock. The original source of its decline was uncontrolled hunting; however, habitat loss through human settlement and livestock grazing, in addition to civil unrest, has more recently contributed to the decline. It is estimated that only small numbers survive in most of the eight countries within its historical range. The dama gazelle has declined rapidly over the last 20 years, with recent estimates of fewer than 700 in the wild. Noble (2003) estimates that the wild population of addax gazelle (*G. dama ruficollis*) is less than 200 specimens, the wild population of dama gazelle (*G. dama dama*) is about 500 specimens, and the mhorh gazelle (*G. dama mhorh*) is extinct in the wild. It was previously extinct in Senegal, but has since been reintroduced, and in 1997, at least 25 animals existed there as part of a semi-captive breeding program (IUCN 2003). The IUCN lists all subspecies of dama gazelles as endangered.

For further information regarding background biological information, factors affecting the species, and conservation measures available to scimitar-horned oryx, addax, and dama gazelle, please refer to the November 5, 1991, and July 24, 2003, **Federal Register** documents discussed below.

#### Previous Federal Action

A proposed rule to list all three species as endangered under 50 CFR 17.11(h) was published on November 5, 1991 (56 FR 56491). We re-opened the comment period to request current information and comments from the public regarding the proposed rule on July 24, 2003 (68 FR 43706), and November 26, 2003 (68 FR 66395). Stakeholders and interested parties, including the public, governmental agencies, the scientific community, industry, and the range countries of the species, were requested to submit comments or information. We received 32 responses by the end of the comment period, including multiple comments from some stakeholders. In accordance with the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities published on July 1, 1994 (59 FR 34270), we selected three appropriate independent specialists to

review the proposed rule. The purpose of such peer review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis. The reviewers selected have considerable knowledge and field experience with scimitar-horned oryx, addax, and dama gazelle biology and conservation. Comments were received from all of the peer reviewers.

#### **Contribution of Captive Breeding to Species Propagation or Survival**

Captive breeding in the United States has enhanced the propagation and survival of the scimitar-horned oryx, addax, and dama gazelle worldwide by rescuing these species from near extinction and providing the founder stock necessary for reintroduction. Some U.S. captive-breeding facilities allow sport hunting of surplus captive-bred animals. Sport hunting of surplus captive-bred animals generates revenue that supports these captive breeding operations and relieves hunting pressure on wild populations. We are proposing a new rule under the Act's regulations in 50 CFR part 17 that would authorize otherwise prohibited activities for U.S. captive-bred live specimens, embryos, gametes, and sport-hunted trophies of these species that enhance the propagation or survival of the species. Thus, we are proposing that, notwithstanding paragraphs (b), (c), (e), and (f) of 50 CFR 17.21, any person subject to the jurisdiction of the United States may take; export or re-import; deliver, receive, carry, transport, or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any live specimen, embryo, gamete, or sport-hunted trophy of scimitar-horned oryx, addax, or dama gazelle that was bred in captivity in the United States.

A consistent theme among the comments received from peer reviewers and stakeholders on the proposed rule to list these species as endangered is the vital role of captive breeding in the conservation of these species. One reviewer noted that 100% of the world's scimitar-horned oryx population (including the reintroduced population that is in an enclosed area), 71% of the addax population, and 48% of the world's dama gazelle population are in captive herds. Captive-breeding programs operated by zoos and private ranches have effectively increased the number of these animals while genetically managing their populations. International studbook keepers and managers of the species in captivity manage these programs in a manner that maintains the captive populations as a

demographically and genetically diverse megapopulation (Mallon and Kingswood 2001). In the 1980s and 1990s, captive-breeding operations in Germany, the United Kingdom, and the United States provided scimitar-horned oryx, addax, and dama gazelle to Bou-Hedma National Park in Tunisia (Mallon and Kingswood 2001). These animals have become the founding stock of captive *in situ* herds that have grown substantially since 1995. The IUCN Species Survival Commission has proposed that some of the antelopes produced be used to establish other captive-breeding operations within the range countries or, given the appropriate conditions in the wild, for reintroduction. Similar *in situ* breeding programs for future reintroduction are occurring in Senegal and Morocco with captive stock produced and provided by breeding operations outside of these countries.

In addition, this proposed rule would not authorize or lead to the removal of any specimen of the three species from the wild. This rule would not affect prohibitions against possession and other acts with unlawfully taken wildlife or importation. This rule also would apply only to specimens that are captive bred in the United States. Any person who wishes to engage in any act that is prohibited under the Endangered Species Act with a specimen that has not been captive bred in the United States will still need to obtain a permit under the Act. The issuance or denial of such permits is decided on a case-by-case basis and only after all required findings have been made.

The probable positive direct and indirect effects of facilitating captive breeding in the U.S. for the conservation of scimitar-horned oryx, addax, and dama gazelle are exemplified in the research and reintroduction efforts involving the American Zoo and Aquarium Association (AZA) and the Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program. In North America, the AZA manages captive populations of scimitar-horned oryx, addax, and dama gazelle through Species Survival Plans (SSP). The scimitar-horned oryx population in North America and Europe is derived from two captures that occurred in Chad in 1963 and 1966. Members of the scimitar-horned oryx SSP are faced with three challenges (Antelope Taxon Advisory Group 2002c): they must manage the captive population to maximize the genetic contributions of founder stock; second, they must find solutions for disposition of surplus animals given the limited holding space among SSP members; and

third, they must find facilities that can house individual males or bachelor herds. Only through inter-institutional collaboration among members, such as the exchange of live specimens or gametes to maintain genetic diversity, can these challenges be surmounted. In one example, thirty founder lines are represented at one ranch that works closely with the SSP. Since typical oryx herds consist of one male and 10–30 females, there will always be a need to manage non-breeding males. Although the SSP consists mostly of AZA-accredited zoos, ranches can serve as repositories for surplus animals. These partnerships also provide opportunities for behavioral and other research in spacious areas found in some zoos and ranches that can be used in forming and preparing groups of animals for reintroduction.

Members of the Addax SSP have also been involved in translocating animals for captive breeding and release in Tunisia and Morocco. Animals held by members of the SSP are included in an international studbook for this species that includes addaxes in zoos and private facilities worldwide (Antelope Taxon Advisory Group 2002a). The dama gazelle North American studbook also includes zoos and ranch participants worldwide. Some of the specimens bred in zoos originated from ranched stock (Metzler 2000).

We are unaware of any negative direct or indirect effects from this rule on wild populations. As mentioned above, this proposed rule would not authorize or lead to the removal of any specimen of the three species from the wild. Indeed, many facilities in the United States that breed these species are working with range countries to breed and reintroduce specimens in areas that they have occupied historically. In 2000, the SSIG was formed as a consortium of individuals and organizations interested in conserving Sahelo-Saharan antelopes and their ecosystems (SSIG 2002). The SSIG has members representing 17 countries and shares information on wildlife management and conservation, captive breeding, wildlife health and husbandry, establishment and management of protected areas, and wildlife survey methods. Members are involved in *in situ* and *ex situ* conservation efforts for the scimitar-horned oryx, addax, and dama gazelle. Several of its projects involve the translocation of captive-bred antelopes to range countries for establishment of herds in large fenced breeding areas prior to reintroduction.

The proposed rule would not directly or indirectly conflict with any known program intended to enhance the

survival probabilities of the three antelope species. The SSP and SSIG programs work collaboratively with range country scientists and governments. Although the proposed rule would not authorize or lead to the removal of any specimen of the three species from the wild, it may contribute to other programs by providing founder stock for reintroduction or research.

This proposed rule would reduce the threat of extinction facing the scimitar-horned oryx, addax, and dama gazelle by facilitating captive breeding for all three species in the United States. Based on information available to the Service, captive breeding in the U.S. has contributed significantly to the conservation of these species. Scimitar-horned oryx are extinct in the wild and therefore, but for captive breeding, the species would be extinct. For addax and dama gazelle, they occur in very low numbers in the wild and a significant percentage of remaining specimens survive only through captivity (71% and 48% respectively). Threats that have reduced the species' to current levels in the wild continue throughout most of the historic range. As future opportunities arise for reintroduction in the antelope range countries, captive-breeding programs will be able to provide genetically diverse and otherwise suitable specimens. Ranches and large captive wildlife parks for non-native populations (e.g., The Wilds, Ohio; Fossil Rim Wildlife Center, Texas) are able to provide large areas of land that simulate the species' native habitat and can accommodate a larger number of specimens than can most urban zoos. Thus, they provide opportunities for research, breeding, and preparing antelopes for eventual reintroduction. International consortia of zoos, private owners, researchers, and range country decision makers have acknowledged the need to protect the habitat of the scimitar-horned oryx, addax, and dama gazelle. They also recognize that, but for captive breeding, it would be difficult, or in some cases impossible, to restore the species in the wild, particularly for species that have become extinct in the wild.

One way the proposed rule would reduce the threat of extinction is by allowing limited sport hunting of U.S. captive-bred specimens to facilitate captive breeding of all three species. Given the cost of establishing and maintaining a large captive breeding operation and the large amount of land that is required to maintain bachelor herds or surplus animals, it is difficult for many private landowners to participate in such endeavors. One incentive to facilitate such captive

breeding operations and ensure that genetically viable populations are available for future reintroduction programs is to allow the limited sport hunting of captive-bred specimens of these species to generate needed operational funds. Such an activity, therefore, reduces the threat of the species' extinction. Most of the available land for captive-held specimens is owned by private landowners (ranchers) or zoos. In Texas, the ranched scimitar-horned oryx population went from 32 specimens in 1979 to 2,145 in 1996; addax increased from 2 specimens in 1971 to 1,824 in 1996; and dama gazelle increased from 9 specimens in 1979 to 369 in 2003 (Mungall 2004). These population increases were due mostly to captive breeding at the ranches supplemented with some imported captive-bred founder stock. Limited hunting of captive-bred specimens facilitated these increases by generating revenue for herd management and the operation of the facility. Ranches also need to manage populations demographically (*i.e.*, age, gender) and genetically (*i.e.*, maximize genetic diversity). Such management may include culling specimens, which may be accomplished through sport hunting. For example, a ranch may need to reduce the number of adult males to achieve the necessary sex ratio for establishing a polygamous breeding group and facilitating the typical breeding behavior of the species. Hunting also provides an economic incentive for private landowners such as ranchers to continue to breed these species and maintain them as a genetic reservoir for future reintroduction or research, and as a repository for excess males from smaller populations, such as those held by zoos. Sport hunting of U.S. captive-bred specimens may reduce the threat of extinction of wild populations by providing an alternative to legal and illegal hunting of wild specimens in range countries.

The movement of live U.S. captive-bred specimens, both by interstate transport and export, is critical to the captive-breeding efforts to manage the captive populations as well as provide animals for reintroduction. Since 1997, 15 scimitar-horned oryx, 40 addax, and 36 dama gazelle have been exported from the United States. Population managers may recommend that specimens be exchanged among breeding institutions to achieve management goals for genetic or other reasons. These institutions may be separated by State (within the United States) or national boundaries. Zoos in Germany, for example, exchange

specimens with zoos in the United States, as recommended by the International Studbook Keeper. The need to quickly move U.S. captive-bred specimens among breeding facilities is reflected in this proposed rule by allowing such movement without requiring a separate ESA permit.

The opinions or views of scientists or other persons or organizations having expertise concerning these species have been taken into account by this proposed rule. The comments received from peer reviewers on our proposed rule for the listing of the three antelopes as endangered alerted us to the vital role that captive breeding, whether at zoos or ranches, is playing in species recovery and reintroduction. Thus, the opinions or views of scientists or other persons or organizations having expertise concerning the three antelope species and other germane matters have been considered in the development of this proposed rule.

The U.S. expertise, facilities, and other resources available to captive-breeding operations have resulted in such a high level of breeding success that the SSIG estimated that there are 4,000-5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle in captivity worldwide, many of which are held in the United States. The U.S. specimens have resulted from very few wild-caught founders that have been carefully managed to increase the numbers of specimens and maintain genetic diversity. Husbandry methods are shared by participants in regional and international studbooks through specialist meetings such as the Antelope Taxon Advisory Group meeting held at the AZA Annual Meeting. Such cooperation allows the sharing of resources among participants of coordinated breeding programs as specimens are moved from one facility to another according to management recommendations. As indicated by the Scimitar-horned Oryx SSP, one of the major issues confronting the captive-breeding community is how to preserve the necessary genetic diversity and manage population surplus, particularly given the space limitations at some facilities. Private ranches in the United States have contributed to the success of captive-breeding programs by absorbing the surplus specimens produced in zoos so that zoos can utilize available space for more genetically important specimens or the appropriate herd social structure. Ranches have also enlarged the captive populations since they are able to house more specimens because of their greater space dedicated to these species than is available in zoos.

Because captive breeding in the U.S. has already contributed significantly to the propagation or survival of the three antelope species and because of the need to facilitate the continued captive breeding of these species among private ranchers and zoos, the proposed rule is an appropriate regulatory management provision for scimitar-horned oryx, addax, and dama gazelle captive-bred in the United States. The probable direct and indirect effects of this proposed rule will be to facilitate activities associated with captive breeding and thus contribute to the propagation and survival of the species. The proposed rule would not, directly or indirectly, conflict with any known program intended to enhance the survival of the population from which the original breeding stock was removed. By maintaining genetic diversity and providing captive-bred stock for reintroduction efforts and research, zoos and ranches in the United States are reducing the threat of extinction of the three antelope species. The proposed rule would facilitate the functioning of programs such as those organized by the AZA and SSIG, and encourage the breeding and management of these antelopes in zoos and on private ranches. In fact, the proposed rule provides an incentive to continue captive breeding.

Therefore, we are proposing to amend current regulations in 50 CFR 17.21 that would authorize otherwise prohibited activities, for U.S. captive-bred live specimens, embryos, gametes, and sport-hunted trophies of these species, that enhance the propagation or survival of the species. We are proposing that any person subject to the jurisdiction of the United States may take; export or reimport; deliver, receive, carry, transport, or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live specimens or sport-hunted trophies of scimitar-horned oryx, addax, or dama gazelle that were captive-bred in the United States.

The proposed rule would not exempt the importation of specimens from foreign facilities. Since the proposed rule pertains only to U.S. captive-bred specimens, all wild specimens and specimens bred in captivity outside of the United States would remain subject to the Act's prohibitions as set forth in § 17.21. The proposed rule contains provisions that will allow the Service to monitor the activities being carried out by captive-breeding operations within the United States to ensure that these activities continue to provide a benefit to the three antelope species. It is, in

part, due to the fact that we can require recordkeeping and access to records that distinguishes U.S. captive-breeding operations from foreign captive-breeding operations. In addition, we have no information on how foreign breeding operations (other than some zoos) manage their captive populations. Until the Service has significantly more information on the breeding operations in other countries, how these operations have contributed to the propagation or survival of the species, and the controls that have been established for these breeding operations, the Service cannot expand this proposed exemption to specimens produced outside the United States.

The proposed rule would not apply to any U.S. specimen that does not meet the definition of captive-bred under 50 CFR 17.3. For any animal that does not meet the definition or for captive-bred specimens produced outside the United States or wild specimens, all prohibitions under § 17.21(a)–(f), 17.22, and 17.23 would apply. The proposed rule also does not include dead specimens other than sport-hunted trophies and specimens that are from activities that do not increase or sustain population numbers.

The United States is a Party to CITES. The scimitar-horned oryx, addax, and dama gazelle are listed in Appendix I of CITES, which requires strict regulation of international movement of these species. In general, any international trade in live or dead specimens of Appendix-I species requires both export permits and import permits issued by the CITES Management Authorities of the exporting and importing countries, respectively. To receive such a permit, certain criteria must be met, including that the Management Authority of the importing country must be satisfied that the import is not to be used for primarily commercial purposes. The importing country's Scientific Authority must advise the Management Authority that the import will be for purposes that are not detrimental to the survival of the species and, if it is a live specimen, that the proposed recipient is suitably equipped to house and care for it. The proposed rule would not affect the CITES requirements for these species.

Any commercial trade in specimens of Appendix-I species is limited to the extent to which such specimens may qualify for an exemption to the general permit provisions of CITES, either because they are pre-Convention specimens (*i.e.*, acquired before the species was listed under CITES) or, for animals such as these antelopes, because they were bred in captivity. These exemptions have strict

requirements. Pre-Convention specimens must be adequately documented as such, so that it is clear as to when the specimen was acquired. For specimens bred in captivity (including parts and products derived from such animals), they must have been produced from parents that mated in captivity, and the parents must have been acquired in accordance with national laws and CITES requirements, and must have been obtained in a manner that was not detrimental to the survival of the wild population. The species must also have been bred in captivity to the second or subsequent generations, and they must have been produced in a facility registered with the CITES Secretariat as an operation breeding Appendix-I species for commercial purposes. Registration of captive-breeding operations carries further requirements, including review by experts, and notification of and opportunity for comment—including objections—by all the CITES Parties.

Therefore, any import into or export from the United States of specimens of these species would not be authorized until all required conservation findings have been made and permits issued by the Service's Division of Management Authority. These existing protections under CITES, in conjunction with the new provisions for the species under this rule, would create an appropriate regulatory framework that protects populations in the wild, ensures appropriate management of U.S. captive-bred populations, and provides an incentive for future captive breeding.

We find that the scimitar-horned oryx, addax, and dama gazelle are dependent on captive breeding and activities associated with captive breeding for their conservation, and that activities associated with captive breeding within the United States enhance the propagation and survival of these species. We therefore propose amending 50 CFR 17.21 by adding a new subsection (h), which would apply to U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle. The revision would allow for the take; export or reimport; delivery, receipt, carrying, transporting or shipping in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce any U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle live specimen, sport-hunted trophy, embryo, or gamete.

#### Public Comments Solicited

We will accept written comments and information pertaining to this proposed rule during this comment period from

the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. Comments on the draft Environmental Assessment will also be considered in our decision regarding whether to finalize the proposed rule.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Scientific Authority (see **ADDRESSES** section).

#### Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### Required Determinations

A Record of Compliance was prepared for this proposed rule. A Record of

Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Without this proposed regulation, individuals subject to the jurisdiction of the United States would need permits to engage in various otherwise prohibited activities, including domestic and international trade in live and dead captive-bred specimens for commercial purposes. Captive-bred specimens in international trade for non-commercial purposes (e.g., breeding loans requiring export or import) would have to be authorized through the permit process. This process takes time, sometimes causing delays in moving animals for breeding or reintroduction. Such movements must often be completed within a narrow time frame and can be further complicated by quarantine requirements and other logistics. We note that the economic effects of the proposed rule do not rise to the level of "significant" under the following required determinations.

#### Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not a significant regulatory action. This proposed rule would not have an annual economic impact of more than \$100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This proposed rule would reduce the regulatory burden on captive-breeding operations that breed the scimitar-horned oryx, addax, and dama gazelle if the three antelopes are listed as endangered because it provides exemptions to the prohibitions of section 9 of the ESA that would otherwise apply to businesses and individuals under U.S. jurisdiction. The exemptions to the prohibitions of the ESA provided by this proposed rule will reduce economic costs of the listing. The economic effect of the proposed rule is a benefit to the captive-breeding operations for the three antelopes because it would allow the take and interstate commerce of captive-bred specimens. The proposed rule, by itself, would not have an annual economic impact of more than \$100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This proposed rule will not create inconsistencies with other Federal agencies' actions. Thus, no

Federal agency actions are affected by this proposed rule.

This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule will not raise novel legal or policy issues. The Service has previously promulgated species-specific rules for other endangered and threatened species, including other rules for captive-bred specimens.

#### Regulatory Flexibility Act

To assess the effects of the proposed rule on small entities, we focused on the exotic wildlife ranching community in the United States because these are the entities most likely to be affected by the proposed rule. We have determined that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it allows for the continued breeding of the species and trade in live specimens, embryos, gametes, and sport-hunted trophies of the three antelopes. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. If the three antelope species are listed, this proposed rule would reduce the regulatory burden, because without this rule all prohibitions of section 9 of the ESA would apply (*i.e.*, take; import, export; delivery, receipt, carrying, transporting or shipping in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce any live or dead specimen).

#### Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule would reduce regulatory obligations and will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this proposed rule would not

impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A Small Government Agency Plan is not required.

### Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. By reducing the regulatory burden placed on affected individuals resulting from the possible listing of the three antelopes as endangered species, this proposed rule would not affect the likelihood of potential takings. Affected individuals would have more freedom to pursue activities that involve captive-bred specimens without first obtaining individual authorization.

### Federalism

In accordance with Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

### Paperwork Reduction Act

The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Numbers 1018-0093 and 1018-0094. This proposed rule does not impose new reporting or recordkeeping requirements on State or local governments, individuals, businesses, or organizations. We cannot conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### National Environmental Policy Act

Council on Environmental Quality regulations in 40 CFR 1501.3(b) state that an agency "may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making." We have drafted an environmental assessment for this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA). We are soliciting comments on the environmental assessment as well as on the proposed rule.

### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

### Executive Order 13211

We have evaluated this proposed rule in accordance with E.O. 13211 and have determined that this rule would have no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

### References Cited

- Antelope Taxon Advisory Group. 2002a. Addax Fact Sheet. American Zoo and Aquarium Association. <http://www.csew.com/antelopetag>.
- Antelope Taxon Advisory Group. 2002b. Addax or Dama Gazelle Fact Sheet. American Zoo and Aquarium Association. <http://www.csew.com/antelopetag>.
- Antelope Taxon Advisory Group. 2002c. Scimitar-Horned Oryx Fact Sheet. American Zoo and Aquarium Association. <http://www.csew.com/antelopetag>.
- IUCN (World Conservation Union). 2003. 2003 IUCN Red List of Threatened Species. <http://www.iucn.org>.
- Mallon, D.P., and S.C. Kingswood (Compilers). 2001. *Antelopes. Part 4: North Africa, the Middle East, and Asia. Global Survey and Regional Action Plans*. SSC Antelope Specialist Group. IUCN, Gland, Switzerland and Cambridge, UK. viii + 260 pp.
- Metzler, S. 2000. Addax Gazelle *Gazella dama ruficollis* North American Regional Studbook: December 31, 1999 Update. Disney's Animal Kingdom: Orlando, Florida.
- Mungall, E.C. 2004. Submission for the Comment Period Listing of Scimitar-horned Oryx, Addax, and Dama Gazelle Under the Endangered Species Act: A Technical Report Prepared for the Exotic Wildlife Association.
- Noble, D. 2003. Overview and status of captive antelope populations. Third Annual Sahelo-Saharan Interest Group Meeting, p. 41
- SSIG (Sahelo-Saharan Interest Group) 2002. Third Annual Sahelo-Saharan Interest Group Meeting Proceedings. Available from S. Monfort, Chair SSIG, National Zoological Park. Smithsonian Institution: Washington, DC.

### Author

The primary author of this notice is Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service (see ADDRESSES section).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17 of subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### PART 17—[AMENDED]

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. Amend §17.21 by adding paragraph (h) to read as follows:

#### § 17.21 Prohibitions.

\* \* \* \* \*

(h) *U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle.* Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person subject to the jurisdiction of the United States may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live specimens, embryos, gametes, and sport-hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:

(1) The purpose of such activity is associated with the transfer of live specimens, embryos, or gametes or sport hunting in a manner that contributes to increasing or sustaining captive population numbers or to potential reintroduction to range countries;

(2) The specimen was captive-bred, in accordance with §17.3, within the United States;

(3) Any exports of such specimens meet the requirements of paragraph (g)(4) of this section, as well as parts 13 and 23 of this chapter;

(4) Each specimen to be re-imported is uniquely identified by a tattoo or other means that was reported on the documentation required under (h)(3); and

(5) Each person claiming the benefit of the exception of this paragraph (h) must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service agents for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.

Dated: January 10, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-1698 Filed 1-31-05; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List a Karst Meshweaver, *Cicurina cueva*, as an Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list a karst meshweaver (spider), *Cicurina cueva* (no common name), under the Endangered Species Act of 1973, as amended (Act) with critical habitat. We find that the petition presented substantial scientific and commercial data indicating that listing *Cicurina cueva* may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species.

**DATES:** The administrative finding announced in this document was made on January 26, 2005. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by May 15, 2005.

**ADDRESSES:** Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Austin Ecological Services Office, 10711 Burnet Rd., Suite 200, Austin, Texas, 78758. The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Pine, Supervisor, Austin Ecological Services Field Office (telephone 512-490-0057 and facsimile 512-490-0974).

**SUPPLEMENTARY INFORMATION:**

#### **Public Information Solicited**

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on *Cicurina cueva*. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of *Cicurina cueva*. We are seeking information regarding the species' historic and current status and distribution, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (*see ADDRESSES* section above). Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### **Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial data indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of

this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated, under our internal candidate assessment process.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). This finding summarizes information included in the petition and information available to us at the time of the petition review. Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations direct, in coming to a 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our finding considers whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately 9 more months, we will perform a rigorous, critical analysis of the best available scientific and commercial data, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and Information Quality Act.

On July 8, 2003, we received a petition requesting that we list *Cicurina cueva* (no common name) as an endangered species with critical habitat. The petition, submitted by the Save Our Springs Alliance (SOSA), Save Barton Creek Association, and Austin Regional Group of the Sierra Club, was clearly identified as a petition for a rule, and contained the names, signatures, and addresses of people representing the requesting parties. Included in the petition was supporting information