

whether the law provides for the following:

1. A provision that authorizes a person (relator) to bring a civil action for a violation of the State false claims act for the person and for the State, which will be brought in the name of the State.

2. A provision that requires a copy of complaint and written disclosure of material evidence and information to be served on the State Attorney General in accordance with State Rules of Civil Procedure.

3. A provision that provides that when a relator brings a *qui tam* action, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

4. Provisions that set forth rights of parties to *qui tam* actions, including:

- If the State proceeds with the action, the State has primary responsibility in the action, but the relator shall have the right to continue as a party to the action; and
- If the State elects not to proceed with the action, the relator may conduct the action but the State may intervene at a later date upon a showing of good cause.

5. Provisions that reward a relator with a share of the proceeds of the action or settlement of the claim, including:

- If the State proceeds with an action brought by the *qui tam* relator, the relator receives at least 15 percent of the proceeds of the action or settlement of the claim, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action;
- If the State does not proceed with an action, the relator receives at least 25 percent of the proceeds of the action or settlement, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action; and
- The court is authorized to award the relator an amount for reasonable expenses, including attorneys' fees and costs, to be awarded against the defendant.

6. A statute of limitations period not shorter than 6 years after the date of the violation is committed, or 3 years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with the responsibility to act in the circumstances, whichever occurs last.

7. A provision that establishes the burden of proof, for each of the elements of the cause of action including damages, no greater than a preponderance of the evidence.

8. A provision that provides a cause of action for relators who suffer retribution from employers for whistleblower activities related to the State false claims act.

OIG is required to consider whether the State law is at least as effective in rewarding and facilitating *qui tam* actions when compared to the provisions at 31 U.S.C. 3730–3732. State false claims acts may include procedural rights, reductions in relator awards, jurisdictional bars, and other *qui tam* provisions similar to those found in the FCA that do not conflict with the requirements of section 1909(b)(2) of the Act. However, if such provisions are more restrictive than the provisions in the FCA, OIG may determine that a State law is not as effective in rewarding or facilitating *qui tam* actions. OIG will make such determinations on a case-by-case basis and in consultation with DOJ.

#### C. Seal Provisions

Under section 1909(b)(3) of the Act, a State law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General. When evaluating whether a State law meets the requirements of section 1909(b)(3) of the Act, OIG will consider whether the law provides a provision that requires the complaint to be filed in camera and to remain under seal for at least 60 days. In addition, OIG will consider whether the State law's seal provisions operate in a way that conflict with the Federal seal in a pendant FCA case.

#### D. Civil Penalty Provisions

Under section 1909(b)(4) of the Act, the State law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729. OIG will review a State law to determine if these provisions include a provision that sets at least treble damages (or double damages in instances of timely self-disclosure and full cooperation) and civil penalties at amounts of at least \$5,000 to \$10,000 per false claim.<sup>2</sup>

#### IV. OIG Procedures for Reviewing State False Claims Acts

As noted above, the effective date of section 1909 of the Act is January 1, 2007. A State that, as of January 1, 2007,

<sup>2</sup> DOJ is authorized to adjust the civil penalties under the FCA for inflation and has issued regulations that raise the FCA penalties. See Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990); 28 CFR 85.3. However, the statutory provisions of the FCA identify the range of civil penalties as \$5,000 to \$10,000, and OIG will review State laws based on those statutory provisions.

has a law in effect that meets the enumerated requirements shall be deemed in compliance with such requirements for so long as the law continues to meet such requirements.

With the publication of these guidelines, OIG will accept requests for review of State laws to determine if they meet the requirements of section 1909(b) of the Act. In order to request OIG review of a State law, the State Attorney General's office should submit a complete copy of the State law, or any other relevant information, to the following address: Office of Inspector General, Department of Health and Human Services, Cohen Building, Mail Stop 5527, 330 Independence Avenue, SW., Washington, DC 20201, Attention: Roderick Chen, Office of Counsel to the Inspector General.

Submissions by telecopier, facsimile, or other electronic media will not be accepted. OIG will review the State law under these guidelines and in consultation with DOJ, and inform the State Attorney General's office in writing whether the State law meets the requirements of section 1909(b) of the Act.

Dated: August 16, 2006.

**Daniel R. Levinson,**

*Inspector General.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Recovery Plan for the Chittenango Ovale Amber Snail

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

**ACTION:** Notice of document availability; final revised recovery plan.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce availability of a final revised recovery plan for the endangered Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). The final plan incorporates comments received during the public and peer review period and updates the objectives, criteria, and actions for recovering this endangered species.

**ADDRESSES:** A copy of the revised plan may be requested by contacting the Fish and Wildlife Service's New York Field Office (NYFO), 3817 Luker Road, Cortland, New York 13045. Copies will also be available for downloading from the NYFO's Web site at <http://www.fws.gov/northeast/nyfo/es/recoveryplans.htm>, and from the

Service's Endangered Species Web site at <http://www.fws.gov/endangered/recovery/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robyn Niver, U.S. Fish and Wildlife Service, at the above address or by telephone at 607-753-9334.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the Federally listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria which, when met, would result in a determination that the species no longer needs the protection of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. A final rule listing the Chittenango ovate amber snail (*Novisuccinea chittenangoensis*) as threatened was published in the **Federal Register** on July 3, 1978 (43 FR 28932), and became effective on August 2, 1978. The initial recovery plan for the species was completed in March 1983 (Riexinger, P., J. Proud, T. Lyons, and D. Sulitka. 1983. Chittenango ovate amber snail recovery plan. Region 5, U.S. Fish and Wildlife Service Report, in cooperation with the Chittenango Ovate Amber Recovery Team. March 24, 1983). A draft recovery plan revision was prepared and issued for the species in 2003.

Issuance of the draft revised plan included a notice of availability and opportunity for public comment (68 FR 68102, December 5, 2003) and other public notification efforts. Pertinent information received by the Service during the public comment period has been considered in preparation of the final revised recovery plan and is summarized in an appendix to the plan. This information will also be taken into account in the course of implementing recovery actions. In addition, new information on population status and

genetics that has become available since publication of the draft in 2003 has informed the final plan with a better understanding of the snail's distribution within its sole population, and has alleviated concerns about possible hybridization between *Novisuccinea chittenangoensis* and an introduced snail occupying the same habitat. The new information has resulted in only a slight shift in the recovery strategy for this species, which continues to be highly imperiled.

Since its discovery in 1905, only one extant *N. chittenangoensis* colony has been verified, from a site within the Chittenango Falls State Park in Madison County, New York. The Chittenango ovate amber snail is a terrestrial species that requires the cool, mild-temperature, moist conditions provided by the waterfalls and mist in its environment. Its habitat lies within a ravine at the base of a 167-foot waterfall, and the ledges where it is found comprise an early successional sere that is periodically rejuvenated to a bare substrate by floodwaters. The species requires a substrate rich in calcium carbonate and appears to prefer green vegetation such as the various mosses, liverworts, and other low herbaceous vegetation found within the spray zone adjacent to the falls. Clean water may be necessary to maintain essential habitat, although water quality may have only an indirect effect on the snail.

The Chittenango ovate amber snail was listed due to its rarity and population decline. Since listing, habitat protection and captive propagation measures have been implemented. Unfortunately, the captive propagation efforts to date have been unsuccessful, and the species' status remains exceedingly precarious. The primary continuing threats to the snail are its small population size and limited distribution as well as an undefined negative interaction with an introduced snail, *Succinea* sp. B. Additionally, potential threats persist from habitat changes and inadvertent human disturbance.

The final revised recovery plan includes updated scientific information about the Chittenango ovate amber snail and identifies research and management actions needed to conserve and recover species within its ecosystem. The recovery goal for the snail is to achieve long-term viability of the species in the wild, thereby allowing it to be taken off the Federal List of Endangered and Threatened Wildlife. The initial recovery objective is to stabilize the extant population at Chittenango Falls. Two necessary conditions for stabilization are maintaining (or

increasing) the baseline population size of the natural colony and maintaining multiple captive populations of *N. chittenangoensis*. Achievement of the first condition will entail habitat management planning and research into the species' biological requirements and possible means of controlling the competing *Succinea* sp. B. In addition to securing the in situ conditions necessary to stabilize the natural population, captive propagation should be reinitiated in accordance with a newly established propagation protocol to safeguard against extinction of this species.

If and when stabilization of the extant *N. chittenangoensis* population at Chittenango Falls has been achieved, progress toward full recovery of the species can commence. This will include augmentation of the population at the Falls, searching for other possible extant populations, long-term maintenance of captive populations, and investigating the feasibility of initiating a population of *N. chittenangoensis* at an alternative location. The plan includes criteria for determining when the objectives of stabilization and full recovery have been met.

*Author:* Mary Parkin, Recovery Coordinator, Endangered Species Program, Fish and Wildlife Service, Region 5.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 27, 2006.

**Michael G. Thabault,**

*Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.*

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**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Consent Decree under the Clean Water Act**

Under 28 CFR 50.7, notice is hereby given that on August 15, 2006, a proposed Consent Decree ("Decree") in *United States and Commonwealth of Kentucky, Environmental and Public Protection Cabinet v. Mid-Valley Pipeline Company, Sunoco Pipeline L.P., and Sun Pipe Line Company*, Civil Action No. 06-57-KKC, was lodged with the United States District Court for the Eastern District of Kentucky.

In this action, the United States alleged Clean Water Act ("CWA") violations arising from two spills of crude oil from the Mid-Valley Pipeline (MVPL). In the Complaint, the United