

## **Annex A: USAID Definitions in More Detail**

This section provides more detailed discussion of the different categories of activities defined by Regulation 216. Read and understand this section before you begin classifying your activities and preparing your IEE or other documentation.

Please note that the section (§) numbers from Reg. 216 are cited throughout this section. *Actual excerpts from Reg. 216 are italicized.* Both are section references and Reg. 216 excerpts are provided because you may need to cite the applicable portions of the regulation in preparing environmental documentation. The full text of Regulation 216 is contained in Annex B.

### ***A.1 Definition of exempt activities***

### ***A.2 Definitions of categorically excluded activities***

### ***A.3 Definitions of “high risk” activities typically requiring an environmental assessment (EA)***

## **A.1 Definition of exempt activities**

Regulation 216 sets out criteria for exemptions as follows:

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### ***Exemptions [§216.2(b)(1)]:<sup>12</sup>***

*(1) Projects, programs, or activities involving the following are exempt:*

- (i) International disaster assistance [International disasters are declared by the U.S. Ambassador in the country(ies) involved, including those that receive emergency food aid];*
  - (ii) Other emergency circumstances; and*
  - (iii) Circumstances involving exceptional foreign policy sensitivities.*
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Sometimes Title II activities are exempt because they are undertaken as part of international disaster assistance involving emergencies (for example, civil strife, famine, major earthquake, or flood). There are instances in which “notwithstanding” authorities will be invoked for emergency actions that have the effect of waiving certain normally required provisions. These instances will need to be determined in consultation with USAID. For example, “notwithstanding” language exists for “emergency feeding” programs that exempts these activities from everything, including 22 CFR 216. The purpose for this is to avoid slowing down food drops to people who are on the verge of starving to death—it is not for sustainable development.

### **The exemptions of §216.2(b)(1) are not applicable to assistance for the procurement or use of pesticides.**

Development activities almost never qualify for exemptions. Permission for an exemption under (ii) and (iii) is required from the highest levels of USAID and from the President’s Council on Environmental Quality. In the extremely unlikely event that your activities might qualify for exemptions (ii) and (iii), a formal written determination, including a statement of justification, is required for each project, program, or activity. The determination is made by the Assistant USAID Administrator with responsibility for the program, project, or activity, or by the USAID Administrator, if authority to approve financing is reserved for the Administrator. The determination is made after consultation with the Council on Environmental Quality (a **rare** event) regarding the environmental consequences of the proposed program, project, or activity.

Table A.1 lists several kinds of PVO activities that USAID may determine to be exempt.

The Agency Environmental Coordinator has responded to several questions from the field concerning exemptions in order to clarify the underlying principles that justify an exemption.<sup>13</sup>

On the ground, practitioners not infrequently encounter situations which require distinguishing between emergency and development programming modalities, and decisions need to be made as to whether emergency or development procedures and requirements apply, especially as related to environmental compliance. Typically questions arise as to how one handles:

- 1) actual (unpredictable) emergencies, such as major floods, cyclones or similar situations, that are declared disasters by the Ambassador and which, if they use TII funds, could be considered exemptions, in accordance with §216.2(b)(1)(i);

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<sup>4</sup> All italicized text in this section is directly quoted from Reg. 216.

<sup>5</sup> Source: Jim Hester, USAID’s Agency Environmental Coordinator (AEC), May 14, 1998 e-mail to Charlotte Bingham, REDSO/ESA REO and Nov. 30, 1998 e-mail to Walter Knausenberger.

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- 2) situations which appear to be defined as emergencies because the source of funding is the emergency side of FFP. (In this case, the justification for an exemption does not appear to lie within Reg. 216 *per se*); and
- 3) emergency programs that are justified with “notwithstanding” clauses and which may not be actual emergencies in the sense of number 1, but the source of the justification for not applying Reg. 216 is a “notwithstanding” clause(s).

The discussion below addresses these issues.

**Table A.1: Some activities that may qualify for exemption**

Type of Activity	Reason for Exemption
Emergency relocation of flood victims	Immediate response required; no alternatives available
Refugee camp establishment for rural populations caught in civil strife	Displaced populations without means or land to grow food; no immediate alternatives available
Emergency medical infrastructure, materials, and equipment for victims of war	Emergency medical requirements for injured populations

- When the current 22 CFR 216 was drafted in 1979-80, USAID created 216.2(b)(1)(i) for declared disaster assistance to avoid any possible delay in getting assistance to people who would die or suffer terribly if help didn't arrive in a matter of days. In the process, (ii) *Other emergency circumstances* and (iii) *Circumstances involving exceptional foreign policy sensitivities* were provided as contingencies to cover matters where people like the Administrator and the White House agreed that in extraordinary cases something was so urgent or so sensitive that environmental review was simply outweighed by the foreign policy need. The benchmark is extraordinarily high for these “emergency” or “foreign policy sensitivities” exemptions. They have been used rarely and even USAID’s first work in war-torn Bosnia did not qualify.

Spending time and effort finding ways around an environmental review is time wasted that could have been used to make a project more effective. The purpose of the regulation is not to go through pointless bureaucratic gyrations, but to ensure a professional job of designing a project to be sustainable and not hurt the people and the society it is trying to help. With or without a regulation such as 22 CFR 216, inattention to environmental impacts can lead to under-performance or harmful activities.

- USAID has determined that declared disaster assistance emergencies funded through the Office of Foreign Assistance (OFDA) are the only situations that qualify for *exemption (i)*. The purpose of this exemption is to give USAID the flexibility to address those disaster situations where even a day or two of delay would cause loss of lives and where getting relief to a location is critical. Even in cases of OFDA disaster assistance, the exemption clause should not be considered a license to ignore environmental consequences. OFDA does **advance planning** on how it will respond to different categories of disasters and **this is where efforts should be made to ensure that whatever is designed as a standard response package is as environmentally sound as possible**, in the same way that OFDA puts serious thought into advance planning to deliver medicines or temporary shelter. When a disaster response is extended in time, there should be a conscious effort to consider environmental impacts and to adjust assistance so as to minimize any long-term harm it might cause.

USAID and other donors are now beginning to understand that giving exemptions to disaster assistance may not be as humane as once thought, since poorly designed disaster assistance can cause major problems after the disaster has passed. Refugee camps are one example. Cooperating Sponsors, USAID, and other donors are learning that while very real needs may exist to get help to people as fast as possible in emergencies, there is also a need to “pre-design” emergency response packages with full consideration of environmental implications and mitigate them in advance of a response. They are also undertaking

environmental review concurrently with providing disaster assistance, so that the assistance can be modified as it goes along to make it more environmentally sound.

USAID's own OFDA has developed guidance for use by PVOs/NGOs in preparation and response to emergencies. PVOs/NGOs are encouraged to develop environmentally sensitive programs based on this guidance and to coordinate their activities with the United Nations High Commission for Refugees (UNHCR) or other entities, which have environmental procedures for refugee operations.

In summary, **if you have activities that you believe may qualify as international disaster assistance consult the MEO (or appropriate parties) as soon as possible** to confirm that an exemption might be in order. Include appropriate information in your proposals indicating what activities are exempt and why. If some of your activities are considered exemptions, include the justifying document (e.g., the disaster assistance cable) in your Reg. 216 environmental documentation.

“Notwithstanding” authorities are found throughout U.S. Government Foreign Appropriations and Assistance regulations, pertaining to exceptions permitting programming despite various prohibitions (i.e., these prohibitions “notwithstanding”) for exigencies of various sorts: e.g.,

- for bonafide declared emergencies threatening human lives with imminent danger, political sensitivities; and
- for overriding geopolitical factors and programmatic needs (such as regional HIV/AIDS programs) deemed important and “without borders”—thus being able to operate in countries in which USAID has no Mission (“non-presence” countries) or is prohibited by law from assisting (e.g., due to military coup—Section 508 of the FY98 Appropriations Act).

For pesticide use, notwithstanding clauses do not override the need for a proper risk-benefit assessment, following USAID's Pesticide Procedures in 22 CFR 216.3(b).

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## A.2 Definitions of categorically excluded activities

**Categorical exclusion criteria.** Reg. 216, 22 CFR 216.2(c)(1), provides three general criteria that define a more specific list of Categorical Exclusions provided in 216.2(c)(2). The three criteria are:

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- (i) *The action does not have an effect on the natural or physical environment;*
  - (ii) *[USAID] does not have knowledge or control over, and the objective of [USAID] in furnishing assistance does not require, either prior to approval of financing or prior to implementation of specific activities, knowledge or control over, the details of the specific activities that have an effect on the physical and natural environment for which financing is provided by [USAID]; and*
  - (iii) *Research activities which may have an effect on the physical and natural environment but will not have a significant effect as a result of limited scope, carefully controlled nature, and effective monitoring.*
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These three criteria **are not normally used** in determining and citing Categorical Exclusions. Instead, you should use the specific list below which is taken from §216.2(c)(2). The list above is used **only** if the activity meets the criteria, but is not specifically listed below. For example, you will notice that none of the items below covers monetization per se, so it would be appropriate to cite 22 CFR 216.2(c)(1)(i) *The action does not have an effect on the natural or physical environment.*

**Specific activities which are usually “categorically exempt.”** The classes of action defined as Categorical Exclusions are listed below. If Categorical Exclusions apply to your activities or components thereof, enter these activities in Table 2.1 with the relevant information including the **specific citation** from the Regulation:

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### **Categorical Exclusions** [§216.2(c)(2)].<sup>14</sup>

- (i) *Education, technical assistance, or training programs except to the extent such programs include activities directly affecting the environment (such as construction of facilities, etc.);*
- (ii) *Controlled experimentation exclusively for the purpose of research and field evaluation which are confined to small areas and carefully monitored [Note: a working definition of small would be fewer than four hectares (ha) or ten acres.];*
- (iii) *Analyses, studies, academic or research workshops and meetings*
- (iv) *Projects in which USAID is a minor donor to a multidonor project and there are no potential significant<sup>15</sup> effects upon the environment of the United States, areas outside any nation’s jurisdiction or endangered or threatened species or their critical habitat [Note: USAID is a minor donor when its total contribution to the project is both less than \$1,000,000 and less than 25 percent of the estimated project cost, or USAID’s total*

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<sup>14</sup> All italicized text in this section is directly quoted from Reg. 216.

<sup>15</sup> In this particular instance the term “significant” is defined according to the U.S. Council on Environmental Quality regulations, because it applies to effects on the U.S. or outside a nation’s jurisdiction. When effects are limited to countries outside the U.S. the word significant is defined as causing significant harm to the environment. Should you have an activity that might have significant effects on the U.S. or that is outside a nation’s jurisdiction, consult the BEO.

contribution is more than \$1,000,000 but less than 25 percent of the estimated project cost and the environmental procedures of the donor in control of the planning of design of the project are followed, but only if the USAID Environmental Coordinator determines that such procedures are adequate.];

*(v) Document and information transfers;*

*(vi) Contributions to international, regional or national organizations by the United States which are not for the purpose of carrying out a specifically identifiable project or projects;*

*(vii) Institution building grants to research and educational institutions in the United States such as those provided for under section 122(d) and Title XII of Chapter 2 of Part I of the FAA [22 USCA §§2151 p. (b) 2220a. (1979)];*

*(viii) Programs involving nutrition, health care or population and family planning services except to the extent designed to include activities directly affecting the environment (such as construction of facilities, water supply systems, waste water treatment, etc.) [Note: if biohazardous waste is handled, blood is tested, or syringes are used (as in an immunization program), mitigative measures to deal with waste disposal must be identified in an IEE.];*

*(ix) Assistance provided under a Commodity Import Program when, prior to approval, USAID does not have knowledge of the specific commodities to be financed and when the objective in furnishing such assistance requires neither knowledge, at the time the assistance is authorized, nor control, during implementation, of the commodities or their use in the host country;*

*(x) Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution [Note: if there could be some biophysical impact from the loans made by the credit institution, for most rural credit programs, procedures for environmental review should be incorporated in the program and this activity should be addressed as part of an IEE.];*

*(xi) Programs of maternal or child feeding conducted under Title II of [Public Law] 480 [Note: when there are no on-the-ground physical interventions.];*

*(xii) Food for development programs conducted by food recipient countries under Title III of [Public Law] 480, when achieving USAID's objectives in such programs does not require knowledge of or control over the details of the specific activities conducted by the foreign country under such program [Note: PVOs do not receive Title III funds, so this categorical exclusion does not apply.];*

*(xiii) Matching, general support and institutional support grants provided to private voluntary organizations (PVOs) to assist in financing programs where USAID's objective in providing such financing does not require knowledge of or control over the details of the specific activities conducted by the PVO [Note: Title II is considered a commodity transfer, not a grant. Activities supported by 202(e) funds are subject to Reg. 216 compliance.];*

*(xiv) Studies, projects or programs intended to develop the capability of recipient countries to engage in development planning, except to the extent [they are] designed to result in activities directly affecting the environment (such as construction of facilities, etc.); and*

*(xv) Activities which involve the application of design criteria or standards developed and approved by USAID [Note: to date USAID has no such approved criteria or standards, so this categorical exclusion will not apply.]*

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### A Few Reminders

- **The most common Categorical Exclusions that will apply to PVO or Cooperating Sponsor small-scale activities are 216.2(c)(2)(i), (ii), (iii), (v), (viii) or (xi).**
- **The Categorical Exclusions of §216.2(c)(2) are not applicable to assistance for the procurement or use of pesticides.** No use of pesticides will be approved unless USAID pesticide procedures have been satisfied. Consult Annex B [22 CFR 216.3(b)].
- Certain activities, for example, monetization or supplying computer equipment, may not fall under the specific list provided in §216.2(c)(2). However, since they normally have no significant adverse effect on the environment, they can be categorically excluded by citing one or more of the three general criteria in 216.2(c)(1). **When an activity does not fit under §216.2(c)(2), but is still categorically excluded, this should be explained, together with citation of 216.2(c)(1).**
- Categorical Exclusions are not a right; they are granted at the BEO's discretion.

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## **A.3 Definitions of “high risk” activities typically requiring an environmental assessment (EA)**

**What triggers an EA?** Activities that can trigger an EA are covered under four sets of regulatory provisions. These are: (1) actions normally having a significant effect on the environment [22 CFR 216.2(d)(1)]; (2) some pesticides [22 CFR 216.3(b)]; (3) endangered species and critical habitats [22 CFR 216.5]; and (4) special provisions of the Foreign Assistance Act as described below. **All those activities or components thereof to which these four provisions apply should be entered in Table 2.1** as potential positive determinations.

The regulation defines an EA as “a detailed study of the reasonably foreseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries.” See the Reg. 216 language [§216.6] in Annex B for more detail. The regulation provides information about the processing, format, and content of an EA, which is a relatively major document (with more detail, coverage, and depth than the IEE). As mentioned elsewhere EAs frequently take several months to a year to complete and are not normally applied to small-scale activities.

The four regulatory provisions that trigger an EA serve as a potential “red flag” that an EA **might be** required. You will note as you read the items covered by these four provisions that there is no reference to scale or magnitude of actions. The need for an EA as opposed to an IEE is a matter of judgment. Thus, you will prepare an IEE, even if you have activities included in this list, so that you can provide information about scale, scope, and intensity of the activities. (For example, if your activities are small-scale or if pesticides have a specific kind of registration status, you will indicate in the IEE why mitigative measures and monitoring are sufficient and why an EA might not need to be prepared. Remember that EAs for small-scale activities are relatively rare.

If you have sets of similar activities, or you and other USAID Partners working in the same area have similar activities, you might consider a Programmatic EA (PEA), which looks generically or programmatically at the entire class of actions. (E.g., “dams and irrigation interventions in Country X.”)

Guidance on the use of PEAs is also provided in Reg. 216 [§216.6(d)]. The regulation states they “*may be appropriate in order to assess the environmental effects of a number of individual actions and their cumulative environmental impact in a given country or geographic area, or the environmental impacts that are generic or common to a class of agency actions, or other activities which are not country specific.*”

Classic PEAs are of benefit when a broad examination of a class of impacts is needed, typically in situations where previous EAs have not been performed and there is little past experience to use as a guide. See **Annex F: Programmatic Environmental Assessments—Special Application** for additional detail.

See Section 3.3 for pointers regarding next steps if your IEE leads to a positive determination.

**Specific activities usually requiring an EA.** Reg. 216 identifies several generic “classes of action” that are considered *a priori* to have a high potential for causing harm to the environment and normally require an EA. These are

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**“Actions normally having a significant effect on the environment” [§216.2(d)(1)]:**

- (i) *Programs of river basin development;*
- (ii) *Irrigation or water management projects, including dams and impoundments;*
- (iii) *Agricultural land leveling;*
- (iv) *Drainage projects;*
- (v) *Large scale agricultural mechanization;*
- (vi) *New lands development;*



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- (vii) Resettlement projects;
- (viii) Penetration road building or road improvement projects;
- (ix) Powerplants;
- (x) Industrial plants; and
- (xi) Potable water and sewerage projects other than those that are small-scale.

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### Other activities and project attributes often requiring an EA.

- **Procurement or Use of Pesticides [§216.3(b)]<sup>16</sup>.** Any assistance involving procurement or use of pesticides is subject to USAID's Pesticide Procedures [22 CFR 216.3(b)]. The definition of a pesticide is broad and includes insecticides, fungicides, herbicides, many other "cides" as well as botanical pesticides and certain biological controls. In many instances, an IEE suffices to describe the conditions for safe use of pesticides. Some types of pesticides require an EA (or EIS); other pesticides may require an EA on the basis of a threshold decision made in an IEE. If pesticide procurement or use is part of your activity, you will need to review the specific provisions of 216.3(b), then determine the USEPA registration status and what restrictions apply with respect to user or environmental hazard, and find out whether USEPA intends to cancel or suspend registration, or has initiated other types of regulatory actions. Unless the exceptions (stringent) of 216.3(b)(2) apply, an IEE must be prepared that addresses the 12 specific types of information required by 216.3(b)(1)(i).

Users of the EPTM may find it useful to obtain up-to-date information on pesticide registration at the following Internet website: <http://www.epa.gov/ebtpages/pesticides.html>.

In practice, USAID's pesticide procedures have had an unintended chilling effect on USAID's engagement in pesticide management, because of the perceived technical and informational hurdles. Paradoxically, Reg. 216 has also tended to minimize the inclination of USAID and its partners to become involved in integrated pest management (IPM). There is no reason why the prudent use of well-chosen, so-called general-use and least-toxic pesticides should not be readily justifiable to promote crop productivity. Ideally, these can be linked to IPM and sustainable agricultural practices.

In order to apply USAID regulations pertaining to pesticides, the name of the pesticide to be used and its USEPA registration status must be known. Contact your headquarters support staff and USAID's BEOs for assistance.

- **Endangered species and critical habitat [§216.5 ].** Regulation 216 contains specific language regarding project activities which may affect endangered species and/or critical habitat:

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*It is A.I.D. policy to conduct its assistance programs in a manner that is sensitive to the protection of endangered or threatened species and their critical habitats. The Initial Environmental Examination for each project, program or activity having an effect on the environment shall specifically determine whether the project, program or activity will have an effect on an endangered or threatened species, or critical habitat. If the proposed project, program or activity will have the effect of jeopardizing an endangered or threatened species or of adversely modifying its critical habitat, the Threshold Decision shall be a Positive Determination and an Environmental Assessment or Environmental Impact Statement completed as appropriate, which shall discuss alternatives or modifications to avoid or mitigate such impact on the species or its habitat.*

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<sup>16</sup> "Use" is interpreted broadly by USAID, to include direct or indirect support to actual use such as transport, provision of fuel for transport, storage or disposal, etc. ( i.e., cradle to grave).

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For more on endangered and threatened species and the U.S. response to the Convention on International Trade in Endangered Species (CITES) see Box A.1.

- **Tropical forests, as addressed in the Foreign Assistance Act (FAA).** Based on amendments to the 1992 FAA, Section 118(c)(14) assistance must be denied for:

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*(A) the procurement or use of logging equipment (unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction, and that the proposed activity will produce positive economic benefits and sustainable forest management systems); and*

*(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.*

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Assistance must also be denied under **Section 118(c)(15)** for the following activities, unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

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*(A) Activities which would result in the conversion of forest lands to the rearing of livestock.*

*(B) Construction, upgrading or maintenance of roads, including temporary haul roads for other logging or other extractive industries, that pass through relatively undegraded forest lands.*

*(C) Colonization of forest lands.*

*(D) Construction of dams or other water control structures that flood relatively undegraded forest lands.*

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- **Biological diversity and endangered species, as addressed in the Foreign Assistance Act (FAA).** Section 119 of the Foreign Assistance Act specifies that the preservation of animal and plant species through the regulation of hunting and trade in endangered species, through limitations on the pollution of natural ecosystems and through protection of habitats, is an important objective of U.S. development assistance. USAID must ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife or plant species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity.

**Section 119(g)(10)** provides for the denial of direct or indirect assistance “*for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.*”

In addition to the endangered species provisions of Reg. 216 and the Foreign Assistance Act, the Endangered Species Act of 1973 (as amended in 1978, 1982, 1988, and 1998) and the CITES convention affect USAID-funded actions overseas (see Box A.1).

### Box A.1

#### Endangered and Threatened Species: What is CITES?

CITES is the Convention on International Trade in Endangered Species of wild flora and fauna.

CITES began in the mid-1970s with 139 member states as signatories.

CITES is a global alliance whose focus is the protection of plants and animals that otherwise could be over-exploited by unregulated international trade

#### What are the Appendices of CITES?

The UN sponsored a conference in Sweden in 1972 to recognize the need for focused international efforts to conserve wildlife. A treaty evolved from this conference which was designed to control the international trade in species that either were threatened with extinction or could become threatened with extinction. Three appendices were created:

- **Appendix I.** Species in which commercial trade is prohibited and non-commercial use strictly controlled. *Examples: red panda, golden-capped fruit bat and Arowana freshwater fish.*
- **Appendix II.** Species in which trade is strictly regulated to avoid jeopardizing species survival. *Examples: Nile crocodile, minke whale and leopard cat.*
- **Appendix III.** Species identified by individual CITES parties as subject to domestic regulations to restrict or prevent exploitation. *Examples: golden jackal, walrus and little egret.*

#### What is the Red List?

The Red List is the most comprehensive inventory of threatened species and subspecies on a global scale. The "IUCN Red List of Threatened Animals" is compiled by the Species Survival Commission (SSC) of IUCN, which has more than 6,000 members.

- **List 1. Threatened Species**  
Animals in this category are listed as Critically Endangered (CR), Endangered (EN), or Vulnerable (VU).  
*Examples: African wild dog (EN), black rhino (CR), and cheetah (VU).*
- **List 2 - Lower Risk: Conservation Dependent**  
Animals in this category are the subject of a targeted conservation program.  
*Examples: minke whale, spotted hyena and white rhinoceros.*
- **List 3 - Lower Risk: "Near Threatened"**  
*Examples: Colobus monkey, white rumped vulture, and shoebill.*
- **List 4 - Extinct and Extinct in the Wild**  
*Examples: dodo, Vietnam warty pig, and pig-footed bandicoot.*

#### What is the U.S. response?

- The US is a signatory to the Convention.
- The Endangered Species Act of 1973 requires all Federal agencies to undertake programs for the conservation of endangered and threatened species, and prohibits the authorizing, funding, or carrying out of any action that would jeopardize a listed species or destroy or modify its "critical habitat." Enforcement authority rests with the U.S. Fish & Wildlife Service. For information by Worldwide Web check: <http://endangered.fws.gov/>.
- Broad prohibitions against taking of wildlife are applied to all domestic and international endangered animal species, which could apply to threatened animals by special regulation.
- Under the Act, authority was provided to acquire land for animals and plants listed under CITES.
- The 1998 Foreign Operations Appropriations Act (P.L. 105-118) prohibits the use of development assistance funds for any activity which is "in contravention to. CITES."