

ensure the long-term persistence of the species.

We continue to consider OHV activity the primary threat to *Astragalus magdalenae* var. *peirsonii*. Documentation available attests to historical and ongoing OHV impacts to the species (WESTEC 1977, pp. 1–135; ECOS 1990, pp. 1–85; Willoughby 2000, pp. 1–37, 2001, pp. 1–31, 2004, pp. 1–20, 2005, pp. 1–; Phillips *et al.* 2001, pp. 1–13; Phillips and Kennedy 2003, pp. 1–21; Groom *et al.* 2007, pp. 119–134; USFWS 2006b, pp. 1–9, and 2007, pp. 1–36). Areas within the dunes subject to intensive OHV use (e.g., staging areas) have a lower abundance of *A. magdalenae* var. *peirsonii*. Longer-term monitoring indicates that plants exposed to OHV activity have a reduced likelihood of survival (e.g., Groom *et al.* 2007, pp. 128–130). Available information suggests that within the foreseeable future OHV use will continue to increase and pose a threat to the survival of *A. magdalenae* var. *peirsonii*, and we can reliably predict that the impacts of continued and increasing levels of OHV use anticipated to occur, particularly if *A. magdalenae* var. *peirsonii* is no longer listed, would likely result in a downward trend in the population until *A. magdalenae* var. *peirsonii* is in danger of extinction. Secondary threats to *A. magdalenae* var. *peirsonii* include rodent and insect herbivory, seed predation, and effects of fragmentation and environmental stochasticity/catastrophes, all which may be exacerbated by the low reproduction of *A. magdalenae* var. *peirsonii*.

While the North Algodones Dunes Wilderness will continue to be closed to OHV use, this area alone is not sufficient to ensure the long-term survival of *Astragalus magdalenae* var. *peirsonii* because it provides only a small percentage of the entire habitat for this species within the Algodones Dunes and the area provides less available habitat for this plant relative to the areas south of State Route 78 that have in the past or may in the future be open to OHV use. Based on the 2005 population estimates derived by the BLM, less than 9 percent of the *A. magdalenae* var. *peirsonii* population in the United States occurs within the Wilderness. The distribution of *A. magdalenae* var. *peirsonii* from pre-2003 surveys indicates a higher relative abundance of plants in the central dunes south of State Route 78 and more recent surveys confirm this observation. Thus, the Wilderness alone is not sufficient to sustain this species because it does not provide sufficient habitat and habitat quality to ensure the long-

term survival of this species, and the long-term viability of the species within the Wilderness is dependent upon the remainder of the range remaining viable. Thus, although direct impacts from OHV use are minimal within the Wilderness, the overall impacts to *A. magdalenae* var. *peirsonii* within the Wilderness that may result from the combined threats discussed above (including indirect effects of OHV use) are essentially equal to those present throughout the rest of the species' range.

Applying the process described above under "Significant Portion of the Range Analysis" for determining whether a species is threatened or endangered in a significant portion of its range, we next address whether any portions of the range of *Astragalus magdalenae* var. *peirsonii* warrant further consideration. As explained above, we have determined that *A. magdalenae* var. *peirsonii* remains threatened throughout all of its range due to the direct mortality, reduced survival, and/or reduced reproductive success that we predict would result from the effects of the identified threats analyzed in the five-factor analysis. We do not have any data suggesting that the identified threats to the species are concentrated in any portion of the range such that *A. magdalenae* var. *peirsonii* may be in danger of extinction in that portion. Therefore, we find that there are no portions of the range that warrant further consideration.

After a thorough review and consideration of all information available, we find that delisting *Astragalus magdalenae* var. *peirsonii* is not warranted at this time because the plant continues to be at risk due to the threats described above. We find that *A. magdalenae* var. *peirsonii* remains likely to become an endangered species within the foreseeable future throughout all of its range and should remain classified as a threatened species. In making this determination, we have followed the procedures set forth in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424).

We will continue to monitor the status of the species, and to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

#### References Cited

A complete list of all references cited in this document is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

#### Author

The primary author of this document is Lloyd B. McKinney of the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 2, 2008.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. E8–16041 Filed 7–16–08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 23

[FWS-R9-IA-2008-0003] [96000-1671-0000-P5]

RIN 1018-AV70

#### Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Import and Export of Sturgeon Caviar

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (FWS), propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by incorporating certain provisions related to international trade in sturgeon caviar adopted at the fourteenth meeting of the Conference of the Parties (CoP14) to CITES. We propose to reduce the quantity of caviar that may be imported or exported under the CITES personal effects exemption and amend the requirements for import of caviar from shared stocks subject to quotas. These changes would bring U.S. regulations in line with revisions adopted by consensus at the most recent meeting of the Conference of the Parties to CITES (June 2007). The revised regulations would help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in sturgeon caviar.

**DATES:** We will accept comments received on or before August 18, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AV70; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

**FOR FURTHER INFORMATION CONTACT:**

Robert R. Gabel, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203 (telephone, (703) 358-2093; fax, (703) 358-2280).

**SUPPLEMENTARY INFORMATION:**

**Background**

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Currently 172 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Section 8A of the Endangered Species Act, as amended in 1982 (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. The current U.S. CITES regulations took effect on September 24, 2007, and incorporate provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the thirteenth meeting (CoP13), which took place in 2004.

Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects (see the definitions in § 23.5) without CITES documents under specific circumstances. For some species, including sturgeon and

paddlefish (*Acipenseriformes*), the Parties have established limits on the quantity of certain specimens that may be transported as personal and household effects. At CoP14, in June 2007, the Parties agreed to reduce the quantity of sturgeon or paddlefish caviar that may be imported or exported under the personal effects exemption from 250 grams to 125 grams (see Resolution Conf. 12.7 (Rev. CoP14) and Resolution Conf. 13.7 (Rev. CoP14)). This change was originally recommended by the International Sturgeon Enforcement Workshop on Combat Illegal Trade in Caviar (Brussels, 2006) and was endorsed by the United States and adopted by consensus at CoP14. We propose to amend 50 CFR 23.15(c)(3)(i) to incorporate this change.

The Parties also agreed to a new quota-setting process for caviar from shared stocks, including a change in the quota year so that it will coincide with the harvest season rather than the calendar year. Previously, under Resolution Conf. 12.7 (Rev. CoP13), "Conservation of and trade in sturgeons and paddlefish," caviar from shared stocks subject to quotas (i.e., the Black Sea, Caspian Sea, and Amur River basins) had to be exported by the end of the calendar year in which it was harvested and processed. At CoP14, the Parties agreed that, from 2008 onward, the quota year will begin on the first of March and end on the last day of February of the following year. Exports of caviar from shared stocks subject to quotas must take place during the quota year in which the caviar is harvested and processed.

In addition, the sturgeon resolution was amended to specifically state that quotas must not be detrimental to the survival of the species in the wild and to remove the requirement that the Secretariat must confirm that the quotas have been agreed to by all relevant countries (see Resolution Conf. 12.7 (Rev. CoP14)). These changes were adopted by consensus at CoP14. We propose to amend 50 CFR 23.71(d) to reflect the relevant changes to the quota-setting process for caviar from shared stocks.

Elsewhere in today's **Federal Register**, we have published a direct final rule to promulgate the same regulatory changes to 50 CFR part 23 as proposed here. We published the direct final rule because these changes are non-controversial and we anticipate no significant adverse public comment. Therefore we had good cause to find that standard notice and public comment procedures would be unnecessary and contrary to the public interest. If we receive no significant adverse comments regarding these

amendments on or before the comment due date specified in the DATES section of this document and the direct final rule, then these changes will become effective on the effective date specified in the DATES section of the direct final rule, and we will take no further action on this proposed rule. If we do receive significant adverse comments, then this proposed rule initiates the normal notice-and-comment rulemaking process.

**Required Determinations**

*Regulatory Planning and Review:* This is not a significant regulatory action under Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget (OMB).

a. This proposed rule would not have an annual economic effect of \$100 million or more or adversely affect a part of the economy, productivity, jobs, the environment, or other units of government. This proposed rule reduces the quantity of sturgeon or paddlefish caviar that an individual may import or export under the personal effects exemption (i.e., without a CITES document) from 250 grams to 125 grams. The personal effects exemption applies only to specimens for personal use that are hand-carried or checked as personal baggage on the same boat, plane, etc., as the traveler. This proposed rule also informs the public of a change in the quota-setting process and timeframe for export of caviar from shared stocks (i.e., the Black Sea, Caspian Sea, and Amur River basins). Publication of this proposed rule would assist U.S. businesses in complying with CITES requirements when engaging in international trade in sturgeon and paddlefish caviar.

We do not expect that this proposed rule would have a significant effect on the volume or dollar value of sturgeon or paddlefish caviar imported, exported, or re-exported to and from the United States. There is no indication that this proposed rule would result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial. An economic analysis is not necessary for this proposed rule as it would not have an economic impact on large or small entities.

b. This proposed rule would not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

c. This proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed rule would not raise novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. All sturgeon and paddlefish (*Acipenseriformes*) are listed under CITES. This proposed rule informs individuals and businesses of provisions adopted at the most recent CoP for international trade in sturgeon and paddlefish caviar.

*Regulatory Flexibility Act:* Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved with international caviar trade would be considered small as defined by the SBA. The declared value for U.S. international trade in sturgeon and paddlefish caviar was \$13.4 million in 2005 and \$13.7 million in 2006.

This proposed rule creates no substantial fee or paperwork changes in the permitting process. The regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This proposed rule would benefit businesses engaged in international caviar trade by providing updated

regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of CITES, which has been in effect in the United States since 1975.

We therefore certify that this proposed rule would 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.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

*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 rule:

a. Would not have an annual effect on the economy of \$100 million or more. This proposed rule provides the importing and exporting community in the United States with updated regulations implementing CITES. This proposed rule would not have a negative effect on this part of the economy. It would affect all caviar importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements would be evenly spread among all businesses, whether large or small. There is not a disproportionate share of benefits for small or large businesses.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This proposed rule may result in a small increase in the number of applications for import/export of caviar for personal use. Under the proposed rule, a CITES document would be required for any amount of caviar over 125g (a reduction from the 250g currently allowed without a permit under the personal effects exemption).

c. Would 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. This proposed rule would assist U.S. businesses and individuals traveling abroad in ensuring that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even

seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

*Unfunded Mandates Reform Act:* Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this proposed rule would have no effect on small governments' responsibilities.

b. This proposed rule would not produce a Federal requirement of \$100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings:* Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it would not further restrict the import, export, or re-export of CITES specimens. Import, export, and re-export of caviar in amounts greater than 125 grams will still be allowed with the appropriate CITES documents. The proposed rule would update the regulations for the import, export, and re-export of CITES specimens, which would assist the importing and exporting community in conducting international trade in CITES specimens.

*Federalism:* These proposed revisions to part 23 do not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

*Civil Justice Reform:* Under 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 Order.

*Paperwork Reduction Act:* This proposed rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA):* The FWS has determined that this proposed rule is categorically

excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures (69 FR 10866, March 8, 2004). No further documentation will be made.

**Government-to-Government Relationship with Tribes:** Under 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. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

**Energy Supply, Distribution or Use:** On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. This proposed rule would revise the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

**Clarity of this regulation:** We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one

of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### Public Comments

We are seeking comments on whether the provisions in this proposed rule allow the affected public to effectively comply with CITES. You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your written comments you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358-2093.

#### List of Subjects in 50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Imports, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

#### Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

#### PART 23 – [AMENDED]

1. The authority citation for part 23 continues to read as follows:

**Authority:** Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

#### § 23.15 [Amended]

2. Amend § 23.15 (c)(3)(i), the first entry in the table, by removing the words "250 gm" in the Quantity column and by adding in their place the words "125 gm."

3. Amend § 23.71(d) by removing paragraph (d)(4) and revising paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

#### § 23.71 How can I trade internationally in sturgeon caviar?

\* \* \* \* \*

(d) \* \* \*

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries. The quotas are based on an appropriate regional conservation strategy and monitoring regime and are not detrimental to the survival of the species in the wild.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has communicated the annual export quotas to CITES Parties.

(3) The caviar is exported during the quota year (March 1 – last day of February) in which it was harvested and processed.

\* \* \* \* \*

Dated: June 5, 2008

**David M. Verhey**

*Acting Assistant Secretary for Fish and Wildlife and Parks*

[FR Doc. E8-16198 Filed 7-16-08; 8:45 am]

**BILLING CODE 4310-55-S**