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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-IA-2014-0010; 92220-1113-0000; ABC Code: C6]

RIN 1018-BA47

Endangered and Threatened Wildlife and Plants; Reinstatement of the Regulation that Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle from Certain Prohibitions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Consolidated Appropriations Act of 2014 (Public Law No. 113-76) was enacted into law on January 17, 2014. A provision of that act directs the Secretary of the

Interior, within 60 days of enactment, to reissue the final rule published on September 2, 2005, that authorized certain otherwise prohibited activities with U.S. captive-bred specimens of scimitar-horned oryx, addax, and dama gazelle where the purpose of the activity is associated with the management of the species in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries. This rule implements that directive.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>. You may obtain information about permits or other authorizations to carry out otherwise prohibited activities by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703-358-2104 or (toll free) 800-358-2104; facsimile: 703-358-2281; e-mail: managementauthority@fws.gov; Web site: <http://www.fws.gov/international/>.

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. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2005 (70 FR 52319), the Service determined that the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) were endangered in their entirety under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). According to this rule, the numbers of these species of antelopes in the wild had declined drastically in the deserts of North Africa over the past 50 years. The causes of decline were habitat loss (desertification, permanent human settlement, and competition with domestic livestock), regional military activity, and uncontrolled killing. With the exception of reintroduced animals, no sightings of the scimitar-horned oryx had been reported since the late 1980s. Remnant populations of the addax might still exist in remote desert areas, but probably fewer than 600 occur in the wild. Only small numbers of dama gazelle were estimated to occur in the species' historical range, with recent estimates of fewer than 700 in the wild. Captive-breeding programs operated by zoos and private ranches have increased the number of these antelopes, while genetically managing their herds and providing founder stock necessary for reintroduction. At that time, the Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program estimated that 4,000–5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle are in captivity worldwide, many of which were held in the United States. Based on a 2010 census of its members, the Exotic Wildlife Association (EWA) estimated that 11,032 scimitar-horned oryx, 5,112 addax, and 894 dama gazelle were on EWA member ranches.

On September 2, 2005 (the same date that we listed the three antelopes as endangered), the Service also published a new regulation (70 FR 52310) at 50 CFR 17.21(h) to govern certain

activities with U.S. captive-bred animals of these three species. For live antelopes, including embryos and gametes, and sport-hunted trophies of these three species, the regulation authorized certain otherwise prohibited activities where the purpose of the activity is associated with the management of the species in a manner that contributed to increasing or sustaining captive numbers or to potential reintroduction to range countries. These activities include take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce. For additional information on that final rule, please see the preamble to the rule published on September 2, 2005 (70 FR 52310).

The promulgation of this regulation was challenged in two consolidated cases in the United States District Court for the District of Columbia (see *Friends of Animals, et al., v. Ken Salazar, Secretary of the Interior* and *Rebecca Ann Cary, et al., v. Rowan Gould, Acting Director, Fish and Wildlife Service, et al.*, 626 F. Supp. 2d 102 (D.D.C. 2009)). The District Court found that the rule violated section 10(c) of the ESA by not providing the public an opportunity to comment on activities being carried out with these three antelope species. On June 22, 2009, the Court remanded the rule to the Service for action consistent with its opinion.

To comply with the Court's order, the Service published a proposed rule on July 7, 2011 (76 FR 39804) and a final rule on January 5, 2012 (77 FR 431) that removed the regulation at 50 CFR 17.21(h), thus eliminating the exclusion for U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions under the ESA. Under that final rule, any person who wished to conduct an otherwise prohibited activity with U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle would need to qualify for an exemption or obtain authorization for

such activity under the ESA. For additional information on that final rule, please see the preamble to the rule published on January 5, 2012 (77 FR 431).

On January 17, 2014, the Consolidated Appropriations Act of 2014 (Public Law No. 113–76) was enacted. Division G, Title I, Section 127 of that act directs the Secretary of the Interior, within 60 days of the date of enactment, to reissue the final rule published on September 2, 2005 (70 FR 52310), without regard to any other provision of statute or regulation that applies to issuance of such rule. This rule implements that directive.

Effects of the Rule

With this rule, persons who wish to engage in the specified otherwise prohibited activities that meet the criteria for enhancement of the propagation or survival of these species may do so without obtaining an individual ESA permit. This rule does not authorize any activity for any specimen of the three species from the wild. It also does not affect provisions relating to importation or possession and other acts with unlawfully taken wildlife. In addition, this rule applies 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 ESA with a specimen that has not been captive-bred in the United States or from a facility that does not meet the criteria of this rule will continue to need to obtain an individual permit under the ESA. The issuance or denial of such permits is decided on a case-by-case basis and only after all required findings have been made.

Each of the three antelope species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This rule does not affect the CITES requirements for these species. Therefore, any import into or export from the

United States of specimens of these species would not be authorized until all CITES requirements have been met.

For additional information on this final rule, please see the preamble to the rule published on September 2, 2005 (70 FR 52310).

Effective Date

This rule is effective upon publication in the **Federal Register**. Section 127 of Division G, Title I, of Public Law 113–76, directs us to reissue, within 60 days of enactment, the final rule published on September 2, 2005. That section also expressly provides that such reissuance is not subject to any other statute or regulation that applies to such a rule. Accordingly, in reissuing this rule, any delay in the effective date otherwise required by statute, regulation, or Executive Order does not apply.

Required Determinations

This rulemaking implements Section 127 of Division G, Title I, of Public Law 113–76, which expressly provides that the reissuance of this rule is not subject to any other provision of statute or regulation that applies to issuance of such a rule. Accordingly, in reissuing this rule, the Service has not made and is not required to make determinations otherwise required by statute, regulation, or Executive Order, such as those previously made when issuing the final rule published on September 2, 2005 (70 Fed. Reg. 52310, 52317-52318) (publishing a new regulation at 50 CFR 17.21(h)) or those previously made when issuing the final rule published on January 5, 2012 (77 FR 431, 436-437) (removing the regulation at 50 CFR 17.21(h)).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, 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; 1531–1544; 4201–4245; 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 wildlife, including embryos and 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 management or transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;

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

(3) All live specimens of that species held by the captive-breeding operation are managed in a manner that prevents hybridization of the species or subspecies;

(4) All live specimens of that species held by the captive-breeding operation are managed in a manner that maintains genetic diversity;

(5) Any export of or foreign commerce in a specimen meets the requirements of paragraph (g)(4) of this section, as well as parts 13, 14, and 23 of this chapter;

(6) Each specimen to be re-imported is uniquely identified by a tattoo or other means that is reported on the documentation required under paragraph (h)(5) of this section; and

(7) 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 officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.

(8) The sport-hunted trophy consists of raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermied head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.

Dated: March 10, 2014.

Michael Bean_____

Acting

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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