designated agent must submit the application as a new application. However, we will provide an extended expiration date of two years for EX classification approvals that expire through December 31, 2012.

Additionally, we will only accept applications that seek to add new item names to existing EX classification approvals from the manufacturer or its designated agent. If the manufacturer was not the original applicant, the application must be submitted by the manufacturer or its designated agent as a new application. Further, applications from non-manufacturers that were denied prior to June 29, 2011 must be resubmitted by the manufacturer.

Finally, EX approvals are non-transferable, and therefore may not be sold or transferred.

Issued in Washington, DC, on December 30, 2011.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–33853 Filed 1–4–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2010–0056; FF09A30000 123 FXGO16710900000R4]

RIN 1018–AX29

Endangered and Threatened Wildlife and Plants; Removal 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: We, the U.S. Fish and Wildlife Service (Service), are revising the regulations that implement the Endangered Species Act of 1973, as amended (Act), by removing the exclusion of U.S. captive-bred live wildlife and sport-hunted trophies of three endangered antelopes—scimitar-horned oryx, addax, and dama gazelle—from the prohibition of certain activities, such as take and export, under the Act. This change to the regulations is in response to a court order that found that the rule for these three species violated section 10(c) of the Act. These three antelope species remain listed as endangered under the Act, and a person will need to qualify for an exemption or obtain an authorization under the current statutory and regulatory requirements to conduct any prohibited activities.

DATES: This rule becomes effective on April 4, 2012. An extended effective date is being provided to facilitate in outreach to the affected communities. Several major industry events are occurring in the beginning of 2012 where Service attendance will provide greater communication on the impacts of this rule and will ensure greater compliance by the affected communities. In addition, an extended effective date will allow the affected community to either legally sell their specimens, if they choose to divest themselves of these species, or to apply for authorization or permits to continue carrying out previously approved activities.

ADDRESSES: 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; email: *managementauthority@fws.gov;* Web site: *http://www.fws.gov/international/index.html.*

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 devise 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 throughout their ranges under the Act (16 U.S.C. 1531 *et seq.*). The numbers of these species of antelopes in the wild have declined drastically in the deserts of North Africa over the past 50 years. The causes of decline are 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 have been reported since the late 1980s. Remnant populations of the addax may still exist in remote desert areas, but probably fewer than 600 occur in the wild. Only small numbers of dama gazelle are 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. The Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program 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. Based on a 2010 census of its members, the Exotic Wildlife Association (EWA) estimates there are 11,032 scimitar-horned oryx, 5,112 addax, and 894 dama gazelle 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.

The promulgation of the regulation at 50 CFR 17.21(h) was challenged as violating section 10 of the Act and the National Environmental Policy Act (42 U.S.C. 4321 et seq.) 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 Court found that the rule for the three antelope species violated section 10(c) of the Act 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), to remove 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 Act. Under the proposed rule, any person who intend 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 Act and applicable regulations.

Removal of 50 CFR 17.21(h)

Under 50 CFR 17.21(h), individuals carrying out certain activities that would contribute to increasing or sustaining the captive numbers of the three species were not required to notify the Service of those activities involving these species, provided that those activities met the criteria established within these regulations. As the Service was not notified of any proposed activities, it could not in turn provide the public an opportunity to comment on those proposed activities. By eliminating the regulation at 50 CFR 17.21(h) and requiring individuals to submit an application, as described in 50 CFR 17.21(g) or 17.22, requesting authorization to carry out an otherwise prohibited activity, the Service can provide the public a 30-day period to comment on any proposed activities. The elimination of this regulation does not alter the current listing status of the species, but does now require that the Service must grant individuals authorization prior to their conducting any activity that is prohibited by the Act.

The Service considered whether there were alternative means to comply with the Court's ruling without requiring ranches or other facilities holding these species to obtain a permit or other authorization. However, the Service was unable to identify an alternative other than the currently established regulations at 50 CFR 17.21(g) and 17.22—providing for the registration of captive-bred wildlife or issuance of a permit—that would provide the public an opportunity to comment on proposed activities being carried out with these species. In addition, the Service did not receive any comments or suggestions from the public that presented a viable alternative (see *Summary of Comments and Our Responses,* below).

Summary of Comments and Our Responses

In our proposed rule (July 7, 2011; 76 FR 39804), we asked interested parties to submit comments or suggestions regarding the proposal to eliminate the regulation at 50 CFR 17.21(h). The comment period for the proposed rule lasted for 30 days, ending August 8, 2011. We received 93 individual comments during the comment period. Comments were received from 2 State agencies; 8 nongovernment organizations, several of which commented jointly; and 86 individuals, most of whom either own ranches that currently maintain animals of the three antelope species or are associated with such ranches. Many of the comments did not specifically address the reason for which the proposal was made—that the exclusion violated the provisions of section 10(c) of the Act—nor did they present alternatives to the proposal to eliminate the regulation; instead the comments focused either on the impact to the ranches if the regulation were eliminated or on the listing of the species. Of the commenters, six supported the proposal to eliminate the regulation, and 90 opposed the proposal either directly or indirectly. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: One commenter stated that sections 10(c) and 10(d) of the Act mandates the Service to provide the required informational notice and an opportunity to comment, but that the Court did not require the Service to develop a new permitting scheme or adopt current permitting processes to provide notice and comment. The commenter went on to assert that the Court, by finding that the plaintiffs did not have standing to challenge the merits of whether the activities conducted on the ranches met the criteria of section 10(a)(1)(A) of the Act, had concluded that the ranches were, therefore, meeting the enhancement criteria and that any future permitting should be 'pro forma.'

Three nongovernment organizations concluded that the Court gave the Service no options but to vacate the regulation and apply the same permitting scheme currently outlined in 50 CFR 17.22 for these three antelope.

One commenter stated that, by choosing to impose a permit system instead of some other means of addressing the Court's finding, the Service failed to consider other options. The commenter expressed the opinion that using the current permitting process would cause the three species more harm than good. Two other commenters encouraged the Service to consider all avenues and remedies and the effects they would have on the three antelope species.

Our Response: The Service agrees that the Court's finding left us no options but to rescind the current regulation at 50 CFR 17.21(h). While the Service agrees that the Court did not mandate us to apply the same permitting scheme established in 50 CFR 17.22 or the registration process identified in 50 CFR 17.21(g), we could find no alternative approach other than existing statutory and regulatory procedures. Further, no commenters provided reasonable alternatives to this approach (see *Issue 15,* below). Consequently, with the elimination of the regulation at 50 CFR 17.21(h), anyone wishing to carry out otherwise prohibited activities would need to either apply for a permit (50 CFR 17.22) or for the captive-bred wildlife registration (50 CFR 17.21(g)).

The Service disagrees with the first commenter's statement that, because the Court did not rule on the merits of whether the ranches were meeting the enhancement criteria, the Court found that these ranches provide enhancement. The Court did not rule one way or another on the merits of the plaintiffs' case regarding the actions conducted on ranches under sections 10(c) or 10(d). In addition, under 50 CFR 17.21(g) and 17.22, we cannot unquestionably accept that the activities of a ranch with these species have a presumptive enhancement value and therefore issue a permit or other authorization 'pro forma.' Any applicant requesting authorization to carry out an otherwise prohibited activity would need to provide adequate information and documentation in their application to show that they are meeting the issuance criteria established at 50 CFR 17.21(g) or 17.22 before authorization can be granted by the Service.

Issue 2: A large number (57) of commenters expressed concern that ranchers and other private holders of captive-bred scimitar-horned oryx, addax, and dama gazelle would no longer have an economic incentive to manage the species if the exclusions were removed. Some commenters went further in stating that the removal of the exclusion would have substantial negative economic impacts on game farms and related support industries, local economies, and jobs. Two commenters stated that because most businesses involved with these species are extremely small, often with only one or two employees, the proposed regulation would be a significant burden and that any pressure that affects local

business and citizens may have a major impact on the viability of local economies. One commenter stated that the review and statistical findings of the annual economic impact of removing the exclusion was ''abstract at best, and incomplete, misleading, and irresponsible to reality.'' This commenter stated that the use of $100 million by the Office of Management and Budget (OMB) as the benchmark in evaluating the merits of the economic impact of the consequences associated with permit requirements has no quantitative support. The commenter felt that OMB could not accurately quantify the financial impact of lifting the permit requirements for these three species. Several commenters said that the Service should keep the exclusion for captive-bred individuals for the very reason that these species are doing fine without any further government regulation.

Our Response: The elimination of this regulation should not result in lower economic incentives or a negative economic impact, provided that the ranches were carrying out activities that were approved under the regulation. The regulation at 50 CFR 17.21(h) authorized certain otherwise prohibited activities without a permit for individuals or ranches that carried out activities that contributed to increasing or sustaining captive numbers of these species. Further, the regulation required each person or ranch claiming the benefits of the exclusion to maintain accurate records of activities, including births, deaths, and transfers of specimens. These same activities could be authorized under 50 CFR 17.21(g) or 17.22. Thus, there should be little or no reduction of allowable activities. With the elimination of 50 CFR 17.21(h), ranches, zoos, and private individuals that maintain these three species will need to submit an application, including a nominal application fee, in order to receive authorization for activities that previously could have been conducted without a permit. We do not believe, however, that the permitting process, including the application fee or possible submission of records that should already be maintained, will result in any significant financial burden. This is particularly so given that the Service has made efforts in recent years to streamline the permitting process and issue permits to authorize multiple activities for an extended period of time.

The Service does recognize, however, that there may be an economic impact if people believe that the elimination of this regulation changes the status of the species and therefore creates a change in activities that may be authorized. Provided that the ranch, zoo, or individual is carrying out activities that benefit or enhance the propagation or survival of the species, as was previously required under the regulation at 50 CFR 17.21(h), otherwise prohibited activities, including limited hunting for herd management purposes, can be authorized. Ranches may need to redesign their marketing efforts, but this change to the regulations should not stop ranches from conducting activities that were previously authorized under 50 CFR 17.21(h).

The Service acknowledges the commenter's concern regarding the benchmark in evaluating the merits of the economic impact on ranches. However, the use of $100 million is set by Executive Order and the Small Business Regulatory Enforcement Fairness Act. The Service does not have the ability to establish an alternative benchmark or how the review is conducted.

Issue 3: Two commenters wrote that the removal of the exclusion leaves the Service with two possible solutions: either the species is allowed to go extinct or the U.S. Government provides subsidies for a mandated conservation plan. The commenters felt that both of these options have negative outcomes—one results in extinction of the species and the other increases government spending at a time when cutbacks are needed.

Our Response: The Service disagrees that the removal of this regulation will result in either the extinction of the species or the need to subsidize conservation efforts. Many facilities and ranches that currently maintain these species will continue to do so, regardless of whether or not they are exempt from prohibitions under the Act. We are confident of this because a number of similar species, also bred and maintained in U.S. ranches, are subject to the same permitting and registration requirements we will apply to the three antelope species when 50 CFR 17.21(h) is removed (see **DATES**, above). The species will not become extinct due to our actions under this rulemaking. Further, the Service cannot provide subsidies to private ranches or facilities to continue to maintain these species. We are confident, however, that such subsidies are not necessary and that many, if not all, operations will continue to maintain these species and provide an ongoing conservation benefit to the species.

Issue 4: Thirty-two commenters pointed out that intensive wildlife management by U.S. ranchers is the reason the species exist today. These commenters were concerned that removal of the exclusion that allows breeding and hunting of these animals without a permit would impede private captive propagation of these species. They expressed the view that the requirement of obtaining authorization or permits before carrying out previously exempted activities would cause a significant loss of critical genetic diversity because private holders, who retain most of the captive animals of these three species in the United States, might dispose of their current stock. Captive groups of these species would shrink, and, potentially, the species would be allowed to go extinct. In addition, they stated that the exclusion allows greater numbers of these animals to be bred than the numbers bred by zoos, wildlife parks, and individuals alone, thus maintaining a larger and more diverse gene pool, which allows some ranchers to contribute selected animals for possible reintroduction to their natural environment.

Our Response: The Service does not believe that ranchers or other holders of these species that are working for the conservation of the species will reduce or eliminate their herds just because a permit or other authorization will now be required. Ranches that currently have other endangered hoofstock already obtain permits for the same activities with those other species. The Act does not regulate possession or purely intrastate activities (with the exception of take). Provided that a ranch was legally carrying out activities that were authorized under 50 CFR 17.21(h) before the elimination of that regulation, the ranch should be able to continue those activities under a permit or registration. There should be no reduction in herds that were actually being used for conservation purposes.

It is possible, however, that the number of ranches or private individuals that currently maintain these species could reduce the size of their herds or remove them from their property under the belief that maintaining them would be an economic burden. This reduction in the number of herds should not significantly influence the genetics of the remaining herds, if they are being properly maintained.

Issue 5: One commenter stated that the numbers of animals maintained on ranches given in the proposed rule were incorrectly low and that the Exotic Wildlife Association (EWA) has numbers that are more accurate.

Our Response: The numbers identified in the proposed rule were estimates based on the information

available at the time the rule was drafted. The Service is aware that EWA has conducted surveys that indicated the actual numbers might be higher. This does not affect what the Service is legally required to do given the Court order. We have incorporated EWA's estimates into this final rule (see *Background,* above).

Issue 6: The Association of Zoos and Aquariums (AZA) expressed concern that the elimination of the exclusion from prohibited activities for the captive animals of these three species would undermine their goal of maintaining genetic diversity. They expressed concerns that their members' efforts in moving listed species have been hampered by permit delays of 6 to 9 months while enhancement findings are being made, which is problematic because there are very few *in situ* conservation programs available for these species.

Our Response: The Service is unclear on how the removal of 50 CFR 17.21(h) will affect the ability of AZA facilities to maintain the genetic diversity of the captive populations or to move animals as part of this effort. Barring any failure on the part of the applicant to meet the criteria for permit issuance, in only limited cases has the permitting process for AZA facilities exceeded 120 days. Except for the import or export of animals, no permits will be required for zoos to move animals among institutions strictly for population management purposes if there is no commercial activity involved.

Issue 7: Three nongovernmental organizations, in expressing their support for the proposed rule, felt that rescinding the regulation would further avoid a precedent that commercial exploitation is automatically authorized merely on the theory that captive breeding, in and of itself, will enhance the survival of listed species.

Our Response: While the Service does believe that captive breeding can provide a significant benefit to endangered species, such benefits can only be realized when the breeding program is scientifically based and conducted in a manner that contributes to the continued survival of the species. This was the basis for establishing the regulation at 50 CFR 17.21(h). However, breeding just to breed, without adequate attention to genetic composition and demographics of the breeding population, may not provide a clear conservation benefit to an endangered species. Even absent 50 CFR 17.21(h), ranches, zoos, and private individuals holding these three species should be able to continue to maintain viable, well-managed, captive groups of animals that can be used as a source of stock for reintroduction programs in the future, if such actions are feasible and beneficial to the long-term survival of the species, as has been done for a number of other species.

Issue 8: Numerous commenters raised questions about the current listing of the three species as endangered under the Act. One commenter said that the U.S. captive-bred animals of these three species of exotic antelopes should never have been included in the listing of the species as endangered, because, in their opinion, the Act was not meant to cover privately owned animals. Three commenters suggested that the Service remove these species from the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Two commenters recommended that the Service not finalize any permit scheme for these three species until the Service has fully exhausted all options for altering the current endangered species listing status for U.S. captive herds, making permits unnecessary for these captive animals. One commenter argued that to eliminate this exclusion without removing these species from the List of Endangered and Threatened Wildlife would violate the President's January 18, 2011, Executive Order (E.O. 13563), which requires Federal agencies to ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.''

Our Response: The proposed rule only addressed the Court's finding that the regulations at 50 CFR 17.21(h) violate section 10(c) of the Act. Discussion of the listing status of these species, including changing that status, is outside the scope of this rulemaking. Two petitions have been submitted to the Service to request reconsideration of the listing status of these species, but the Service must complete this rulemaking now in order to comply with the Court order; we cannot delay this action until the time when the petitions have been fully addressed.

In addition to taking this action as necessary to comply with the Court's order, the Service does not agree that eliminating 50 CFR 17.21(h) will violate the January 18, 2011, Executive Order. In fact, the Executive Order calls on Federal agencies to develop regulations that ''allow for public participation and an open exchange of ideas.'' While the elimination of 50 CFR 17.21(h) has been perceived as having a significant economic impact on some ranches, it has been determined that the benefits of this action justify its costs by impose the least burden on society and identifying specify avenues for carrying out otherwise prohibited activities.

Issue 9: Three commenters thought the Federal government should not regulate the harvest of animals that are not native to the United States. They felt that no permits should be needed to provide a sustainable environment where exotic species can thrive and increase in numbers. The Texas Department of Agriculture (DOA) believes that ''regulating the domestic management of these animals is beyond the fundamental intent of the Endangered Species Act.''

Our Response: The Service disagrees. The Act specifically covers any species that is listed as endangered or threatened, whether it is native to the United States or non-native and whether it is in captivity or in the wild. The prohibitions apply to all listed specimens. But the Act's prohibitions are limited. Therefore, no permits are required to breed or maintain a listed species. It is only when an individual attempts to carry out an activity that is otherwise prohibited under the Act, such as transport in interstate or foreign commerce in the course of a commercial activity, import or export, or take, that the Service has a mandate to regulate the activity.

Issue 10: The Texas Parks & Wildlife Department (TPW) expressed concern about the possible unintended consequences of the proposed rule. If the exclusion is revoked, the TPW is concerned that some owners may release animals onto previously unoccupied range, leading to uncontrolled population growth, damage to native plant communities, and other potentially negative impacts on native habitat. Another commenter expressed the same concern about the huge herds of free-ranging exotics that have escaped from captivity throughout Texas, and believed it was important that private landowners be able to continue to control and manage exotic animals in order to prevent destruction of vegetation and degradation of wild habitats by large numbers of native and exotic ungulates. The commenter thought it was, ''critical that the state be provided the option for exclusive jurisdiction over the management of non-native, non-indigenous exotic pig, goat, sheep, elk, deer, antelope, and gazelle species within the borders of that State.'' The commenter felt that this would be consistent with the public trust doctrine, under which the States are entrusted with regulatory oversight of native wildlife resources and impacts of native wildlife.

Our Response: The Service does not expect this rule to result in the intentional release of significant numbers of the three species into

previously unoccupied areas of the United States. However, the Service does recognize that there are free-ranging herds of exotic species in Texas and other States that have a negative impact on native vegetation and wildlife. The Service also supports efforts carried out by various States to control these exotic species to reduce their impacts on native ecosystems. There are a number of exotic ungulates listed under the Act as either endangered or threatened that are commonly held on ranches in Texas and other States. We encourage cooperation between State wildlife agencies and ranches that maintain exotic species to develop best management practices to reduce the escape of exotic species. Ongoing efforts are needed to coordinate Federal and State efforts to control the spread of these listed exotics onto pristine areas where native wildlife and vegetation could be affected.

Through the Act, Congress gave jurisdiction to determine which species qualify as endangered or threatened, and responsibility for their protection and recovery, to the Service and the National Marine Fisheries Service. States are essential partners in endangered species conservation, but only the Service can authorize activities with these species that would be otherwise prohibited, and nothing under the public trust doctrine affects this legal regime.

Issue 11: One commenter pointed out that the Service has no plan or way of taking custody of or caring for any of the unwanted animals resulting from the elimination of the exclusion at 50 CFR 17.21(h). The commenter also felt that the Service or nongovernment organizations that support the elimination of the regulation should provide a plan to reimburse or compensate the owners of these animals for their lost revenue and investment if the regulation is eliminated. Another commenter questioned whether taking away the incentive for landowners to propagate these species was in fact a case of ''de facto taking.'' A third commenter felt it would be a taking if the final rule impedes his ability to have economic benefit from maintaining herds of these antelopes. Two other commenters did not think the government had the right to control personal property. Finally, another commenter said that the proposed elimination of 50 CFR 17.21(h) infringes on the free market and private property rights.

Our Response: The commenter is correct that the Service has no plans to take custody of any animals currently held on private property or to compensate current owners for any perceived loss of revenue. Such compensation or assuming custody of these species is not within the Service's authority. Further, the Service disagrees that the elimination of 50 CFR 17.21(h) constitutes a taking, because it does not deprive the owners of these animals from continuing to derive an economic benefit from them. This rule is not a taking of property because individuals can obtain authorization for the same otherwise prohibited activities with these three endangered antelopes when issuance criteria are met as they had under 50 CFR 17.21(h). Provided that a rancher meets the criteria for obtaining a permit, which are similar or identical to the criteria established at 50 CFR 17.21(h) for carrying out otherwise prohibited activities, the rancher will be able to obtain a permit or authorization to carry out the same activities that the rancher currently conducts. This rule does not infringe on any property rights or adversely affect the free market when activities are conducted in a manner consistent with the requirements of the Act.

Issue 12: A number of commenters raised the issue of hunting of these species. Two commenters said that the Service should protect endangered exotic wildlife from hunting and further killing. Three other commenters stated that hunters have saved most of these animals from decline and feel that hunting these animals should not be viewed as a threat to species numbers. It is their supposition that the steady hunting demand for these species has ensured the continued propagation and survival of the species. They pointed to the conservation success story of North American elk, white-tailed deer, waterfowl, and turkeys as evidence that their survival is due in large part to the American hunter.

Our Response: The Service has stated on numerous occasions that scientifically based hunting programs can provide a benefit to the long-term survival of a species. The American hunter has clearly provided benefits to many species. Hunting of exotic species within the United States can also benefit the survival of the species involved if the hunting program and other activities with the species are carried out in a manner that contributes to increasing or sustaining the number of animals in captivity or to potential reintroduction to range countries.

Issue 13: Several commenters suggested that the removal of the exclusion at 50 CFR 17.21(h) is not based on logic, but rather on political opinions and personal philosophies to end all hunting over sound science, professional wildlife management, and demonstrated success in preserving these species.

Our Response: The removal of the regulation at 50 CFR 17.21(h) is based on the Court decision that the regulation is in violation of section 10(c) of the Act. The Service could see no other option than to remove this regulation to ensure that we complied with the Court order. This action is not a reflection of the Service's position on hunting or successes that have been achieved with the three antelope species or any other species.

Issue 14: Two commenters thought that current conditions within the native range of these species are not conducive to reintroduction. They expressed the opinion that few governments of the native countries want to protect or increase the numbers of these species and stated that the repatriation project of the Second Ark Foundation and Exotic Wildlife Association has met with many roadblocks.

Our Response: The Service understands that many factors contribute to the successful reintroduction of a species to its native range. We acknowledge that the Second Ark Foundation and Exotic Wildlife Association have been confronted with obstacles to providing specimens for reintroduction, and we understand that such reintroduction programs can often be difficult in developing countries for any species. Currently, we are aware that there are only a limited number of *in situ* conservation programs available for these species, but that does not affect how we must apply the requirements of the Act to their captive animals in the United States.

Issue 15: Many commenters expressed concerns that the current permitting process does not work well and is a disincentive to ranching operations. Two commenters thought the Service should create an alternative permitting process that includes an online submission process to register herds and obtain take permits electronically, develop the ability to receive electronic reports, develop scientifically based cull requirements, and allocate permit application fees to *in situ* conservation efforts. One commenter suggested that the Service implement a herd inventory monitoring program to get additional information for making permitting decisions. Several commenters provided specific examples of how to improve the permitting process to reduce unnecessary burdens in the interest of the species. Suggestions included combining the application processes for registration under the captive wildlife

registration (50 CFR 17.21(g)) and take permits (50 CFR 17.22) or revising the applications to be clearer. Other comments included moving to an electronic application process, making permits valid for a longer period of time, and reviewing and processing applications in a more timely manner. One commenter, while believing no regulation is needed, could accept some form of moderately priced, multi-year permit that requires limited annual report data. One commenter said expectations related to transfers between facilities, including breeding-only and hunting-only operations, must be well defined in order to provide landowners with a transparent process. Two commenters suggested working with a State's wildlife authority to regulate and oversee the permitting process to increase cooperation with landowners. The AZA suggested that there needs to be a provision that allows AZA institutions to engage in time-sensitive international movement of these animals for noncommercial purposes, such as breeding loans or reintroduction, without having to obtain additional permits.

Several commenters expressed opinions on what would constitute enhancement or furthering the conservation of the species so that permits or authorizations could be granted. Three nongovernment organizations were concerned that the existing permitting system would undermine the conservation of these antelope species due to questions on whether or not current permits are being issued in accordance with the Act. One commenter suggested that permits must provide flexibility in harvest allowances to allow managers to maintain balanced numbers relative to habitat carrying capacities. Another commenter recommended that the permit address additional harvest protocols and emergency response for when properties enter severe, extreme, or exceptional drought.

Our Response: These comments are outside the scope of this rulemaking because they do not address the Court's ruling that 50 CFR 17.21(h) violates section 10(c) of the Act and the rescission of 17.21(h). Nevertheless, the Service appreciates the comments and will consider them as we develop ways to improve the efficiency and effectiveness of our permitting process. We are currently working on certain improvements, such as the development of electronic applications and more timely review processes. We are considering other efficiency improvements as well. We encourage anyone who has recommendations on how to improve our current permitting process to contact the Service's Division of Management Authority, Branch of Permits (see **ADDRESSES**, above).

Issue 16: Two commenters recommended that the public comment period for permit applications, which is currently 30 days, should be eliminated, or reduced to no more than 14 days. In addition, they suggested only comments offered by knowledgeable persons that actually own or deal with the species should be considered.

Our Response: Section 10(c) of the Act specifies that the comment period be 30 days. Because the 30-day comment period is set by statute, we cannot shorten it by regulation. In addition, the Act states that comments are welcome from any interested party, and therefore all comments that are received during an open comment period are considered .

Issue 17: One commenter suggested that any new regulations should include an anti-harassment provision with a $10,000 fine for those who use the information made available through the application process to directly or indirectly harass or otherwise interfere with the applicant's operation or business. Harassment should include the use of deception or misrepresentation to get access to the applicant's private operations.

Our Response: The Service does not have the authority to include an anti-harassment provision in our regulations under the Act. There are other legal remedies to address harassment. Information that is made available through the public comment process is intended to provide the public an understanding of the activities being proposed. It is not intended to provide anyone with the opportunity to harass directly or indirectly, or to interfere in lawfully conducted activities.

Issue 18: One commenter recommended that the definition of ''captive-bred'' be amended, ''to reflect only those animals and genetic materials designated for potential reintroduction under the direction of scientists of the Association of Zoos and Aquariums (AZA) institutions for all non-native, non-indigenous exotic pig, goat, sheep, elk, deer, antelope and gazelle species.'' The commenter suggested that this could be used as a basis to exempt privately raised animals on Texas ranches from any rules defining ''captive-bred'' animals.

Our Response: The proposed rule only addressed the Court's finding that the regulations at 50 CFR 17.21(h) violate section 10(c) of the Act. Discussion of the definition of ''captive-bred'', including changing that definition within the regulations, is outside the scope of this rulemaking. However, the Act specifically covers any species that is listed as endangered or threatened, whether it is in captivity, including those that are captive-bred or wild. The prohibitions apply to all listed specimens. Changes to the definition would not be a basis for exempting privately raised animals.

Consistent with the Court's ruling that the regulation at 50 CFR 17.21(h) is in violation of section 10(c) of the Act and following consideration of all comments, the Service is eliminating the regulation at 50 CFR 17.21(h). When the final rule takes effect (see **DATES**, above), individuals who intend to carry out otherwise prohibited activities will need to have authorization either under 50 CFR 17.21(g) or 17.22.

Required Determinations

Regulatory Planning and Review—Executive Order 12866: The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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 will 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 will 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 in taking, exporting, re-importing, and selling in interstate or foreign commerce of these three endangered antelopes are considered small as defined by the SBA.

This rule requires individuals and captive-breeding operations of the three endangered antelopes to apply for authorization and pay an application fee of $100 to $200 every 1–5 years, depending on the type of permit or authorization, when conducting certain otherwise prohibited activities. While there are no accurate numbers of U.S. facilities with these animals, estimates range as high as about 400. It is not clear if all of these facilities would be conducting activities that would be otherwise prohibited under the Act; however, if the total is 400 and they all require permits for continuing activities they have been conducting under the exclusion that is being rescinded, the maximum annual cost to all of them for obtaining permits would be about $50,000–60,000. The regulatory change is not major in scope and creates only a modest financial or paperwork burden on the affected members of the general public.

We, therefore, certify that this 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.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act: This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more. This rule removes the regulation at 50 CFR 17.21(h) that excludes U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions of the Act. Current estimates indicate that about 12,000 to 13,000 of these animals occur in captive-breeding operations in the United States. About 11,000 are scimitar-horned oryx with a value of $1,500 to $3,000 each (based on internet advertisements), for a total value of $33,000,000, although only a fraction of these are sold for breeding or as trophies annually. Addax and dama gazelle are fewer in number (several hundred each), but more valuable as both breeding stock and trophies, with values of mature animals up to $4,000–$6,000 each. Assuming 2,000 animals of these two species at a value of $4,000 each, the total value is $8,000,000, but again the revenue generated by these animals will be a fraction of this amount because breeding operations will retain a significant portion of their animals for further breeding. Individuals and captive-breeding operations will now need to qualify for an exemption or obtain endangered species permits or other authorization to engage in certain otherwise prohibited activities. Permit application fees of $100–$200 will be required for anyone seeking permits, and we estimate up to 400 potential permit applicants, although some authorizations will remain in effect for up to 5 years from one application. This rule does not have a negative effect on this part of the economy. It will affect all businesses, whether large or small, the same. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule will result in a small increase in the number of applications for permits or other authorizations to conduct otherwise prohibited activities with these three endangered antelope species.

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

a. This rule will not significantly or uniquely affect small governments. A small government agency plan is not required.

b. This rule will 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 rule will not have significant takings implications. A takings implication assessment is not required. This rule does not have takings implications because individuals can still obtain authorization for the same otherwise prohibited activities with these three endangered antelopes when issuance criteria are met.

Federalism: This revision to part 17 does not contain significant Federalism implications. A federalism impact summary statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of subsections 3(a) and 3(b)(2) of the 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 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 Service has determined that this rule is a regulatory change that is administrative and legal in nature. The rescission of this rule responds to a Court ruling finding that 50 CFR 17.21(h) violates section 10(c) of the Act and remanding to the agency for further proceedings consistent with its opinion. As such, the rule is categorically excluded from further NEPA review as provided by 43 CFR 46.210(i) of the Department of the Interior's Implementation of the National Environmental Policy Act of 1969 regulations (73 FR 61292; October 15, 2008). 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.

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 rule does 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.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we are amending part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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.

§ 17.21 [Amended]

■ 2. Amend § 17.21 by removing paragraph (h).

Dated: December 27, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–23 Filed 1–3–12; 11:15 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA917

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 5, 2012, until the effective date of the final 2012 and 2013 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**. Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0307, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0307 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.

• *Hand Delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2011 and 2012 harvest specifications for groundfish in the GOA (76 FR 11111, March 1, 2011) and Pacific cod revision (76 FR 81860, December 29, 2011) set the 2012 pollock TAC at 121,649 metric tons (mt) and the 2012 Pacific cod TAC at 58,650 mt in the GOA. In December 2011, the Council recommended a 2012 pollock TAC of 116,444 mt for the GOA, which is less than the 121,649 mt established by the final 2011 and 2012 GOA harvest specifications. The Council also recommended a 2012 Pacific cod TAC of 65,700 mt for the GOA, which is more than the 58,650 mt established by the final 2011 and 2012 harvest specifications for groundfish in the GOA. The Council's recommended 2012 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently,