

CONSUMER CREDIT COUNSELING  
SERVICE OF LANE COUNTY INC, 149  
WEST 12TH AVENUE SUITE 100,  
EUGENE, OR 97401, Amount Awarded:  
\$7,000

PIERCE COUNTY COMMUNITY ACTION  
AGENCY, 8811 SOUTH TACOMA WAY,  
TACOMA, WA 98499, Amount Awarded:  
\$24,600

SPOKANE NEIGHBORHOOD ACTION  
PROGRAMS, 2116 EAST FIRST AVE,  
SPOKANE, WA 99202, Amount Awarded:  
\$60,475

FREMONT PUBLIC ASSOCIATION, PO BOX  
31151, SEATTLE, WA 98103, Amount  
Awarded: \$24,600

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BILLING CODE 4210-27-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Policy on Giant Panda Permits

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

**ACTION:** Notice of policy on the issuance  
of permits for giant panda imports.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a policy on the issuance of permits for the import of live giant pandas to clarify what information the Service considers in making the permit findings under the Convention on International Trade in Endangered Species and the U.S. Endangered Species Act and to assist persons in filing a complete application. The policy is intended to complement, and not replace, the current permit procedures and issuance criteria in the regulations. The goal of this policy is that all imports directly benefit panda conservation through a coordinated effort that supports China's National Plan, National Survey, or Captive Breeding Plan. Based on current information on the status of pandas and their habitat, the policy emphasizes research and captive-breeding activities needed to ensure the captive population becomes self-sustaining and to recover panda populations in the wild. Thus, all monies used in a loan agreement or raised as a result of a panda import should fund giant panda conservation efforts, with a significant portion being used for priority *in-situ* conservation projects in China. Display of a panda would be allowed as an ancillary component that would not interfere with the research or captive-breeding activities. It is unlikely that the Service would be able to make the necessary findings to issue a permit to import animals removed from the wild after December 31, 1996. The policy also addresses the transfer of live pandas

within the United States and the import or export of tissue samples. The policy supersedes previous policy. The suspension of the review and processing of permit applications to import live giant pandas is now lifted.

**DATES:** This policy is effective August 27, 1998 and will remain in effect until modified or terminated.

**ADDRESSES:** Questions regarding this policy should be addressed to the Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ-700, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:**

Teiko Saito, Chief, Office of Management Authority, telephone (703) 358-2093 or fax (703)-358-2280, (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

**Acronyms Used in This Notice**

AZA American Zoo and Aquarium Association  
CBSG Conservation Breeding Specialist Group (a program of the IUCN)  
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora  
ESA U.S. Endangered Species Act  
IUCN World Conservation Union  
MOC Ministry of Construction (China)  
MOF Ministry of Forestry (China)  
SSP Species Survival Program (a program of the AZA)  
WWF World Wildlife Fund for Nature

**Background**

The survival and ultimate recovery of the population of the giant panda (*Ailuropoda melanoleuca*) in its ecosystem is the strong desire of the United States, the People's Republic of China (China), and the international conservation community. As such, the panda is subject to strict protection by its listing as an endangered species under the ESA and its inclusion in Appendix I of CITES. The Service is responsible for regulating pandas by deciding whether to grant permits to allow their movement into and within the United States. In making these decisions the Service, under the ESA, must determine whether the proposed activities are not likely to jeopardize the continued existence of the giant panda and would be for scientific research that promotes the conservation of the species or enhancement of propagation or survival, and under CITES, would be for purposes that are not detrimental to the survival of the species and that are not primarily commercial.

In the late 1980's, the proposals for temporary exhibition (short-term) loans

of giant pandas became an increasingly controversial issue. During one period in 1988, the Service received reports that as many as 30 institutions may have been negotiating, or planning to negotiate, with various entities in China to arrange panda loans, potentially posing additional threats to the wild and captive populations of pandas. As a result the Service, through the public review process, published a policy on March 14, 1991 (56 FR 10809), for the issuance of import permits for short-term exhibition loans. In 1992, after the Service had issued a permit to the Columbus Zoo to import a pair of giant pandas for a short-term exhibition loan, the CITES Secretariat requested the Service to re-evaluate its policy on panda imports. The Service published a notice in the **Federal Register** on June 29, 1992 (57 FR 28825), requesting public comment on the existing policy.

Before re-evaluation of the existing policy on short-term exhibition loans was completed, the Service received an application from the Zoological Society of San Diego (San Diego Zoo) to import a pair of giant pandas for a long term, captive-breeding loan. On April 20, 1993, the AZA announced the development of a Giant Panda Conservation Action Plan, which has since been formalized. The plan outlines a captive-breeding program with support from 29 zoological institutions in North America. In addition, in July 1993, China's MOC (the agency generally responsible for China's *ex-situ* panda conservation) published the second giant panda studbook, listing all pandas then in captivity.

With the possibility of receiving an increasing number of import permit applications for giant pandas for public exhibition, scientific research, and/or captive-breeding purposes, the Service felt that a re-examination of the long-range implications of panda imports was necessary to ensure that such imports best serve the conservation needs of the species. Thus, on December 20, 1993, the Service announced in a news release the temporary suspension of the processing of any new permit applications for the import of live giant pandas during a reassessment of the policy. On May 4, 1994, the Service requested public comments and announced a working public meeting to assist the Service in formulating the draft revised policy (59 FR 23077). Public meetings were held by the Service on May 26 and August 23, 1994. The Service published the proposed policy for comment on March 30, 1995 (60 FR 16487). See that notice for a summary of the comments previously

received. The comment period on the new proposed policy was subsequently extended for an additional 60 days in 1995 and reopened for 150 days in 1997 to receive new information relevant to the proposed policy (60 FR 33224, 62 FR 35518, and 62 FR 53017).

The following summarizes new information received during the open comment periods of the proposed policy and discusses the rationale for decisions reflected in the final policy.

#### Population Status

The proposed policy summarized the information on the status of wild panda populations. The 1985–1988 survey remains the most current information on the status of wild panda populations. The most commonly accepted current estimate is that there are fewer than 1,000 pandas left in the wild. A new Chinese national survey is to commence in 1998.

#### Status of Captive Breeding in China and the Need for Breeding Efforts Outside of China

The proposed policy indicated that the captive-breeding program in China is not currently self-sustaining. While this remains true, advances have been made. In December 1996, the Chinese Association of Zoological Gardens, MOC, in collaboration with the CBSG, held a Giant Panda Captive Management Planning Workshop (MOC/CBSG Workshop) in Chengdu, China. The objectives of the workshop were to assist local captive population managers and policy makers to: (1) Formulate priorities for a practical and scientific management program that fully utilized all founders in captivity for the purpose of developing a healthy, growing population of giant pandas in China; (2) formulate a program that has linkage to the wild population, including the possible reintroduction of individuals, if needed; (3) eliminate the need to take more giant pandas from the wild; (4) develop a risk analysis and simulation population model for the captive population that can be used to guide and evaluate management and research activities; (5) identify useful technology transfer and training, including evaluating all adult, reproductive-age giant pandas in Chinese institutions; and (6) identify and recruit potential international collaborators, when needed, to enhance action. A final report was published that outlines recommendations in order to meet these goals.

#### Reintroduction

The proposed policy noted that reintroduction is a long-term goal that

needs to be incorporated into coordinated international conservation efforts. The Service still understands that reintroduction is a stated long-term goal and sees value in discussing this issue as long as it does not overshadow efforts to protect panda habitat.

In September 1997, WWF and China's MOF (the ministry generally responsible for *in-situ* panda conservation) held a workshop on reintroduction. Several action steps were recommended: (1) Implement a national survey; (2) conduct further research aimed at improving birth and neonatal survival rates in the captive population; (3) continue to urge the government of China to completely implement the China National Plan for Panda Conservation (National Plan); (4) promote long-term national and international cooperation in raising funds; and (5) initiate an experimental program with pandas in the captive population designed to provide additional information on conducting successful releases.

#### Giant Panda Conservation Plans

The proposed policy outlined the status of the National Plan and AZA's Giant Panda Conservation Action Plan, and focused on funding of *in-situ* projects from the National Plan to ensure conservation of pandas in the wild. While the primary goal of the policy continues to be conservation of pandas in the wild, the policy has been broadened to include all of China's giant panda conservation efforts—the National Plan, National Survey, and Captive Breeding Plan (as updated by the MOC/CBSG Workshop report). The Service recognizes that although the National Plan and National Survey are the primary plans identifying high priority *in-situ* projects, the Captive Breeding Plan may have *in-situ* projects (e.g., surveys or reintroduction efforts). The Service also recognizes that although the Captive Breeding Plan is the primary plan identifying high priority *ex-situ* conservation projects, the National Plan may have *ex-situ* projects.

In September 1997, the Chinese hosted the International Symposium on Environmental Protection and City Development of the 21st Century in which panda conservation was a key topic. This symposium is a further example of the willingness of the Chinese to collaborate and cooperate on an international scale to further the conservation of pandas.

#### Purposes

The purposes of the ESA are to provide a means by which the

ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of certain conservation treaties and conventions. The purpose of CITES is to protect animals and plants to ensure that commercial demand does not threaten their survival in the wild by regulating trade in listed species. This policy is derived from these purposes. The proposed policy required that any import should be part of a coordinated international panda effort. While this should be a long term goal, it may not be possible to have all institutions worldwide holding pandas to be part of an international panda conservation effort. Therefore, the final policy clarifies that any U.S. institution wishing to import pandas should participate in a coordinated international conservation effort as much as possible and coordinate efforts in the context of China's National Plan, National Survey, or Captive Breeding Plan.

#### Wild-Taken Pandas

The proposed policy set out that no pandas removed from the wild after December 31, 1986, be allowed to be imported because of the potential threat of incentives for removal due to demand for captive pandas. The Service re-evaluated this determination and based on new information, changed the date to December 31, 1996. This new date coincides with the date of the MOC/CBSG Workshop where it was determined that no additional wild-caught pandas were needed to sustain the captive population. Concerns over take from the wild have decreased based on information from the giant panda studbook which shows only a few pandas have been removed from the wild in the past several years and on previous information from China on rescue guidelines. Changing the date will allow imports of genetically important wild-caught pandas that are already in captivity but have not bred. One aim of the AZA Giant Panda SSP is to focus their expertise on investigating why these pandas are not breeding. Known breeders would most likely remain in China as part of the breeding program. See further discussion of this topic in the Summary of Comments.

#### Age and Other Parameters of Animals Available for Importation

The proposed policy provided that no post-breeding age pandas (*i.e.*, 20 years and older) would be considered for

import because it was felt that the risks from transport were unacceptable. In the final policy the Service will use age as a factor in determining issuance of a permit as it relates to the proposed purpose of import. However, no upper age limit is set since the Service has no scientific information to show that it would be very risky to ship older pandas, but infirm animals will not be allowed to be imported if transport will compromise the health of the panda.

#### **Length of Loans**

In the proposed policy, the length of giant panda loans was to be determined by the purpose(s) of the loan and the length of time necessary to accomplish the goals of the import. This has not been changed in the final policy. The Service believes that internationally coordinated giant panda conservation efforts could incorporate various types of import, exchange, or loan arrangements requiring varying lengths of time.

#### **Enhancement and Conservation Benefits of Specific Projects**

The Service proposed that the majority of net profits (80 percent) should be used to fund *in-situ* conservation projects in China's National Plan. The Service continues to believe that *in-situ* conservation is critical to the recovery of giant pandas in China, but recognizes the need to ensure to the extent possible that the captive-breeding program in China is self-sustaining. Additionally, funding of captive breeding and research can potentially contribute toward conservation of pandas in the wild, particularly now that China has a scientifically based captive-breeding/research plan. Thus, the policy now states that a significant portion of all funds associated with the loan, not just net profits, should be used to fund *in-situ* conservation projects, instead of designating a specific percentage. This retains the appropriate emphasis on *in-situ* conservation, but allows more funds to support *ex-situ* projects as primarily outlined in the Captive Breeding Plan. The proposed policy also outlined a regime to identify and track project implementation. This has been retained, but project selection may now be expanded beyond the National Plan to include the National Survey and Captive Breeding Plan.

The Service continues to emphasize the need to relate giant panda imports to the conservation and enhancement of the species in the wild, especially through funding of *in-situ* projects. Presumably, most of the imports will be from China but funding associated with

imports of pandas from other countries will also need to be linked to *in-situ* conservation projects, although more flexibility will be allowed for these imports. It is expected that most imports would be for multiple purposes and funds (loan money and/or net profits) would be generated. The allocation of funds to panda conservation satisfies part of the conservation and enhancement findings required by an import under the ESA. If no funds are associated with the import or transfer of live pandas, the proposed activities must significantly contribute to panda conservation in the wild. On the other hand, if funds are involved, then a significant portion of all funds, including net profits received by an applicant during a loan period, regardless of the source of the panda, should be used for conservation projects.

#### **Scientific Research**

The Service proposed that imports for scientific research must contribute to the conservation of pandas in the wild and in captivity. The final policy has added some flexibility in that the research can be more focused on contributions for captive animals if the import is for dual purposes (scientific research and enhancement of the propagation and survival of the species under the ESA).

There needs to be continual coordinated efforts to set priorities for panda research. China's National Plan provides the following research priorities: (1) Habitat improvement; (2) captive breeding; (3) ecology, population status, and monitoring; (4) rearing and nutrition; (5) prevention of illness; and (6) reintroduction of captive pandas to the wild. The "Giant Panda Breeding Plan" developed in China lists the following areas that need basic research: (1) artificial insemination biology and techniques; (2) breeding behavior; (3) disease prevention; (4) reproductive physiology; (5) diet; (6) mating ability; (7) reproductive longevity; and (8) fertility. These priorities for the captive population are further clarified in the report from the MOC/CBSG Workshop. Because of the precarious level of the panda population, it is important that research findings are shared quickly and methodologies are transferred to China for use in the field and in the captive-breeding program.

The ESA regulations [50 CFR 17.22(a)(1)(vii)] provide that an applicant must give a full statement of the reasons the applicant is justified in obtaining a permit for scientific purposes, including details of the

activities. The final policy continues to outline that the applicant must provide a research proposal that demonstrates that the research is properly designed and can be accomplished with the available expertise and resources. The Service will not categorize or identify acceptable kinds of research, but will retain the option of evaluating the validity and/or current need of the proposal based on priorities included in China's National Plan, National Survey, or Captive Breeding Plan, or any subsequent modification of these plans. If the panda(s) would also be on exhibition, the applicant should have a monitoring plan to ensure that the display does not interfere with the research or bias the data. Thus, under the proposed policy the applicant needed to have adequate facilities separate and apart from the public exhibition areas in case it is found that exhibition interfered with the research. This same guidance was included in the Captive Breeding section. Through the comments, it was evident that the wording was interpreted to mean applicants needed facilities totally separated from the exhibit. The final policy clarifies that the intent is for an applicant to have off-exhibit facilities of sufficient size to house pandas on a long term basis, if necessary, to conduct research or breeding, but not necessarily be physically separated.

#### **Captive Breeding**

The ESA regulations [50 CFR 17.22(a)(1)(viii)] provide that an applicant demonstrate a willingness to participate in a cooperative breeding program and maintain or contribute data to a studbook. The current issuance criteria require the Service to find the proposed activity will not directly or indirectly conflict with any known program intended to enhance survival probabilities of the population. Thus, the proposed policy emphasized that institutions that import pandas for captive breeding should participate actively in a coordinated international panda conservation effort and needed to supplement the breeding program in China. The final policy continues to require that imports for captive breeding supplement China's breeding program but ties such participation to the MOC/CBSG Workshop report. In addition, to assist in wild panda recovery and development of a self-sustaining captive population, captive-breeding activities should have a research component.

The continued decline of the wild population of giant pandas and the increasing fragmentation of its habitat may make it increasingly important to establish a self-sustaining captive

population. The current captive population represents about 10 percent of the total panda population, captive and wild. As of December 1996, there were 124 giant pandas in captivity in 38 institutions: 104 animals were in institutions in China and 20 pandas were in 9 institutions located outside of China. In China, five institutions had 73 animals and were responsible for nearly all the breeding success. Seventeen institutions held single animals. The Chinese recognize that these captive pandas need to be moved for better breeding opportunities and to ensure that all mature individuals participate in breeding. Of the 20 pandas currently held in 9 institutions outside China, 3 institutions hold only 1 panda. These data demonstrate the great need to coordinate the movement of captive-held pandas internationally.

The captive-breeding program in China is not currently self-sustaining. Between 1936 and 1988, 345 pandas held in captivity produced 67 litters of 106 cubs, with only 32 surviving more than a year. In recent years, improvement in management and joint efforts within China enhanced breeding and survival rates and reduced the infant mortality rate of the captive population. However, a review of the International Studbook of the Giant Panda suggests that the current number of founders contributing to the captive population is inadequate. According to the studbook, the current captive population is descended from 32 founders. However, recent research suggests that fewer than 32 founders may exist because the paternity of some of the captive-born pandas is uncertain. Ongoing research should solve this question. The current captive population includes 48 wild-caught pandas that have not reproduced, but only 32 of these are currently of reproductive age. If these pandas can be encouraged to breed, the captive population will not need additional genetic material from the wild population to become self-sustaining. This is supported by information from the 1996 MOC/CBSG Workshop.

Permittees who import pandas for captive breeding should actively coordinate with all panda holders as much as possible and must participate in the AZA's Giant Panda SSP or a similar plan approved by the Service. Imports of pandas for the sole purpose of producing more pandas would not likely satisfy the required finding of enhancement under the ESA. Since it is expected most of the pandas to be imported into the United States for breeding would have a history of not reproducing, it is anticipated that there

will be a research component to any captive-breeding activities.

#### **Exhibition**

The policy proposed two alternatives for exhibition: (1) Exhibition solely as an ancillary component, and (2) short-term exhibition. The final policy reflects Alternative 1. Therefore, applications for import of pandas solely for exhibition purposes would not be approved as a general matter. This is consistent with the AZA moratorium on short-term panda loans. Educational display (exhibition) would be allowed as an ancillary component of a scientific research or research/captive-breeding program, when the display will not interfere with the research or captive-breeding activities. Even temporary loans of pandas solely for display to another institution during the non-breeding season would likely not be allowed, as this could be disruptive to behavioral interactions, endocrine monitoring, and research designed to maximize breeding success.

With advances in coordinated conservation efforts for the giant panda, if institutions in the United States are exhibiting captive pandas, the Service believes that the institutions should focus their energy on activities that best ensure the recovery of wild pandas. The Service recognizes that the use of any of these animals for short-term exhibition could detract from the overall captive conservation efforts by stimulating institutions to use resources for short-term exhibition, rather than committing resources to needed captive breeding or research. Furthermore, the use of breeding age pandas for short-term exhibition loans could increase the stress and reduce acclimation of pandas to breeding surroundings while minimizing the opportunities for important research and captive-breeding activities. Thus, the Service, as a matter of policy, discourages the issuance of permits for the import of pandas for solely exhibition purposes (even though such exhibits might raise substantial funds to go back to China). Every panda import must have intrinsic conservation benefits in its own right, in addition to financial contributions to China.

#### **Primarily Commercial**

Under CITES, Appendix-I species, such as giant pandas, cannot be imported for primarily commercial purposes. Therefore, an applicant for a giant panda import permit must provide sufficient information to the Service to consider in making a finding that the import is not for primarily commercial purposes [(50 CFR 23.15(d)(7)]. Thus, the language on internal accounting

systems was clarified in the final policy and monitoring visitation was added as a way to provide additional information needed to calculate net profits. No other major changes were made in the final policy in this section.

#### **Suitability of Facilities**

Under the CITES regulations, the recipient of a giant panda is required to have suitable housing and equipment to care for the panda(s) [50 CFR 23.15(d)(6)] and under the ESA regulations at 50 CFR 17.22(a)(2)(vi), the facilities and resources must be adequate to successfully accomplish the objectives stated in the permit application. Applicants for a giant panda permit must submit sufficient information to show that they meet these requirements. The proposed policy enabled applicants to provide copies of existing protocols for monitoring health and behavior recommended by a coordinated international panda conservation effort. The final policy allows applicants to submit protocols recommended by a coordinated panda conservation effort, such as the AZA Giant Panda SSP, since there is no one true organized international panda conservation effort at this time. Additionally, the requirement to note any roads adjacent to panda facilities was dropped since there is no evidence that shows activity or noise from adjacent roads negatively affects panda behavior.

#### **Transfers of Pandas to Other Entities Within the United States**

The policy clarifies that persons intending to transfer live pandas in the United States will need to meet the provisions of the policy, either by obtaining an interstate commerce permit or prior approval of the Service as conditioned by the import permit.

#### **Summary of Comments and Responses**

Comments on the proposed policy were received during four comment periods (March to May 1995, June to July 1995, July to September 1997, and September to November 1997) and were considered in formulating this final policy. The following summarizes those comments organized by elements in this policy. The Service received 205 comments (letters, form letters, and form post cards) from 4 zoological institutions, 5 conservation groups, 7 animal interest groups, 3 business or trade organizations, 1 State agency, 7 foreign governmental agencies, and 178 individuals. The Service has reviewed all of these written comments. Comments or information updating the data presented in the SUPPLEMENTARY

INFORMATION section are incorporated into that section of this final notice.

#### *Purposes*

*Issue:* Several commenters suggested that there was no single coordinated international panda conservation effort and that there should be flexibility and discretion to pursue the primary goal of survival of the species.

*Response:* The Service agrees that it may not be possible to have all institutions worldwide that have pandas be part of one international panda conservation effort. However, this should be a long term goal and any U.S. institution wishing to import giant pandas should participate in a coordinated panda conservation effort as much as possible and should work closely with the Chinese government to ensure their efforts are based on recommendations of China's National Plan, National Survey, or the Captive Breeding Plan. The language has been changed appropriately.

*Issue:* One commenter stated that the Service should withdraw the proposed policy, abandon efforts to set any specific policy for imports of giant pandas, immediately lift the moratorium on panda imports, and evaluate imports on a case-by-case basis.

*Response:* The Service disagrees since pandas are critically endangered and engender much public interest. The purpose of the policy is to openly and clearly outline how applicants who wish to import giant pandas can meet the criteria of CITES and the ESA. This policy will be applied to each application for import on a case-by-case basis and will provide clear guidance for consistent evaluation so pandas in the wild will benefit.

*Issue:* One commenter thought the ban on importing giant pandas should remain in place so that maximum conservation resources for saving these animals could be focused on saving them in their natural habitat. Other commenters stated that no giant pandas should be held in a zoo.

*Response:* The Service agrees that conservation efforts should be primarily focused on saving pandas in the wild. However, pandas that are already in captivity can serve a role in conservation of pandas in the wild. Captive pandas offer opportunities to conduct needed research and can help to educate people worldwide on the plight of pandas. Money generated from importing and exhibiting captive pandas can be used to fund *in-situ* panda projects. While in the past, the motivation for removing pandas from the wild was questionable, it is clear from the December 1996 studbook, that

very few pandas have been removed from the wild in the past several years and the Captive Breeding Plan states that no additional wild-caught pandas are needed to sustain the captive population. The Service does not believe that importing captive pandas into the United States at this time under the final policy will lead to further removal from the wild. However, the Service will consider this when evaluating specific applications and not allow the import of pandas removed from the wild, except in exceptional circumstances. The Service would be remiss if it did not allow activities with captive pandas to occur, within the criteria of CITES and the ESA, that can be shown to benefit pandas in the wild.

#### *Wild-Taken Pandas*

*Issue:* Several commenters did not believe the proposed use of December 31, 1986, as the cut-off date to be justified in light of current information on the limited removal of pandas from the wild and the under-represented founder stock of the captive population. Another commenter stated that they believed that the studbook data was incorrect and that the MOF was actually "rescuing" more pandas than was reflected in the studbook.

*Response:* The Service agrees that caution should be used when considering imports of wild-caught pandas into the United States so loans will not stimulate further wild take. However, a number of the wild-caught pandas already in captivity have not bred and are very important genetic founders, as determined in the MOC/CBSG Workshop. The AZA Giant Panda SSP recognizes this as an area where U.S. zoos can use their specialized expertise. The Service agrees that this would be an appropriate issue for U.S. zoos to become involved in since pandas that are known breeders would most likely remain in China as part of the breeding program. Non-breeding pandas could potentially be exported to the United States to research why they were not breeding. Additionally, the MOC/CBSG Workshop report noted that no additional wild-caught pandas were needed to sustain the captive population based on the assumption that more captive pandas will become successful breeders. The Service changed the date to December 31, 1996, to coincide with the MOC/CBSG Workshop date based on information from the workshop, including the updated studbook showing few recent wild-caught pandas being added to the captive population, and on the previous information from China on rescue guidelines. At this time, the Service has

no evidence that the studbook information is incorrect. Should information become available through genetic research to show that more wild-caught animals have been added to the captive population in recent years, the Service will consider revising this section of the policy. Since each import of a panda will be evaluated on a case-by-case basis, the Service still reserves the right to deny the import of a wild-caught animal, regardless of when it was removed from the wild, if the Service determines that the removal from the wild may have been detrimental to the species. It is unlikely that the Service would be able to make the necessary finding to issue a permit to import any pandas "rescued" from the wild after December 31, 1996, since it was concluded that these pandas are not needed for captive population maintenance. Recently "rescued" pandas should remain in China to either be returned to the wild or used in their captive-breeding program.

#### *Age and Other Parameters of Animals Available for Loans*

*Issue:* Several commenters agreed with the Service's proposal that post-breeding age pandas not be considered for import due to risks associated with transport. Several other commenters disagreed, indicating there is no data to support the proposal.

*Response:* The Service agrees there is a lack of data on the risk of transporting pandas over the age of 20, and therefore did not set an upper age limit for pandas to be imported into the United States. Additionally, since current research is not focused on aging in pandas, this may be one area that U.S. institutions may want to conduct research. The Service feels it should not eliminate the possibility of doing this type of research in the United States. The Service will, however, consider age as a factor in determining issuance of a permit as it relates to the proposed purpose of import on a case-by-case basis. Regardless of age, the Service agrees that, except in an emergency situation where there is no reasonable alternative medical care available, infirm animals should not be imported unless the medical condition has improved to the point that transport will not further compromise the health of the panda nor interfere with the purpose of the import.

#### *Length of Loans*

*Issue:* Several commenters were opposed to short-term loans, in particular for exhibition purposes. Another commenter felt length of loans should be a function of permit purposes and flexibility should be allowed in

order to accomplish the proposed activities in a reasonable period of time.

*Response:* The Service feels the language in the proposed policy allows flexibility but appropriately ties the length of the loan to the proposed purpose of the import. Thus, the language in this section has not been revised.

#### *Enhancement and Conservation Benefits of Specific Projects*

*Issue:* The MOC pointed out that China does not have one national program for the conservation of the panda but both their agency and MOF have panda conservation programs.

*Response:* The Service has clarified the language in this notice.

*Issue:* The Service received a number of comments on the proposed distribution of net profits ranging from agreement with the proposed policy to suggestions on different ways to divide the net profits, including not designating a ratio. One commenter thought the policy should not require all net profits be used for panda conservation only. Another thought China should decide how funds are used.

*Response:* The Service agrees there should be some flexibility in how net revenues are used for panda conservation but also strongly believes that *in-situ* conservation should remain the central focus to panda recovery. The Service has changed the policy to read that a significant portion (rather than 80 percent) of all revenue related to the holding of the pandas, not just net profits, should go to *in-situ* panda conservation. Because there appeared to be some confusion in the comments regarding the source of funds so allocated, the Service has also changed the language in the policy to clarify this issue. To make the required findings under the ESA and CITES, and work toward the recovery of the giant panda, the Service believes that all panda funds should be used for panda conservation. The Chinese government and the applicant select the projects to be funded in the loan agreement. The policy clarifies that the Service will consider whether these are priority projects in panda plans developed by the Chinese.

*Issue:* One commenter stated that it was unreasonable to assume that any movement of giant pandas generates funds and this part of the policy concerning non-Chinese pandas be omitted. Several commenters suggested that the criterion of ownership for allocation of funds be dropped.

*Response:* The Service does not agree that it is unreasonable to assume that

any movement of pandas generates funds. The Service would agree that putting pandas on exhibit may not result in an increase in profit *per se*, but there have not been any imports which demonstrate this. However, there are many examples showing that pandas on exhibit generate revenue. Since the Service is changing the policy language for pandas belonging to China to be more flexible, there would be little difference in the distribution of revenue for the display of pandas from China and for display of pandas from non-Chinese institutions. Because of this, the Service has decided to eliminate the distinction between pandas owned by China and pandas belonging to other entities. The final policy states that a significant portion of all revenues for any panda import should be used for *in-situ* conservation of pandas in the wild with the remainder being used for either *in-situ* or *ex-situ* panda conservation projects.

*Issue:* One commenter suggested that the Service clarify the relationship between the Enhancement section and the Primarily Commercial section by combining the sections or sequencing them to more clearly acknowledge the ties between the two sections.

*Response:* The Service agrees and revised the policy language to better explain these relationships. In order to validate the CITES finding that the import is not for primarily commercial purposes, the policy outlines that any net profit, over the time of holding the animal(s), should be used to fund panda conservation projects in China. In addition, the use of net profits and loan agreement monies to fund conservation projects is part of the findings under the ESA, which requires that the import benefit the conservation of the species in the wild. The Service believes that to reach conservation and enhancement of pandas in the wild, all funds generated by pandas should be used for pandas and not directly for other species. The Service also continues to believe that permittees need to track net profits and project status to ensure the integrity of the original findings.

*Issue:* Commenters both supported and opposed the proposed policy requirement to monitor progress of projects funded for panda conservation in China.

*Response:* The Service believes the use of funds in meaningful panda conservation activities in China is a key means to help reach conservation and enhancement under the ESA and the ability to verify that this is being met is crucial. Therefore, the Service did not alter the requirements in this section of the policy.

*Issue:* One commenter noted that there are several types of *in-situ* conservation projects that should be the highest priorities for support from panda loan revenue, including the National Survey scheduled to begin in 1998.

*Response:* The Service agrees that priority should be given to funding the National Survey and urges institutions to strongly consider funding this effort during their negotiations to obtain pandas. The Service also agrees that it may be useful to utilize panda revenues to integrate field staff into projects and to support field educational activities and will consider this when reviewing giant panda import applications.

#### *Scientific Research*

*Issue:* One commenter stated that scientific research on panda reproduction should be conducted only in the wild, not in zoos or artificial study facilities. Other commenters stated that the policy should recognize the expertise and capability outside of China that can be used to assist the international effort.

*Response:* The Service believes there are studies which can be conducted on captive animals that would provide information useful in studying or managing wild panda populations. Captive pandas should be utilized to the greatest extent possible to benefit the wild populations. Scientific research both in China and the United States is one area where this can happen.

*Issue:* Two commenters thought the proposed policy was too intrusive and burdensome. The requirements exceed the Service's goal of ensuring that applicants are engaging in valid and needed research and could cause delays or limit research. Two commenters supported the Service's detailed requirements.

*Response:* The Service believes an applicant must clearly show that the scientific research is *bona fide* and will contribute to the conservation of the panda, particularly in the wild. This information is similar to information researchers routinely submit to receive other research grant funds and is information that a scientist needs to conduct a valid investigation. The Service needs to be informed of major procedural changes in the research since the granting of an import permit for scientific research is based on a particular research proposal. Radical changes in a scientific investigation could be reason for suspending a permit if the research no longer contributes to panda conservation. The Service will make every effort to evaluate any proposed changes in a research program

in a timely manner so research is not interrupted, but it is also important for the permittee to alert the Service to changes as soon as possible.

*Issue:* One commenter suggested that milk be added to urine, feces, and synthetic DNA as substances that would not require a permit for export or import, when collected as outlined in the proposed policy. Another commenter indicated that until another decision is made by the Conference of Parties to CITES, the Secretariat considers urine, feces, and synthetic DNA as covered by CITES.

*Response:* The Service has not included milk in this short list of exempted by-products at this time since, for the most part, it cannot be obtained without manipulating an animal. The Service has written the Secretariat outlining the U.S. position on urine, feces, and synthetic DNA and recognizes that some countries may require permits for these products. That is why the policy recommends that people contact the foreign CITES Management Authority to meet their requirements.

*Issue:* One commenter disagreed that facilities to house pandas needed to be separate and apart from the public exhibition facility as there is no evidence that exhibition would interfere with research and it could be extremely costly. Another commenter stated that a recipient zoo should provide adequate off-exhibit space in which to conduct research.

*Response:* In considering the comments, the Service changed the policy to no longer require housing or research areas totally separate and apart from the exhibition areas, but the applicant/permittee should have adequate housing away from public view should the Service determine that exhibition of the pandas is not compatible with the research.

#### *Captive Breeding*

*Issue:* One commenter strongly agreed with the need to: (1) Coordinate the movement of captive-held pandas internationally since the captive-breeding effort in China is not currently self-sustaining and (2) enhance captive propagation efforts, with special emphasis on unrepresented founders, particularly males.

*Response:* The Service continues to believe that breeding of captive-held/captive-born pandas needs to be coordinated internationally. The MOC/CBSG Workshop held in December 1996 in Chengdu is an excellent step toward this goal.

*Issue:* One commenter recognized the concerns of the Service about the role of

captive breeding but felt requiring a detailed breeding protocol was unnecessary and intrusive. Another commenter stated that since the policy requires all applicants to be members of a coordinated international effort, the Service should defer to those coordinated efforts (AZA programs and SSPs) to ensure that an institution has the necessary facilities and expertise to import a panda.

*Response:* The Service needs to be assured that any applicant wishing to import a giant panda for breeding has the necessary knowledge, expertise and facilities to accomplish their goal. In order to be more flexible, the Service will accept a statement that the applicant is following the AZA Giant Panda SSP recommendations for breeding protocols in lieu of submitting the actual protocol. However, the Service will still require submission of facility and exhibit information in the form of photographs, diagrams, and written description with each application.

*Issue:* One commenter did not agree that the name, position, and qualifications of the individual making the decision to take animals off display must be supplied but thought that this decision should be made by the institution's animal managers.

*Response:* The Service agrees that the submission of this information is not necessary and has removed the language from the policy.

#### *Exhibition*

*Issue:* A majority of the commenters supported Alternative 1 which proposed to allow imports for exhibition solely as an ancillary component. One commenter, while generally supporting this alternative, also recommended that the Service recognize the role of exhibition in raising revenues necessary to support conservation efforts.

*Response:* The Service selected Alternative 1 for the final policy. Although exhibition typically cannot be the sole purpose of an import, the Service expects it will be a component of most applications and the funds raised will be considered when making the enhancement finding under the ESA.

#### *Primarily Commercial*

*Issue:* One commenter stated that the Service does not have the authority to propose that all net profits resulting from the import of a panda for long term captive-breeding loans be used for the conservation of pandas in the wild; the Service should recognize that long term breeding loans are inherently not for primarily commercial purposes and that

the intended purpose of the loan, to save the giant panda, is non-commercial.

*Response:* The Service has the authority to propose how net profits should be used, since this is a part of the not for primarily commercial purposes and conservation/enhancement findings. The Service does not have enough information at this time to conclude that long term breeding loans are inherently not commercial. The intent to save giant pandas does not necessarily mean that an institution would not also want to generate revenue while contributing to the panda conservation effort.

Historically, the exhibition of pandas has generated much public interest and short-term loans have generated much revenue for the institution exhibiting them. There has only been one long term loan undertaken and it has only been in effect for little over a year. Until more experience is gained, the Service needs to review each application for import and receive information, in the form of accounting for profit, to satisfy itself that the initial finding that the import was not for primarily commercial purposes remains valid for long term loans.

*Issue:* One commenter was concerned about the degree of specificity applied to allowable expenses and suggested language to clarify reasonable expenses.

*Response:* The Service agrees that these recommendations will provide additional flexibility and has incorporated them into the policy. The clarifying changes do not affect the Service's ability to review the data submitted and to ensure that its finding that the permitted activity is "not for primarily commercial purposes" remains accurate.

*Issue:* Two commenters felt that to make the not-for-primarily commercial finding requires an initial determination concerning the overall purpose as well as a need for ongoing review in order to be satisfied that those purposes are being met. One commenter added that the same measures for compliance with CITES have to be met for each and every applicant.

*Response:* The Service agrees with this evaluation which is reflected in the policy.

*Issue:* Commenters sought clarification of the term "indirect revenues." One of these commenters suggested that since the proposed policy used only direct expenses, the final policy should use a similar approach for calculating revenue. Commenters also stated that the Service should clarify that the cost of the loan is included in reasonable expenses. One commenter

added that the cost of technology transfer programs and education programs in the United States also be included.

*Response:* The Service agrees with the above and has changed the policy.

*Issue:* Two commenters stated that it will be extremely difficult for an institution, over long periods of time, to accurately assess the exact "net profits" related to a panda loan.

*Response:* The Service agrees that it may be difficult to assess exact net profits over time, but reasonable information is necessary to continue to assess that the import is not for primarily commercial purposes.

*Issue:* One commenter believed that exhibition of pandas for whatever purpose remains "primarily commercial" and thus falls under the restriction applied to CITES Appendix I listings.

*Response:* The Service does not agree that exhibition of pandas should automatically be determined primarily commercial. It is true that exhibition of pandas generates revenue, but if no net profits are generated or if net profits are generated but are used for conservation of the affected species, the Service can conclude that the import was not for primarily commercial purposes.

*Issue:* Several commenters suggested language changes to help clarify the intent of the section on internal accounting systems.

*Response:* The Service agrees with these suggestions and has revised the policy accordingly.

*Issue:* One commenter felt the proposed policy was too restrictive in requiring approval from the Service if the permittee changes the conservation projects to be funded from those presented in their application; this requirement was unnecessary and appears to intrude in the internal affairs of a sovereign nation since all conservation projects are to be high priorities of the China's National Plan.

*Response:* To make the findings under the ESA and CITES, the Service needs to consider whether the funds will be used to support priority conservation projects identified by the Chinese government in the National Plan, National Survey or Captive Breeding Plan. The Service sees this as a way to support China's management of pandas. Requiring permittees to obtain approval from the Service if they change the conservation projects to be funded ensures that funds are going to priority projects identified by the Chinese government in these plans.

*Issue:* One commenter recommended that reports only be required on a multiple-year basis, such as every five

years. Another commenter recommended that the Service carefully review and monitor financial reports annually to determine whether the commercial test is actually being met, and that the policy provide for possible adjustments in conservation funding commitments based on actual panda-related income.

*Response:* The Service believes that it is important to review the information on primarily commercial before too much time elapses and has retained the requirement for an annual report.

*Issue:* One commenter was concerned by the level of what they considered to be micro management; suggested the Service is not equipped to deal with the internal accounting procedures and annual reports as proposed in the policy; and thought the use of marketing data (such as visitors surveys) would be a more productive way to obtain information on revenue earned due to exhibition of giant pandas.

*Response:* The Service feels that the collection of this level of information has been useful in evaluating the current permit held by the San Diego Zoo. The Service agrees that marketing data such as visitation monitoring is also important to collect since it allows for more accurate calculation of how much revenue a facility is generating because of pandas and has revised the policy.

*Issue:* One organization stated that the disparate treatment business corporations are subjected to under the current policy for "short-term exhibition only" loans should have no place in a final policy dealing with long term captive-breeding loans. They added that it is the intended use of the species, not the tax status of the applicant, that should be of concern and that the Service should not impose a higher burden of proof on business corporations to engage in long term captive-breeding loans under the AZA plan. Another commenter stressed that the difficulty for commercial entities is inherent in the treaty language itself; since commercial entities have as a fundamental purpose the pursuit of profit, assurances will be sought from profit-making entities just as from non-profit entities that the requirements of CITES are being met in an ongoing manner.

*Response:* The Service views "for-profit" (business corporations) institutions as having a more difficult time in satisfying the burden of proof, since they are founded with the purpose of making a profit and have additional factors, such as a fiduciary duty to stockholders, that must be addressed in the finding that an import is not for

primarily commercial purposes. The captive breeding example in Resolution Conf. 5.10 specifically mentions the need to account for benefits to stockholders.

*Issue:* One commenter cited *WWF v. Hodel*, Civ. No. 88-1276 (D.D.C. 1988) as evidence that the Service acknowledged that CITES does not require the types of restrictions that the proposed policy applies in connection with the issue of commercialism. Another commenter stated that they are also well aware of this case and pointed out that the position taken by DOI on commercialism was in fact rejected by the Court in that matter.

*Response:* In *World Wildlife Fund v. Hodel*, District Judge Johnson found that the Service had failed to articulate the reasons supporting its "implicit" finding that the importation of giant pandas by the Toledo Zoo for short-term exhibition purposes "was not primarily for commercial purposes." Judge Johnson, after determining that the additional fee charged by the Toledo Zoo for the public to view the pandas was "significant to a consideration of the CITES requirement that the import was not primarily for commercial purposes", issued a preliminary injunction against the Toledo Zoological Gardens to prevent the collection of such additional fees. While Judge Johnson's ruling did not prescribe a firm boundary between those activities that are primarily commercial in nature from those that are not, her ruling did correctly identify the responsibility of the Service to explain the basis of its permitting action with particular emphasis on statutory and treaty-based requirements and criteria. In dealing with complex permitting questions like those covered by this policy, it is the Service's goal that decisions be made on the basis of complete administrative records and fully explained records of decision. This policy was intended to achieve that goal, especially on the complex findings and determinations that must be made as a prerequisite to issuing any import permits for giant pandas.

#### **Suitability of Facilities and Care**

*Issue:* One organization commented that their experience with pandas has led to the realization that exercise and open space may be much more important for the well-being of pandas than had previously been thought. The suitability of facilities and care should be directly associated with the purposes of the permit.

*Response:* The Service agrees the suitability of facilities and care is tied directly with the purposes of the permit.

In addition, the amount of open space or opportunities for pandas to exercise will be considered during review of permit applications when deciding whether permit issuance criteria under CITES and the ESA are met.

*Issue:* One commenter did not understand why the Service needs to know the existence of adjacent roads to the panda facility and urged this requirement be deleted.

*Response:* At the time the proposed policy was written, the Service was concerned about the impact of traffic noises on panda behavior. Since then, the Service has received information from facilities holding pandas that pandas are unaffected by routine traffic noises. Thus, this has been deleted from the policy.

*Issue:* One commenter suggested that the Service require that the importer account for the animals' psychological, behavioral, and physical needs while housed prior to, after, and during transport. Additionally, a veterinarian with expertise in panda well-being should be required to travel with any imported animal to ensure direct and immediate care throughout the trip.

*Response:* Importers of pandas are required to ship the animals under humane and healthful conditions and follow the regulations on providing care, food, and water during transport (50 CFR Part 14, Subpart J). The Service agrees that it is a good idea for a veterinarian or other animal care personnel with expertise in panda care to accompany pandas. In the past, China has required Chinese caretakers to accompany pandas in transit. Since the Service is not aware of any problems that have occurred during prior shipments of pandas, the Service does not believe it is necessary to change the policy at this time.

#### *Transfer of Pandas to Other Entities Within the United States*

*Issue:* One commenter did not understand the grounds for requiring an interstate commerce permit to transfer loaned giant pandas to other entities within the United States.

*Response:* Under the ESA, the transfer of a giant panda to another institution across state lines constitutes interstate commerce, and therefore requires an ESA permit, since it is expected that the receiving facility gains financially or otherwise by having that animal at their facility. The Service has a long-standing policy that legitimate non-commercial breeding loans do not need interstate commerce permits because they generally do not involve the transfer of specimens in the pursuit of gain or profit. However, panda loans present

exceptional facts that require the recipient of any panda transfer to address all the elements of the panda policy and interstate commerce permits would be required for any interstate transfer since exhibition of giant pandas generate much public interest and monetary gain for the exhibiting institution.

*Issue:* One organization commented that it is burdensome and decreases the flexibility in a breeding program to require an applicant to indicate in the import application any intended transfers of the pandas within the United States at a later time.

*Response:* The Service agrees that an importer may not be able to project whether the pandas they wish to import would need to be moved to another facility at a later date and has deleted the requirement to anticipate interstate movement prior to import under the policy. However, the subsequent transfer of a panda will need to meet the provisions of the policy through an interstate commerce permit or intrastate transfer authorization from the Service as conditioned under the import permit. This is to ensure that all transfers meet the approval of the Chinese government or the entity that owns the animal and meet the purposes of the original import under CITES and the ESA.

#### *Required Determinations*

*Issue:* One organization stated that Executive Order 12866 requires any significant regulatory action be reviewed by the Office of Management and Budget. The Executive Order defines "significant regulatory action" to include those actions which " \* \* \* raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." Section 1(a) of the order states: "The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law \* \* \* or are made necessary by compelling public need, such as material failures of private markets to protect or improve \* \* \* the environment \* \* \*". Based on the definition of "significant regulatory action" and Section 1(a), the commenter asserted that the Service's proposed policy should be subject to OMB review. They further stated that their comments on the proposed policy question whether the "primarily commercial purposes" standards the Service proposes "are required" by law, and whether there is a compelling public need for the policy based on " \* \* \* material failures of private markets to protect or improve \* \* \* the environment \* \* \*". The commenter

believes that the "private market" of zoological institutions, and specifically in this case the AZA, has protected and continues to protect endangered species like the panda through non-governmental captive-breeding programs.

*Response:* While the Service believes that this action is a policy and not a rule, it has followed the Administrative Procedures Act, the Regulatory Flexibility Act, and Executive Order 12866. The policy sets out guidance that is intended to assist the decision-makers and staff within the Service to carefully review applications for panda import permits, to ensure that all statutory and treaty-based criteria have been addressed and fully explained in the administrative record, and, assuming that these goals are met, to thereby enhance the conservation of the giant panda. The policy does not prescribe new restrictions or limitations of general application to those who would apply for such permits, but instead sets out a "road map" on how to develop and submit a complete application in light of the best available scientific information available to the Service at this time. No regulatory impact analyses are required by law for the adoption of this statement of agency policy. Even if such analyses were required, nothing in this policy could be construed to impose an economic impact that does not already exist as a result of the ESA and CITES.

#### *Other Issues*

*Issue:* One commenter pointed out that CITES Notification No. 932 (Loans of Giant Pandas) does not carry forward the implied criticisms of captive breeding outside of China contained in the CITES Standing Committee document, Doc. SC.36.15. The notification explicitly recognizes that there may well be a role for institutions outside of China for captive breeding. The repeal of Notification No. 477 removes any open criticism by the Secretariat or the Standing Committee of captive breeding, especially as this purpose relates to commercialism.

*Response:* The Service agrees that Notification No. 932 recognizes the export of giant pandas for captive breeding under specific circumstances, and believes this has come about because of the positive changes in panda conservation efforts in China and elsewhere.

*Issue:* One commenter believed that reasonable assumptions on the question of commercialism can be drawn from the Notification and Doc. SC.36.15. The first assumption is the Secretariat's view that the giant panda is not actually or

currently threatened by international trade. The second assumption is that panda loans can be made in accordance with the normal provisions of CITES. All that is necessary in addressing commercialism is application of the standard provisions of Conf. 5.10.

*Response:* The Service agrees. The Secretariat also cautioned that care needs to be taken that the money offered to China reflect the real value of pandas to that institution and are not a "token gesture," with the bulk of the monies being retained by the institution itself for its own benefit. The Secretariat noted that the latter would be incompatible with the requirement that imports of Appendix-I species be for purposes which are not primarily commercial.

*Issue:* One commenter stated that the application of the CITES standard to only export Appendix-I animals in exceptional circumstances should not be confused with the subjective and limited definition, when there is a high degree of probability of captive breeding taking place. Another commenter added that the emphasis should be on the "best interest of the whole species."

*Response:* The Service believes that Section 3.c of Notification No. 932 should be interpreted to mean that breeding age animals should only be exported to institutions either in potential breeding pairs or singly to facilities that already have breeding age panda(s). This is further qualified by limiting exports to institutions that cooperate with others in a breeding program. The Service does not believe that this would exclude the possibility of exporting animals that have not bred in China to a United States breeding program, such as AZA's Giant Panda SSP, in which the focus is to research why these pandas have not successfully bred.

*Issue:* One commenter stated that the Service does not have the authority to implement Notification No. 932 and the proposed policy itself can only be implemented and enforced as a formal Service regulation adopted after rulemaking procedures.

*Response:* The Service has discretion to formulate policy that defines or clarifies how to interpret or implement already existing regulations, in this case 50 CFR Parts 13, 17, and 23 for a particular species.

*Issue:* One commenter stated they were very concerned by the negative impact this policy has had on commercial entities in their desire to help panda conservation through long term breeding loans that would result in *in-situ* financial contributions and

captive breeding research in the United States.

*Response:* The Service recognizes that commercial institutions can potentially make significant contributions toward conservation programs for endangered species. However, in the case of all Appendix-I imports, including giant panda imports, the Service is obligated to determine that the import is not for primarily commercial purposes. Commercial entities must be able to show that they will not economically gain by the import over time, before the Service can approve an import permit. These types of institutions could still contribute financially to panda conservation, without importing the animals, if they chose to do so.

With publication of this policy, the Service lifts the suspension of the review and processing of permit applications to import live giant pandas, which has been in place since December 20, 1993. The policy is effective immediately to allow organizations that have, or are finalizing, loan agreements with China to apply without further delay. Accordingly, we have good cause under 5 U.S.C. 533(d) to waive the 30-day effective date. Applicants should allow at least 120 days for the processing of an application. This time frame includes a notice in the **Federal Register** of the availability of each application for a 30-day public comment period as required under the ESA.

#### Required Determinations

The information collection requirements identified in this policy as part of the permit application have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0093. OMB has reviewed this document under Executive Order 12866.

The Service has determined that this policy is categorically excluded under Departmental procedures from complying with the National Environmental Policy Act (NEPA) (516 Departmental Manual, Ch. 2, Appx. 1, paragraph 1.10). An Environmental Action Memorandum is on file at the Service's Office of Management Authority in Arlington, Virginia.

#### Policy on Import of Giant Pandas

Given the long history and controversial nature of the issue of giant panda imports, the Service considers the conservation status of the giant panda sufficiently unique to warrant establishment of a separate policy on the import of giant pandas. The policy sets out guidance that is intended to

assist the decision-makers and staff within the Service to carefully review applications for panda import permits, to ensure that all statutory and treaty-based criteria have been addressed and fully explained in the administrative record, and, assuming that these goals are met, to thereby enhance the conservation of the giant panda. The policy does not prescribe new restrictions or limitations but instead sets out a "road map" on how to develop and submit a complete application in light of the best scientific information available to the Service at this time.

Before a decision is made on any application for a permit to import or engage in interstate commerce in giant pandas, the Service must review the application in terms of the applicable requirements of CITES and the ESA. Issuance of an import permit under CITES requires prior findings that: (1) The proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant is suitably equipped to house and care for the animals. Issuance of a permit under the ESA requires prior determinations that, among other things: (1) The activity would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the ESA; and (2) issuance of the permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15. In addition, Section 9(d) of the Lacey Act, with regulations at 50 CFR 14, Subpart J, requires that shipments of live wild mammals being shipped to the United States are done under humane and healthful conditions such that the animals arrive alive, healthy, and uninjured.

This policy provides guidance on Service consideration of these requirements relative to the giant panda only. These considerations and this policy are in no way intended to apply to import permit applications for other species. All such applications must continue to demonstrate that the proposed imports meet the applicable requirements of CITES and the ESA consistent with the conservation status of the particular species in question and the best scientific information available for that species.

### Purposes

The primary goal of the policy is to ensure that all permitting decisions involving the transfer of giant pandas into and within the United States contribute toward the survival, and ultimately the recovery of panda populations in the wild. The long term goal is to have all captive-holders of giant pandas cooperate in one international plan. Toward that goal, all transfers should be part of a coordinated panda conservation effort, a term used in this policy to mean an organized effort through which all giant panda movements support high priority projects in China's National Plan, National Survey, or Captive Breeding Plan. If an import or transfer has breeding as one of its purposes, the institution should also coordinate their activities with China's Captive Breeding Plan and must participate in AZA's Giant Panda SSP or a similar plan approved by the Service, as required generally under existing regulations. The Service anticipates that most permit applications will be for multiple purposes. Applicants must identify the primary purpose for the proposed import or interstate transfer and all other intended purposes. No activities for additional purposes should be undertaken after issuance of a permit without prior approval from the Service since issuance of the permit would be based on the purposes identified in the initial application.

The ultimate objective of managing captive pandas should be for research or research/breeding purposes, and any training or use of pandas in animal acts would detract from this objective. Therefore, use of pandas in animal acts or shows most likely would not meet the current permit issuance criteria in the regulations and is discouraged under this policy.

### Wild-Taken Pandas

The following criteria would be used when evaluating import applications involving pandas removed from the wild. These temporal criteria are based on information available to the Service suggesting that the removal of pandas from the wild has increasingly come under Chinese control, starting prior to the WWF Plan of August 1989.

In all cases, the Service continues its policy of approving import permit applications only when it is sure that the import did not, or will not, contribute to the removal of pandas from the wild.

1. For wild-taken pandas, those removed from the wild prior to December 31, 1996, would be

considered eligible for inclusion in an import permit.

2. Pandas removed from the wild after December 31, 1996, are not likely to be eligible for inclusion in an import permit, in part because the MOC/CBSG Workshop report states that no additional wild-caught pandas are needed to have a self-sustaining captive population.

### No Detriment Finding Under CITES

Under CITES Article III.3(a), the import of any specimen of a species included in Appendix I requires a finding by the country of import that the import will be for purposes that are not detrimental to the survival of the species. This finding must be made within the context of the fundamental principle that trade in specimens of Appendix-I species must only be authorized in exceptional circumstances. This finding is made on a case-by-case basis, and is governed by the best available scientific information and the status of the species involved, both in captivity and the wild. The finding also considers whether the intended purposes cannot be achieved by other means (better alternative uses for the animals). Relative to imports of giant pandas, this finding will focus on ensuring that an import will not adversely affect wild populations by directly or indirectly causing the removal of animals from the wild either for the specific import under consideration or by creating a perception that additional imports will be authorized. The finding will also consider the purpose for import to ensure that it contributes to improving the conservation status of the species.

### Age and Other Parameters of Animals Available for Importation

1. The Service will consider the age of the pandas and how it relates to accomplishing the proposed activities.

2. The Service also will consider how each specific panda relates to accomplishing the proposed activities and how it was selected to ensure the import will not interfere with China's research and breeding programs.

3. Except in an emergency situation where there is no reasonable alternative medical care available, an infirm animal will not be allowed to be imported unless transport will not further compromise the health of the panda or interfere with the purposes of the import.

### Humane Shipment and Transport

Any giant panda shipped to the United States must comply with the regulations in 50 CFR Part 14, Subpart

J: Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States. Shipments of pandas by air must meet the International Air Transport Association's Live Animal Regulations. The Service will evaluate proposed shipping containers to ensure that live pandas shipped to the United States arrive alive, healthy, and uninjured and that transportation occurs under humane and healthful conditions.

### Length of Loans

In situations where the movement of the panda is part of a loan agreement, the Service will evaluate the length of time requested for the loan to ensure it is appropriate to the proposed activity. The length of the loan should be of sufficient duration to accomplish the stated goals. It is anticipated that such activities may require 3 to 5 years, or longer, to produce research results for the maximum benefit for captive-breeding activities or to produce research results that benefit captive and wild populations.

### Section 7 Consultation Under the ESA: No Jeopardy Finding

Under section 7 of the ESA, the Service is required to insure that its permit action to allow import, export, and interstate or foreign commerce involving giant pandas is not likely to jeopardize the continued existence of that species. The Service will conduct consultation which will conclude with issuance of a biological opinion stating whether the proposed action is or is not likely to jeopardize the continued existence of the giant panda. A biological opinion will be prepared for each permit application.

Each biological opinion will include a description of the proposed action and take into consideration the status of the giant panda in China, the status of the giant panda in captivity (domestic and international), the effects of the action, and the cumulative effects of the action. If it is determined that the proposed action is likely to jeopardize giant pandas, reasonable and prudent alternatives would be recommended to avoid jeopardy. In the event no reasonable and prudent alternatives are available, the Service will not issue the permit.

If a specific biological opinion concludes the proposed permit is not likely to jeopardize giant pandas, an incidental take statement will be provided to address the anticipated incidental take, if any, that would result from the permit issuance. In addition, the incidental take statement would include terms and conditions to

minimize the impact of incidental take. Such terms and conditions would also be incorporated into the ESA permit.

#### *Enhancement and Conservation Benefits of Specific Projects*

Enhancement of the propagation or survival of a species and conservation benefits for scientific research under the ESA can be achieved through the following: (1) The proposed activities must ultimately benefit pandas in the wild, and (2) all funds should be used for giant panda conservation including habitat protection or captive breeding efforts, with a significant portion of all funds being used for *in-situ* conservation projects for the giant panda. Both of these elements should be met to address the conservation/enhancement finding.

1. Whenever funding (import or loan agreement, fundraising money, and net profits) is associated with the import or transfer of giant pandas, the following should be addressed:

(a) Conservation projects to be funded should address the following:

- They should be included in China's National Plan, National Survey, or Captive Breeding Plan and should be formally approved by China's Project Office of MOF, MOC, or other appropriate entity.

- They should be considered a high priority in the most recent Plan.

- They should be described as specifically as possible, with funding allocations to specific tasks given in foreign currency (e.g., yuan) and in U.S. dollars, and projected timeframes given for use of the funds to initiate and complete specific projects or activities.

- Conservation projects that do not meet the above criteria will be considered by the Service, if compelling reasons are given.

- Any change in conservation projects to be funded once a permit is granted would be considered an amendment and would need prior approval of the Service.

(b) The applicant should provide a plan to monitor the disbursement of funds for selected conservation projects or activities. The plan needs to be sufficiently complete so that the Service is satisfied of its effectiveness and is assured the projects will be completed. Such a monitoring plan should include provisions equivalent to the following:

- Before funds are transferred to the appropriate office in China or the lending entity, the permittee and the appropriate foreign entity should agree on a detailed budget, work plan, and timetable for project completion. Specific, measurable objectives and a

schedule for progress reports should be identified for each project.

- Payments should be made in installments. Each payment needs to be linked to actions taken toward completion of the project(s).

- Subsequent payments should be contingent on approval of progress reports by the permittee.

- An assessment should be conducted annually to verify progress toward project implementation.

- The permittee should have permission from the Chinese implementing agency or lending entity for the permittee, an authorized representative, and the Service to examine records and to make site visits to funded projects at least annually if needed.

(c) Funds (import or loan agreement money, fund raising money, and net profits) associated with the import/transfer of giant pandas should be allocated for panda conservation as follows (see Primarily Commercial Purposes for additional discussion of net profits):

- A significant portion of the funds should be used for *in-situ* conservation projects for the giant panda and its habitat in China as listed in China's National Plan, National Survey, or Captive Breeding Plan.

- The remaining funds should be used to support panda conservation including breeding or educational efforts for the giant panda in China or additional *in-situ* projects or, if the panda originated in a country outside of China, panda conservation projects outside of China.

- In the event that funds generated exceed the ability of the Chinese to apply the monies to priority projects or captive breeding in China at any one time, then funds may be used to support breeding efforts for the giant panda outside China.

- The allocation of funds for other uses than outlined above will be considered by the Service if compelling reasons are given.

- Any change in allocation of funds once a permit is granted would be considered an amendment and would need prior approval of the Service.

2. If neither the payment of money nor the generation of revenue are associated with the import or transfer of live pandas, the applicant should provide information to the Service to show convincingly that the results of the proposed activities will contribute significantly to the conservation of the panda in the wild.

3. Annual reports to the Service will be required, which should give an accounting and report of funds

transferred and portions of the conservation project completed (see Primarily Commercial Purposes for further reporting requirements). Copies of reports received by the applicant from the recipient of funding should be included, with English translations if reports are not in English.

The policy considerations concerning the enhancement and conservation benefits in this Section and in the related sections on the types of activities for which a permit can be issued—Scientific Research, Biological/Scientific Samples, Captive Breeding, and Exhibition—would be used by the Service relative to the giant panda only. These considerations and this policy are in no way intended to apply to import permit applications for other species. All such applications must continue to demonstrate that the proposed imports meet the applicable requirements of the ESA and CITES consistent with the conservation status of the particular species in question and the best scientific information available for that species.

#### **Scientific Research**

One of the purposes of the ESA is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. The ESA defines "conservation" as the use of all methods and procedures which are necessary to bring an endangered or threatened species to the point it no longer needs to be protected by the ESA. There is a great need for scientific research on the giant panda, both in the wild and in captivity to help achieve this goal. If permits are issued for imports of live animals for a combination of research and captive breeding, the proposed research must contribute to panda conservation but may be more focused on captive populations.

1. The applicant must provide information to show that the research is *bona fide*, meaning research that is properly designed using the scientific method, and can be accomplished with the expertise and resources available. This should include:

- Objectives and goals should be clearly defined in the research protocol. Hypotheses and experimental designs intended to test them should be described. Any subsequent substantive procedural changes and/or additions must be pre-approved by the Service. The Service will review changes in a timely manner so as not to disrupt the research as applicable.

- Investigative procedures and research protocols should be described in detail or referenced as published in

a recognized refereed, peer-review journal.

- Estimated time frames need to be given.
- Research should not be duplicative unless it is a collaborative effort, or if repetition can be justified.
- The results of the research would be expected to identify, evaluate, or resolve panda conservation problems or contribute to the basic knowledge of panda biology and ecology deemed important to the survival of the panda.
- The research results would likely be published in a recognized refereed, peer-reviewed scientific journal.

2. The applicant must have the expertise and resources to accomplish the stated objectives of the proposed research, and describe how the research would not conflict in any way directly or indirectly with known conservation programs for that species. For research with live pandas:

- Research should be recognized as a high priority activity in China's National Plan, National Survey, or Captive Breeding Plan.

- The proposal should describe how the study may contribute to the conservation of the giant panda in the wild. If portions of the research are *in-situ*, the research must be a collaborative effort with Chinese scientists. For any *ex-situ* portion of the research, the applicant should describe why it is best conducted outside China, and how any information gained or methodologies developed will be transferred for use in China, including estimated time frames of transfers, training, or collaborative efforts.

- Any physically invasive procedures to be used or any behavioral modifications anticipated as part of research activities should be described.

- The permittee must provide an annual report summarizing research activities associated with the purposes of the permit, including a brief description of each project, a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results and copies of published papers resulting from the research. The report must also indicate whether the research resulted in the development of protocols or other methodologies, if the products were transferred to the Chinese government, and how they have been or will be used for giant panda conservation.

3. If live pandas are going to be on exhibition at any time during the term of the research project, the following should be addressed:

- The applicant should provide protocols outlining how the research and exhibition will be monitored to

ensure that having the pandas on exhibit is not interfering with the research or biasing data. In lieu of submitting the protocol, the applicant may cite the protocols of the AZA Giant Panda SSP or other relevant breeding plan.

- The applicant must have adequate facilities to conduct the research and provide information on alternative facilities to house the pandas away from public exhibition in case it is found that exhibition interferes with the research. The off-exhibit space, in addition, should be large enough to provide an adequate exercise area should panda(s) need to be housed there on a long term basis.

#### *Biological/Scientific Samples*

Permits for import of panda biological samples can be issued for scientific research (including, but not limited to, genetic research, monitoring of health status and diagnosis of disease or other pathological conditions, physiological and behavioral research, assessment of contaminant loads, and gene banking).

For research involving biological samples, the applicant should have the expertise and resources to accomplish the stated objectives:

- Salvaged specimens (*i.e.*, those obtained from animals that have died of natural causes; naturally shed hair; deposited scent gland secretions) should be obtained without harassing any live animals, and collection must be authorized by the MOF, MOC, or the Project Office or the owner of the panda if not owned by China.

- Any invasive sampling or sample collection involving restraint of the animals should be done by qualified personnel (as determined by the applicant), preferably veterinarians, with appropriate training and experience in capture, restraint, and sample collection, so as not to result in death or injury of animals. Collection of samples, including semen specimens, that involve the use of general anesthesia generally may be imported if collected by individuals who possess appropriate expertise in anesthesia of giant pandas so that risk to the animals is minimized, and in the case of semen, persons collecting specimens should also possess appropriate expertise in electro-ejaculation techniques for giant pandas. Invasive sampling or sample collection involving restraint of wild pandas, including semen collection, is limited generally to situations resulting from capture activities conducted for another purpose approved by MOF authorities and should not involve any type of remuneration for the collection of the samples. Animals should not be

captured for the sole purpose of collecting samples.

- The results of research conducted with imported specimens must be reported to the Service at least annually; a report should include copies of any scientific publications produced. The report should contain information on the number and type (e.g., blood, hair, skin biopsy) of samples imported, specific source/location from which each sample was collected (if more than one was authorized), and brief observations on the effects of sampling on the animals. The report should also indicate whether the research resulted in the development of protocols or other methodologies, if the products were transferred to the Chinese government, and how they have been or will be used for giant panda conservation.

- Permits to import samples to monitor or determine reproductive status or to import semen for use in captive breeding may be issued. Imports of semen from China should be coordinated with China's Captive Breeding Plan, the AZA Giant Panda SSP, or other coordinated panda conservation plan approved by the Service. Imports of semen from countries other than China must also be done in accordance AZA's Giant Panda SSP (or other plan) but may not require specific written approval from China.

- The import or export of urine, feces, and synthetic DNA, when collected in a manner that does not involve the capture, detention, or killing of protected wildlife, does not require a permit from the Service. The CITES Management Authority of any exporting or importing country should be contacted to meet any requirements it may have.

#### *Captive Breeding*

Any captive breeding conducted with imported pandas needs to benefit panda conservation by supplementing the breeding program in China to achieve a self-sustaining captive population (as outlined in the MOC/CBSG Workshop report), and typically provide a source of funds for panda conservation in the wild. There may be a need to maximize the use of pandas currently held in captivity that are not essential to China's Captive Breeding Plan. The Service expects that most of the pandas made available for import into the United States will be ones that have not successfully bred in China. Thus, at this time, the Service finds that captive breeding for the sole purpose of producing offspring is not sufficient to satisfy the enhancement requirement of the ESA. This policy therefore stresses the need for any permit applications

involving captive breeding to include a research component that will benefit panda conservation.

1. If the applicant intends to conduct captive breeding of imported pandas, in addition to the research requirements, the applicant should provide sufficient information to demonstrate the necessity of importing pandas for captive breeding:

- Enhancement may be partially satisfied through captive breeding if it can be convincingly shown that results will be used to study and/or manage giant pandas in a way that contributes to panda conservation. The application or request will be expected to include a research component aimed at increasing reproductive success especially if the animals involved have a history of being non-breeding animals. It is expected that requests to import live giant pandas for captive breeding will also include other enhancement activities, such as the generation of funds for panda conservation in the wild.

- The proposed captive breeding should be part of a coordinated panda conservation effort designed to complement conservation efforts for the wild panda population and the applicant must actively participate in the AZA's Giant Panda SSP or a similar plan approved by the Service.

- The captive breeding program should coordinate with China's Captive Breeding Plan and should demonstrate how it will contribute to the preservation of the panda's gene pool (*i.e.*, retention of maximum genetic diversity). The choice of individuals to be imported should be based on scientific management of the captive populations with genetic and demographic criteria used to determine mating pairs.

- Applications for panda movements should describe how the study would contribute to the conservation of the giant panda in the wild or in captivity, and how any information gained or methodologies developed will be for use in China, including estimated time frames of transfers, training, or collaborative efforts.

2. The applicant should provide information to show that he/she has the expertise and resources to accomplish the stated objectives:

- The applicant should submit a detailed breeding protocol that outlines when male and females will be paired for breeding, how females and males will be visually and physically separated and/or managed together, with layout of facilities and protocols for rearing potential young. In lieu of submitting the protocol, the applicant could show they are using the protocol

of the AZA Giant Panda SSP. However, the Service will still request submission of facility and exhibit information in the form of photographs, diagrams and written description with each application.

- Artificial insemination or any other physically invasive procedures should be described, and any subsequent substantive procedural changes and/or additions must be pre-approved by the Service.

- The permittee must provide quarterly updates and an annual report summarizing breeding and research activities, including a copy of protocols developed and methodologies used, a summary of data collected with a discussion of results, and copies of any published papers. The report should also indicate whether the activities resulted in the development of protocols or other methodologies, if such products were transferred to the Chinese government, and how they have been or will be used for giant panda conservation.

3. If pandas are going to be on exhibition at any time during the captive-breeding loan:

- The applicant should provide protocols outlining how the captive breeding, its research component, and exhibition will be monitored to ensure that having the pandas on exhibit does not interfere with captive breeding and/or its research component.

- The applicant must have adequate facilities to conduct the captive breeding and its research and provide information on alternative facilities to house the pandas away from public exhibition in case it is found that the exhibition interferes with the captive breeding or research. The off-exhibit area should provide sufficient space for exercise should pandas need to be housed there long term.

- The applicant must consent to the movement, substitution, or transfer of any panda to another approved institution if, in the judgment and at the request of the Chinese government or the SSP Panda Coordinator, such action is needed to maximize successful captive-breeding opportunities.

#### *Exhibition*

1. The import of giant pandas for the sole purpose of educational exhibition would not be sufficient to satisfy enhancement requirements. The Service expects institutions importing giant pandas to educate the U.S. public about the ecological role and conservation needs of the giant panda, but will not consider this as an adequate justification for issuing a permit. However, if an applicant is developing

a panda conservation education program that would be transferable to the Chinese government, or is developing a program specifically for use in China, particularly in localities near giant panda habitat and reserves, the Service will consider this project as part of a coordinated conservation effort in making its enhancement finding.

- Educational programs in China should be aimed at local people, school children, panda researchers (field and captive), reserve biologists, and managers and should be in conjunction with the full cooperation of the Chinese authorities.

- Educational activities or projects should be described in detail, including samples of the kinds of educational materials to be used and a description of evaluation methods.

- The messages conveyed through the educational program should stress historical and contemporary impacts on the status of the giant panda in the wild and conservation efforts that might be required to halt the species' decline and degradation of its habitat.

2. Educational displays would only be allowed as an ancillary component of a research or research/captive-breeding program. However, if an applicant intends to exhibit the panda(s), educational display(s) should be developed and implemented to educate the U.S. public about the ecological role and conservation needs of the giant panda. Specifically, the import of pandas solely for exhibition loans is discouraged.

#### *Primarily Commercial Purposes*

With regard to the determination of whether an import of giant pandas is not to be used for primarily commercial purposes, the Service will utilize the following policy.

1. Resolution Conf. 5.10 of the Conference of Parties to CITES provides that:

- The nature of the transfer of specimens between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must not be for primarily commercial purposes, and it is the responsibility of the recipient country's Management Authority to make this determination.
- There may be some commercial aspects of that use, but the non-commercial uses must predominate in order to be deemed primarily non-commercial.

2. Any public, private, non-profit, or commercial (profit-making) institutions, organizations, and agencies will receive consideration for applications for the

importation of pandas. The Service's general regulations at 50 CFR 10.12 define "public" institutions as those that "\* \* \* are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit." Although commercial organizations may also choose to apply for an import permit, the orientation of such organizations to carry out transactions in the pursuit of gain or profit would make it more difficult for the Service to find that the specimen proposed for import is not to be used primarily for commercial purposes. As in all cases, the burden rests with the applicant to show that this CITES requirement is satisfied.

3. The Service's policy is that all net profits should be used for panda conservation in China, with a significant portion of such funds being used for *in-situ* conservation (see Enhancement and Conservation Benefits of Specific Projects). Net profits include all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by an institution or related organization (including any commercial parent organization of the applicant, but not including unrelated private entities, such as hotels, not associated with the applicant) as a result of the panda import, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activities (e.g., exhibition).

- Reasonable expenses would include, but are not limited to, the following: Facility construction if amortized for the entire proposed length of stay for the imported animal(s); cost of the importation agreement; facility maintenance; and direct labor and operating expenses and supplies needed for the care of the pandas and necessary to conduct research or research/captive-breeding activities that have been identified in the application.

- In making decisions on panda import permit applications, the Service's goal would be to maximize funds going back to conservation projects in China and, as such, costs associated with ordinary operations, such as advertising, general personnel costs, general legal expenses (not directly related to the panda import), would not be considered reasonable expenses unless they can be shown to be necessary to sustain the conservation purpose of the import.

- Collection of revenues generated by import of the panda by the importing institution (e.g., gate receipts, food and

drink sales, tourist souvenirs), either for its own use or for the use of other organizations, for purposes other than those previously described ordinarily would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.

- Monitoring of visitation and other means of tracking monies earned as a result of panda activities should be employed by the institution to assist in gathering data used to calculate net profits.

4. Each applicant for a panda import, in satisfying the applicable requirements of 50 CFR subchapter B, must submit a detailed plan for the allocation of all funds raised in excess of expenses (net profits), as a result of the panda import. The application should also include a statement from a licensed, independent certified public accountant stating that the applicant's internal accounting system is sufficient to account for and track funds generated directly by the panda import, and for the subsequent disbursement of funds.

5. Each recipient of a permit to import pandas is required, in accordance with 50 CFR 13.45, to submit an annual report to the Service as a condition of the permit. The annual report must contain a full accounting of all funds raised directly by the institution or related organization, the reasonable expenses incurred and the portion of the funds raised that is in excess of these expenses, and what portion of these funds are to be disbursed for giant panda conservation projects or activities as outlined in the prior section, Enhancement and Conservation Benefits of Specific Projects. A description of the method used to calculate net profits and categories of expenses and revenues (including enhanced stock value, if applicable) must also be included in the report.

- The report should include names of people involved, location of the activities, a brief description of each project and assessment of project implementation, and the amount and use of money being provided the project.

- Conservation projects other than those projects presented in the application must receive approval from the Service prior to allocating funds.

- If applicants wish to protect the specific dollar amounts submitted in their annual report from disclosure under the Freedom of Information Act, they should indicate this in the report along with a reasonable justification to withhold confidential business information.

These policy considerations would be used by the Service only for

determining whether panda imports are primarily commercial in nature. They are not intended to apply to Appendix-I import permit applications for other species. All such applications must continue to demonstrate that the proposed import meets the general requirements of CITES Article III to satisfy the "not to be used for primarily commercial purposes" test.

#### *Suitability of Facilities and Care*

Under CITES, the Service must be "satisfied that the proposed recipient of a living specimen (to be imported) is suitably equipped to house and care for it." Under the regulations implementing the ESA, the Service must determine that the applicant has "\* \* \* The expertise, facilities, or other resources \* \* \* to successfully accomplish the objectives \* \* \*" To aid in satisfying these requirements, applicants should provide the following information in addition to the information required in 50 CFR 17.22:

- Copies of protocols for monitoring general health and behavior. In lieu of new protocols, an applicant may submit copies of protocols recommended by a coordinated panda conservation effort, including the AZA Giant Panda SSP.

- Diagrams and photographs clearly depicting all enclosures where the panda may be housed, including any off-exhibit areas and panda holding area(s) in relation to other facilities.

- Information to demonstrate the applicant has adequately consulted with other facilities that have successfully held pandas in recent years, that the applicant has facility features that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers and veterinarians, have had proper training and experience to care for pandas.

- Approval of facilities by the Chinese or appropriate authority in the lending country, if such a stipulation has been made in a contractual agreement.

#### *Transfer of Pandas to Other Entities Within the United States*

Transfer of pandas already in the United States may be allowed as part of a scientific research or research/captive-breeding program but should address all of the considerations noted in this policy. Pandas may be displayed as long as it does not interfere with breeding or research. The proposed recipient of the panda transferred between states will need to apply for and receive an interstate commerce permit under the ESA prior to the transfer since the recipient would potentially gain

financially by having pandas at their facility and/or are being held under a loan (e.g., lease-hold agreement) from China or other lending entity. The proposed recipient of the panda will need to provide all the information required by the ESA, its regulations, and this policy in order for the Service to make its findings prior to issuance of a permit. The Service will facilitate, to the extent possible, the transfer of animals within the United States when it is part of a coordinated research or research/breeding program. If the receiving institution has a panda permit on file with the Service, it can reference the permit number and information in this file, and provide any new information for the Service to review in consideration of an interstate commerce permit. Because applications will be published in the **Federal Register**, the applicant will need to allow at least 90 days for processing. Since transfers must also have the prior approval of the Chinese government or the entity that owns the animals, a permittee must have prior approval of the Service to transfer pandas within a state, and the proposed recipient should address all of the considerations noted in this policy. The number of times an individual panda is transferred within the United States will be closely monitored by the Service to protect the overall health and well-being of the animal.

This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 22, 1998.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 98-23074 Filed 8-26-98; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-921-08-1320-01; NDM 86601]

#### Coal Lease Offering

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of coal lease offering by sealed bid: NDM 86601—Knife River Corporation.

U.S. Department of the Interior, Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107-6800.

Notice is hereby given that the coal resources in the lands described below in Mercer County, North Dakota, will be

offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Knife River Corporation, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181-287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearing have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is \$100 per acre, or fraction thereof. No bid that is less than \$100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

**Coal Offered:** The coal resource to be offered consists of all recoverable reserves in the following-described lands located approximately 2.5 miles south of the town of Beulah, North Dakota:

T. 143 N., R. 88 E., 5th P.M.,  
Sec. 24: NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ,  
S $\frac{1}{2}$ SE $\frac{1}{4}$ .

Containing 360 acres, Mercer County, North Dakota.

There are three principal minable coal seams in the tract. They are the School House, Upper Beulah-Zap, and Lower Beulah-Zap. The tract contains an estimated 6.21 million tons of recoverable reserves.

The School House seam averages 5.8 feet in thickness. Coal quality, as received, averages 6,643 BTU/lb., 36.66 percent moisture, 10.43 percent ash, and 1.24 percent sulfur.

The Upper Beulah-Zap seam averages 10.9 feet in thickness. Coal quality, as received, averages 6,776 BTU/lb., 38.52 percent moisture, 5.94 percent ash, and 0.49 percent sulfur.

The Lower Beulah-Zap seam averages 3.5 feet in thickness. Coal quality, as received, averages 6,717 BTU/lb., 38.27 percent moisture, 7.32 percent ash, and 0.76 percent sulfur.

**Rental and Royalty:** A lease issued as a result of this offering will provide for payment of an annual rental of \$3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of the coal mined by surface methods and 8.0 percent of the value of the coal mined by underground methods. The value of the

coal shall be determined in accordance with 43 CFR 3485.2.

**Date:** The lease sale will be held at 10 a.m., Wednesday, September 30, 1998, in Side B of the Conference Room on the Sixth Floor of the Granite Tower Building at the above address.

**Sealed Bids:** Sealed bids must be submitted on or before 9 a.m., Wednesday, September 30, 1998, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107-6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

**SUPPLEMENTAL INFORMATION:** Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: August 20, 1998.

**John E. Moorhouse,**

*Acting State Director.*

[FR Doc. 98-22974 Filed 8-26-98; 8:45 am]

BILLING CODE 4310-DN-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-910-08-1020-00]

#### New Mexico Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of council meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on October 1 and 2, 1998 at the Amberley Suites Hotel, 7620 Pan American NE, Albuquerque, NM 87109.

The meeting on Thursday October 1 starts at 8:30 a.m., and the meeting on Friday October 2 starts at 8:00 a.m. The agenda for the RAC meeting includes agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting on July 30 and 31, 1998 in Taos, NM., BLM Field Office Managers presentations,