Public Comments Solicited

We solicit comments on the draft economic analysis referred to in this document, as well as on any other aspect of the proposed critical habitat designation for the five Tennessee and Cumberland River Basin mussels. In order to accommodate the public hearing and public review of the draft economic analysis, we are now closing the comment period for both the proposed rule and the draft economic analysis on December 5, 2003. All previous comments and information submitted during the comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AI76'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our Tennessee Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We particularly seek comments concerning:

(1) Are there other types of activities, such as habitat conservation plans, related to this proposed designation of critical habitat whose costs are not reflected in the draft economic analysis? If so, please provide as much information as possible to enable us to identify those activities and address those costs.

Author

The primary author of this document is Rob Tawes (*see* **ADDRESSES** section).

Authority

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

Dated: September 29, 2003.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–25184 Filed 10–3–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF49

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Tibetan Antelope as Endangered Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the 12-month finding that a petition to list the Tibetan antelope (*Pantholops hodgsonii*) as endangered throughout its range pursuant to the Endangered Species Act of 1973, as amended (Act, or ESA), is warranted. The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we herein propose to list the Tibetan antelope as endangered, pursuant to the Act. This proposed rule, if made final, would extend the Act's protection to this species. The Service seeks data and comments from the public on this proposal.

DATES: Comments and information may be submitted until January 5, 2004. Public hearing requests must be received by November 20, 2003.

ADDRESSES: Submit comments, information, and questions to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203 USA; or by fax, 703–358–2276; or by e-mail, *Scientificauthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

To request copies of the regulations regarding listed wildlife or inquire about prohibitions or permits, write to: Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 USA. Alternatively, you may contact us by telephone, 703–358–2104 or toll free at 1–800–358–2104; or by fax, 703–358–2276; or by e-mail, *Managementauthority@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address; or by telephone, 703–358–1708; or by fax, 703–358–2276; or by e-mail, *Scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the U.S. Fish and Wildlife Service (Service) to make a finding on whether a petition to list, delist, or reclassify a species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition (this finding is referred to as the ''90-day finding'') and published promptly in the **Federal Register**. If the 90-day finding is positive (*i.e.*, the petition has presented substantial information indicating that the requested action may be warranted), Section 4(b)(3)(A) of the Act requires the Service to commence a status review of the species if one has not already been initiated under the Service's internal candidate assessment process. In addition, Section 4(b)(3)(B) of the Act also requires the Service to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing actions (this finding is referred to as the ''12-month finding''). The 12-month finding is also to be published promptly in the **Federal Register**.

Natural History

The Tibetan antelope (*Pantholops hodgsonii* sensu Wilson and Reeder 1993) is a medium-sized bovid endemic to the Tibetan Plateau in China (Tibet Autonomous Region, Xinjiang/Uygur

Autonomous Region, and Qinghai Province) and small portions of India (Ladakh) and western Nepal (although there is no evidence that they still occur in Nepal). The Tibetan antelope is also known by its Tibetan name ''chiru.'' These two common names will be used interchangeably in this document.

Adult males are characterized by long, slender, antelope-like black horns. Although the Tibetan antelope has been placed in the subfamily Antilopinae, recent morphological and molecular research indicates that it is most closely allied to the goats and other members of the subfamily Caprinae (Gentry 1992, Gatesy *et al.* 1992, both cited in Ginsberg *et al.*1999). The species is uniquely adapted to the high elevation and cold, dry climate of the Tibetan Plateau (Schaller 1998). The sexes segregate almost completely during the spring and early summer (May and June), when adult females and their female young migrate north to certain calving grounds and return south by late July or early August, covering distances as far as 300 kilometers (km) each way (Schaller 1998). Seasonal migrations constitute a critical aspect of the chiru's ecology and help define the ecosystem as a whole.

Previous Federal Action

On October 6, 1999, the Service received a petition from the Wildlife Conservation Society (Joshua R. Ginsberg, Ph.D., Director, Asia Program, and George B. Schaller, Ph.D., Director of Science) and the Tibetan Plateau Project of Earth Island Institute (Mr. Justin Lowe, Director) requesting that the Tibetan antelope (*Pantholops hodgsonii*) be listed as endangered throughout its entire range. The petition was actually dated October 7, 1999, but was received via e-mail the previous day.

On April 14, 2000, the Service made a positive 90-day finding on the Wildlife Conservation Society/Tibetan Plateau Project petition (*i.e.*, the Service found that the petition presented substantial information indicating that the requested action may be warranted). That finding was published in the **Federal Register** on April 25, 2000 (65 FR 24171), thereby initiating a public comment period and status review for the species. The public comment period remained open until June 26, 2000. We received 272 comments during the public comment period, including 1 from a range country government (People's Republic of China), 4 from non-governmental conservation organizations, 41 (letters) from individuals, 86 (postcards) from individuals, and 1 letter-petition signed by 140 individuals. All comments fully supported an endangered listing for the Tibetan antelope, although only five comments provided any new information on the status of or threats to the species. Particularly important among these was the letter from Mr. Zhen Rende, Director General of the CITES Management Authority of China, in which he expressed strong support for an endangered listing for the Tibetan antelope under the ESA.

In our 90-day finding, we stated that we had used all relevant literature and information available at that time (April 2000) on current status of and threats to the Tibetan antelope. Since then, a limited amount of relevant new information has become available as a result of the status review and public comment period. That information has been incorporated, as appropriate, in this 12-month finding.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species on the basis of one or more of the five factors described in section 4(a)(1). These factors and their application to the Tibetan antelope are as follows:

A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Tibetan antelope are endemic to the high Tibetan Plateau. Most of their range lies above 4,000 meters (m) in elevation, but they occur at elevations as low as 3,250 m in parts of Xinjiang (Schaller 1998). They prefer flat to rolling topography and alpine steppe or similar semiarid plant associations (Schaller 1998). They occasionally occur in alpine desert steppe habitats, at least on a seasonal basis, but are not known to have occurred in Qinghai's Qaidam Basin (Schaller 1998). They do not occur in alpine meadow areas receiving greater than 400 millimeters (mm) annual precipitation (Schaller 1998).

Although the current east-west distribution of chiru appears much as it was described a century ago by Bower (1894, cited in Schaller 1998), that distribution is now fragmented where previously it was continuous. Schaller (1998) determined that chiru no longer occur, or occur in low numbers, in several areas where early explorers noted them to be abundant. The current range is divided into two areas: A northern one of about 490,000 square kilometers (km2) and a central one of about 115,000 km2. Distribution between the two areas was continuous until recent decades, and there may still be rare contact near the western end. However, current chiru populations in the central Chang Tang of the Tibet Autonomous Region are highly fragmented and occur in small, scattered herds. The range has also contracted in eastern Qinghai Province (Schaller 1998).

Changes in Chinese government policy have led to increasing human development and activity on the Tibetan Plateau, including transportation development (roads and railways), resource extraction activities (minerals, oil, and gas), permanent settlement of traditionally nomadic or semi-nomadic pastoralists, and rangeland use for domestic livestock grazing (Ginsberg *et al.* 1999). These activities have already adversely modified or destroyed Tibetan antelope habitat in some areas and threaten to modify or destroy habitat over a large area in the near future.

Nomadic and semi-nomadic pastoralists have grazed a mix of domestic livestock (primarily sheep, goats, yaks, and some horses) on the Tibetan Plateau for millennia in relative harmony with the environment (Miller 2000, 2002). These livestock can directly and indirectly compete with Tibetan antelope for available vegetation resources, both within and outside established protected areas (Schaller 1998, Ginsberg *et al.* 1999). In recent decades, as a result of government policy changes, excessive livestock grazing has degraded or destroyed chiru habitat in some areas, and could eventually lead to the destruction of some portion of the species' range through physical displacement and/or overgrazing, which may contribute to desertification (Ginsberg *et al.* 1999, Miller 2001). Recent changes in Chinese Government policy have resulted in an attempt to permanently settle many Tibetan pastoralists, with a resultant proliferation of rangeland fencing on portions of the Plateau (Miller 2000, Los Angeles Times 2002). Livestock frequently graze year-round in antelope habitat, and increasingly, nomads are fencing for winter-spring grazing and fodder production, thereby excluding chiru from the fenced grassland resources. Tibetan antelope need open range to survive (Miller and Schaller 1997). Enclosure and conversion of grasslands disrupt antelope habitat, posing a particular threat in the spring, when weakened chiru are attempting to rebuild their energy reserves, and in the

fall, as antelope are preparing for the harsh winter.

The Tibetan Plateau has extensive gold deposits. Gold mining can have significant impacts on chiru habitat and lead to increased poaching. Mining degrades or destroys chiru habitat through environmental contamination and disturbance, and through pollution of surface waters [U.S. Embassy, China (USEC) 1996]. Illegal mining activity also opens another avenue for profiting from poaching (USEC 1996). Bleisch (1999) noted that illegal gold mining camps in the Arjin Shan Reserve in Xinjiang have served as bases for poachers and have provided them with essential logistical support and access. Without this support, poachers would have a difficult time operating in these remote regions. As a result, ''poaching has already had a profound impact on the chiru population of the reserve. Several areas where calving females formerly congregated are now empty of chiru during the calving season'' (Bleisch 1999). In 2002, Rick Ridgeway and Galen Rowell spent 2 weeks on foot locating an unknown calving ground in the western Chang Tang only to discover that its location was less than 2 days' overland drive from a new gold mine that had sprung up in the previous few months (Ridgeway 2003). They wrote:

> That same dirt road [a 60-mile dirt road built by miners in the previous 3 months] gives us an easy way home, as we cart toward our waiting vehicle. But it could also give poachers easy access to the calving grounds. From the mine we estimate a four-wheel-drive vehicle could make it cross-country in 2 days.... With the chiru's calving grounds suddenly vulnerable, we feel a new urgency to report our findings.

Governments may periodically enforce mining bans in sensitive areas, and have done so in Tibet, but in general it is difficult to control illegal miners over extensive areas of remote lands with poor road access. Tibet has reserves of many other valuable minerals, among them uranium, copper, and cesium, and mining of these minerals may also impact chiru habitat and lead to poaching.

Oil exploration and some production have commenced within the chiru's range, and pose threats of destroying habitat; polluting the environment with toxic production chemicals, effluents, and emissions; increasing disturbance levels; and increasing the incidence of poaching by drawing additional settlers into the region (Ginsberg *et al.* 1999). In 2001, Chinese researchers announced the discovery of a potentially huge oil and gas deposit, extending over 100 km in length, in the Qiangtang Basin of the Tibet Autonomous Region (Global Policy Forum 2001). The deposit could potentially produce hundreds of millions of tons of oil.

Construction of the Qinghai-Tibet Railway, currently in progress, threatens to destroy important Tibetan antelope habitat, and, perhaps more importantly, significantly disrupt chiru migration corridors in southwestern Qinghai Province. One news service report mentioned that construction on the railway, the first to link the Tibet Autonomous Region with the rest of China, was temporarily suspended in June 2002 because up to 1,000 migrating chiru were unable to cross the construction area (People's Daily 2002, Xinhuanet 2002a). All activity was stopped and construction workers removed from the area until these animals had passed the construction site. Although the news service report mentioned that ''a passage specially for animals will be set aside when the railway is built, so as to ensure the free migration for wildlife in the locality,'' it is not certain how successful such a passage would be in ensuring freedom of movement for thousands of migrating chiru.

Three contiguous protected areas have been established to protect Tibetan antelope populations and habitat in western China: Chang Tang Nature Reserve (approximately 334,000 km^2 in the Tibet Autonomous Region), Kekexili (aka Kokoxili or Hoh Xil) National Reserve (approximately 45,000 km^2 in Qinghai Province), and Arjin Shan Reserve (45,000 km^2 in Xinjiang Province). A fourth protected area, Xianza Reserve (40,000 km^2 in the Tibet Autonomous Region), also includes some chiru habitat. These reserves are only partially effective in protecting the chiru and its habitat due to a combination of inadequate management, limited enforcement capacity, an influx of settlers, and domestic livestock grazing [International Fund for Animal Welfare/Wildlife Trust of India (IFAW/WTI) 2001]. Miller (1997) has noted that, while many of the protected areas in the Tibetan Plateau region encompass high-elevation rangelands, protected areas at lower grassland elevations are scarce. It has been difficult for reserve staffs to keep poachers and illegal gold miners out, a fact that prompted the Qinghai Provincial Government in late 1999 to close the Kekexili Reserve to all activities that were not expressly authorized in advance by the State Forestry Administration (SFA) (China Daily 1999).

The Chang Tang Reserve staff lacks the funding, experience, personnel, and equipment to adequately prevent chiru poaching and other threats to the species (SFA 1998). Formerly nomadic pastoralists are establishing settlements within the Chang Tang Reserve, and immigrants from other parts of the Plateau are moving into protected areas. Increased human presence, whether temporary nomadic aggregations or permanent human settlements, can adversely affect Tibetan antelope habitat and be a detrimental disturbance factor.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are no accurate estimates of Tibetan antelope numbers from the past, although the few early western explorers who ventured onto the Tibetan Plateau noted the presence of large herds in many areas (Schaller 1998). For example, Rawling (1905, cited in Schaller 1998) noted: ''Almost from my feet away to the north and east, as far as the eye could reach, were thousands upon thousands of doe antelope with their young * * *. Everyone in camp turned out to see this beautiful sight, and tried, with varying results, to estimate the number of animals in view. This was found very difficult * * * as we could see in the extreme distance a continuous stream of fresh herds steadily approaching; there could not have been less than 15,000 or 20,000 visible at one time.'' Bonvalot (1892), Wellby (1898), Deasy (1901), and Hedin (1903, 1922) made similar observations (all references cited in Schaller 1998). Schaller (1999) has suggested that upwards of 1 million Tibetan antelope roamed the Tibetan Plateau as recently as 40 to 50 years ago. Historical population estimates of 500,000 to 1,000,000 appear to be reasonable based on the limited information available.

Although data on the current population dynamics of chiru are fragmentary and preliminary (Schaller 1998), it is clear that the total population has declined drastically in the past 30 years and is continuing to decline at an alarming rate. Schaller (1998) estimated that the total population in the mid-1990s may have been as low as 65,000–75,000 individuals. More recent estimates from China quote a population figure of 70,000, although the scientific basis for the estimate is not given (Xinhuanet 2002b). If one assumes that the historical population of chiru was 500,000 individuals (an apparently conservative estimate), then the most recent estimate of 70,000 represents a population decline of greater than 85 percent.

The principal cause of the Tibetan antelope population decline has been poaching on a massive scale for the species' fur (wool), known in trade as shahtoosh (''king of wool''), which is one of the finest animal fibers known (Ginsberg *et al.* 1999). Shahtoosh is processed into high-fashion scarves and shawls in the Indian State of Jammu and Kashmir; these items are greatly valued by certain people of wealth and fashion around the world. The international demand for chiru fiber and shahtoosh products is the most serious threat to the continued existence of the Tibetan antelope. Although overall mortality rates are not known, poaching mortality was estimated to be as high as 20,000 individuals per year (SFA 1998). Poaching appears to have declined in some areas in recent years (Xinhuanet 2002a), most likely because there are not enough animals to warrant an organized poaching effort. But Chinese officials acknowledge that ''poaching is still far from being eradicated in China.'' (Xinhuanet 2002c). Annual recruitment of young has been estimated at around 12 percent (Schaller 1998). If one assumes that the total population of chiru is 70,000 individuals and that the population is currently declining at a rate of 1,000–3,500 individuals per year (admittedly a rough estimate, given available data), then the species could go extinct within the next 20 to 70 years. The species' role as the dominant native grazing herbivore of the Tibetan Plateau ecosystem has already been significantly diminished, and its influence on ecosystem structure and function would likely be substantially reduced or eliminated well before the species actually goes extinct.

Although the shahtoosh trade has existed for centuries, killing of Tibetan antelope on a widespread, commercial basis probably began only in the 1970s or 1980s, resulting from an increase in international consumer demand and increased availability of vehicles on the Tibetan Plateau. Schaller and Gu (1994) noted that, with the increasing availability of vehicles beginning three decades ago, ''truck drivers, officials, military personnel and other outsiders also began to shoot wildlife * * *.'' Most chiru poaching takes place in the Arjin Shan, Chang Tang, and Kekexili Nature Reserves by a variety of hunters, including local herders, residents, officials, military personnel, gold miners, and truck drivers (Schaller 1993, Schaller and Gu 1994). Organized, large-scale poaching rings have developed in some areas. Poachers always kill Tibetan antelope to collect their fiber. No cases of capture-and-release wool collection are known, nor is naturally shed fiber collected from shrubs and grass tufts, as is often claimed (primarily by people within the shahtoosh industry). Poachers shear the hides, and collect and clean the under-fur of the antelope, or sell the hides to dealers who prepare the shahtoosh (Wright and Kumar 1997).

Schaller speculated that, during the 1980s and 1990s, tens of thousands of chiru were killed for their wool (Ginsberg *et al.* 1999). One chiru carcass yields about 125–150 grams (gm) of fiber. In the winter of 1992, an estimated 2,000 kilograms (kg) of wool reached India, and consignments of 600 kg were seized (and released) in India during 1993 and 1994 (Bagla 1995, cited in Ginsberg *et al.* 1999). This amount alone represents 17,000 chiru. In October 1998, 14 poachers in the Tibet Autonomous Region were convicted of collectively killing 500 chiru and purchasing 212 hides, and were sentenced to 3 to 13 years imprisonment (Xinhua 1998, cited in Ginsberg *et al.* 1999). The largest enforcement action to date within China, involving several jurisdictions and dubbed the ''Hoh Xil Number One Action'' by Chinese authorities, resulted in the arrest of 66 poachers and the confiscation of 1,658 chiru hides in April and May 1999 (Liu 1999, cited in Ginsberg *et al.* 1999). The IFAW/WTI (2001) report lists 77 known seizures of chiru hides, raw shahtoosh, and finished shahtoosh scarves. Recent documented seizures have been of 39 kg of raw fiber in March 2001 along the Tibet-Nepal border (IFAW/WTI 2001) and 80 shahtoosh shawls in New Delhi in March 2002 [Wildlife Protection Society of India (WPSI) News 2002]. Most recently, a consignment of 211 kg of raw shahtoosh was seized by wildlife officials in Delhi in early April 2003 (A. Kumar, WTI, *pers. comm.* with K. Johnson, Division of Scientific Authority, April 6, 2003). This quantity of raw wool represents the killing of almost 1,800 chiru.

Shahtoosh is smuggled out of China by truck or animal caravan, through Nepal or India, and into the State of Jammu and Kashmir in India. This is in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as well as domestic laws of the countries involved. The shahtoosh industry in the Srinagar region of Jammu and Kashmir is controlled by a wealthy, influential group of 12 to 20 families (Wright and Kumar 1997). There are about 100 to 120 family-run manufacturing operations that employ upwards of 20,000 people who prepare, weave, and finish the raw shahtoosh into scarves and shawls (IFAW/WTI 2001). The scarves are sold throughout India and smuggled abroad in violation of Indian law, CITES, and domestic legislation in many of the importing countries (Wright and Kumar 1997). Shahtoosh products have been made in Jammu and Kashmir for centuries, but the current high levels of poaching are a result of consumer demand in the West, including the United States.

Chiru are also killed for their horns (used in traditional medicinal practices), hides, and meat (Ginsberg *et al.* 1999), although these uses are secondary to the use of fiber.

C. Disease or Predation

Schaller (1998) documented Tibetan antelope mortality caused by disease and predators such as the wolf (*Canis lupus*), snow leopard (*Uncia uncia*), lynx (*Lynx lynx*), brown bear (*Ursus arctos*), and domestic dog (*Canis familiaris*). He suggested that wolf predation may at one time have been a substantial mortality factor for chiru, particularly on the calving grounds. At the present time, neither disease nor predation is considered to threaten or endanger the species in any portion of its range. However, one or both of these factors may become more significant as populations decline and become increasingly fragmented because of other mortality factors.

D. Inadequacy of Existing Regulatory Mechanisms

The Tibetan antelope was listed in Appendix II of CITES in 1975; it was transferred to Appendix I in 1979. All three countries that comprise the species' natural geographic range—China, Nepal, and India—are CITES Parties. The only reservation ever held on the species was taken by Switzerland in 1979 and withdrawn in October 1998. The Tibetan antelope is protected at a national level by China, Nepal, and India.

In China, the chiru is a Class 1 protected species under the Law of the People's Republic of China on the Protection of Wildlife (1989), which prohibits all killing except by special permit from the central government. Although China has expended considerable effort and resources in an attempt to control poaching, it has been unable to do so (SFA 1998) because of the magnitude of the poaching, the extensive geographic areas involved, and the high value of shahtoosh, which gives poachers great incentive to continue their illegal activities. On several occasions, China has appealed to other governments and organizations to eliminate the demand for and

production of shahtoosh products, most recently at the 1999 International Workshop on Conservation and Control of Trade in Tibetan Antelope held in Xining, China, in October 1999 and in a Resolution adopted at the 11th Meeting of the Conference of the Parties to CITES in Kenya in April 2000 (Resolution Conf. 11.8). China re-iterated its commitment to Tibetan antelope conservation at the 12th Meeting of the Conference of the Parties to CITES in Santiago, Chile, in November 2002 (Resolution Conf. 11.8 Rev. COP12 and Decision 12.40).

In Nepal, the chiru is listed as an endangered species under Schedule I of Nepal's National Parks and Wildlife Conservation Act (1973) (Wright and Kumar 1997). Smugglers use Nepal as a transit route from China to India (Government of Nepal 1999), and recent investigations by WWF Nepal Program and TRAFFIC India have documented the routes used. Although Nepal has made some effort to stop the illegal trade, including the confiscation of several shahtoosh shipments, it has been unable to eliminate or control the trade. This has, in part, resulted from the lack of CITES-implementing legislation at a national level (Government of Nepal 1999). In its national report to the International Workshop on Conservation and Control of Trade in Tibetan Antelope in October 1999, the Government of Nepal indicated that it had recently prepared CITES-implementing legislation, which was awaiting approval by the Government (Government of Nepal 1999). That legislation apparently had not yet been enacted as of the 46th Meeting of the CITES Standing Committee (SC) in March 2002 (SC46 Doc. 11.1).

In India, the chiru is listed on Schedule I of the Wildlife Protection Act (1972), which prohibits hunting and trade in any part of the species (Wright and Kumar 1997). The northern Indian State of Jammu and Kashmir has a separate wildlife act, The Jammu and Kashmir Wild Life Protection Act (1978) (J&K Act), which is independent of national law. Chiru are listed on Schedule II of the J&K Act. Trade in Schedule II species, including shahtoosh, is permitted under certain conditions. The J&K Act specifies that state permission is required to possess Schedule II wildlife products, that unlicensed dealers are prohibited from selling these products, and that licensed dealers are required to report to the government any import of Schedule II animal products (Ginsberg *et al.* 1999). Despite the fact that no shahtoosh dealers have ever been licensed (Government of India 1999), the production and sale of shahtoosh shawls and other products have continued in Jammu and Kashmir. On May 1, 2000, in response to public interest litigation filed by the Wildlife Protection Society of India (WPSI), the High Court of Jammu and Kashmir ruled that the shahtoosh trade was in violation of the J&K Act, CITES, and India's Export-Import Policy (IFAW/WTI 2001). The Government of Jammu and Kashmir set about to bring its law into compliance with national legislation and CITES, but that has not yet been completed, and the shahtoosh trade has continued. In May 2001, WPSI and WTI filed a contempt of court petition against the Jammu and Kashmir Government.

Sale of shahtoosh shawls occurs elsewhere in India as well, although prohibited by national law. And, despite the fact that CITES and India's Customs Law prohibit the commercial import and export of shahtoosh and shahtoosh products, raw shahtoosh fiber still enters India and finished products still leave. Indian authorities have made a number of seizures of raw fiber and finished products over the years (Wright and Kumar 1997, Government of India 1999), but, because of the conflict with Jammu and Kashmir, have been unable to end the production of shahtoosh products.

In the United States, the Appendix-I listing for the Tibetan antelope has not been adequate to control the import and sale of shahtoosh products. Although several investigations have revealed a market for shahtoosh products in the United States, the first successful prosecution was in 2001. On May 29, 2001, a Los Angeles-based clothier agreed to pay a $175,000 civil settlement for importing and selling shahtoosh shawls in violation of the ESA and the Lacey Act (Press Release from the U.S. Attorney's Office, District of New Jersey, dated May 29, 2001).

CITES provisions of the Endangered Species Act prohibit engaging in trade contrary to CITES and the possession of any specimen traded contrary to CITES. Thus, once a shahtoosh shawl is successfully smuggled into the United States, enforcement officers must prove the unlawful import in order to seize that shawl. Listing the Tibetan antelope under the Act would prohibit the sale or offering for sale of shahtoosh products in interstate or foreign commerce. This would give U. S. prosecutors additional means of fighting shahtoosh smuggling and the illegal market within the United States.

E. Other Natural or Manmade Factors

Tibetan antelope are known to have died from exposure and malnutrition associated with severe winter weather (Schaller 1998). A blizzard in Qinghai Province killed a disproportionate number of young and yearlings, and resulted in reproductive failure in the following year.

Summary of Findings

The Service has reviewed the information presented in the original petition, the literature cited in that petition, all public comments received, and other available literature and information. On the basis of the best scientific and commercial information available, the Service's 12-month finding is that the petitioned action is warranted. The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we herein propose to list the Tibetan antelope as endangered throughout its range, pursuant to the Endangered Species Act of 1973, as amended. Public comments on this proposed rule will be solicited, as will peer review (*see* subsequent sections of this **Federal Register** document).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate the impact of their actions within the United States or on the high seas on any species that is proposed or listed as endangered or threatened, and on critical habitat of an endangered or threatened species, if any is designated. Because the Tibetan antelope is not native to the United States, we are not proposing to designate critical habitat

for the species, in accordance with 50 CFR 424.12(h). With respect to the Tibetan antelope, no Federal activities, other than the issuance of CITES import and export permits, are currently required. Listing of the Tibetan antelope as endangered under the Act would require the issuance of ESA import and export permits by the Service's Division of Management Authority (DMA), and consequently a consultation with the Service's Division of Scientific Authority (DSA) under Section 7 of the Act prior to the issuance of any permit.

The Act and its implementing regulations set forth a series of prohibitions and exceptions that generally apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), within U.S. territory or on the high seas, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees or agents of the Service, and State conservation agencies. The interstate commerce prohibitions will be especially useful to the Service's efforts to curtail any illegal shahtoosh trade within the United States.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific research purposes, for enhancement of the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Because the Tibetan antelope is listed in Appendix I of CITES, a CITES permit is already required for import to or export from the United States. Under this rulemaking, an ESA permit would also be required for import or export of Tibetan antelopes to the United States. Prior to issuance of a permit, DMA would need to consult with DSA under Section 7 of the Act, as well as make its own determination that the application satisfies the permit-issuance criteria (*i.e.*, research or enhancement of propagation or survival).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be based on the most accurate and up-to-date information possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning biological, commercial trade, or other relevant data concerning any threat to this species. Final action on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final action that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home addresses, and we will honor these requests to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of this proposal in the **Federal Register**. Such requests must be made in writing and be addressed to: Chief, Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended.

Paperwork Reduction Act of 1995

This rule contains no new information collection requirements under the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

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List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17— [AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Antelope, Tibetan (Chiru).	*Pantholops hodgsonii*.	China, India, Nepal	Entire	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: August 21, 2003.

Marshall P. Jones,

Deputy Director, Fish and Wildlife Service.

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