

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend temporary § 165.T13–009 by revising paragraphs (a)(1)(ii) and (a)(2)(ii) to read as follows:

#### § 165.T13–009 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*
- (ii) Enforcement time and date. 9:30 p.m. to 11 p.m. on August 27, 2005.
- (2) \* \* \*
- (i) \* \* \*
- (ii) Enforcement time and date. 9:30 p.m. to 11 p.m. on September 10, 2005.
- \* \* \* \* \*

Dated: August 23, 2005.

**Patrick G. Gerrity,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.*

[FR Doc. 05–17473 Filed 9–1–05; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018–AT95

### Endangered and Threatened Wildlife and Plants; Exclusion of U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are amending the regulations promulgated under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) to add new regulations to govern certain activities with U.S. captive-bred scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*), which have been listed as endangered. For U.S. captive-bred live wildlife, including embryos and

gametes, and sport-hunted trophies of these three species, this rule authorizes certain otherwise prohibited activities that enhance the propagation or survival of the species. International trade in specimens of these species will continue to be subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We have also prepared a final Environmental Assessment with a Finding of No Significant Impact for this final rule under regulations implementing the National Environmental Policy Act of 1969 (NEPA).

**DATES:** This rule is effective October 3, 2005.

**ADDRESSES:** The complete supporting file for this rule is available for public inspection, by appointment, during normal business hours at the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

#### SUPPLEMENTARY INFORMATION:

##### Background

Historically, the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) occupied the same general region of North Africa. Wild numbers of the three antelopes have declined drastically over the past 50 years. The scimitar-horned oryx may now be extinct in the wild. The declines have resulted primarily from habitat loss, uncontrolled killing, and the inadequacy of existing regulatory mechanisms.

Of the three antelope species, the scimitar-horned oryx is the most threatened with extinction. By the mid-1980s, it was estimated that only a few hundred were left in the wild, with the only viable populations known to be in Chad. However, no sightings of this species in the wild have been reported since the late 1980s, and the 2003 *Red List of Threatened Species* shows the status of the scimitar-horned oryx as “extinct in the wild” (World Conservation Union [IUCN] 2003). Captive-bred specimens of this antelope have been placed into large fenced areas for breeding in Morocco and Tunisia. Once animals are reintroduced, continuous natural breeding is anticipated so that wild populations will be re-established.

It is believed that the addax was extirpated from Tunisia during the 1930s, and the last animals were killed in Libya and Algeria in 1966 and 1970, respectively. Remnant populations may still exist in the remote desert areas of Chad, Niger, and Mali, with occasional

movements into Libya and Algeria during times of good rainfall. In the IUCN/SSC Antelope Specialist Group’s *Global Survey of Antelopes*, the addax is considered to be “regionally extinct” (Mallon and Kingswood 2001). The addax is listed as critically endangered by IUCN (IUCN 2003) and probably numbers fewer than 600 in the wild (Noble 2002).

The dama gazelle is able to utilize both semi-desert and desert habitats, and is smaller than the scimitar-horned oryx or addax. Of the three antelope species, the dama gazelle is the least susceptible to pressures from humans and livestock. The original cause of its decline was uncontrolled killing; however, habitat loss through human settlement and livestock grazing, in addition to civil unrest, has more recently contributed to the decline. It is estimated that only small numbers survive in most of the eight countries within its historical range. The dama gazelle has declined rapidly over the last 20 years, with recent estimates of fewer than 700 in the wild. Noble (2002) estimated that the wild population of addax gazelle (*G. dama ruficollis*) is fewer than 200 specimens, the wild population of dama gazelle (*G. dama dama*) is about 500 specimens, and the mhorh gazelle (*G. dama mhorh*) is extinct in the wild. The dama gazelle was previously extirpated from Senegal, but has since been reintroduced, and in 1997, at least 25 animals existed there as part of a semi-captive breeding program (IUCN 2003). The IUCN lists all subspecies of dama gazelles as endangered.

Captive breeding in the United States has enhanced the propagation or survival of the scimitar-horned oryx, addax, and dama gazelle worldwide by rescuing these species from near extinction and providing the founder stock necessary for reintroduction. The scimitar-horned oryx is possibly extinct in the wild; therefore, but for captive breeding, the species might be extinct. Addax and dama gazelle occur in very low numbers in the wild, and a significant percentage of remaining specimens survive only in captivity (71% and 48%, respectively). Captive-breeding programs operated by zoos and private ranches have effectively increased the numbers of these animals while genetically managing their herds (Mallon and Kingswood 2001). Threats that have reduced these species’ numbers to current levels in the wild continue throughout most of the historic range. As future opportunities arise for reintroduction in the antelope range countries, captive-breeding programs will be able to provide genetically

diverse and otherwise suitable specimens.

Some U.S. captive-breeding facilities allow sport hunting of surplus captive-bred animals. Sport hunting of surplus captive-bred animals generates revenue that supports these captive-breeding operations and may relieve hunting pressure on wild populations. For further information regarding background biological information, factors affecting the species, and conservation measures available to scimitar-horned oryx, addax, and dama gazelle, please refer to the November 5, 1991; July 24, 2003; February 1, 2005; and today's **Federal Register** documents discussed below.

### Previous Federal Action

The Mhorr gazelle and Rio de Oro dama gazelle (*G. d. lozanoi*) were listed as endangered throughout their ranges on June 2, 1970 (35 FR 8495). A proposed rule to list all scimitar-horned oryx, addax, and dama gazelle as endangered in the List of Threatened and Endangered Wildlife [50 CFR 17.11(h)] was published on November 5, 1991 (56 FR 56491). We re-opened the comment period to request current information and comments from the public regarding the proposed rule on July 24, 2003 (68 FR 43706), and November 26, 2003 (68 FR 66395). Stakeholders and interested parties, including the public, governmental agencies, the scientific community, industry, and the range countries of the species, were requested to submit comments or information. In accordance with the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities published on July 1, 1994 (59 FR 34270), we selected three appropriate independent specialists to review the proposed rule. The purpose of such peer review is to ensure that our listing decisions for these species are based on scientifically sound data, assumptions, and analysis. The reviewers selected have considerable knowledge and field experience with scimitar-horned oryx, addax, and dama gazelle biology and conservation. Comments were received from all of the peer reviewers. After review of public comments, we prepared a final rule listing the three species as endangered. The final listing rule is being published in the **Federal Register** concurrent with this final rule regarding U.S. captive-bred specimens.

A consistent theme among the comments received from peer reviewers and stakeholders on the proposed rule to list these species as endangered is the vital role of captive breeding in the conservation of these species. One

reviewer noted that 100% of the world's scimitar-horned oryx (including the reintroduced herds that are in enclosed areas), 71% of the addax, and 48% of the dama gazelles are in captive herds. In response to these comments, on February 1, 2005 (70 FR 5117), we announced a proposed rule and notice of availability of a draft environmental assessment to add new regulations under the Act to govern certain activities with U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle, should they become listed as endangered. The proposed rule covered U.S. captive-bred live wildlife, including embryos and gametes, and sport-hunted trophies, and would authorize certain otherwise prohibited activities that enhance the propagation or survival of the species. The "otherwise prohibited activities" were take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce. In the proposed rule, we found that the scimitar-horned oryx, addax, and dama gazelle are dependent on captive breeding and activities associated with captive breeding for their conservation, and that activities associated with captive breeding within the United States enhance the propagation or survival of these species. Comments were accepted until April 4, 2005.

### Summary of Comments and Recommendations

In response to the proposed rule and notice of availability of a draft Environmental Assessment, the Service received 181 comments from the public. Forty-two commenters expressed support for the proposed rule; these commenters included several nonprofit organizations and private individuals. Twenty-five letters of support were variations of a single form letter. Organizations in support of the rule were the American Zoo and Aquarium Association (AZA), Conservation Force (on behalf of over 10 hunting and taxidermy organizations), the Exotic Wildlife Association, Safari Club International, and the Texas Wildlife Association. The form letter stated that the present situation in which ranchers raise and trade these antelopes benefits species conservation, as well as ranchers and hunters. It argued that ranchers will not be able to contribute to antelope conservation if they are "restricted or penalized" for raising and managing these species.

There were 139 commenters who opposed the proposed rule (153 if co-

signers are included); of these, 96 were form letters. Organizations that opposed the rule included the Animal Protection Institute, Defenders of Wildlife, and The Humane Society of the United States (in joint comments representing 22 organizations), and TRAFFIC North America. A law firm provided a more detailed legal commentary on behalf of The Humane Society of the United States and Defenders of Wildlife. The Environmental Law Clinical Partnership submitted comments on behalf of the Center for Biological Diversity and Friends of Animals. The vast majority of the form letters critical of the proposed rule were the result of a press release issued by Friends of Animals on March 8, 2005. All of these comments included a request to list the three antelope species as endangered wherever they occur and not to include an exemption for U.S. ranches.

The following is a summary of the substantive comments and our responses. We have included the "talking points" included in the form letters. We also received comments that were outside the rule's scope. However, responses to some of these comments are included where doing so will help clarify the purpose of the rule.

*Issue 1:* Although supportive of the proposed rule, several commenters suggested broadening the scope of the rule to cover all captive-bred animals from species listed under the Endangered Species Act, wherever they occur. They also requested that we provide an exemption for all parts and products from a sport-hunted specimen, including meat and fur.

*Service Response 1:* This rule covers only U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle based on information regarding the conservation needs and the role of captive breeding for these particular species. We have exempted only specimens of these three species captive-bred in the United States because an important part of the rule is the requirement that any person participating in these activities maintain records and make these records available to Service officials upon request. It is difficult to establish a record-keeping system for captive-breeding operations outside the United States and even more difficult to access records kept outside the United States. In addition, we have limited ability to monitor captive-breeding operations located outside the United States, and we do not have sufficient information on operations outside the United States to determine whether they meet the standards for enhancement of propagation or survival of the species.

We have limited the rule to captive-bred live wildlife, including embryos and gametes, and sport-hunted trophies because live wildlife, embryos, and gametes are essential to propagation and sport-hunted trophies. The sport-hunted trophy includes more than the mounted specimen. It may be raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermied head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.

*Issue 2:* Some commenters suggested that the rule should include criteria for approving individual captive-breeding operations to receive the benefits of the rule. Some commenters suggested including criteria for managing culls on ranches, requiring that all profits from *ex situ* activities be used for *in situ* conservation, and that the regulated operations must participate in conservation plans to establish wild populations in the range countries.

*Service Response 2:* The successful breeding of these three species in captivity in the United States has added significantly to the global populations of these species. Persons may operate under the provisions of the rule only if the purpose of their activity is associated with the transfer of live wildlife, including embryos and gametes, or with sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries. The rule also requires that each person claiming the benefit of the exception maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials. In the final rule we have added two criteria that will ensure that any captive-breeding facility operating under the rule is managing the species to ensure genetic integrity and diversity.

With these criteria, we have determined that U.S. operations that maintain captive-bred specimens of these three species contribute to the enhancement of the propagation or survival of these species, as required under section 10(a)(1)(A) of the Act and 50 CFR 17.22(a)(2). Therefore, the requirements in the rule are adequate and appropriate for these species.

*Issue 3:* One commenter noted that the proposed rule referred to "populations" of captive-bred scimitar-horned oryx, dama gazelle, and addax,

and that this usage is inconsistent with the definition of this term in the applicable regulations.

*Service Response 3:* We agree that captive-held animals may not qualify as populations as defined at 50 CFR 17.3 and have changed the rule accordingly.

*Issue 4:* Some commenters argued that the Service has failed to show how these captive-breeding operations meet the standards for the enhancement of propagation or survival under section 10 of the Act and failed to explain how the Service's approach will benefit wild populations. One commenter argued that the Service offered no support for its statement that hunting of captive-bred animals relieves pressure on wild populations.

*Service Response 4:* The rule discusses how authorizing these activities for U.S. captive-breeding operations enhances the propagation of these species by providing an incentive to continue to raise animals in captivity while managing their genetic diversity, serving as repositories for surplus animals, and facilitating the movement of specimens between breeding facilities. We found that authorizing these activities also enhances the survival of the species by providing an incentive to continue captive-breeding and genetic management programs, which have (in conjunction with foreign captive-breeding operations) prevented the possible extinction of at least one of the species, contributed significantly to the total number of remaining animals of the other two species, and provided founder stock for reintroduction.

As explained in the proposed rule, providing opportunities for sport hunting of captive-bred wildlife may relieve pressure on wild populations of the species by providing an alternative to legal and illegal hunting of animals in the wild.

*Issue 5:* The majority of commenters opposing the proposed rule stated that captive-bred specimens from U.S. ranches do not contribute to reintroduction efforts in range countries, nor are specimens from U.S. ranches needed for these efforts.

*Service Response 5:* In our proposed rule, we mentioned that 30 founder lines of scimitar-horned oryx are represented on at least one ranch that works closely with the Scimitar-horned Oryx Species Survival Plan (SSP). The SSP has provided specimens for reintroduction programs in range countries, and the ranch will contribute specimens when needed. Indeed, one commenter noted that he recently shipped 44 dama gazelles, 32 addax, and 10 scimitar-horned oryx that were captive-bred on U.S. ranches to a private

wildlife sanctuary in the United Arab Emirates, where they will be bred to produce specimens for eventual release in the historic range. The commenter added that the Conservation Committee of the Exotic Wildlife Association is developing a feasibility study to determine how ranchers can best contribute specimens to reintroduction programs. Between October 2003 and March 2005, the U.S. Fish and Wildlife Service's Division of Management Authority issued CITES permits for the export of U.S. captive-bred scimitar-horned oryx (45 specimens), addax (90 specimens), and dama gazelle (70 specimens) to the United Arab Emirates for captive breeding. Most of these specimens were captive-bred on U.S. ranches.

We do not know when or to what degree any particular ranch will be called upon to provide specimens for reintroduction efforts or research necessary to facilitate such programs. However, their continued breeding of these species, and their monitoring and maintaining genetic diversity, will ensure that specimens will be available when the appropriate conditions for reintroduction exist in range countries. As one commenter pointed out, other species that are captive-bred on U.S. ranches, such as Grevy's zebra and blackbuck, have been used in research and reintroduction projects.

*Issue 6:* Several commenters indicated that conservation resulting from ranches that allow sport hunting is not comparable to zoo-based conservation programs. They also noted that the AZA acquisition—disposition policy prohibits AZA institutions from supplying animals to or receiving them from ranches that allow hunting of those species. Thus, they argue that few ranches can cooperate with zoo programs.

*Service Response 6:* Both zoos and ranches may breed and otherwise contribute to the conservation of these species, whether or not there is collaboration. We acknowledge that some ranches breed these species and do not allow hunting of them, whereas others do. However, we have found that ranches that meet the regulatory criteria, whether or not they allow sport hunting of the three antelopes, enhance the propagation or survival of these species. According to several commenters, many ranches, whether offering sport hunts or not, have provided research opportunities to study these species in partnership with academic institutions.

*Issue 7:* Some commenters contended that hunting on U.S. ranches may undermine the conservation of wild specimens by increasing the demand for

trophies or creating incentives for illegal trade.

*Service Response 7:* There is no evidence that sport hunting of captive-bred animals increases poaching of these species in the wild. Sport hunting of these species has been occurring on ranches in the U.S. for more than 20 years. There is no evidence that the availability of captive-bred animals to trophy hunters has contributed in any way to hunting pressure on these species in the wild. Furthermore, the United States and range-country governments, as well as most countries worldwide, are required to strictly regulate trade in these species because the scimitar-horned oryx, addax, and dama gazelle are listed in Appendix I of CITES. Listing in CITES Appendix I requires strict regulation of international movement of these species, which may only be authorized in "exceptional circumstances." With the listing of these three antelopes as endangered under the Act, the regulatory protections will be further strengthened, not reduced, because both CITES and Act regulations will apply. Sport hunting of surplus animals from captive-breeding operations in the United States is anticipated to reduce the incentive for removal of wild animals in their range countries by providing an alternative source of specimens.

*Issue 8:* One commenter stated that ranches that breed specimens select for trophy quality, which may reduce genetic fitness.

*Service Response 8:* We know that 30 founder lines of scimitar-horned oryx are represented on at least one ranch that works closely with the Scimitar-horned Oryx SSP. We have received no indication in the literature or from commenters indicating that breeding programs on ranches have caused a loss in overall genetic variation in U.S. captive-bred antelopes. In addition, we have added criteria to the final rule that will prevent hybridization of species or subspecies and require that all specimens be managed in a manner that maintains genetic diversity.

*Issue 9:* One commenter suggested that surplus captive-bred specimens from ranches should be relocated, not killed.

*Service Response 9:* Although thousands of these animals have been produced in captivity, the number of animals released into the wild has been limited. Reintroduction programs cannot absorb the entire production of captive-breeding operations for logistical reasons and because reintroductions—for almost any mammal—are limited to small groups of animals that can be conditioned and

monitored to ensure their survival. The amount of secure habitat for reintroductions is also a factor limiting the numbers of animals that can be released. In our proposed rule, we stated that some killing of surplus specimens may be necessary to manage captive herds (e.g., to reduce aggression among males) and to finance captive-breeding operations. In addition, the United States does not have the jurisdiction to direct another country in regard to when it should accept animals and when it should release them to the wild.

*Issue 10:* One commenter asserted that the Service cannot propose any exemptions or permits for a species under the Act until the species is actually listed under the Act; in doing so, they argue, the Service has violated its consultation responsibilities under section 7 of the Act.

*Service Response 10:* It was critical that development of a rule that provides an incentive to continue captive breeding of these species proceed concurrently with the determination of their legal status under the Act to ensure that no breeding programs would be disrupted by a final listing determination. This final rule has therefore been released concurrently with the final listing determination to ensure there is no confusion regarding the authority of the Service to regulate such activities for these species. There is no limitation under either the Act or the Administrative Procedure Act for related proposed rulemakings to proceed concurrently to the final rule stage.

After considering all of the effects that would be posed by the proposed rule, we determined that the measures included in the final rule would reduce the threat of extinction to the species by facilitating captive breeding. Therefore, no conference procedure under section 7(a)(4) of the Act is required.

*Issue 11:* One commenter believed that the proposed rule would set a precedent for legal hunting of listed species in captivity.

*Service Response 11:* We disagree. The development of this rule was specific to these three species and included consideration of specific threats, specific conservation needs, and the benefits of captive breeding to all three species. In no way should the development of this regulation for these species under the Act be interpreted as a statement of what regulatory scheme would be appropriate for other listed species also found in captivity within the United States.

*Issue 12:* One commenter argued that we did not establish how conservation efforts for the species would be

hampered by the application of current Act regulatory systems to captive-breeding operations.

*Service Response 12:* The Act does not require a particular regulatory system be used to implement the Act. Rather, the Act requires that authorized activities must meet standards for enhancing the propagation or survival of the species. We have found that the regulatory framework established for the three antelope meets these standards and is the best management scheme to encourage continued captive breeding and management of these species. Similar regulations, the captive-bred wildlife regulations at 50 CFR 17.21(g), have been used as a basis for developing this rule. However, the current regulations do not cover species for which sport hunting is an integral part of management of the species, and they do not provide an authorization for the interstate and foreign commerce of sport-hunted trophies. Thus, the movement of sport-hunted trophies taken for management purposes would be limited unless an Act permit or authorization had been granted. Not requiring each person to apply for a permit or authorization prior to engaging in these activities provides an important incentive to these operations to continue their captive-breeding and management programs.

*Issue 13:* One commenter argued that the Service does not have the authority under the Act to propose this rule for an endangered species.

*Service Response 13:* As explained above, captive-breeding operations within the United States that meet the criteria established by this rule meet the standards for both enhancing the propagation and enhancing the survival of these three species, as shown by the findings for each of the criteria found at 50 CFR 17.22(a)(2). While the Service typically authorizes activities under section 10(a)(1)(A) of the Act on a case-by-case basis through the issuance of individual permits or authorizations, there is no requirement that we may do so only via this process. The requirements for notification and opportunity for public comment under section 10(c) and publication of final determinations under section 10(d) have been satisfied through this rulemaking process.

*Issue 14:* A few commenters asserted that any regulatory scheme that facilitates killing of animals as contributing to conservation is not supported by the law except under extremely narrow circumstances.

*Service Response 14:* Section 10 of the Act does not set absolute limits on the Service's ability to authorize the taking

of an endangered species. In fact, the section specifically states that the Secretary may authorize any act otherwise prohibited under section 9, which includes take. Take includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect an endangered species, or attempt to engage in any such conduct (see section 3(19) of the Act). Section 10(a)(1)(A) does require that any authorized activity must enhance the propagation or survival of the species overall. An example of when take of a listed species benefits conservation is our regulation on the import of sport-hunted African elephant (*Loxodonta africana*) trophies. The African elephant is listed as threatened under the Act. The import of sport-hunted trophies from African countries is only allowed when certain criteria are met, including that "a determination is made that the killing of the animal whose trophy is intended for import would enhance survival of the species" [50 CFR 17.40 (e)(3)(iii)(C)]. When evaluating a hunting program in an African country, Service biologists consider whether revenue derived from the hunt is used to further elephant conservation. These funds have been used to support anti-poaching activities and establish game management areas with important elephant habitat.

*Issue 15:* One commenter opposed the rule because it would deny Act protection to most members of the three species.

*Service Response 15:* This rule does not deny Act protection to most members of the three species. All of the prohibitions under section 9 apply to all animals in the wild. These same prohibitions also apply to any animal captive-bred outside the United States. This regulation applies only to members of the species that were captive-bred within the United States. The comments that noted that many of the animals found in captivity are located in the United States support the Service's determination that U.S. captive-breeding operations have played a significant role in the propagation or survival of all three species and that a regulatory scheme that facilitates the continuation of these activities is appropriate for the species.

*Issue 16:* Many commenters opposed the rule because of their philosophical opposition to trophy hunting or hunting in general. Others expressed concerns regarding "canned hunts."

*Service Response 16:* Hunting has a long history of contributing to conservation in the United States. The Service acknowledges that wildlife populations and habitats have been sustained through the financial

contributions of hunters. The proposed rule authorizes the taking of individual animals, but only if the purpose of the taking contributes to increasing or sustaining captive antelope numbers or to potential reintroduction to range countries. This approach to management has caused captive-bred specimens to proliferate, thus contributing to their propagation and increasing their chances of survival.

#### **Contribution of Captive Breeding to Species Propagation or Survival**

A peer reviewer of the proposed rule for listing the three antelope species as endangered noted that 100% of the world's scimitar-horned oryx population (including the reintroduced specimens that are in enclosed areas), 71% of the addax population, and 48% of the dama gazelle population are in captive herds. Captive-breeding programs operated by zoos and private ranches have effectively increased the number of these animals while genetically managing their herds. International studbook keepers and managers of the species in captivity manage these programs in a manner that maintains the captive specimens as a demographically and genetically diverse megapopulation (Mallon and Kingswood 2001). In the 1980s and 1990s, captive-breeding operations in Germany, the United Kingdom, and the United States provided scimitar-horned oryx, addax, and dama gazelle to Bou-Hedma National Park in Tunisia (Mallon and Kingswood 2001). These animals have become the founding stock of captive *in situ* herds that have grown substantially since 1995. The IUCN Species Survival Commission has proposed that some of the antelopes produced be used to establish other captive-breeding operations within the range countries or, given the appropriate conditions in the wild, for reintroduction. Similar *in situ* breeding programs for future reintroduction are occurring in Senegal and Morocco with captive stock produced and provided by breeding operations outside of these countries.

This rule does not authorize or lead to the removal of any specimen of the three species from the wild. This rule would not affect prohibitions against possession and other acts with unlawfully taken wildlife or importation. This rule only applies to specimens that are captive bred in the United States. Any person who wishes to engage in any act that is prohibited under the Endangered Species Act with a specimen that has not been captive bred in the United States will still need to obtain a permit or authorization

under the Act. The issuance or denial of such permits or authorizations is decided on a case-by-case basis and only after all required findings have been made. The rule contains provisions that will allow the Service to monitor the activities being carried out by captive-breeding operations within the United States to ensure that these activities continue to provide a benefit to the three antelope species. The rule also does not include dead specimens other than sport-hunted trophies or specimens derived from activities that do not meet the criteria.

The probable positive direct and indirect effects of facilitating captive breeding in the United States for the conservation of scimitar-horned oryx, addax, and dama gazelle are exemplified in the research and reintroduction efforts involving the AZA and the Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program. In North America, the AZA manages captive scimitar-horned oryx, addax, and dama gazelle through SSPs. The captive scimitar-horned oryx in North America and Europe are derived from two captures that occurred in Chad in 1963 and 1966. Members of the Scimitar-horned Oryx SSP are faced with three challenges (Antelope Taxon Advisory Group 2002b): They must manage the captive herds to maximize the genetic contributions of founder stock; second, they must find solutions for disposition of surplus animals given the limited holding space among SSP members; and third, they must find facilities that can house individual males or bachelor herds. Only through inter-institutional collaboration among members, such as the exchange of live specimens or gametes to maintain genetic diversity, can these challenges be surmounted. In one example, 30 founder lines are represented at 1 ranch that works closely with the SSP. Since typical oryx herds consist of 1 male and 10–30 females, there will always be a need to manage nonbreeding males. Although the SSP consists mostly of AZA-accredited zoos, ranches can serve as repositories for surplus animals or assist in gene pool management. These partnerships also provide opportunities for behavioral and other research in spacious areas found in some zoos and ranches that can be used in forming and preparing groups of animals for reintroduction.

Members of the Addax SSP have also been involved in translocating animals for captive breeding and release in Tunisia and Morocco. Animals held by members of the SSP are included in an international studbook for this species

that includes addaxes in zoos and private facilities worldwide (Antelope Taxon Advisory Group 2002a). The dama gazelle North American studbook also includes zoos and ranch participants worldwide. Some of the specimens bred in zoos originated from ranch stock (Metzler 2000).

Both zoos and ranches may breed and otherwise contribute to the conservation of these species, whether or not there is collaboration. According to several commenters on the proposed regulation, many ranches, whether offering hunts or not, have provided research opportunities to study these species in partnership with academic institutions.

A commenter on the proposed regulation noted that he recently shipped 44 dama gazelles, 32 addax, and 10 scimitar-horned oryx that were captive-bred on U.S. ranches to a private wildlife sanctuary in the United Arab Emirates, where they will be bred to produce specimens for eventual release in the historic range. We note that between October 2003 and March 2005, the U.S. Fish and Wildlife Service's Division of Management Authority issued CITES permits for the export of U.S. captive-bred scimitar-horned oryx (45 specimens), addax (90 specimens), and dama gazelle (70 specimens) to the United Arab Emirates for captive breeding. Most of these specimens were captive-bred on U.S. ranches. We do not know when or to what degree any particular ranch will be called upon to provide specimens for reintroduction efforts or research necessary to facilitate such programs. However, their continued breeding of these species, and their monitoring and maintaining genetic diversity, will ensure that specimens will be available when the appropriate conditions for reintroduction exist in range countries.

We are not aware of any negative direct or indirect effects from this rule on wild populations. This rule does not authorize or lead to the removal of any specimen of the three species from the wild. Indeed, many facilities in the United States that breed these species are working with range countries to breed and reintroduce specimens in areas that they have occupied historically. In 2000, the SSIG was formed as a consortium of individuals and organizations interested in conserving Sahelo-Saharan antelopes and their ecosystems (SSIG 2002). The SSIG has members representing 17 countries and shares information on wildlife management and conservation, captive breeding, wildlife health and husbandry, establishment and management of protected areas, and wildlife survey methods. Members are

involved in *situ* and *ex situ* conservation efforts for the scimitar-horned oryx, addax, and dama gazelle. Several of its projects involve the translocation of captive-bred antelopes to range countries for establishment of herds in large fenced breeding areas prior to reintroduction. A commenter on the proposed rule noted that the Conservation Committee of the Exotic Wildlife Association is developing a feasibility study to determine how ranchers can best contribute specimens to reintroduction programs.

The rule does not directly or indirectly conflict with any known program intended to enhance the survival probabilities of the three antelope species. The SSP and SSIG programs work collaboratively with range country scientists and governments. Although the rule does not authorize or lead to the removal of any specimen of the three species from the wild, it may contribute to other programs by providing founder stock for reintroduction or research.

This rule will reduce the threat of extinction facing the scimitar-horned oryx, addax, and dama gazelle by facilitating captive breeding for all three species in the United States. Based on information available to the Service, captive breeding in the United States has contributed significantly to the conservation of these species. Scimitar-horned oryx may be extinct in the wild; therefore, but for captive breeding, the species might be extinct. Addax and dama gazelle occur in very low numbers in the wild and a significant percentage of remaining specimens survive only through captivity (71% and 48% respectively). Threats that have reduced the species' populations to current levels in the wild continue throughout most of the historic range. As future opportunities arise for reintroduction in the antelope range countries, captive-breeding programs will be able to provide genetically diverse and otherwise suitable specimens. Ranches and large captive-wildlife parks for non-native herds (e.g., Bamberger Ranch, Texas; The Wilds, Ohio; Fossil Rim Wildlife Center, Texas) are able to provide large areas of land that simulate the species' native habitat and can accommodate a larger number of specimens than can most urban zoos. Thus, they provide opportunities for research, breeding, and preparing antelopes for eventual reintroduction.

International consortia of zoos, private owners, researchers, and range country decision makers have acknowledged the need to reduce threats in the range countries (e.g., habitat protection, reduce poaching) of

the scimitar-horned oryx, addax, and dama gazelle. They also recognize that, but for captive breeding, it would be difficult, or in some cases impossible, to restore the species in the wild, particularly for species that have become extinct in the wild.

One way this rule will reduce the threat of extinction is by allowing limited sport hunting of U.S. captive-bred specimens to facilitate captive breeding of all three species. Given the cost of establishing and maintaining a large captive breeding operation and the large amount of land that is required to maintain bachelor herds or surplus animals, it is difficult for many private landowners to participate in such endeavors. An incentive to facilitate these captive breeding operations and ensure that genetically viable herds are available for future reintroduction programs is to allow the limited hunting of captive-bred specimens. Most of the available land for captive-held specimens is owned by private landowners (ranchers). In Texas, the number of ranched scimitar-horned oryx went from 32 specimens in 1979 to 2,145 in 1996; addax increased from 2 specimens in 1971 to 1,824 in 1996; and dama gazelle increased from 9 specimens in 1979 to 369 in 2003 (Mungall 2004). These increases were due mostly to captive breeding at the ranches supplemented with some imported captive-bred founder stock. Limited hunting of captive-bred specimens facilitated these increases by generating revenue for herd management and the operation of the facility. Ranches also need to manage herds demographically (i.e., appropriate age and gender numbers and ratios) and genetically (i.e., maximize genetic diversity). Such management may include culling specimens, which may be accomplished through hunting. For example, a ranch may need to reduce the number of adult males to achieve the necessary sex ratio for establishing a polygamous breeding group and facilitating the typical breeding behavior of the species. Hunting also provides an economic incentive for private landowners such as ranchers to continue to breed these species and maintain them as a genetic reservoir for future reintroduction or research, and as a repository for excess males from other captive herds. Sport hunting of U.S. captive-bred specimens may reduce the threat of extinction of wild populations by providing an alternative to legal and illegal hunting of wild specimens in range countries. Thus, hunting of U.S. captive-bred specimens of these species

reduces the threat of the species' extinction.

The movement of live U.S. captive-bred specimens, both by interstate transport and export, is critical to the captive-breeding efforts to manage the captive herds as well as provide animals for reintroduction. Between October 2003 and March 2005, CITES permits were issued for the export of U.S. captive-bred scimitar-horned oryx (45 specimens), addax (90 specimens), and dama gazelle (70 specimens). Studbook managers may recommend that specimens be exchanged among breeding institutions to achieve management goals for genetic or other reasons. These institutions may be separated by State (within the United States) or national boundaries. Zoos in Germany, for example, exchange specimens with zoos in the United States, as recommended by the International Studbook Keeper. The need to quickly move U.S. captive-bred specimens among breeding facilities is reflected in this rule by allowing such movement without requiring a separate ESA permit or authorization.

The opinions or views of scientists or other persons or organizations having expertise concerning these species have been taken into account in this rule. The comments received from peer reviewers on our proposed rule for listing the three antelopes as endangered alerted us to the vital role that captive breeding, whether at zoos or ranches, is playing in species recovery and reintroduction. Comments on the proposed new regulation provided some information. More general comments are addressed in the summary of comments. Thus, the opinions or views of scientists or other persons or organizations having expertise concerning the three antelope species and other germane matters have been considered in the development of this rule.

The U.S. expertise, facilities, and other resources available to captive-breeding operations have resulted in such a high level of breeding success that the SSIG estimated that there are 4,000–5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle in captivity worldwide, many of which are held in the United States. The U.S. specimens have resulted from very few wild-caught founders that have been carefully managed to increase the numbers of specimens and maintain genetic diversity. Husbandry methods are shared by participants in regional and international studbooks through specialist meetings such as the Antelope Taxon Advisory Group meeting held at the AZA Annual Meeting. Such cooperation allows the sharing of

resources among participants of coordinated breeding programs as specimens are moved from one facility to another according to management recommendations. As indicated by the Scimitar-horned Oryx SSP, one of the major issues confronting the captive-breeding community is how to preserve the necessary genetic diversity and manage population surplus, particularly given the space limitations at some facilities. Some private ranches in the United States have contributed to the success of captive-breeding programs by absorbing the surplus specimens produced in zoos so that zoos can utilize available space for more genetically important specimens or the appropriate herd social structure. Ranches have also enlarged the captive populations because they are able to dedicate more space to these species, and therefore house more specimens, than can zoos.

Based on the best available scientific information and comments received from peer reviewers, non-government organizations, and the public, we have determined that U.S. operations that breed scimitar-horned oryx, addax, and dama gazelle have already contributed significantly to the propagation or survival of the three antelope species. Because of the need to facilitate the continued captive breeding of these species in private ranches and zoos, this rule is an appropriate regulatory management provision for scimitar-horned oryx, addax, and dama gazelle captive-bred in the United States. The probable direct and indirect effects of this rule will facilitate activities associated with captive breeding and thus contribute to the propagation and survival of the species. The rule will not, directly or indirectly, conflict with any known program intended to enhance the survival of populations in the wild. By maintaining genetic diversity and providing captive-bred stock for reintroduction efforts and research, captive-breeding operations in the United States are reducing the threat of extinction of the three antelope species. The rule facilitates the functioning of conservation programs, including those organized by the AZA and SSIG, and encourages the breeding and management of these antelopes. In fact, the rule provides an incentive to continue captive breeding. Therefore, we find that authorizing certain otherwise prohibited activities for U.S. captive-bred live wildlife, including embryos and gametes, and sport-hunted trophies of the three species that meet specific criteria enhances the propagation and survival of the species.

#### Endangered Species Act 10(d) Finding

The Service may grant exceptions under subsections (a)(1)(A) and (b) of the Act only if it finds and publishes the findings in the **Federal Register** that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the Act. Based on the comments received from captive-breeding operation representatives demonstrating their commitment to the continued enhancement of the propagation and survival of the scimitar-horned oryx, addax, and dama gazelle, we find that the exceptions in this rule have been applied for in good faith.

We also find that the rule will not operate to the disadvantage of these species. In fact, it will benefit them by assisting in their rescue from near extinction and providing the founder stock necessary for reintroduction. The scimitar-horned oryx is possibly extinct in the wild and therefore, but for captive breeding, the species might be extinct. For addax and dama gazelle, they occur in very low numbers in the wild, and a significant percentage of remaining specimens survive only in captivity (71% and 48%, respectively). Captive-breeding programs operated by zoos and private ranches have effectively increased the numbers of these animals while genetically managing their herds. As future opportunities arise for reintroduction in the antelope range countries, U.S. captive-breeding programs will be able to provide genetically diverse and otherwise suitable specimens.

Section 2 of the Act defines the purpose of the Act as providing a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, providing a program for the conservation of such endangered species and threatened species, and taking such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in paragraph 2(a) of the Act. One of the stated policies of the Act is for all federal agencies to seek to conserve listed species and use their authorities in furtherance of the purposes of the Act. In section 3, the term "conservation" means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." The definition specifically

includes propagation and transplantation as methods that can lead to the recovery of listed species, both of which are components of captive breeding of the three antelope species. As discussed above, the rule provides incentive to U.S. captive-breeding operations that will ensure continued propagation of genetically diverse specimens of these three species, which can serve as a reservoir for future reintroductions and assist in research. Therefore, we find that this rule is consistent with section 2 of the Act.

#### Description of This Rule

We are amending 50 CFR 17.21 by adding a new paragraph (h), which will apply to U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle. The provision allows for the take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce of U.S. captive-bred live scimitar-horned oryx, addax, or dama gazelle, including embryos and gametes, and sport-hunted trophies, as long as certain criteria are met.

Any exports of such specimens must meet the marking and reporting requirements for export [50 CFR 17.21(g)(4) and part 14], general permit requirements and conditions (50 CFR part 13), and all CITES requirements (50 CFR part 23). Each specimen to be re-imported must be uniquely identified by a tattoo or other means that is reported on the required documentation. Each specimen at the captive-breeding operation must be managed to prevent hybridization of species or subspecies and must be managed in a manner that maintains genetic diversity.

Each person claiming the benefit of the exception of this rule must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for inspection at reasonable hours set forth in 50 CFR 13.46 and 13.47.

#### Effects of This Rule

With this rule we find that the scimitar-horned oryx, addax, and dama gazelle are dependent on captive breeding and activities associated with captive breeding for their conservation, and that activities associated with captive breeding within the United States enhance the propagation and survival of these species. Therefore, persons who wish to engage in the specified otherwise prohibited activities that meet the criteria for enhancement of the propagation or survival of these

species may do so without obtaining an individual Endangered Species Act permit.

This rule does not authorize any activity for any specimen of the three species from the wild. It also does not affect provisions relating to importation or possession and other acts with unlawfully taken wildlife. In addition, this rule applies only to specimens that are captive-bred in the United States. Any person who wishes to engage in any act that is prohibited under the Endangered Species Act with a specimen that has not been captive-bred in the United States or from a facility that does not meet the criteria of this rule will need to obtain an individual permit under the Act. The issuance or denial of such permits is decided on a case-by-case basis and only after all required findings have been made.

This rule does not affect the CITES requirements for these species. Therefore, any import into or export from the United States of specimens of these species would not be authorized until all CITES requirements have been met. See the proposed rule for more information on the application of CITES to these activities. The existing protections under CITES, in conjunction with the new provisions for the species under this rule, create an appropriate regulatory framework that protects populations in the wild, ensures appropriate management of U.S. captive-bred specimens, and provides an incentive for future captive breeding.

#### Required Determinations

A Record of Compliance was prepared for the proposed rule. A Record of Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Without this new regulation, individuals subject to the jurisdiction of the United States would need individual permits to engage in various otherwise prohibited activities, including domestic and international trade in live and sport-hunted captive-bred specimens for commercial purposes. Captive-bred specimens in international trade for noncommercial purposes (e.g., breeding loans requiring export) would have to be authorized through the permit process. This process takes time, sometimes causing delays in moving animals for breeding or reintroduction. Such movements must often be completed within a narrow timeframe and can be further complicated by quarantine requirements and other logistics. We note that the economic effects of this rule do not rise to the level of

“significant” under the following required determinations.

#### Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action. The rule will not have an annual economic impact of more than \$100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This rule will reduce the regulatory impacts on captive-breeding operations that breed the endangered scimitar-horned oryx, addax, and dama gazelle because it provides exemptions to certain prohibitions of section 9 of the Act that would otherwise apply to businesses and individuals under U.S. jurisdiction. The exemptions to the prohibitions of the Act provided by this rule will reduce economic costs of the listing. The economic effect of the rule is a benefit to the captive-breeding operations for the three antelopes because it allows the take and interstate commerce of captive-bred specimens. The rule, by itself, will not have an annual economic impact of more than \$100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule does not create inconsistencies with other Federal agencies' actions. Thus, no Federal agency's actions are affected by this final rule.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule will not raise novel legal or policy issues. The Service has previously promulgated species-specific rules for other endangered and threatened species, including other rules for captive-bred specimens.

#### Regulatory Flexibility Act

To assess the effects of the rule on small entities, we focused on the exotic wildlife ranching community in the United States because these are the entities most likely to be affected by the rule. We determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it allows for the continued breeding of the species and trade in live specimens, embryos, gametes, and sport-hunted trophies of the three antelopes. An initial Regulatory Flexibility Analysis was not required.

Accordingly, a Small Entity Compliance Guide was not required. This rule reduces the regulatory impact, because without this rule all prohibitions of section 9 of the Endangered Species Act would apply (*i.e.*, take; export; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce).

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule would reduce certain regulatory obligations and will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A Small Government Agency Plan is not required.

#### Takings

In accordance with Executive Order 12630, this final rule does not have significant takings implications. By reducing the regulatory burden placed on affected individuals resulting from the listing of the three antelopes as endangered species, this rule will not affect the likelihood of potential takings. Affected individuals will have more freedom to pursue activities that involve captive-bred specimens without first obtaining individual authorization.

#### Federalism

In accordance with Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not

unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

#### Paperwork Reduction Act

The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Numbers 1018-0093 and 1018-0094. This rule does not impose new reporting or recordkeeping requirements on State or local governments, individuals, businesses, or organizations. We cannot conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

Council on Environmental Quality regulations in 40 CFR 1501.3(b) state that an agency "may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making." We drafted an environmental assessment for the proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA). A final environmental assessment was prepared based on comments received and a Finding of No Significant Impact was prepared.

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

#### Executive Order 13211

We have evaluated this final rule in accordance with E.O. 13211 and have determined that this rule will have no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### References Cited

- Antelope Taxon Advisory Group. 2002a. Addax Fact Sheet. American Zoo and Aquarium Association. <http://www.csew.com/antelopetag>.
- Antelope Taxon Advisory Group. 2002b. Scimitar-Horned Oryx Fact Sheet. American Zoo and Aquarium Association. <http://www.csew.com/antelopetag>.
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Antelope Specialist Group. IUCN, Gland, Switzerland and Cambridge, UK. Viii + 260 pp.

Metzler, S. 2000. Addax Gazelle *Gazella dama ruficollis* North American Regional Studbook: December 31, 1999 Update. Disney's Animal Kingdom: Orlando, Florida.

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Noble, D. 2002. Overview and status of captive antelope populations. Third Annual Sahelo-Saharan Interest Group Meeting, p.41 SSIG (Sahelo-Saharan Interest Group) 2002. Third Annual Sahelo-Saharan Interest Group Meeting Proceedings. Available from S. Monfort, Chair SSIG, National Zoological Park, Smithsonian Institution: Washington, DC.

#### Author

The primary author of this notice is Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

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

#### Regulation Promulgation

■ Accordingly, we hereby amend part 17 of subpart C, 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. Amend § 17.21 by adding paragraph (h) to read as follows:

#### § 17.21 Prohibitions.

\* \* \* \* \*

(h) *U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle.* Notwithstanding paragraphs (b), (c), (e), and (f) of this section, any person subject to the jurisdiction of the United States may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live wildlife, including embryos and gametes, and sport-hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:

(1) The purpose of such activity is associated with the management or

transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;

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

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

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

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

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

(7) Each person claiming the benefit of the exception of this paragraph (h) must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.

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

Dated: August 25, 2005.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-17432 Filed 9-1-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AI82

#### Endangered and Threatened Wildlife and Plants; Final Rule To List the Scimitar-Horned Oryx, Addax, and Dama Gazelle as Endangered

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status for scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) throughout their ranges, pursuant to the Endangered Species Act of 1973, as amended (Act). The best available information indicates that the causes of decline of these antelopes are (1) habitat loss through desertification, permanent human settlement, and competition with domestic livestock, and (2) regional military activity and uncontrolled killing. These threats have caused the possible extinction in the wild of the scimitar-horned oryx and the near-extinction of the addax in the wild. All three species are in danger of extinction throughout their ranges. Accordingly, we are listing these three antelopes as endangered.

**DATES:** This final rule is effective on October 3, 2005.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours in the office of the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 (telephone, 703-358-2104; fax, 703-358-2281).

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Scientific Authority, at the above address; by telephone, 703-358-1708; by fax, 703-358-2276; or by e-mail, [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The scimitar-horned oryx stands about 47 inches [in, 119 centimeters

(cm)] tall and weighs around 450 pounds [lb, 204 kilograms (kg)]. It is generally pale in color, but the neck and chest are dark reddish brown. As the name suggests, adult animals possess a pair of horns curving back in an arc up to 50 in (127 cm) long. The scimitar-horned oryx once had an extensive range in North Africa throughout the semi-deserts and steppes north of the Sahara, from Morocco to Egypt.

The addax stands about 42 in (106 cm) tall at the shoulder and weighs around 220 lb (100 kg). It is grayish white and its horns twist in a spiral up to 43 in (109 cm) long. The addax once occurred throughout the deserts and sub-deserts of North Africa, from the Atlantic Ocean to the Nile River.

The dama gazelle stands about 39 in (99 cm) tall at the shoulder and weighs around 160 lb (72 kg). The upper part of its body is mostly reddish brown, whereas the head, rump, and underparts are white. Its horns curve back and up, but reach a length of only about 17 in (43 cm) long. The dama gazelle, the largest of the gazelles, was once common and widespread in arid and semi-arid regions of the Sahara.

Of the three antelope species, the scimitar-horned oryx has been the most susceptible to the threats it faced. In Egypt, the species became extinct over a century ago (M. Riad, Minister of State for Environmental Affairs, *in litt.*, August 2003). By the mid-1900s, intensive killing had extirpated the scimitar-horned oryx from Morocco (Fact sheet submitted to the Service by M. Anechoum, Secretary General, Department of Waters and Forests in the Campaign Against Desertification, Morocco, pers. com., September 2003). By the mid-1980s, it was estimated that only a few hundred were left in the wild, with the only viable populations known to be in Chad. There have been no reported sightings of this species in the wild since the late 1980s. The World Conservation Union (IUCN) has declared the species extinct in the wild (IUCN 2003). In 1983, it was listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Captive-bred specimens are being introduced into large fenced areas in Morocco and Tunisia, and these animals may be released into the wild when adequately protected habitat is available (Antelope Taxon Advisory Group 2002b).

It is believed that the addax was extirpated from Tunisia during the 1930s, and the last animals were killed in Libya and Algeria in 1966 and 1970, respectively. The last observation of addax in Egypt was in the 1970s (Riad,