

Evaluation of the Information in the SCI and EWA Petitions

As previously mentioned, SCI requests delisting of the “U.S. captive populations” of the three antelope species based on the assertion that the Service committed “errors” in the interpretation of the best scientific and commercial data available at the time of the 2005 determination to list the scimitar-horned oryx, dama gazelle, and addax as endangered in their entirety. SCI also requests that we “correct the Endangered Species Act listing of scimitar-horned oryx, dama gazelle, and addax to specify that only the populations in the portion of their range outside of the United States are classified as endangered.” EWA requests delisting of the U.S. captive-bred populations of the three antelope species on the basis that the Service’s interpretation of the original data for the listings was also in error, and in addition asserts that captive-bred animals of the three species that are held in the United States are recovered.

Essentially, both petitioners request separate designation, or legal status, under the Act for captive animals held within the United States from that of members of the same taxonomic species located in the wild or held in captivity elsewhere around the world.

The Service completed its listing determination for the three antelope species in 2005. In that rulemaking process, the Service found that a differentiation in the listing status of captive U.S. specimens of these antelopes was not appropriate (70 FR 52319). While the Service does not have an absolute policy or practice with respect to whether it can differentiate the listing status of captive and wild specimens of the same species, we generally have included wild and captive animals together when listing species. Nevertheless, petitioners assert that the treatment by the Service of chimpanzees in 1992 warrants similar treatment now for these antelope species. In that 1992 rulemaking, the Service uplisted chimpanzees in the wild to endangered, while retaining the prior status of threatened for those in captivity. That 1992 action preceded the adoption by the Service and the National Marine Fisheries Service of the Distinct Population Segment (DPS) Policy (61 FR 4722, February 7, 1996) and case law that has developed under the DPS Policy, such as the decision in *Alesea Valley v. Evans* (161F. Supp. 2d 1154 (D.OR)). Nonetheless, because the Service has no absolute policy or practice as to whether it can differentiate the listing status of wild

and captive specimens of the same species, a reasonable person could conclude that the petitioned action may be warranted.

Finding

We find that the two petitions contain substantial information that the petitioned action may be warranted. It is important to note that the “substantial information” standard for a 90-day finding is in contrast to the Act’s “best scientific and commercial data” standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the captive antelopes covered by these petitions, which is conducted following a 90-day finding that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (“substantial 90-day finding”). Because the Act’s standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will conclude that the Service has the discretion to treat such specimens differently, or that the petitioned action is warranted. It does, however, mean that the Service will be able to consider this question in more depth and detail. In addition, the Service will be able to consider the question of the appropriate status of U.S. captive members of the three antelope species at the same time as it considers the status of captive chimpanzees in completing a separate 12-month finding on a petition to eliminate the separate ESA classification of captive and wild chimpanzees. The substantial 90-day finding on the chimpanzee petition was published September 1, 2011 (76 FR 54423), and a document to reopen the comment period was published November 1, 2011 (76 FR 67401).

With this substantial 90-day finding, we are initiating a rangewide status review of the captive antelopes covered by the petitions, and, once it is completed, we will make a finding on whether delisting the U.S. captive specimens of any of these species is warranted. This finding fulfills any obligation under 16 U.S.C. 1533(b)(3)(A) and the regulations at 50 CFR 424.14(b).

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

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Author

The primary authors of this notice are the staff of the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: September 12, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120425420-2420-01]

RIN 0648-BB92

Fisheries of the United States; National Standard 1 Guidelines; Reopening of Public Comment Period

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

ACTION: Advance notice of proposed rulemaking; reopening of public comment period.

SUMMARY: NMFS is reopening the comment period on the Advance Notice of Proposed Rulemaking (ANPR) published on May 3, 2012, on potential adjustments to the National Standard 1 Guidelines, one of 10 national standards for fishery conservation and management contained in Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act. The current comment period is scheduled to end on September 15, 2012. Because of the importance of NS1 to U.S. fishery management and the complexity of the issues, NMFS feels reopening the comment period will provide for a fuller range of public input on the NS1 Guideline issues. The comment period will close on October 12, 2012.

DATES: The comment period for the ANPR was published on May 3, 2012 (77 FR 26238), and closed on September 15, 2012. The comment period will reopen on September 16, 2012, and remain open through October 12, 2012.

ADDRESSES: You may submit comments on the referenced ANPR, identified by “NOAA–NMFS–2012–0059”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter “NOAA–NMFS–2012–0059” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- Fax: 301–713–1193, Attn: Wesley Patrick.

- Mail: Wesley Patrick; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13436; Silver Spring, MD 20910.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to another address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will

generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Wesley Patrick, Fisheries Policy Analyst, National Marine Fisheries Service, 301–427–8566.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2012, NMFS published an ANPR (77 FR 26238) to provide background information and to request public comment on potential adjustments to the National Standard 1 Guidelines. The ANPR provides the public with a formal opportunity to comment on the specific ideas mentioned in the ANPR, as well as any additional ideas and solutions that

could improve provisions of the National Standard 1 Guidelines.

The comment period on the ANPR was originally scheduled to close on August 1, 2012. NMFS received a request from the Western Pacific Regional Fishery Management Council on behalf of all eight regional councils, to extend the comment period on the ANPR to September 15, 2012. On July 3, 2012, NMFS published a **Federal Register** notice extending the comment period to September 15, 2012 (77 FR 39459). Because of the importance of NS1 to U.S. fishery management and the complexity of the issues, NMFS feels reopening the comment period will provide for a fuller range of public input on the NS1 Guideline issues. NMFS is reopening the comment period and establishing a comment period end date of October 12, 2012.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 14, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs.

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