



## **Exotic Wildlife Association Membership Alert**

In the Exotic Wildlife Association's effort to keep our membership up to date concerning the latest information regarding the "Three Species" (Scimitar Horned Oryx, Addax, and Dama Gazelle) we have received an advanced copy of the new rule that will be posted by the United States Fish and Wildlife Service. I have attached the wording of this final rule with this e-alert. The new rule will take effect 90 days after its publication in the Federal Registry on January 5, 2012. This means that those breeders who currently own one or more of the species will have until **April 4, 2012** to obtain permits or legally sell their animals. This rule will replace the exemption from the provisions of the ESA that was given to these three species in 2005.

I will be meeting with the USFWS Friday in Dallas to discuss the new rule and the requirements for possessing, breeding and carrying out day to day activities managing these three species and will report my findings to you as quickly as I know exactly what the new requirements will be and how the USFWS expects to enforce these new regulations.

Please understand the EWA and other associations are still pursuing legal and legislative remedies that we believe will stop the new regulations from taking effect.

Charly Seale  
Executive Director

**U.S. Fish and Wildlife Service  
News Release  
January 4, 2012**

### **U.S. Fish and Wildlife Service Repeals Regulatory Exclusion for Captive-Bred African Antelope Species under the Endangered Species Act**

The U.S. Fish and Wildlife Service (Service) today announced a final rule to eliminate a regulation that authorized certain otherwise prohibited activities under the Endangered Species Act (ESA) with U.S. captive-bred animals and sport-hunted trophies of three endangered African antelope species - the scimitar-horned oryx, addax and dama gazelle. The regulation being eliminated had excluded these three species from permitting requirements as long as certain conditions were met.

The removal of this exclusion requires anyone in the United States who possesses any of these three antelope species to obtain authorization from the Service if they wish to carry out otherwise prohibited activities, including interstate or foreign commerce,

import, export (including re-export), culling or other forms of take. The Service currently approves such activities for similar ESA-listed captive-bred species on ranches and in zoos under the same authorization process.

If a captive-breeding facility, such as a zoo or ranch, is legally carrying out activities that were previously authorized under the exclusion, they should be able to continue those activities with the proper permit or other authorization.

In 2005, the Service added these three antelope species with native ranges in Africa to the Federal List of Endangered and Threatened Wildlife. The species all inhabit the sparse desert regions of Northern Africa. The dama gazelle and addax are considered critically endangered, while free-ranging populations of the scimitar-horned oryx may no longer exist in the wild. However, these species, particularly the scimitar-horned oryx, breed well in captivity. There are thought to be thousands of these animals in zoos, on game ranches, and in other such facilities in the United States and elsewhere.

Captive breeding in the United States has contributed to the 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. However, many U.S. game ranches offer limited hunting of these species on their lands to manage the size of their populations and remove surplus males.

In general, the ESA prohibits the import or export of any listed species, or its parts or products, as well as sale in interstate or foreign commerce, without prior authorization from the Service. However, in an effort to support captive breeding of these critically endangered species and maintain genetically viable populations, the Service granted an exclusion at the time these species were listed that allowed owners of these animals to continue carrying out breeding and other activities, including interstate commerce and hunting for herd management, without obtaining an individual permit.

The exclusion was challenged in Federal District Court by Friends of Animals and other groups. In 2009, the court remanded the regulation back to the Service, directing the agency to provide opportunities for the public to review and comment when authorizing otherwise prohibited activities - interstate or foreign commerce, import or re-import, export or re-export, or take (other than normal husbandry, breeding, and non-injurious veterinary procedures) - with these listed species, consistent with the ESA.

The Service considered whether there were alternative means to meet the Court's ruling without requiring ranches or other facilities to obtain a permit or other authorization. However, the Service was unable to identify a viable alternative from either internal discussions or its review of public comments.

Consequently, the Service is announcing a final rule eliminating the exclusion of the three endangered African antelope species from certain prohibitions under the ESA. The final rule requires individuals to obtain an endangered species authorization under the currently established ESA regulations by applying for a permit or captive-bred wildlife registration to conduct any prohibited activities.

The final rule will become effective 90 days after its publication in the Federal Register on April 4, 2012.

## **Captive Breeding of Three Foreign Antelope Species Under the Endangered Species Act Background and Q&As**

### **Background:**

In 2005, the U.S. Fish and Wildlife Service (Service) added three species of African antelopes (scimitar-horned oryx, addax, and dama gazelle) to the Federal List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA). In addition, with the listing of all three species as endangered, the Service published a rule excluding these species from permit requirements for activities within the United States, as well as export (including re-export) and re-import, for any specimens that had been captive-bred in the United States (50 CFR 17.21(h)).

This rule allowed holders of these species to continue carrying out activities, such as hunting on a private ranch or game operation, which would not otherwise be allowed under the ESA without a permit.

Soon after the rule was published, Friends of Animals and other groups challenged the exclusion in Federal District Court. In 2009, the court remanded the regulations back to the Service, directing the agency to provide opportunities for the public to review and comment on activities that the Service might authorize with these species. To meet the Court's ruling, the Service has removed the exclusion for captive-bred specimens of these three antelope species.

### **What protections are afforded to foreign species under the ESA?**

In general, as for any listed species, the ESA prohibits the import or export of any listed species, or its parts or products, as well as sale in interstate or foreign commerce, without a permit. The take prohibition applies as well, except for generally accepted animal husbandry practices and other activities outlined in the Service definition of "harassment."

### **What changes will occur in how these three antelope species will be regulated under the Endangered Species Act?**

This action revokes the regulation codified at 50 CFR 17.21(h). Once this rule is removed, individuals who maintain these species must apply to receive authorization under Section 10 of the ESA (50 CFR 17.21 and 17.22) to carry out activities that would otherwise be prohibited, such as interstate commerce, export, and take. The process that would now be required of individuals that hold one of these species is the same process used by those individuals wishing to carry out similar activities with other species listed under the ESA, including other deer and antelopes.

### **What did the exclusion provide?**

The exclusion eliminated the need for permits or other authorizations to conduct otherwise prohibited activities with U.S. captive-bred specimens of these species from, based on the role captive breeding has played in the continued existence of the species. The exclusion did not exempt captive-bred antelopes from the specific permit requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or apply to antelopes bred in captivity in other countries. It also did not apply to any animal taken from the wild.

### **Why was the exclusion put in place?**

Existing U.S. captive-breeding programs have been successful and the Service decided to ease the permitting requirements in recognition of the enhancement provided by

captive breeding to the survival of these species. Captive breeding in the United States has contributed to the 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 efforts. U.S. captive-breeding facilities, such as zoos and ranches, are working with countries such as Tunisia and Morocco to breed and reintroduce the antelopes in the arid North African habitat they historically occupied. As additional opportunities arise for reintroduction, captive-breeding programs will provide genetically diverse and otherwise suitable animals. Ranches and large captive wildlife parks for non-native populations offer tracts of land that simulate the species' native habitat and can accommodate a larger number of animals than can most urban zoos; they also provide opportunities for studying, breeding, and preparing antelopes for eventual reintroduction into the wild in North Africa.

### **Why are the regulations being changed?**

The Court's ruling remanded the rule back to the Service, with instructions to offer opportunities for public notice and comment whenever otherwise prohibited activities with endangered species are authorized. Although the Service had previously excluded these animals from regulation, they are still listed as endangered. In order to best comply with the ruling, the Service decided to revoke the exclusion and include these species under existing permitting regulations.

### **How will the new regulations affect holders of these antelope species?**

If a captive-breeding facility, such as a zoo or ranch, was legally carrying out activities that were previously authorized under the exclusion, they should be able to continue with those activities by obtaining a permit or other authorization from the Service. The removal of this exclusion requires such authorization for interstate or foreign commerce, import, export (including reexport), or culling or other forms of take. The Service does not have jurisdiction over breeding or ownership within a state. Therefore, no authorization is required to simply breed or maintain these antelope species.

### **What is a Final Rule and what does this one include?**

A Final Rule is an official decision or determination made related to an earlier proposed rule. Both the proposed and final rules are published in the Federal Register. For a copy of the final Federal Register notice, visit:

[http://www.fws.gov/international/newspubs/fedregnot\\_list.html](http://www.fws.gov/international/newspubs/fedregnot_list.html)

This Final Rule states that, with the elimination of the regulation at 50 CFR 17.21(h), individuals wishing to carry out otherwise prohibited activities will need to obtain an endangered species authorization under the current ESA regulations by applying for either a permit at (50 CFR 17.22) or captive-bred wildlife registration (50 CFR 17.21(g)), or both.

### **What is the Captive-bred Wildlife Registration?**

In 1979, the Service published the Captive-bred Wildlife (CBW) regulations to reduce federal permitting requirements and facilitate the breeding of endangered and threatened species for conservation purposes by establishing a registration program. Under the CBW program, otherwise prohibited activities, such as interstate commerce, are authorized, but only when the activities can be shown to enhance the propagation or survival of the species. Registrants of the CBW program must provide a written annual report with information on activities including births, deaths, and transfers of specimens.

To learn more about the CBW program, visit <http://www.fws.gov/international/pdf/reg.pdf>.

For a copy of the CBW application, visit here: <http://www.fws.gov/forms/3-200-41.pdf>

**When will the new rule become effective?**

The final rule will become effective 90 days after its publication in the Federal Register on April 4, 2012. A delayed effective date is being provided to facilitate outreach to the affected communities. Several major industry events are occurring in the beginning of 2012 where Service attendance will provide greater communication on the impacts of this rule and will ensure greater compliance by the affected communities. In addition, an extended effective date will allow the affected communities to either legally sell their specimens or to apply for authorization or permits to continue carrying out previously approved activities.

Click [Final Rule](#) to view the language in the final rule from the Department of the Interior Fish and Wildlife Service.