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Enhancement-of-Survival Permits: Background and Status of Proposed Policy

name redacted

Analyst in Environmental and Natural Resources Policy
Resources, Science, and Industry Division

Summary

On August 18, 2003, the Fish and Wildlife Service released a proposed policy that provides guidance on the issuance of *enhancement-of-survival* permits authorized by the Endangered Species Act.¹ The aim of this policy is to broaden consideration of issuing permits for the harvesting and import of foreign endangered species, as an incentive to encourage conservation of the endangered species in the wild. This policy has generated controversy. Some contend that the take of endangered species in foreign countries cannot be controlled and may lead to the reduction of many endangered species. Further, some contend that the proposed policy is vague in describing how funds generated from the harvesting of endangered species will be transferred to conservation programs. The Fish and Wildlife Service and some supporters of the policy contend that limited harvesting of endangered species will create an overall benefit to the species by funding conservation programs to help the species. Currently, the proposed policy is still being considered and no final policy has been issued. This report will be updated as events warrant.

This report summarizes and analyzes a proposed policy for enhancement-of-survival permits for foreign species listed under the Endangered Species Act (ESA; P.L. 93-205; 16 U.S.C. §§1531-1544). The proposed policy is still being considered and no final policy has been issued. This differs from a proposed regulation to revise permit applications for taking endangered species from domestic and foreign areas.² Some have erroneously referred to these policies as one policy.

¹ U.S. Department of the Interior, Fish and Wildlife Service, "Draft Policy for Enhancement-of-Survival Permits for Foreign Species Listed Under the Endangered Species Act," *Federal Register*, vol. 68, no. 159 (Aug. 18, 2003), p. 49512. (Hereafter cited as *Proposed Policy*.)

² U.S. Department of the Interior, Fish and Wildlife Service, "Revisions to the Regulations Applicable to Permits Issued Under the Endangered Species Act," *Federal Register*, vol. 68, no. 175 (Sept. 10, 2003), p. 53327.

Background

Nearly 40% of all species listed under the Endangered Species Act (ESA) have natural habitat ranges outside the United States. Although foreign and domestic species are treated equally in the listing process under the ESA (i.e., use the same biological criteria for listing), most of the conservation provisions listed under the ESA are not applied to foreign species. Some examples include habitat and recovery planning, state grant programs, and those prohibition-of-*take*³ provisions that are limited to actions taken within the United States, territorial seas of the United States, or high seas (i.e., actions committed by persons under the jurisdiction of the United States). The ESA specifically addresses foreign species under §§8 and 8A of P.L. 93-205, as amended. These sections authorize the United States to provide financial assistance, support foreign conservation programs (including participation in multilateral or bilateral agreements), and send technical assistance to help other countries with species listed under the ESA.⁴

The ESA also implements the Convention on the International Trade of Endangered and Threatened Species of Wild Flora and Fauna (CITES). CITES parallels the ESA by dividing its listed species into groups according to the estimated risk of extinction, but uses three major categories, rather than two.⁵ In contrast to the ESA, CITES focuses exclusively on trade, and does not consider or attempt to control habitat loss.

Proposed Policy

According to the Fish and Wildlife Service (FWS), the incentives the United States can use to encourage conservation of foreign species are limited under existing laws and treaties.⁶ One venue for conserving species, according to the FWS proposed policy, is through permits that would allow imports of foreign listed species, or their parts or products.⁷ These permits would allow imports of endangered species into the United States for scientific research and for the *enhancement of survival* of the species in their range country (i.e., country where the population of the species in question exists).⁸ *Enhancement of survival* implies that the import of endangered animals or their parts or products will provide incentives for increasing the survival of the species in its native

³ The term *take* under ESA is defined at 16 U.S.C. §1532 as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” (Harassment and harm are further defined in regulation at 50 C.F.R. §17.3.) Taking is prohibited under 16 U.S.C. §1538.

⁴ For more information on the ESA, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by (name redacted), (name redacted), and (name redacted).

⁵ Under CITES, species are listed in one of three appendices. Species in Appendix 1 are considered “threatened with extinction” and are banned from international trade with few exceptions; species in Appendix II are not necessarily threatened with extinction, but trade must be controlled to avoid exploitation that would threaten their survival; and species in Appendix III are protected in at least one country, which has asked others for assistance in controlling trade.

⁶ *Proposed Policy*.

⁷ *Ibid.*

⁸ See P.L. 93-205, §10(A)1(a).

habitat. For example, if trophy hunters are allowed to harvest a limited number of animals, and if funds generated by their activities (e.g., through permits or taxes) are transferred to a conservation program that supports a population of the same species, then some contend, the limited take of individuals through hunting could enhance the species by providing an incentive for conservation. According to the FWS, the authority to issue these types of permits already exists. However, in the past, the guidelines allowing these permits to be issued have been interpreted narrowly, which has resulted in few permits being issued.⁹ The proposed policy is expected to provide a “new” way of looking at the basis of findings under existing regulations that allow for enhancement-of-survival permits.¹⁰ (The specific guidelines to apply for an enhancement-of-survival permit are found at 50 CFR §§17.22 and 17.32.)

The proposed policy is expected to provide guidance for considering the issuance of enhancement-of-survival permits under §10(A)1(a) of the ESA. The permits would allow imports of foreign-listed species or their parts or products under limited circumstances when a “substantive conservation program for the species [exists] and the import or export [of the species] meets all relevant requirements and resolutions of CITES.”¹¹ Protected species are organized under CITES into three appendices. Species in Appendix I are threatened with extinction and trade in these species is prohibited for commercial purposes. Appendix II contains species not necessarily threatened with extinction, but which require controlled trade to prevent population declines. For species protected in Appendix III, at least one country has requested other countries to assist in regulating trade originating in that country. Under the proposed policy, if a species is listed under Appendix I of CITES, it must meet the CITES requirements for trade to be considered for a permit under this proposed policy. The conservation program must be established and shown to offset the limited take of individual animals through the conservation of the species in the range country. The application process would follow guidelines listed in the current federal regulations and a notice of each application would be published in the *Federal Register*. The applicant must provide information that would allow the FWS to conclude that the species in question would obtain a net benefit from its conservation program if imports of the species or its parts or products are allowed into the United States. Further, “a substantial contribution to the conservation of the species in the wild, through direct or indirect means” must result.¹² It is unclear what the parameters and form of this contribution must be. Decisions on permits would be made on a case-by-case basis for each species.

Several species that could serve as examples of the potential application of the proposed policy are listed in the policy. These species include Morelet’s Crocodile, Straight-horned Markhor, Asian Bonytongue, Wood Bison, and Asian Elephant.

Reaction to the Proposed Policy. Some supporters of the proposed policy believe that the policy is one of the few ways the United States can provide incentives for

⁹ *Proposed Policy*.

¹⁰ Personal communication with Kenneth Stansall, Assistant Director of International Affairs, U.S. Fish and Wildlife Service, U.S. Dept. of the Interior, Washington, DC, Jan. 26, 2004.

¹¹ *Proposed Policy*.

¹² *Ibid*.

conservation in developing countries. Others appreciate the concept of the policy, but would like to have “solid evidence” that trade would actually benefit animals in the wild.¹³ Some environmental groups have responded to this proposed policy with skepticism on its possible effects on endangered species, and contend that the policy is too vague and may spur an increase in smuggling.¹⁴ Further, some groups contend that the policy places too much responsibility on the range country for operating and maintaining conservation programs. The Department of the Interior contends that permits will only be given if a substantive conservation program is in place and is enhancing the survival of the species. The DOI further states that the precedents for these permits already exist for some of the species that are listed as threatened under the ESA and some species that are listed under CITES.¹⁵

¹³ Alan Miller, “U.S. Seeks Looser Rules on Wild Animal Imports,” *The Los Angeles Times* (Oct. 13, 2003).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

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