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***NOAH'S ARK IS
LEAKING***

**The Department of Interior Abandons
International Species Protection**

May 1997

About PEER

Public Employees for Environmental Responsibility (PEER) is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources.

PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Inform** the administration, Congress, state officials, the media and the public about substantive issues of concern to PEER members;
3. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management; and
4. **Monitor** land management and environmental protection agencies.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who advocate environmental protection in a responsible, professional manner.

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About This Report

This PEER white paper documents the almost complete abandonment of international Endangered Species Act protections by the Department of Interior over the past decade and the resulting detriment to global biodiversity.

Noah's Ark Is Leaking is written by scientific staff of the Assistant Directorate for International Affairs of the Fish & Wildlife Service, the very unit charged with foreign species protection. The U.S. Lists of Endangered and Threatened Wildlife and Plants, once the flagship of the worldwide effort to identify and save species from extinction, have become a fragmented relic, testament to the power of international commercial lobbies.

This white paper is the second in a series of reports detailing failure of the Fish & Wildlife Service to implement the letter as well as the spirit of the Endangered Species Act. The first report, **Tarnished Trophies: The Department**

of Interior's Wild Sheep Loophole, spelled out the role played by the Fish & Wildlife Service in facilitating trophy hunting of threatened and endangered species.

The authors of this report choose to remain anonymous not only to avoid further employment retaliation but also to focus attention on the facts and not the identity of the speaker.

In conjunction with this white paper, PEER is formally petitioning the Department of Interior to expand and update the U.S. List of Endangered and Threatened Wildlife so that it reflects the current status of global biodiversity, as required by the Endangered Species Act.

PEER is proud to serve conscientious public employees who have dedicated their careers to faithful execution of the laws protecting this country's and this planet's natural resources.

Jeff DeBonis
PEER Executive Director



I. Executive Summary

The U.S. Lists of Endangered and Threatened Wildlife and Plants were once flagships for the worldwide effort to save that part of nature confronted with extinction. Today U.S. protection of foreign species in jeopardy is a fragmentary relic, controlled by commercial interests. Years of studied inaction by the Department of Interior has left the vast majority of internationally recognized life in peril outside of recognition by the Endangered Species Act (ESA).

The U.S. Fish & Wildlife Service Assistant Directorate for International Affairs (AIA) has converted endangered species operations into a conduit for importation by commercial and sport-hunting interests. Emphasis is now given to delistings, reclassifications, special regulations, and permits that facilitate such importation and other activities that formerly could not be carried out.

The result is a *de facto* moratorium on foreign listings, a posture which flies in the face of the growing global endangered species crisis. The number of mammals around the world recognized as being in jeopardy by scientific authorities is multiplying, nearly tripling in just the past ten years. These endangered animals constitute nearly a quarter of all the world's full species of mammals. If subspecies are added in, the actual number of mammals in jeopardy is much closer to a half than to a fourth of the world's total.

During this explosive decline in world biodiversity, the U.S. List had a net gain of 17 mammals (21 added but 4 delisted), about **one percent of the internationally recognized growth in endangered mammal species:**

- There have been no foreign species added to the ESA lists in the past two years and only 11 listing documents filed in the last decade;
- More time and effort is being expended on petitions to delist and downlist species, with new emphasis placed on processing special regulations and reclassifications in order to facilitate commerce in the animals or their parts;

➤ At a time when international authorities list more than two thousand mammals in all categories of concern the U.S. lists contain only a small fraction of these animals.

These figures collectively reflect the constant pressure on the bureaucracy from commercially and politically oriented constituencies. The Fish & Wildlife Service's AIA continues to concentrate its limited resources on the concerns of special interest groups seeking reduced protection of endangered species while simultaneously ignoring the plight of the many foreign species that warrant increased protection and recognition, including those long under petition.

The fact that ESA foreign species listings are horribly out of date is not a merely academic concern. International treaties contain loopholes which allow continued trade in affected species and the additional teeth of the ESA are often necessary to achieve conservation goals. For example, failure to properly list the African elephant under ESA contributed to a two-thirds drop in population. By contrast and despite earlier international listing, it was the ESA listing of several species of big cats (the tiger, jaguar, cheetah and other spotted cats) which effectively reduced markets and encouraged improved management by host countries.

In October 1996, the World Conservation Union, the largest and most respected species classification organization, issued what Interior Secretary Bruce Babbitt hailed as "the most thorough scientific assessment of the state of the world's wildlife ever undertaken." Regarding this assessment, called the **Red List**, Secretary Babbitt said "It clearly indicates that, unless people of all nations make extraordinary efforts, we face a looming catastrophe of almost biblical proportions... Today's report is a clarion call to take action while we still can."

At the very moment Secretary Babbitt spoke of clarion calls, his own agency was blocking attempts to update the ESA listings so that they conform to the **Red List:**

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- Deadlines for addressing listing petitions are routinely ignored;
- Pretexts are invented to avoid listing. In one instance Fish & Wildlife Service managers argued that because several petitioned species might have already declined to the point of extinction their listing would jeopardize the integrity of the ESA lists;
- Sporadic listing of small groups of species are used to block more substantive listing petitions with “warranted-but-precluded” findings.

An earlier PEER white paper, **Tarnished Trophies**, detailed the dominance of sports hunting groups in manipulating Fish & Wildlife Service to allow the import of Asian wild sheep trophies. The agency’s AIA remains susceptible to such special interest group pressure in part because it lacks any systematic or consistent approach to listing activity, leaving a bureaucratic free-for-all.

PEER has submitted the largest single listing petition in order to bring the ESA list into conformity with the World Conservation Union

Red List. PEER is seeking to add more than 3,700 mammals, birds, reptiles, amphibians, fish and invertebrates to coverage of the Endangered Species Act, citing the most definitive biological compilation ever undertaken together with Secretary Babbitt’s endorsement.

This petition requests that species, subspecies and distinct vertebrate populations classified by the World Conservation Union as critically endangered, endangered or vulnerable be listed by the U.S. as endangered, and that those species classified as conservation dependent and near threatened be listed by the U.S. as threatened. In order to phase in the implementation of this wholesale revision, the PEER petition proposes that all of the proposed species not already listed by the U.S. be listed as threatened and that the appropriate species be upgraded to endangered status as soon as feasible.

PEER’s listing petition, while the largest ever filed, is not without precedent. In 1970, the Fish & Wildlife Service itself added 250 species and subspecies to its List of Foreign Fish and Wildlife and in 1976 added another 159 that had already been listed by international bodies.

II. Role of the Endangered Species Act

Legal Mandate to Protect Biodiversity

Biodiversity. Not even in dictionaries just a few years ago, the word now cries out at us from newspapers, magazines, and radios. We are constantly warned that the diversity of the world's animal and plant life is declining and that something must be done. The obvious first step, before any species can be helped, is to determine and document precisely what is in jeopardy. This is the process of classification or listing of endangered species.

The United States has an extensive legal framework to assist the world's diversity of threatened animals and plants. More than 30 years ago, in October 1966, Congress passed the original Endangered Species Preservation Act. That measure charged the Department of Interior to develop a list of endangered wildlife within the United States and required federal agencies to

take appropriate conservation measures. The Endangered Species Conservation Act of 1969 followed, extending coverage to foreign species and providing substantive controls on importation.

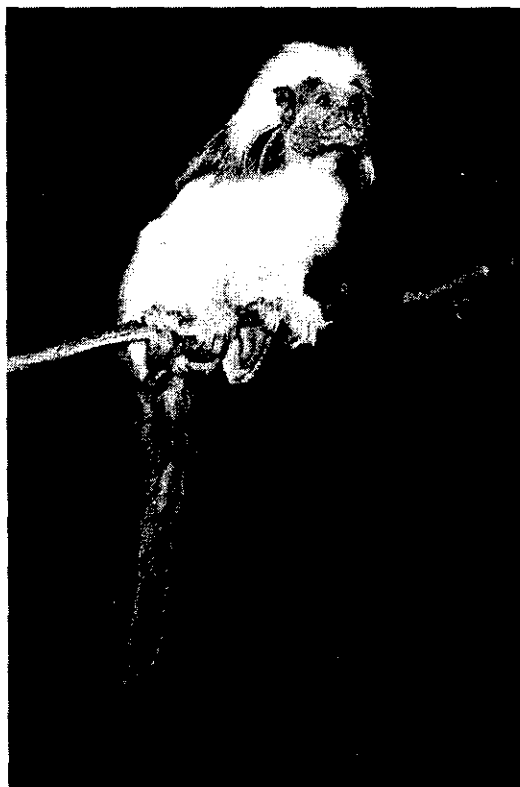
Then came the comprehensive Endangered Species Act of 1973, designed to replace, strengthen, and greatly expand the earlier legislation. Besides instituting strict prohibitions on the taking and harming of all kinds of endangered animals and plants, the new Act set forth series of innovations. Along with listing species already "in danger of extinction," the Interior Department (and the Department of Commerce for certain marine species) was now required to classify "threatened" species, those "likely to become...endangered...within the foreseeable future." In this way problems could be recognized and remedies initiated well before the endangered stage was reached.

In 1973, the Convention on International Trade in Endangered Species of Wild Fauna and Flora or "CITES" commenced. This treaty, now ratified by the United States and 135 other countries, seeks to control the exploitation of wildlife and plants through import and export restrictions. By vote of the member nations, species of concern are placed on either of two major lists: Appendix I for species threatened with extinction and that are or may be affected by trade; and Appendix II, for those that are not necessarily threatened with extinction now but may become threatened unless trade is subject to strict regulation. The next major Conference of the Parties, at which changes to the appendices will be considered, is scheduled for June 1997.

Significance of Listing and the Limits of CITES

The Endangered Species Act of 1973 requires foreign species (including subspecies and distinct vertebrate populations) be treated the same as native U.S. species with regard to addition to the Lists of Endangered and Threatened Wildlife and Plants.

Restrictions on import, export, and interstate commerce remain the most practical and fre-

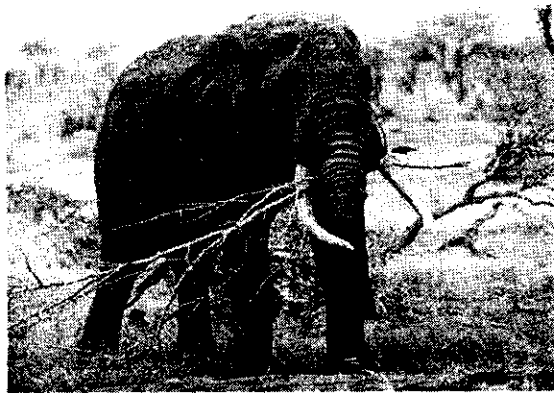


Cotton Top Tamarin. Listed as endangered under the Endangered Species Act.

quently used methods of applying the benefits of the Endangered Species Act to foreign wildlife and plants. Overutilization frequently is a major problem to many species. Listing automatically prevents general importation into the U.S., or provides a basis for special rules controlling such importation, thereby reducing markets and encouraging improved management. One of the most significant measures of this kind came on March 30, 1972, when the tiger, leopard, jaguar, cheetah, and other spotted cats were listed as endangered. Until that time, thousands of those animal skins were being imported annually into the U.S. for the fur market. The listing closed down this activity, helped to stop the worldwide decline of spotted cats, and stimulated international conservation attention to the problem.

In the Federal Register of December 30, 1974, three species of commercially valuable Australian kangaroos were listed as threatened, with special rules providing for limited importation of skins when certain conditions were met. This measure led to development of improved management programs by the Australian states. The listing of the Chilean false larch, a commercially valuable tree, on November 7, 1979, is considered by concerned Chileans to have reinforced their government in taking conservation measures that helped save the species from serious decline.

It sometimes is argued that the controls imposed by CITES are fully adequate for regulation of



African Elephant. Failure by the U.S. to list the African elephant as endangered or to otherwise protect it through special rules opened the way to a commercial assault on the species with devastating results. It is now classified as endangered by the IUCN.

importation to the U.S. and that further measures under the Endangered Species Act are not necessary. On May 12, 1978, the African elephant was listed as threatened by the U.S. However, the species also was then on Appendix II of CITES, and special rules were issued allowing continued commercial importation of ivory pursuant to CITES provisions. The U.S. had been influenced by the argument that such provisions were adequate to regulate the ivory market and that some trade in ivory could encourage conservation. If a species were given a practical value, it was argued, only then will commercial interests and local governments work to protect it.

Such assumptions proved disastrously wrong. Hundreds of millions of dollars worth of ivory and other elephant products continued to pour into the U.S. as part of a vast global commercial assault on the species. Elephant populations fell by nearly two-thirds. In that case, CITES was woefully inadequate and the Endangered Species Act was not effectively utilized. Importation should have been totally prohibited and other measures of the Act to help develop international conservation measures were not engaged for more than another decade.

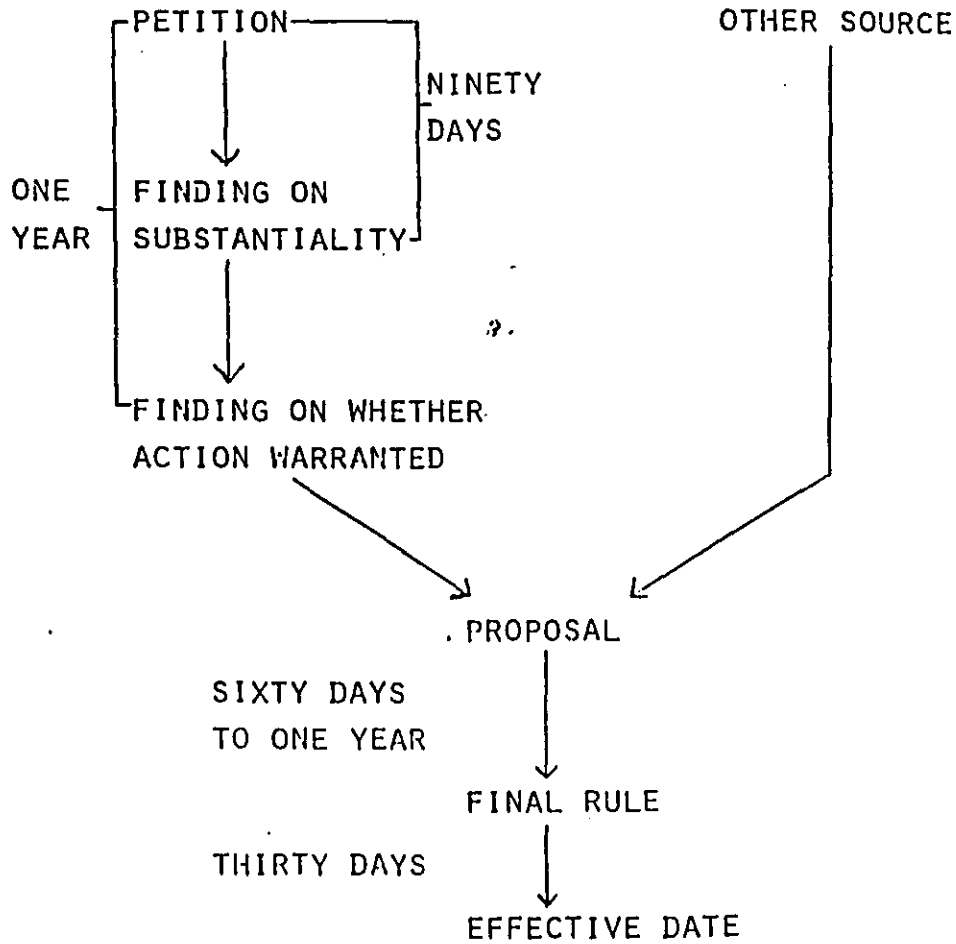
The Endangered Species Act Listing Process

Treaties can be signed, Congress can act, and cabinet members can speak, but the day-to-day work of listing endangered species in the U.S. falls to the internal operations of federal agencies. Listing is a regulatory process, normally requiring both proposed and final rules, a public comment period, and sometimes an initial notice of review.

Outsiders can participate in the process by submitting petitions to list, reclassify, or delist species. Such petitions, however, can set off requirements for additional reviews and findings. The law specifies that a petition be followed within 90 days by a finding as to whether substantial information has been presented, and, if that finding was positive, within one year by another finding as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity.

The "warranted-but-precluded" category is intended to hold deserving species in readiness

ADDING A SPECIES TO THE LIST OF ENDANGERED AND THREATENED WILDLIFE



while additional details regarding their status are worked out, or while listings of higher priority species are developed. In practice, this category has become a way to defer action, a legal limbo where certain species have resided for 20 years or more. These delays have caused embarrassment and lately there has been an increasing tendency to make 90-day findings of nonsubstantial information and one-year findings of "not warranted," rather than keep adding species to the ranks of the warranted-but-precluded.

One effect of this new, more negative approach has been to make it much more difficult for the common citizen, without access to extensive

technical and legal assistance, to participate in the listing process.

If a petition does move all the way to the point of a warranted finding, the Act requires such action be followed "promptly" by publication of a proposed rule to implement the measure. It has in fact been the usual practice to publish warranted findings together with proposed listing rules. The law requires a final decision on listing, under most circumstances, within a year of the proposal. Therefore, even when the law is followed to the letter, more than two years may pass between receipt of a listing petition and the actual listing.

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But the law is commonly not followed. The long and tortuous path, from an initial internal suggestion or outside petition, to actual listing, goes through at least a dozen offices or levels of approval. This route often is repeated at least three times, for the review and petition findings, the proposed rule, and the final

rule. This convoluted path presents abundant opportunities for the delay, weakening and, sometimes, a total roadblock to proposed protective measures. Any technical defect or contrary information, no matter how spurious or self-serving, can hold up listing petitions for years past legal deadlines.

Red Tape Route

CUT
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PORTION

(attach to cover and leave 1 1/2" at top of cover for label)

ENDANGERED SPECIES RULE/NOTICE - ACTION CONTROL SHEET

Please review those portions of interest to you, take the necessary action, and immediately move the package to the next office. This form is a part of the permanent, administrative record. Phone 208-4646 (AES) for messenger pickup. This sheet does NOT constitute the surname record.

ACTION:

RO BIOLOGIST:		TELEPHONE No:			
TE BIOLOGIST:		TELEPHONE No: 703/358-2171			
DATE due FR (if any):		DATE PROPOSAL PUBLISHED:			
Location	Action Office	Action Required	Initial	IN Date	OUT Date
RO	RO/FO Biologist	Surname doc.			
750	ARLSQ	OSA	Surname doc.		
420C	ARLSQ	OWA	Surname doc.		
520	ARLSQ	LE	Surname doc.		
3012	Interior	Assistant Director	Surname doc.		
452	ARLSQ	TE Biologist	Log in Monitor		
3024	Interior	AES	Log - 1		
6560	Interior	(see below **)			
3024	Interior	Solicitor (A/SOL-FW)	Surname doc.		
452	Interior	AES	Log - 2		
224	ARLSQ	TE	Surname doc.		
3024	Interior	POH	Surname doc.		
3024	Interior	DAES	Review doc.		
3024	Interior	AES	Surname and Advise Dir.		
3256	Interior	Director	Sign or Elevate		
452	ARLSQ	TE	Distribute		

OSA - Rev. 1/94

**A/SOL-FW will surname: (1) international or multi-regional species listing rules; (2) critical habitat rules and associated economic documents for multi-regional listings; (3) experimental population rules; (4) special rules; and (5) others when requested.

SPECIAL NOTES ON ROUTING:

Separation of Foreign Species Function

There once was a component of the Fish and Wildlife Service called the Office of Endangered Species. It contained a branch responsible for the listing of both native and foreign species. This branch was greatly expanded following passage of the Endangered Species Act of 1973, mainly through hiring of authorities on various kinds of animals and plants, directly from academia. These professionals treated their role almost as a crusade to compile U.S. Lists that would reflect the true extent and diversity of the

global endangered species crisis. The listing branch of the old Office of Endangered Species was probably among the most unusual units in the federal government. A visitor there might have thought it was a graduate student office, and could have encountered groups of scholars at night or on weekends, voluntarily researching their subjects and assembling documents they thought would aid conservation.

This halcyon period did not last.

Ironically, the greatly strengthened 1973 Act made listing far more difficult, as every newly



Nyala. Listed as "conservation dependent" by the IUCN but not listed by the U.S.

U.S. Fish & Wildlife Service

proposed species was scrutinized for possible political and economic repercussions. While there was an increase in the listing of certain biological groups, particularly plants and native U.S. fish and invertebrates, the classifications of higher vertebrates and all kinds of foreign animals and plants suffered. Efforts by new listing personnel to improve the situation were seen as threats to affected commercial interests and their representatives. During this period, there were no less than three formal attempts to disband the unit. With the assistance of outside conservation groups, the listing branch remained intact for a decade. The opposition to listing efforts finally prevailed and the functions of the unit were transferred to regional Fish and Wildlife Service offices. Many of the staff members, seeing what was

happening, began to leave on their own. Others were forced out with short notice. A few remained and merged into the bureaucracy.

In October 1987 the Office of Endangered Species was completely abolished, although some of its functions with respect to native U.S. species were retained by a rump unit in Washington, D.C. The listing of foreign species was transferred to the Office of Scientific Authority (OSA), which until that time had been involved primarily with providing technical advice related to CITES. OSA was then a component of the Fish and Wildlife Service's former Division of Research, also known as Region 8, but now is part of the Assistant Directorate of International Affairs (AIA).

III. The U.S. Forfeits International Leadership

The Importance of Foreign Listing

The World Conservation Union, also known as the International Union for Conservation of Nature and Natural Resources or IUCN, is the largest and most knowledgeable organization devoted to the classification and protection of endangered species. Based in Switzerland, its Species Survival Commission comprises approximately 100 specialist groups, with over 6,000 members, and a network of cooperating authorities, including the vast resources of Birdlife International (also known as the International Council for Bird Preservation or ICBP). Recently the Commission issued the 1996 IUCN Red List of Threatened Animals. More than just a list of names, it is an inch-thick book showing how newly developed analytical standards of jeopardy apply to the world's wildlife.

In an October 3, 1996 statement, U.S. Secretary of the Interior Bruce Babbitt said of the new IUCN Red List:

"This report...is probably the most thorough scientific assessment of the state of the world's wildlife ever undertaken. It clearly indicates that, unless people of all nations make extraordinary efforts, we face a looming catastrophe of almost biblical proportions. . . . The IUCN's report shows that we must not only continue and accelerate these efforts here at home, but that we must extend them world-wide by offering our expertise and support in conservation activities. Our children and grandchildren should not be deprived of a world where these magnificent and diverse wild animals can still find places to exist and raise their young. Today's report is a clarion call to take action while we still can."

The U.S. Lists of Endangered and Threatened Wildlife and Plants were once flagships for the worldwide effort to save that part of nature confronted with extinction. The 1969 legislation devoted to foreign species, the initial compilation of endangered foreign wildlife of 1970, and the 1976 classifications of CITES species

(see below) are evidence the U.S. Lists were intended for comprehensive coverage of species on a global scale. The very first page of the Endangered Species Act of 1973 (Section 2(a)(4)) suggests the legislation is meant to apply to species covered by CITES and other international agreements. Section 8 of the Act is devoted entirely to the conservation of species in foreign countries, further recognizing America's international leadership role which Secretary Babbitt's statement of October 3, 1996 powerfully reinforced.

In the context of the Act and other mandates, the Interior Department has an institutional responsibility to inform and educate the public, government agencies, the U.S. scientific and conservation communities, and international organizations. The U.S. Lists are regularly published and widely distributed by Interior for informational purposes. Those Lists are what the American public, educators, Congress, and



Hamadryas Baboon. Listed as "near threatened" by the IUCN but not listed by the U.S.

other governmental bodies generally rely upon for assessing the extent and diversity of the global crisis confronting wildlife and plants. They are usually consulted to determine the status of particular species.

Accurate and reasonably complete Lists serve as more than management tools. They become scientific instruments, reflecting that part of the entire natural world that may be disappearing. As such, the Lists can convey an idea of the extent and diversity of this problem to all persons and groups who depend on the Department of Interior for information, and who possibly can help support relevant activities and conservation efforts. By failing to develop the Lists to a meaningful degree, the government reduces the vanishing species crisis in the eyes of potential supporters and thus reduces the amount of help that can be expected.

The "recognition" role of listing is not a triviality. It has been referred to as a key element in a number of listings. For example, in the Federal Register of December 18, 1992, the National Marine Fisheries Service of the Department of Commerce indicated that U.S. classification of the Saimaa seal of Finland "would make it easier to obtain international funds to promote conservation of the species." A recent petition to list the Australian koala pointed out that U.S. classification could stimulate local efforts to save the ecosystem on which that species depends. Every single U.S. listing document contains a version of the following statement: "Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals."

The hard facts are that the great battle to save wildlife and wild places is being lost. The United States is the only nation that has the resources to prevent the "catastrophe" pointed out by Secretary Babbitt. But without fundamental lists that provide a reasonable impression of the extent and diversity of the global endangered species crisis, Congress and ranking administrative officials will not be able to formulate an effective response and allot appropriate amounts in a budget. There will not be any empirical basis on which to establish future conservation efforts on a worldwide scale.

History of Foreign Listing

The listing of foreign wildlife predates the Endangered Species Act of 1973. It was first authorized by the Endangered Species Conservation Act of 1969. Initial publication of what then was called the "United States List of Foreign Fish and Wildlife" occurred in the Federal Register of June 2, 1970. The approximately 250 animals covered therein still constitute nearly half of all currently listed foreign species. This extensive inventory of 27 years ago demonstrated an apparent intent to go far beyond native wildlife and immediate U.S. trade interests in recognition of the endangered species problem. It comprised a great diversity of animal life, including the volcano rabbit, Mexican prairie dog, several rare freshwater fish, and many small birds of little significance in international commerce. It was based on IUCN compilations of the time and information provided by foreign wildlife agencies, individual scientists, and trade sources. It represented a sincere expression of the worldwide conservation situation. In a way, it was the closest the U.S. ever came to heeding Secretary Babbitt's call for action.



Giant Anteater with Young. The giant anteater is listed by the IUCN as "vulnerable" but is not listed by the U.S.

There was never again to be such a massive single listing of foreign species. The only other measure of comparable scope, and the largest single listing pursuant to the current Act, came in the Federal Register of June 14, 1976, in which 159 animal species and subspecies were classified as endangered. These animals were then already on Appendix I of CITES, and a determination had been made that such status generally justified listing pursuant to the Endangered Species Act, unless there was substantive

conflicting information. Even this measure was not actually initiated by the Department of Interior, but came only as a result of a petition from outside conservationists.

Foreign listings did continue with some regularity over the next decade, but efforts to maintain a degree of parity with coverage by international organizations began to fade. In 1980, the International Council for Bird Preservation (ICBP) petitioned Interior to bring its bird coverage up to date by listing all species and subspecies then classified as endangered by the IUCN. The petition was put into the "warranted-but-precluded" category and most of the involved birds remain there to this day, together with many others from another ICBP petition of 1991.

The End of Lists

Since the transfer of responsibility to OSA in 1987, there have been only 11 Federal Register documents adding foreign species to the Lists, an average of barely one a year. The last, a belated effort to deal with some of the birds from the ICBP petitions, was published on January 12, 1995, more than two years ago. Shortly thereafter, in April 1995, came the new Republican-dominated Congress's moratorium on all listings under the Endangered Species Act. A year later the official legislative ban was lifted but there have been no more foreign listings or even proposals and none are imminent. A defacto moratorium seems to have settled over the program.

This does not mean, however, that there is no foreign endangered species activity going on. Much is happening, but in a grotesque parody of the original intent of the Act, the Assistant Directorate for International Affairs (AIA) has converted endangered species operations into a conduit for importation by commercial and sport-hunting interests. From now on, emphasis will be given to delistings, reclassifications, special regulations, and permits that facilitate such importation and other activities that formerly could not be carried out. Plans are being made to hire a new staff specialist, whose role will specifically include work on removal of species from the Lists.

Of the two current U.S. Lists, the one covering plants is still relatively new and has never moved far into the global arena. In contrast, the U.S. List of Endangered and Threatened Wildlife

once closely followed scientific understanding of the world's animal life then recognized to be in jeopardy, and even served as a guide to international conservation efforts. However, as the bureaucracy increasingly convoluted the listing process in the U.S., and as knowledge of the endangered species crisis was expanded by international authorities, the U.S. List began to lose meaning. Today it is hopelessly behind that of the IUCN.

As already noted, U.S. listings of foreign animals began to slacken in the 1970s. The 1976 endangered classification of most CITES Appendix I species was not utilized as an effective precedent. Of the subsequent additions to Appendix I by CITES—including various Pacific island flying foxes, many kinds of smaller whales, the red panda and Asiatic black bear, and numerous parrots and macaws—few were brought under the coverage of the Endangered Species Act. In at least one case, presence of the African elephant on Appendix I was given as an excuse not to classify as endangered.

Nonetheless, as late as 1987 the scope of coverage by the U.S. List of Endangered and Threatened Wildlife was still reasonably close to that of the IUCN, at least with respect to higher vertebrates. It was at that point foreign listing responsibility was turned over to the Office of Scientific Authority (OSA).

The new bureaucratic environment, where foreign species would be the focus of attention, could have been viewed as an opportunity for a push that would bring the U.S. Lists back up to world class level. What really happened, in so far as animals, is revealed by the sad figures in the table. As for the U.S. List of Endangered and Threatened plants, not a single foreign species has been added. There were three on the List in 1987; only those three are there today.

The 1996 IUCN figures in the table actually greatly understate the extent to which the U.S. listings have fallen behind. The 1987 IUCN figures include biological subspecies, in addition to full species, and also animals that then were classified as "rare" and "indeterminate," as well as "endangered" and "vulnerable." In 1996, subspecies were compiled separately and not included in the summarized totals provided by IUCN. In addition, the 1996 publication represented a major new revision in categorization by the IUCN. The "rare" and "indetermi-

A Comparison of Numbers of Animals on the IUCN and U.S. Lists in 1987 and 1996*

	1987		1996	
	IUCN	U.S.	IUCN	U.S.
<i>Mammals</i>	380	280	1,061	290
<i>Birds</i>	338	141	1,057	184
<i>Reptiles</i>	116	73	235	79
<i>Amphibians</i>	27	8	100	9
<i>Fish</i>	168	11	611	11
<i>Invertebrates</i>	1,132	3	1,297	7

- The U.S. figures in both years refer to "endangered" and "threatened" animals, including full biological species, subspecies and populations.
- The IUCN figures for 1987 refer to animals, both species and subspecies, in the categories then called "endangered," "vulnerable," "rare," and "indeterminate." The last classification meant that the species was known to belong to one of the other categories but that there was not enough information to determine which one.
- The IUCN figures for 1996 refer to animals in the categories now called "critically endangered," "endangered," and "vulnerable." Those in the categories "conservation dependent" and "near threatened" are not included, even though those classifications probably correspond closely to U.S. "Threatened." In addition, the 1996 IUCN figures do not include subspecies.
- Therefore, the 1996 comparison greatly understates the disparity between the IUCN and U.S. List.

**This list does not include those animals that occur within the United States.*



Asiatic Black Bear. The Asiatic black bear is still found over a large area but its decline due to habitat loss and relentless hunting to obtain its body parts for their alleged medicinal value. The bear is classified as "vulnerable" by the IUCN but not listed by the U.S.

nate" classifications were eliminated and many of the species that had been so covered were dropped or put into new categories that also are not included in the summarized totals shown in the table. In contrast, U.S. classifications are the same and subspecies are included in both years shown.

Despite its enormous scope, the IUCN assessment is considered complete only with respect to mammals and full species of birds. Limited resources prevented any attempt to cover bird subspecies; indeed, many subspecies included in earlier IUCN lists were dropped. This is a major weakness of the IUCN document. If bird subspecies had been included, the disparity between the IUCN and U.S. would have been far more severe. The IUCN assessments of lower vertebrates and in-

vertebrates are also acknowledged to be far from complete.

Notwithstanding its limitations, the 1996 IUCN Red List represents a degree of expansion effectively placing it in a separate universe from that of the U.S. foreign listings during the past decade. In the past decade the U.S. issued only two final rules on foreign invertebrates, together containing four swallowtail butterflies. No fish at all were listed and only one amphibian. A single document added six reptiles to the List, but those already had been under review prior to the 1987 transfer of foreign listing responsibility to OSA.

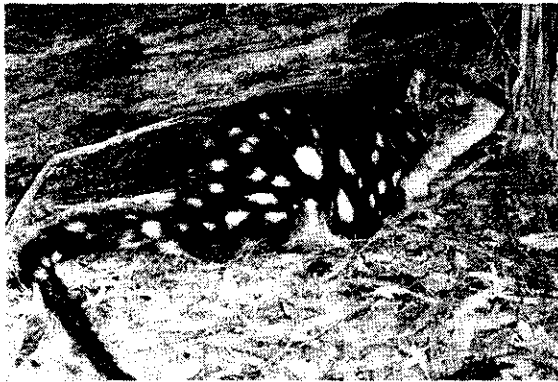
Too Endangered to List

Two final rules, in 1990 and 1991, added seven birds to the U.S. List. However, a subsequent effort to add 30 more birds in a single document ran into trouble. Its story provides some insight into the kind of trivial problems that long have plagued U.S. listing operations. This was the first attempt since the 1987 reorganization to make a substantial contribution towards bringing the U.S. in line with the IUCN. The 30 birds were all of those found in Africa and on associated islands that had been covered by the ICBP petitions of 1980 and 1991; none were of any commercial interest and listing would not have caused hardship for anyone.

A proposed rule to list the 30 birds was drafted within the Department of Interior in April 1992, but its passage along the approval route was



Red or Lesser Panda. Listed as "endangered" by IUCN but not listed by the U.S.



Tiger Cat. The tiger cat, the largest native carnivore remaining on the mainland of Australia, has become rare because of human predation and habitat destruction. It is classified as "vulnerable" by the IUCN but is not listed by the U.S.

soon halted. The problem was not that anyone questioned whether the species were actually in jeopardy, but, ironically, the barrier was an expressed fear that three or four of the birds might already have declined to the point of extinction and their listing might somehow jeopardize the integrity of the List. This concern apparently outweighed the increased integrity that might have come through listing the other 90 percent of the birds. No one was willing to give the go ahead. The requirement of the Endangered Species Act that receipt of a petition be followed by a decision within a year was ignored. The legal deadline eventually would be missed by almost two years.

It was not the first time that listing was blocked because a species was too endangered, and it would not be the last. In a much more publicized case, in the Federal Register of December



Greater Egret. Listed as "threatened" by IUCN but not listed by the U.S.

15, 1994, Interior withdrew a proposal to list a native fish, the Alabama sturgeon, ostensibly because its existence had not been confirmed for a year. The true reason is said to have been fear of upsetting political interests concerned about interference that listing might cause to waterway activity. The sturgeon was found alive shortly after the withdrawal but still has not been listed. In any case, such rediscovery of "lost" species is almost routine. Indeed, almost by definition an endangered species is one that may be so rare that its existence can not be confirmed at a given time. Nearly any issue of Oryx, a quarterly British journal devoted to endangered species, will have one or more accounts of rediscoveries of species not recorded for 20, 50, or even 100 years. The October 1996 issue, for example, reported the



Andean Flamingo. Also listed as "threatened" by the IUCN and not listed by the U.S.

finding of a Chinese plant last collected in 1932, of a large deer in Tibet not scientifically observed since the 1940s, and of two birds on an Indonesian island last seen in the 1920s.

And so it would be with the African birds. One of the questionable species was actually rediscovered in Madagascar as the proposed rule was being drafted. News that two others had been found, in Madagascar and the Seychelles islands, came later. Some evidence that the fourth might still exist also was assembled, but by then opposition had faded. The proposal was finally published on March 28, 1994, nearly three years after receipt of the second ICBP petition on April 30, 1991. Appropriate authorities were notified and a public review was opened. Not one objection or question was received. The final rule, the

largest single U.S. listing of animals since 1976, was issued on January 12, 1995.

Mammal Mayhem

The group of animals best documented by the Department of Interior is mammals. As indicated by the table, even in late 1987 the number of mammals listed by the U.S. was nearly 75 percent of the number listed by the IUCN. However, a decline in activity already was evident and would continue. The U.S. List of Endangered and Threatened Wildlife, or some version thereof, has now been in existence since 1967, almost exactly 30 years. Analysis of the current list and accompanying citations shows that in the first decade (1967-1976), about 200 mammals were listed, including both full species and subspecies, native and foreign. In the second decade (1977-1986), only about 70 mammals were added. And in the third decade (1987-1996), following the reorganization, barely 20 were listed.

It would be comforting to think that this sequence reflects a moderating of the endangered species crisis. Actually, however, the number of mammals around the world recognized as being in jeopardy by scientific authorities is multiplying. As the table shows, the number of non-U.S. mammals listed by the IUCN nearly tripled from 1987 to 1996. These 1,006 species, together with another 90 that do occur in the U.S., constitute nearly a quarter of all the world's full species of mammals. When this fact was announced in conjunction with release of the new IUCN Red List in October 1996, the resulting headlines were shocking.

But the mammal crisis is actually far worse than those statistics indicate. The announced IUCN coverage of 1,096 mammals applies only to full species and only to those in the IUCN categories of "critically endangered," "endangered," and "vulnerable." There are another 75 mammal species in the category "conservation dependent" and 598 in "near threatened." These latter two categories, by definition, cover species that come close to meeting the criteria for vulnerable or endangered listing. A "conservation dependent" species is held to be the direct target of a conservation program, cessation of which would result in the species qualifying for one of the higher categories within five years. A "near threatened" species is one "close to the thresh-



Brush-Tailed Rock Wallaby. Listed as "vulnerable" by the IUCN but not listed by the U.S.

old of the vulnerable category." A vulnerable species, in turn, is one "facing a high risk of extinction in the wild in the medium-term future."

The above general IUCN definition of vulnerable is not very different from the definition of "endangered" in the U.S. Endangered Species Act of 1973, which is "in danger of extinction throughout all or a significant portion of its range." In contrast, the U.S. definition of "threatened" implies a lesser degree of jeopardy and longer time frame: "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

Note that an IUCN "vulnerable" species must already be faced with the risk of extinction in the mid-term future. But a U.S. "Threatened" species does not have to be in danger of extinction, does not even have to be likely to reach that point until the foreseeable future, and has to meet those conditions only in a significant portion of its range. While there has been a casual tendency to treat U.S. "Threatened" as the equivalent of IUCN "vulnerable," an assessment of the actual legal definitions and applications of these terms suggests otherwise. In fact, U.S. "Endangered" appears to overlap largely with IUCN "vulnerable," as well as with IUCN "endangered" and "critically endangered." U.S. "Threatened" evidently is a lower category intended by Congress to cover species before they reach the more serious levels of jeopardy. Therefore, almost by definition, U.S. "Threatened" corresponds closely with the IUCN "near threatened" and "conservation dependent."



Garden Dormouse. Once a common European animal but now declining through habitat disruption. It is classified as "vulnerable" by the IUCN but is not listed by the U.S.

Until the 1973 Act, the U.S. had only the "endangered" and not the "threatened" category. One of the great failings of the subsequent program is the underutilization of the latter classification. The U.S. endangered category now covers 350 native and foreign mammal species and subspecies. But only 27 mammals are listed as threatened. One would logically (and hopefully) expect that the number of species merely approaching the point of being in danger of extinction would be far larger than the number already at that point. Unfortunately, the bureaucracy has never followed the Congressional mandate to point out species on such an approach, through adequate use of the threatened classification. Considering also the above discussion of definitions, it would seem that a reasonable start at getting back to adequate listing coverage would be for the U.S. to extend its threatened classification to those species designated near threatened and conservation dependent by the IUCN.

Even consideration of the species in those two IUCN categories does not provide a complete picture of the crisis confronting the world's mammals. In addition to its recognition of full biological species, the IUCN covers subspecies (or biological races) of some groups and lists those separately. Subspecies were not included in the widely publicized story that nearly a quarter of the world's mammals are threatened with extinction. The IUCN in fact assigns critically endangered, endangered, vulnerable, conservation dependent, and near threatened clas-

sifications to 220 mammal subspecies that are not components of any of the full species of mammals that also are in those categories.

Subspecies should not be trivialized. They include some of the best known and most seriously endangered animals in the world. For example, the IUCN gives no classification at all to the leopard as a full species but does list eight subspecies of North Africa and Asia as endangered or critically endangered. A majority of the native U.S. mammals on the Department of Interior's own List are subspecies and populations, not full biological species. Those include the gray wolf, grizzly bear, Florida panther, Sonoran pronghorn antelope, and woodland caribou.

According to the latest authoritative compilation (Mammal Species of the World, Smithsonian Institution, 1993, edited by D. E. Wilson and D. M. Reeder), 4,629 species of mammals have existed in the world in modern time. As noted, 1,096 of those are classified as critically endangered, endangered, or vulnerable by the IUCN. Another 75 are designated conservation dependent, 598 are near threatened, 3 are regarded as "extinct in the wild," and 86 are considered already fully extinct. If the many subspecies recognized by the IUCN also are added in, the actual number of mammals in jeopardy is much closer to a half than to a fourth of the world's total.

Unfortunately, the U.S. not kept up with documenting this mammalogical crisis in the de-



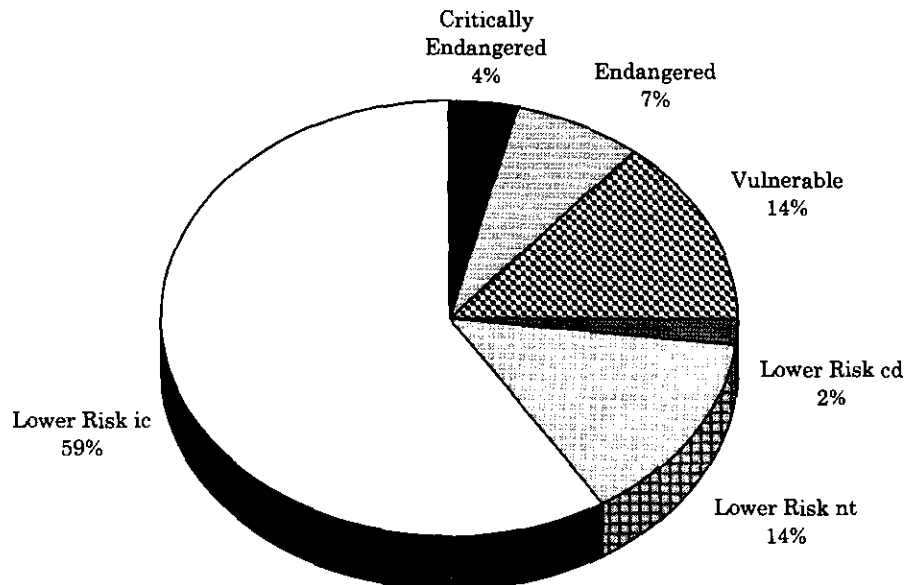
Michoacan Pocket Gopher. Many endangered species are not large, spectacular creatures. The Michoacan pocket gopher is restricted to a few mountainous areas of west-central Mexico. It is rapidly declining as its habitat is converted to agriculture. It is classified as endangered by the IUCN but is not listed by the U.S.

cade since listing responsibility was transferred to OSA. In the 1996 IUCN Red List, the total number of mammal species and subspecies in all categories of concern is 2,078 (not including subspecies that are parts of listed full species). The number of mammals in equivalent IUCN categories a decade earlier was 417. The net increase was 1,661. In the same period the U.S. List had a net gain of 17 mammals (21 added but 4 delisted). That is just about one percent of the IUCN growth. Of the mammals added by the U.S., 12 were native U.S. species or subspecies handled outside of AIA/OSA, and four were seals and dolphins under control of the National Marine Fisheries Service. Only five were foreign species for which AIA/OSA was responsible. Of those five, one was a deer in the Philippines that already had been officially proposed for endangered classification prior to the transfer of responsibility to AIA/OSA, three were Chinese monkeys covered by a single

document, and one, the argali, has seen its listing largely negated by subsequent AIA actions.

The argali, a bighorn sheep of east-central Asia, was classified as endangered or threatened in various parts of its range in 1992, following a long and difficult review process. Special regulations were issued providing for limited importation of sport-hunted trophies from the threatened populations, when certain conditions had been met by the managing authorities. Subsequently, the listing and the regulations successfully withstood two challenging lawsuits by sport hunting interests. Remarkably, however, AIA now is issuing permits for the importation of sport-hunted trophies of the threatened argali from Mongolia and Kyrgyzstan, even though: (1) such permits appear to be in violation of the provisions set forth in the Department of Interior's own regulations covering the spe-

Mammals



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cies; (2) AIA's own contract investigators, as well as other impartial field workers, have stated that the conditions set forth in the permits (supposedly guaranteeing that importation will be beneficial to the species) are not being met; (3) in issuing the permits, AIA is relying entirely on information from parties that have strong political or economic interests in importation; and (4) there is an effective and legally long overdue Department of

Interior proposed rule of April 23, 1993, to reclassify all argali as endangered, and hence issuance of permits is continuing in violation of a longstanding practice of not allowing importation of trophies of species considered endangered. For a fuller discussion of this species see a previous PEER White Paper entitled *Tarnished Trophies: The Department of Interior's Wild Sheep Loophole* (October 1996).

IV. Bureaucratic War of Attrition

With so few foreign species being added to the U.S. List of Endangered and Threatened Wildlife in the last 10 years, it is not obvious where resources earmarked for listing have been going. Admittedly, a few species of great interest and controversy required a considerable proportion of available time and funding. The argali is one example, with the various regulations, reviews, lawsuits, and related activities taking most of the time of the single listing specialist in OSA over a period of several years (such has made all the more tragic the effective nullification of the argali regulations by the AIA/OSA permit process).

The argali measures, however, were at least intended to increase the protection of an exploited species. Other major OSA actions have centered on reduction of controls. In the Federal Register of March 9, 1995, for example, OSA removed the three commercially valuable species of Australian kangaroos from the List of Endangered and Threatened Wildlife. The original listing in 1974 had been the first pursuant to the new Endangered Species Act of 1973 and was responsible for improved controls by the Australian states on hunting and exportation of kangaroo skins and other products. No one denied that there were millions of kangaroos. But one need only recall the story of the American bison to understand how rapidly even the most abundant species can be brought to the point of extinction through over exploitation. Remarkably, the U.S. kangaroo regulations were

working, subject to controlled importation and without complaint from domestic commercial interests. Then, in what could be construed as a vindictive measure against conservation organizations calling for more restrictive controls, the responding report of a U.S. investigation in Australia was provided to a hunting organization, which then simply resubmitted the report as a petition to delist the kangaroos.

There was no practical need to proceed with this action, there were many seriously endangered species that deserved listing, some of which had been subject to warranted-but-precluded petition findings for years, and there remained doubts about the status of the kangaroos. Nonetheless the delisting steamroller was set in motion; a warranted-but-precluded finding would not be enough. There would be extensive series of reviews and published documents, widespread public opposition, additional travels to Australia, and many months of full time staff work. The main question about this affair is not whether the kangaroos qualified for threatened status, but why such a relentless and expensive effort was made to complete the delisting even to the point of rushing the draft proposal through various levels of the Interior Department in the last week before President Clinton was inaugurated in January 1993.

In 1993 and 1996, respectively, OSA also issued regulations reclassifying the Nile crocodile of Africa and the saltwater crocodile in Australia from endangered to threatened and providing for importation of skins; similar measures regarding other crocodylians are under consideration. Such regulations require considerable time and intensive work, which translates into money. Regardless of whether the species can sustain the degree of exploitation involved, it is unclear why OSA is putting its limited funds for endangered species work into such efforts, while thousands of seriously jeopardized species around the world are in need of help and usually have not yet even been recognized through U.S. listing. Many of the IUCN specialist groups have developed detailed action plans that point out potential projects desperately in need of funding. This work is being ignored by the U.S. at the same time strenuous



Gray Kangaroo. Delisted by the U.S. in response to a petition from a hunting organization.

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effort is being made to officially facilitate importation of commercially valuable species.

The above should not be construed to mean that OSA never has committed a major part of its listing resources toward increasing protection. In the Federal Register of March 12, 1990, in response to a petition from Jane Goodall and other conservationists, the Department of Interior issued regulations reclassifying both the chimpanzee (in the wild) and pygmy chimpanzee from threatened to endangered and strengthening controls on captive animals. This measure was not without controversy and delay, and the prestige of Jane Goodall may have had much to do with its ultimate success, but nonetheless it represents the last great example of U.S. leadership in global endangered species classification. Our recognition of the proper status of the two chimpanzee species came six years before the published IUCN endangered designations in 1996.



Pygmy Chimp. Due to the prestige of Jane Goodall, the pygmy chimpanzee was uplisted to endangered by the U.S., one of the very few examples where the Endangered Species Act was ahead of the IUCN.

Shortly thereafter, another opportunity for the U.S. to take such a leading role bogged down. In February 1989, amidst worldwide publicity over the devastation of the African elephant by ivory poaching, the Department of Interior had been petitioned to reclassify the species from threatened to endangered. More than two years later,

in the Federal Register of March 18, 1991, Interior finally responded with a proposal. However, under pressure from sport-hunting and political interests, the countries of South Africa, Zimbabwe, and Botswana already had been exempted from prospective endangered coverage. Finally, in the Federal Register of August 10, 1992, Interior announced that it would not proceed with an endangered classification in any part of Africa. A number of excuses were offered but the actual and unstated reason may have been that an endangered classification might make it difficult to justify importation of sport-hunted trophies and continued legal interstate commerce in ivory already in the U.S.

One excuse used for not classifying the elephant as endangered was that the species already was adequately protected by being on Appendix I of CITES. This rationale is exactly opposite of the legal interpretation that led to the mass U.S. endangered listing of CITES Appendix I species in 1976 (see above). Within months of the elephant withdrawal, when OSA listed three foreign swallowtail butterflies (Federal Register of January 14, 1993), one of the reasons given was that those species were on Appendix I and the rule was "an effort to establish closer alignment" between CITES and the U.S. Lists. Moreover, in astonishing contrast, when OSA proposed to delist the three Australian kangaroos (Federal Register of January 21, 1993), it stated one of the reasons for removing protection was that the species are not on the appendices of CITES.

The African elephant remains in the U.S. threatened category, where it has been since 1978. The species' over-all numbers have fallen by about two-thirds since that year and are continuing to decline in response to illegal hunting, conflicts with agriculture, and habitat fragmentation. Although some local populations appear stable, the long-term prospects for survival of the species in a fully natural state are not favorable. When the new 1996 IUCN Red List appeared recently, the classification given to the entire species was endangered.

Not every OSA positive listing action has been the result of a petition from the outside. The three Chinese monkeys referred to above, and three of the butterflies, were listed entirely on OSA's own initiative. That is to say, two listing



The Addax. The addax, a large white antelope of North Africa, has been nearly wiped out by human hunting. It is classified as "endangered" by the IUCN. A 1991 U.S. proposal to do the same has never been made final for fear of interfering with sport hunting of introduced addax on Texas "game ranches."

documents, actually originating in OSA and ultimately leading to successful listings, have been published in a period of 10 years. All other foreign species added to the List since the 1987 reorganization were the result of petitions, were already under review prior to that year, or, as in the case of the argali, were necessitated by associated legal pressures.

OSA also initiated a proposal on November 5, 1991, to classify the addax, scimitar-horned oryx, and dama gazelle as endangered. These three North African antelope, already designated endangered or critically endangered by the IUCN, are declining drastically because of uncontrolled hunting and loss of habitat. There seemed little doubt they would easily qualify for coverage under the ESA. Controversy soon developed, however, because captive addax and oryx have been released onto large ranches in Texas for purposes of sport hunting. Concerns were raised that listing would interfere with this activity or cause problems with respect to federal permits needed to carry resulting trophies across state lines. Starting in September 1992, various versions of a final rule were drafted, redrafted, and debated.

None satisfied all of the involved parties. The legal deadline for a final rule now has been missed by over four years and there is no prospect for breaking the deadlock. Such delays are now becoming the rule.

From 1992 to 1994, a biologist working intermittently with OSA as a training project, developed a complete document proposing to list the subspecies of wolf found in the Arabian Peninsula as endangered. This subspecies has become rare through elimination of natural prey and persecution by people. There seemed little question that U.S. listing would be appropriate. But AIA stopped it, questioning whether it was of sufficiently high priority. The work already had been done, and done voluntarily by someone not even in AIA, and

very little else was being listed. Nonetheless, the project was killed and all the work negated.

The Arabian wolf affair did stimulate a drive to develop what would be a priority system for listing foreign species, although the Department of Interior had long ago published such a system for listing in general. Two successive committees wrestled with the problem for a year and eventually came up with a recommendation in June 1995. Nothing further has ever come of this document. The acting AIA assistant director who instigated the project has long since departed. There still is no foreign listing priority system. And the Arabian wolf is forgotten.

The absence of a systematic or even a consistent approach to foreign listing means that AIA continues to act or not act according to its own peculiar internal rhythm. Even though AIA believes it does not have to list any species on its own, it is required to respond to petitions in accordance with a set schedule—at least that is what the law says. Such a petition, to add seven foreign swallowtail butterflies to the List of Endangered and Threatened Wildlife, was received in January 1994. A finding was made

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One-Year Deadlines?

The Endangered Species Act of 1973 requires that normally not more than a year pass: (1) between receipt of a listing petition and a finding as to whether such listing is warranted; and (2) between publication of a proposed listing rule and a final decision on such rule. How well has Interior kept to these legal mandates with respect to petitions received and proposals made since 1991 for adding foreign species to the Lists or upgrading their classifications?

Action	Required Date	Actual Date
Goliath Frog--petition finding	April 9, 1992	September 12, 1991
Foreign Birds--petition finding	April 30, 1992	March 28, 1994
African Elephant Reclassification-- final decision	September 18, 1992	August 10, 1992 **
Three Swallowtail Butterflies-- final decision	September 10, 1992	January 14, 1993
Goliath Frog--final decision	September 12, 1992	December 8, 1994
Three North African Antelope-- final decision	November 5, 1992	None
Argali Reclassification-- final decision	April 27, 1994	None
Seven Swallowtail Butterflies-- petition finding	January 10, 1995	None
Foreign Birds--final decision	March 28, 1995	January 12, 1995
Koala--petition finding	May 5, 1995	None

** Although the original proposal on the elephant was on March 18, 1991, Interior legally extended the deadline for a final decision by six months pursuant to a provision of the Act. In any case, the decision was to withdraw the proposal and not upgrade the elephant's classification.

that substantial information had been presented, and according to law a review notice was published in the Federal Register of May 10, 1994. No more has been heard on the matter. A final decision as to whether listing of the butterflies is warranted is now more than two years past the legal deadline.

The treatment of the butterfly petition, however, pales in comparison to what happened as a result of a petition to list the African goliath frog.

Special Profile-- Betrayal of the Goliath Frog

The central African goliath frog (Conraua goliath), the world's largest, may weigh seven to nine pounds, have a head and body length of well over a foot, and a total length, including the hind leg and foot, of 32 inches. But this giant amphibian has a relatively restricted distribution. It occurs along major rivers in dense rainforest within an area of about 10,000 square miles in Equatorial Guinea, northwestern Gabon,

Noah's Ark is Leaking

and southwestern Cameroon. By contrast, the common bullfrog (*Rana catesbiana*), which is less than half the size, occurs all across eastern North America from Quebec to Mexico.

It is a big frog in a small range. To conservationists, such a combination is potential for disaster. Moreover, it depends on a specialized habitat, evidently requiring rivers well oxygenated by descent over waterfalls and rapids. The forests along these waterways are being cleared, human activity is increasing and the frog is considered a delicacy by some of the native people. Despite its spectacular size, it was not scientifically described until 1906, and available records indicate only 91 specimens were collected through 1967.

In the 1980's there was a sudden increase in exportation of live individuals, with most coming to the United States for the commercial pet trade and exhibition. Much publicity centered on the attempted entry of some of these animals in the celebrated Frog Jump Jubilee in Calaveras County, California. This attention may have stimulated interest in collection for purposes of food production. Import records, probably incomplete, show that about 50 to 80 frogs entered the U.S. each year from 1985 to 1994.

In July 1992, a zoo purchased six frogs from an importer at \$1,200 each. Other asking prices have ranged from about \$600 for small specimens to \$2,500 for frogs weighing 6 to 9 pounds. It proved difficult to maintain the species in captivity and efforts to establish breeding populations have not been successful. By 1994, all of the individuals in U.S. zoos reportedly had died, though some were being held by a private importer.

Despite the lucrative trade and various other potential threats confronting the goliath frog, it has never been placed on the appendices of CITES. The IUCN, however, long classified it as vulnerable and continues to do so in its new 1996 Red List. The species thus seemed a promising candidate for the U.S. List of Endangered and Threatened Wildlife. When concerned zoologists submitted a listing petition to the Department of Interior in April 1991, it looked like a fairly straightforward procedure. A listing proposal followed rather quickly, in the Federal Register of September 12, 1991. A two-month public comment period was provided, newly received information was assessed,

and by February 1992 a final rule to list the goliath frog as threatened had been drafted in OSA. It looked as though something rarer than any species on the List was about to happen: a listing action was going to take place well in advance of the legal deadline.

Then all began to unravel. Personal reports from representatives of Cameroon and Gabon at a CITES

Conference suggested that local utilization and exportation were adequately controlled. This information was never documented, contrasted sharply with data provided by field biologists in Africa, and was of questionable use because of its receipt well after the end of the official comment period. Nonetheless, it was applied in an effort to kill the whole listing.

In addition, in association with the Conference, there had been a review of a simultaneous U.S. proposal to add the goliath frog to the CITES appendices. The one and a half page report on the frog seemed careless and incomplete. Its recommendation against listing was based entirely on negative comments—by just two parties—on the U.S. proposals to list the frog as threatened and add it to the CITES appendices.



The Goliath Frog. The goliath frog became a political football and was finally listed by the U.S. after more than three years of wrangling and litigation.

LINCOLN PARK ZOO

U.S. Fish & Wildlife Service

Both of those parties had an interest in importation for commercial or exhibitional purposes. Remarkably, the report did not cite the IUCN African Reptile and Amphibian Specialist Group, information from field zoologists in the region, the various positive comments on the listing proposal, the information in the proposal itself, or the original petition and supporting materials. Nonetheless, this critically flawed document was seized upon by the bureaucracy to support its case against listing.

For nearly three more years the listing of the frog floundered. The deadline for a final rule, September 12, 1992, came and went. Now it looked like another example of forgotten species and forgotten laws. But on June 11, 1993, attorneys representing the original petitioners and supporting conservation organizations filed a notice of intent to sue the Department of Interior for violation of the Endangered Species Act. Finally forced to take action, Interior drafted its own notice to formally withdraw the listing proposal. The notice was challenged, however, by Interior's own Office of the Solicitor and was never published.

Another period of inaction followed, but on April 15, 1994 the petitioners and their supporters filed a lawsuit. In a last and expensive attempt to avoid listing, Interior arranged for an

agreement by which it would issue a notice reopening the comment period on the original proposal. This notice appeared in the Federal Register of July 19, 1994, and a further extension of the comment period came on October 25, 1994. Perhaps there was hope that new information could be compiled in support of withdrawal. In fact, of the six responses that came in, three expressed support for the original proposal and three indicated there was nothing new to report. Other information obtained after the lawsuit was filed indicated that, in contrast to what was stated in the CITES analysis, substantial importation of frogs to the U.S. was still going on, and the government of Cameroon now regarded the species as "rare or on the way to extinction."

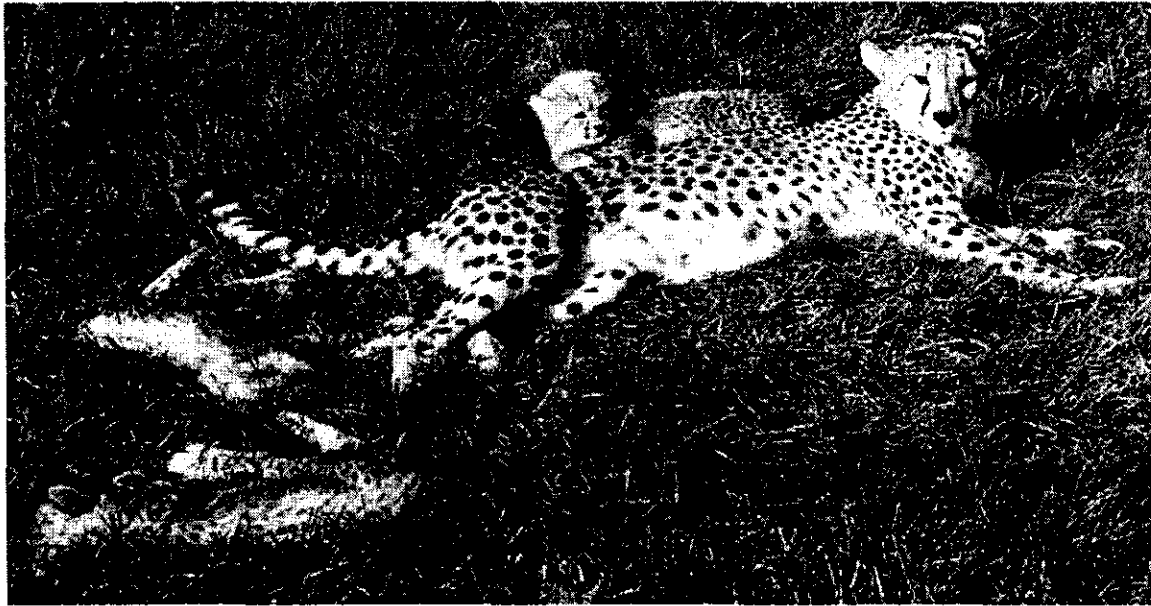
There was no more room for maneuver. Interior had to agree to settle the case and list the goliath frog. Notice to that effect appeared in the Federal Register of December 8, 1994. At the time it seemed a major victory.

If, however, the listing of a single species, of considerable interest and commercial significance, required three years of debate and litigation, there is little hope to ever cover all the thousands of less spectacular but still highly deserving creatures that make up the world's biodiversity. Something more is needed.

V. Species In The Balance

There have been no foreign listings in more than two years. This can be attributed in part to the Congressional moratorium, from April 1995 to May 1996, but is mainly the result of an unwritten policy by AIA to avoid adding any substantial number of new species to the

demonstration would help make a more convincing case for delisting and downlisting ("we are listing species, so don't complain about a few delistings"). It also would provide a legal technique to allow more substantive petitioned listings to be blocked with



Cheetah With Kittens. Proposed for delisting by the government of Namibia.

List. There is instead an emphasis on delistings, reclassifications, special regulations, and other measures that facilitate the importation of currently listed species.

There are also to be reduced restrictions on listed species that are on the CITES appendices, so that these species are protected merely in accordance with CITES provisions. These measures would not necessarily be inappropriate in all cases, but if they monopolize foreign listing resources there will be little hope of ever developing a meaningful U.S. expression of the worldwide endangered species crisis.

To be sure, there will be sporadic listings of small groups of species, comparable to those of the past decade. This trickle will be used like a pressure valve to appease critics by demonstrating some progress is indeed being made in listing endangered species. Such a

"warranted-but-precluded" findings, because the law allows such findings to be made only if resources are being devoted to other listing actions.

In addition to the proposed listing of the three African antelope, which seems hopelessly deadlocked, and extension of endangered status to all aragli, which is probably dead, there is only one other outstanding positive listing proposal. This "semilisting" measure would not actually add anything to the List or increase protection, but would simply recognize that the already listed tuatara (a lizard-like New Zealand reptile) actually consists of two, rather than one, full species. The resultant final rule is likely to be the first positive foreign listing measure after the end of the Congressional moratorium.

Meanwhile, AIA continues to deal with various petitions from outside interest groups.

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Recently there have been requests from: (1) the government of Namibia to reclassify its cheetah population from endangered to threatened, so that sport-hunted trophies of the species can be more easily exported to the U.S.; (2) commercial interests to delist the South American vicuna to facilitate importation and utilization of its valuable wool; and (3) a trapping organization to delist the Mexican bobcat.

While it is possible that some of these measures are not unreasonable, collectively they represent the constant pressure on the bureaucracy from commercially and politically oriented constituencies to use the process only to further their immediate interests. Meanwhile, AIA continues to concentrate its limited resources on the concerns of special interest groups seeking reduced protection of endangered species while simultaneously ignoring the plight of the many foreign species that warrant increased protection and recognition, including those long under petition.

There is one other petition under active current consideration, and the outcome could go a long way toward setting the future course of the entire foreign listing program. About three years ago, on May 5, 1994, the Department of Interior received a petition from a coalition of conservation groups in Australia and the U.S. to add the koala to the U.S. List of Endangered and Threatened Wildlife. This popular marsupial species was nearly wiped out by uncontrolled fur hunting in the early 20th century. Its numbers subsequently increased, thanks to legal protection established after public outcry in Australia and other countries, but are now again declining because of habitat destruction and fragmentation. The petition, with supporting documentation filling several large boxes, presented a detailed and authoritative case for listing. It pointed out that logging, agriculture, and other problems have eliminated at least two-thirds of the koala's original forest and woodland habitat. Other reported problems include fires, disease, drought, harassment by dogs, interference with normal gene flow, and killing along the roads now penetrating habitat. Of particular current concern is the destruction of forests to produce industrial woodchips for export to Japan.

In the new 1996 IUCN Red List, the koala is classified as "near threatened," a designation, which, as explained above, corresponds closely to the legal definition of U.S. "threatened." In its 1992 "Action Plan," the IUCN Australasian Marsupial and Monotreme Specialist Group designated the koala "potentially vulnerable," noting its range had declined by 50 to 90 percent.

In the Federal Register of October 4, 1994, the Department of Interior announced the required 90-day finding that the petition had presented substantial information and opened a public review. On February 15, 1995, the comment period was extended to April 1, 1995. Since then the issue has lapsed; a finding as to whether listing is warranted is now two years behind the legally mandated deadline.



Koala. Listed by the IUCN as "near threatened" but not listed by the U.S.

No one has claimed that the koala is in imminent danger of total extinction. Nonetheless, formal recognition of its plight through U.S. listing is supported by at least two critical innovations of the Endangered Species Act of 1973:

1) Even if considered not to meet the Act's definition of "endangered," the koala would qualify for the new "threatened" category, as it is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." There is general agreement that the species already has lost more than half its natural habitat.

2) The very first stated purpose of the Act is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." This Congressional mandate reflects remarkable foresight. The important thing is not just to preserve remnant samples of species but to save entire ecosystems so that viable populations may continue to function naturally with respect to ecology, behavior and genetic exchange.

The koala's ecosystem—the tall eucalyptus forest of eastern Australia—is being steadily reduced and fragmented. Without intervention, it may deteriorate to the point at which fully viable populations of dependent species could no longer be supported. Conservationists have called upon the U.S. to venture its prestige in bringing attention to the situation. The koala thus may offer the U.S. a final chance to demonstrate international leadership, by utilizing the listing role of the Act in an effort to save species and their ecosystems before the critical stage is reached.

The continuous disagreement and delay that has surrounded U.S. foreign listing, both within Interior and between the government and outside parties, does not bode well for substantive future improvement. Even if the arguments and litigation would disappear, the inherent complexity and length of the listing process precludes any swift closure of the gap between the coverage by the U.S. Lists and the global situation.

The recent appearance of the 1996 IUCN Red List of Threatened Animals, together with its endorsement by Secretary Babbitt, suggests a solution. For purposes of the actual listing of foreign species, the U.S. could adopt the IUCN coverage as its own. Although there were earlier editions of the IUCN list, the 1996 publication represents the first application of detailed new statistical criteria to the world's wildlife, as well as the compilation of

data from many new action plans and surveys by the network of specialist groups. The publication therefore would meet the Endangered Species Act's requirement that listings be based on the "best...data available." Adoption of the IUCN compilation in its entirety would enable the Department of Interior to point to it as a controlling authority, thereby avoiding future disagreements as to what should or should not be listed. The contentious and costly petition process would essentially become moot.

In conjunction with this white paper PEER is formally petitioning the Department of Interior to expand the U.S. List of Endangered and Threatened Wildlife by addition of all nonnative species, subspecies and distinct vertebrate population segments not already on the List, which are classified as critically endangered, endangered, vulnerable, conservation dependent, or near threatened in the 1996 IUCN Red List of Threatened Animals.

In accordance with the interpretation of category definitions explained above, the petition requests those species, subspecies and populations classified by the IUCN as conservation dependent or near threatened be listed by the U.S. as threatened. Those listed in the more serious IUCN categories should be listed by the U.S. as endangered.

In order to minimize any economic disruption or bureaucratic upheaval which may result from the immediate classification of such a large number of species as endangered, the PEER petition suggests a phase in process. Section 9 of the Endangered Species Act automatically applies a number of strict prohibitions regarding taking of, and importation or other commerce in endangered species. These prohibitions are irrelevant to the great majority of species covered by the PEER petition, which are jeopardized by habitat loss, local exploitation or other environmental disruption and not by taking or importation by persons under U.S. jurisdiction.

The PEER petition requests that all affected species be initially listed as threatened, with special regulations forestalling immediate application of the Section 9 prohibitions, and then upgraded as soon as feasible. This initial sifting could be done in a focused fash-

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ion, taking priority over all other AIA listing activities, within the next year. This would leave the small minority of controversial uplisting issues squarely before AIA to be addressed while the involved species were at least partially protected under the ESA rather than as completely unrecognized by the U.S.

The above procedure would allow the U.S. List itself to be brought up to date in a single stroke. Implementation of import controls and other prohibitions on certain species could be carried out as time and resources allowed, in accordance with need, and would no longer compromise proper recognition of what species are endangered or threatened. Once again the American public, government, and conservation community would have an official compilation of the true extent and diversity of the world's endangered animals.

The mid-level bureaucracy can thrive when the activities it oversees are not of great concern to upper tiers of the administration or Congress. The development of the Lists of Endangered and Threatened Wildlife and Plants, it seems, has not been of high priority. As a result, legal mandates and deadlines relative to listings are freely ignored. Mollie Beattie, the late Director of the Fish and Wildlife Service, had a genuine interest in endangered species. Her last major pronouncements, issued in news releases barely a month before her death, called for renewed emphasis on listings. But she is lost to us now. It remains to be seen whether Secretary Babbitt will back up his recent "call for action" with a demand for compilation of meaningful international lists, or if his words will be seen by the bureaucracy as lacking any substance.



Greater Kudu. The greater kudu, an antelope of eastern and southern Africa, is classified as "near threatened" by the IUCN and is unlisted by the U.S.
