

WILDCAT CONSERVATION LEGAL AID SOCIETY

October 21, 2011

VIA Federal eRulemaking Portal

Public Comments Processing
Attn: FWS-R9-IA-2011-0027
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
MS2042-PDM
Arlington, VA 22203

***Re: Proposed Rule: Endangered and Threatened Wildlife & Plants
U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers***

Pursuant to the notice of the proposed rule to amend the regulations that implement the Endangered Species Act (ESA) [FWS-R9-IA-2011-0027; 96300-1671-0000-R4] [RIN 1018-AW81], first published in the Federal Register on August 22, 2011, Vol. 76, No. 162, we are providing comments related to the proposed rule.

The WildCat Conservation Legal Aid Society (WCCLAS) is in support of USFWS' proposed rule to amend the regulations that implement the ESA by removing inter-subspecific crossed or "generic" tigers from the list of species that are exempt from registration under the Captive-Bred Wildlife regulations (CBW).

We applaud USFWS for recognizing that when the exemption from the CBW was made in 1998, that [they] "may have inadvertently suggested that the breeding of these tigers qualifies as conservation. By removing the exemption, we can reinforce the value of conservation breeding of individual tiger subspecies and discourage the breeding of tigers of unknown or mixed lineage." Indiscriminate breeding of an endangered species, producing hybrids, and/or inbreeding in order to produce variations of color by forcing a recessive gene trait, solely for commercial purposes, should never have been allowed to take place under the ESA regulations.

In 1993, USFWS amended the CBW regulations by eliminating the "public education through exhibition of living wildlife as the sole justification for the issuance of a CBW registration." We can only speculate as to why USFWS made the determination in 1998 to categorize inter-subspecific crossed or "generic" tigers as *exempt* from the CBW registration.

1725 I STREET, NW, SUITE 300, WASHINGTON, DC 20006
TELE: 202-349-3760 ~ FAX: 202-349-3915
WWW.WCCLAS.ORG ~ INFO@WCCLAS.ORG

"ENSURING A WILD FUTURE FOR ALL WILDCATS"

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Furthermore in 2009, USFWS was found in violation of section 10(c) of the ESA when a species specific exemption was promulgated for three endangered antelope species (See *Friends of Animals, et al., v. Ken Salazar, Secretary of the Interior and Rebecca Ann Cary, et al., v. Rowan Gould, Acting Director, Fish and Wildlife Service, et al., 626 F. supp. 2d 102 (D.D.C. 2009)*).

In the memorandum opinion, the court stated:

Plaintiffs argue that FWS violated subsection 10(c) of the ESA, when it issued a blanket exception for all persons who breed the antelope species in captivity in the United States without any requirement for an application and case-by-case assessment of that application. They argue that the plain language of subsection 10(c) demands that permits be issued on a case-by-case basis, pointing to provision “[t]he Secretary shall publish notice in the Federal Register of *each* application for an exemption or permit which is made under this section.” See 16 U.S.C. § 1539(a)(1) (emphasis added). The court concludes that plaintiffs are correct and that the text, context, purpose and legislative history of the statute make clear that Congress intended permits for the enhancement of propagation or survival of an endangered species to be issued on a case-by-case basis following an application and public consideration of that application.

The court further stated “Blanket exemptions under regulations are anathema to this intention because they allow FWS to permit a great number of exemptions at once without providing the detailed information to the public that would be required in an individual analysis.” The notice to amend the regulations to remove the antelopes from the list of species that are exempt from CBW registration was published in the Federal Register on July 7, 2011.

Whether by design or plan, political or public pressure, we hope that USFWS is fully committed to enforcing the ESA regulations as they state in proposing this change to the regulations is “to ensure that we maintain strict control of captive tigers in the United States. We do not believe that breeding inter-subspecific crossed or generic tigers provide a conservation benefit for the long-term survival of the species.”

We do too, and we’ll be watching.

Lisa Ann Tekancic, Esq.
President

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