Compliance with Executive Order 12291
The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act
Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island’s program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities, and, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271
Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority
This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6922(a), 6926, 6974(b).

Julie D. Belaga,
Regional Administrator.
[FR Doc. 90-5588 Filed 3-9-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17
RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Endangered Status for Chimpanzee and Pygmy Chimpanzee
AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) reclassifies wild populations of the chimpanzee and all populations of the pygmy chimpanzee from threatened to endangered status. Both species have declined through such problems as massive habitat destruction, excessive hunting and capture by people, and lack of effective national and international controls. This rule will enhance the protection of the Endangered Species Act of 1973, as amended, for these species. Captive populations of the chimpanzee will continue to be classified as threatened, and individuals of that species in the United States will continue to be covered by a special regulation allowing activities otherwise prohibited.

EFFECTIVE DATE: April 11, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (703-558-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION:
Background
The genus Pan contains two species: the chimpanzee (P. troglodytes) and the pygmy chimpanzee (P. paniscus). There is little overall difference in size between the two species, both weighing up to about 100 pounds (45 kilograms) in the wild. However, P. paniscus has relatively larger lower limbs and a narrower chest than does P. troglodytes. The Chimpanzee is known to have occurred originally in 25 countries of equatorial Africa, from Senegal in the west to Tanzania in the east. The pygmy chimpanzee is found only in the nation of Zaire, and only to the south of the Zaire River. The ranges of the two species are not known to overlap.

In the Federal Register of October 19, 1976 (41 FR 45993), the Service classified both the chimpanzee and pygmy chimpanzee as threatened species, pursuant to the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 et seq.). Cited problems included human destruction of natural habitat, capture and export for research laboratories and zoos, the spread of disease from people to chimpanzees, and ineffectiveness of existing regulatory mechanisms. Simultaneously, the Service issued a special regulation providing that the prohibitions that generally cover all threatened species would not apply to P. troglodytes and P. paniscus held in captivity in the United States on the effective date of the rule, or to the progeny of such animals, or to the progeny of chimpanzees legally imported into the United States after the effective date of the rule.

This exemption was intended to facilitate legitimate activities of U.S. research institutions, zoos, and entertainment operations, without affecting wild chimpanzee populations.

Within the last decade there have been increasing indications that the status of wild chimpanzees is deteriorating and that most populations are continuing to decline. On November 4, 1987, the Service received a petition from the Humane Society of the United States, World Wildlife Fund, and Jane Goodall Institute, requesting that P. troglodytes be legally reclassified from threatened to endangered. The petition was accompanied by a detailed report from the Committee for Conservation and Care of Chimpanzees (Teleki 1987). This report cites practically all pertinent recent literature on the status of the chimpanzee in the wild, and was prepared with the assistance of numerous field research workers. It points out that the chimpanzee has declined drastically because of such problems as massive habitat destruction, population fragmentation, excessive local hunting, and international trade. On February 4, 1988, the Service made a finding, in accordance with section 4(b)(5)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted. In the Federal Register of March 23, 1988 (53 FR 9480), the Service published this finding and announced a status review of both P. troglodytes and P. paniscus. The comment period for the review ended on July 21, 1988.

During the review period, the Service received 40 comments from major authorities and organizations, and from governments of nations with wild chimpanzee populations, all of which agreed with the petition and/or provided additional information lending support. Of these, 17 were from parties who actually have studied chimpanzees in the wild. In addition, during the review period, 54,212 supporting letters and postcards were received from the public. Several thousand more supporting comments arrived after the end of the comment period.

The Service received six comments opposing reclassification during the review period, and several more afterwards. None of these comments provided information about the status of chimpanzees in the wild, but they did make three general points: (1) The petition and accompanying report do not present a complete or accurate picture, and contain errors; (2) any plans for reclassification should await the results of a prospective National Institutes of Health survey of chimpanzees and other primates in Africa; and (3) chimpanzees are important in biomedical research, no
animals have been imported to the United States for such purposes in the last decade, and reclassification to endangered would interfere with study, transportation, and propagation of animals already here.

With respect to the first point, the Service is satisfied that the report by the Committee for Conservation and Care of Chimpanzees is reliable and contains much valuable information derived in large part from persons who have observed first hand the situation in the wild. Its overall assessment corresponds closely with that found in a new International Union for Conservation of Nature and Natural Resources (IUCN) Red Data Book, Threatened Primates of Africa (Lee, Thornback, and Bennett, 1988), which became available to the Service following the review period. The indicated errors seem to be mostly minor typographical ones. The report acknowledges that data are limited for some areas and that additional survey work is urgently needed. However, and with respect to the second point above, major new field surveys would take years to complete, and the Act requires that classification be based on the best data available and that decisions on petitions be made within 12 months of receipt. The report, the IUCN Red Data Book, and other currently available information provide a sufficiently comprehensive picture of the chimpanzee's status to allow assignment of a legal classification.

With respect to the third point, the chimpanzee (P. troglodytes) is considered to be of much importance in biomedical and other kinds of research, and is also held in captivity for use by zoos, as pets, and in entertainment. The petition and supporting documents and comments dealt primarily with status in the wild, and not with the viability of captive populations. There are questions about whether and how many such populations are indeed viable, but to the extent that self-sustaining breeding groups of captive P. troglodytes provide surplus animals for research and other purposes, there may be reduced probability that other individuals of that species will be removed from the wild. There has been no major legal importation of wild chimpanzees into the United States for about a decade, and recently passed legislation would prohibit investigators supported by Federal funds from using chimpanzees taken from the wild. At present, research work continues in the United States through the use of captive breeding groups. Without the availability of such groups, the relevant research might be done by others, perhaps in foreign countries and with wild-caught animals and their progeny. This line of reasoning has been questioned, but suggests that severe restrictions on use of captive animals in the United States might discourage propagation efforts and lead to a decline in the population here, and possibly contribute to greater demand for wild-caught animals elsewhere.

There is controversy regarding the viability and fecundity of over-all captive populations, but management of certain captive breeding groups seems to be becoming more sophisticated and successful. A studybook for P. troglodytes has been developed, and proposals to establish a Species Survival Plan are being prepared by members of the American Association of Zoological Parks and Aquariums. These plans are designed to maintain the genetic diversity of the captive population. Approximately 240 P. troglodytes are held by the Association's member institutions. The extent of breeding among P. troglodytes held as private pets or for entertainment purposes is not known, and neither is the number of individuals involved, but there has been one estimate of at least 200.

From 1,100 to 1,450 P. troglodytes are held by biomedical facilities in the United States. Many of these animals have been used in various studies of infectious diseases and are not suitable for breeding programs. Furthermore, eight institutions hold most of these animals, and all but one currently provide records to the International Species Inventory System. Five of the eight are part of the National Chimpanzee Species Program coordinated and supported by the National Institutes of Health. This program now has about 400 animals. Its immediate goal is to augment the breeding population with half of the offspring (about 35 animals/year). In addition, the National Institutes of Health has funded research directed at increasing the breeding capability of the captive population. Finally, there have been promising findings that may enhance this population and reduce the need for additional animals for research, especially through development of a means to distinguish chimpanzees exposed to, but not infected with, non-A/non-B hepatitis virus.

There are also over 1,000 captive P. troglodytes in Europe, including about 300 in biomedical research facilities and 550 in zoos. Many of these animals are in groups that are being managed with a stated objective of achieving self-sustaining breeding populations (the extent to which this objective may be attainable is not yet known). In addition, there are at least 300 captive members of this species in Japan, including over 100 in research facilities. While the previously mentioned groups are thought to be the largest, there are indefinite numbers of P. troglodytes in zoos and research facilities in other parts of the world, including about 60 in zoos in Australia and New Zealand.

In the Federal Register of December 28, 1988 (53 FR 52452), the Service announced its finding that reclassification of wild populations of the chimpanzee from threatened to endangered was warranted. In the Federal Register of February 24, 1989 (54 FR 8152), the Service proposed to implement such reclassification. At the same time, the Service announced that its status review had indicated that the pygmy chimpanzee should be reclassified from threatened to endangered, and such reclassification was proposed. The latter species is represented by fewer than 100 captive individuals throughout the world.

Partly in consideration of available information on the management situation, the Service did not propose reclassification of captive P. troglodytes.

Those populations in the United States still will be covered by provisions of the special regulation of October 19, 1976. The Service will monitor captive status by requesting an annual report from each major facility in the United States holding chimpanzees, relative to numbers, mortality, breeding success, and other pertinent factors. The proposal was, and this final rule is, restricted to reclassification of the species in the wild, which evidently was the primary objective of the petition.

Summary of Comments and Recommendations

In the proposed rule of February 24, 1989, and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Cables were sent to United States embassies in 22 of the countries that have or had wild chimpanzee populations, requesting new data and the comments of the governments of the countries. These cables yielded 14 responses; 6 expressed or suggested support for the proposal and the others indicated that no data were available.

There were 163 other responses during the comment period, 27 being from major authorities and organizations concerned with research and conservation involving chimpanzees. Of these 27, most supported and none expressed general opposition to
reclassification of *P. paniscus* or to reclassification of wild populations of *P. troglodytes*. However, 8 recommended that some or all captive populations of *P. troglodytes* also be reclassified from threatened to endangered status. Several arguments were put forth in support of this position and specific comments with corresponding responses - are as follows:

1. **Comment:** There is no legislative history suggesting that captive populations can be treated as distinct "species" and there is no precedent for listing captive populations differently than wild populations.
   **Response:** In the Endangered Species Act of 1973, as amended (Act), the definition of "species" is not the same as the usual biological definition of species but is expanded specifically to include "any species, subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Captive animals are distinct from wild populations and may have the potential to interbreed when mature. In the case of the chimpanzee, some animals are specifically being managed as an interbreeding population. In listing the ranched population of the Nile crocodile in Zimbabwe, the Service has previously classified specimens in captivity differently than wild populations.

2. **Comment:** Placing captives in a category of lesser concern might actually stimulate continued commerce and thereby create conditions contrary to the intent of the Endangered Species Act.
   **Response:** The Service believes that to the extent that self-sustaining breeding groups of captive *P. troglodytes* provide surplus animals for research and other purposes, there may be reduced probability that other individuals of that species will be removed from the wild.

3. **Comment:** Captive breeding efforts by private institutions participating in the National Chimpanzee Management Program cannot be considered because they are not efforts by a State or political subdivision of a State.
   **Response:** The direction to take into account efforts made by State or political subdivisions applies only to the consideration of protective management efforts when assessing listing determinations, but not the aspect on the status of the population. Nevertheless, the National Institutes of Health (NIH) is supporting and guiding the National Chimpanzee Management Program. NIH's protective efforts are covered by subsections 4[a](1) (B), (D) and (E) of the Endangered Species Act and must be considered.

4. **Comment:** The previous split treatment did not lead to an increase of the wild populations. Furthermore, there was "previous mismanagement [of captive populations] by NIH and grant recipients".
   **Response:** While the wild populations declined since the original special rule was applied to the captive populations in the United States, there is no evidence that the different treatment of these populations was in any way responsible for the population decline. Furthermore, while some previous captive breeding management practices, such as hand-rearing young in an attempt to maximize production and other management strategies discussed by Seal and Flesness (1988), were misdirected, those involved in the National Chimpanzee Management Program have modified their breeding program as indicated in a letter by Flesness (pers. comm.).

5. **Comment:** Captive populations in the United States are being managed inadequately, are likely to decline in the near future, and are not self-sustaining, especially because there are few second generation captive-born chimpanzees.
   **Response:** The Service did not utilize important data on the deteriorating status of the captive groups. The Service should postpone separating wild and captive populations until self-sustaining captive populations are an established fact.

6. **Comment:** The Service believes that some major chimpanzee breeding groups in the United States are being managed with the objective of achieving self-sustainability. The Service will monitor the status of these groups, in part through the request for annual reports, and will conduct more extensive assessments if significant new data become available. The present captive population may include a higher percentage of older animals than is perhaps demographically desirable. However, a population decline in the short-term does not mean that the population could not become stabilized at a lower level or even rebound to a higher level. Captive chimpanzees have been bred to the second generation, and the major populations in the United States are being managed so that significant numbers of second generation and beyond stock are likely to be produced.

7. **Comment:** Foreign populations are not self-sustaining. The decision to retain them as threatened was without any scientific information.
   **Response:** The Service has considerable information on chimpanzee numbers, especially in Europe, including many not recorded in the International Species Inventory System, and on initial efforts towards cooperative captive breeding programs. The Service believes that some of these captive populations have the potential to become self-sustaining, but believes that further information is warranted.

8. **Comment:** Classifying captive populations in foreign countries threatens the species "by allowing institutions in foreign countries to trade in wild-caught animals.
   **Response:** Listing the species as threatened or endangered imposes no direct control over actions by foreign individuals or organizations outside of the United States. Restrictions on the import of animals or specimens solely for biomedical purposes are the same for threatened and endangered species.

Also among the 27 responses cited above were 6 pointing out a need for improved methods to track movement of chimpanzees, and to ensure that all animals entering the United States meet provisions of the regulations. Such means of registration include standard fingerprinting, microchip emplacement, and blood typing. Again, the Service will endeavor to determine whether such methods are necessary and feasible, and, if so, would plan appropriate modifications of the regulations.

Some commenters specifically suggested requiring DNA "fingerprinting" of all animals is foreign facilities that may wish to export chimpanzees to the United States in the future, and at least one commenter suggested that the public be notified of all applications to import chimpanzee specimens to the United States through the Federal Register as is now required for all endangered species, and that
trade be restricted to CITES Parties. In response, the Service notes that the proposed special rule provides that the chimpanzees removed from the wild after the effective date and their progeny will still be treated as endangered for permitting purposes. Proof of specimens being born in captivity rests with the importer. Nevertheless, there is the perception that retaining captive populations of chimpanzees as threatened will abet trade, and further safeguards on imports of chimpanzees into the United States could be considered. While procedures to record DNA “fingerprints” of all foreign held specimens may now be impractical, the Service will publish in the Federal Register all import permit applications for chimpanzee specimens in order to obtain information about questionable acquisitions of chimpanzees in foreign countries and will consider DNA fingerprinting or transponder marking of chimpanzees in the United States.

Some commenters also suggested that classifying captive chimpanzees as threatened will allow some animals to be exported, and then exchanged for younger specimens that would not be allowed in trade and reimported as the original animals. In response, the Service notes that it presently requires the listing of any identifying marks on animals on applications when export is requested. Furthermore, many of the animals being exported and reimported are associated with circuses and may be sufficiently recognizable based on individual traits. Nevertheless, the Service will consider the merits of fingerprinting chimpanzees being exported.

Finally, 7 of the 27 response cited above expressed concern that certain captive colonies of *P. troglodytes* in Africa, now involved in research and breeding, would be adversely affected by the new regulations. Some or all of these comments evidently resulted from misunderstanding of the proposal. Most, for example, asked that the colonies in question not be classified as endangered, when, in fact, the proposal called for all captive *P. troglodytes*, in Africa and elsewhere, to be classified as threatened (though it is true that those captives within the historic range of the species will be subject to the regulations that cover endangered species). Some of the comments indicated a belief (1) that the colonies had the same exemption from the prohibitions as did captive chimpanzees in the United States, and that the proposal would eliminate this exemption, and/or (2) that application of the endangered species regulations to these captive groups would impose more restrictive provisions on the importation of specimens for biomedical research purposes than are now imposed by the threatened species regulations. These views are not correct. Captive animals outside of the United States have never been covered by the exemption. As for importation into the United States, the same kinds of permits for biomedical research purposes that were allowed previously will continue to be available. Some of the commenters thought that treating captive chimpanzees as endangered in range states applies a different standard for these states than other countries. However, the opportunity to move chimpanzees from the wild into captive situations within individual range states would seem to be sufficiently difficult to control so that the same provisions for obtaining permits should apply to both wild and captive populations in the range states.

Of the remaining 7 responses received during the comment period, all indicated general support, but 11 requested reclassification of captive *P. troglodytes*, and 17 requested improved tracking methods. Since the end of the official comment period, a number of additional responses have been received, including 9 from major authorities and organizations. One of the latter argued that reclassification would do more harm than good by removing the incentive for population studies of wild populations. In this regard, while it is possible that the incentive for funding population studies from certain sources (particularly those seeking to obtain more captive animals) might be decreased, it is possible that funding from other sources (especially those seeking to develop conservation programs) would be increased. In any case, the Service is responsible for assigning classifications based upon the best available information on the status of the involved species. None of the other late-arriving responses contains substantial points that differ from those of comments received earlier.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that the pygmy chimpanzee and wild populations of the chimpanzee should be reclassified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the chimpanzee (*Pan troglodytes*) and pygmy chimpanzee (*Pan paniscus*) are as follows (information from Lee, Thornback, and Bennett 1988, and Teleki 1987, unless otherwise indicated).

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The historical range of *P. troglodytes* encompassed all or parts of at least 25 countries, from Senegal to Tanzania. This distribution corresponded closely with the tropical forest belt of equatorial Africa, and indeed the chimpanzee is usually dependent on areas of unbroken forest, though there is increasing evidence that it is not uniformly distributed throughout such areas. The species also is able to survive at lower density in secondary forests, savannahs, and other habitats, if food sources, particularly fruit trees, remain available, and human disturbance is not extensive. *P. paniscus* is found only in the forests of central Zaire, between the Zaire, Lumami, and Kasai/Sankuru Rivers, but its distribution is not continuous in this area.

Habitat destruction, with consequent access and disturbance by people, is one of the major factors in the decline of the chimpanzees. Human population increase, conversion of forests to agriculture, and commercial logging have drastically reduced available chimpanzee habitat. These processes are most prevalent in the western and eastern parts of the overall range of *P. troglodytes*, and seem to be working towards the center. Most of the primary forests of such countries as Sierra Leone, Rwanda, and Burundi have already been eliminated, along with most of the resident chimpanzee populations. In his response to the proposed rule, Dr. Harold R. Bauer (Ohio State University) pointed out that aerial photography shows that in the 1940s there was an almost continuous cover of forest in the region of Tanzania around Gombe National Park, but that by the 1960s the park had become essentially a biological island. Professor R.W. Wrangham (University of Michigan) responded that his studies in Uganda have revealed that forests there are being destroyed and converted to agriculture at an accelerating rate, and that loggers are killing and eating the chimpanzees.

The IUCN already classifies one of the three subspecies of *P. troglodytes* as endangered. This subspecies, *P. t. verus*, formerly ranged from Senegal to Nigeria, and may have numbered 500,000.
The chimpanzee now has been entirely extirpated from 5 of the 25 countries in which it is known to have originally occurred. Its numbers have been reduced to fewer than 1,000 individuals in 10 other countries, to fewer than 5,000 in 6 others, and to fewer than 10,000 in 2 of the remaining 4 countries. There had been an assumption that the chimpanzee was relatively secure in the nation of Gabon, based on a survey in the early 1980's, which estimated numbers there at about 64,000. However, Dr. Caroline E. C. Tutin, who headed that survey, recently submitted a comment during the Service's status review, in which she stated that, because of habitat disruption and hunting, the chimpanzee had begun "to decline at an alarming rate" in Gabon. She thinks that numbers will fall by at least 20 percent by 1998, and she now thinks that reclassification to endangered is appropriate. In its response to the proposed rule, the Government of Gabon indicated that logging and railroad construction had opened new forest areas to hunters, thereby adversely affecting the chimpanzee population.

The status of P. troglodytes is most poorly known in the nation of Zaire. Numerical estimates range up to 110,000 individuals, but such figures are based on calculations of the amount of habitat thought to be suitable, and on the assumption that all such habitat is still occupied. There are indications that much of the involved area may never have supported substantial chimpanzee populations, even under natural conditions, and that the species already has been eliminated in other parts of the area, particularly through logging and hunting. A more realistic estimate for the number of P. troglodytes in Zaire would be around 20,000 (according to Lee, Thornback, and Bennett 1988). In other countries in the eastern part of the range of the species, populations are known to have become highly fragmented and to be declining.

Numerical estimates for P. paniscus, which occurs only in Zaire, also sometimes have been high, up to about 100,000-200,000. Again, however, such figures are based on the belief that distribution is continuous. Actually, according to the IUCN, the species is absent or rare in many areas of presumed suitable habitat, even under natural conditions, and is apparently not present in the central part of its range. It now remains common only in a few scattered localities, with the most reliable population estimate being about 15,000 animals. The main ongoing problem is habitat loss through increasing slash and burn cultivation, and commercial logging. Reduction and fragmentation of the already discontinuous range also has resulted from local hunting. These problems are relatively well known with respect to P. paniscus south of the Zaire River, and provide an idea of what may also be happening to P. troglodytes, found to the north. P. paniscus evidently is the rarer of the two species.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Chimpanzees are extensively sought by people, both alive for use in research, entertainment, and exhibitions, and dead, for local use as food and in religious rituals. Such utilization is contributing substantially to the decline of each species. The United States was once the chief importer of chimpanzees (41 FR 45993; October 19, 1976), but has experienced no major legal activity of this kind for about a decade. Commercial trade has continued elsewhere, and there has been an alarming recent trend towards killing adult females both for local use as meat and in order to secure their live offspring for export. Also, because entire family groups may have to be eliminated in order to secure one live infant, and since many of these infants perish during the process, it has been estimated that five to ten chimpanzees die for every one that is delivered alive to an overseas buyer. Many thousands of wild chimpanzees have been lost in this manner during the last several decades, with a resulting extermination or great reduction of several major populations, particularly in western Africa. There remains a substantial commercial demand for chimpanzees, especially for biomedical research, and to a lesser extent for behavioral studies.

There also is an escalating demand for local utilization of the meat of chimpanzees. Opening of forest habitat and the spread of modern weapons are helping to satisfy this demand. Mining operations attract large concentrations of people and result in intensive hunting to supply meat from the surrounding forests. Such activity is of particular concern with respect to P. troglodytes in eastern Zaire. Comments from several authorities (Dr. Arthur D. Horn, Dr. Geza Teleki, and Drs. Nancy Thompson-Handler and Richard K. Malenky), received by the Service during its recent status review, also indicate that P. paniscus has declined in numbers and distribution through local taking for use as food or pets, and in religious rituals.

C. Disease or Predation. Chimpanzees are susceptible to many of the same diseases that afflict people (indeed this is why chimpanzees are considered important in biomedical research).
When natural chimpanzee populations are reduced and come into increasing contact with the expanding human population, the former may be exposed to infectious diseases. In a comment in response to the Services status review, Dr. Jane Goodall pointed out that illnesses of various types, including several major epidemics, have been among the factors preventing an increase in the chimpanzee population of Tanzania’s Gombe National Park, even though that area is better protected than are most chimpanzee habitats of Africa.

D. The inadequacy of existing regulatory mechanisms. Both *P. troglodytes* and *P. paniscus* are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention), meaning essentially that export and import are prohibited by member nations, unless such activity is not detrimental to the species. In addition, domestic legislation in various non-African countries, including the United States, restricts or forbids importation of wild-caught chimpanzees. Many of the African nations with wild chimpanzee populations also have protective laws. Nonetheless, chimpanzees continue to be exported, imported, and captured and killed illegally for various uses.

Internationally, there have been problems, both because not all involved countries are parties to the Convention, and because the controls of the Convention are sometimes surreptitiously bypassed. There have been cases of chimpanzees being illegally captured and exported from countries in Africa, and then brought into nations that are parties to the Convention. In response to inquiries by the Service during its recent status review, the governments of several African nations indicated that they have regulations protecting chimpanzees, but that enforcement is very weak because of lack of resources and expertise. The Central African Republic, for example, explained that hunting pressure by the native forest people was relatively light, but that poachers from surrounding areas, and even from outside the country, were causing increasing problems. In her response to the review, Dr. Jane Goodall stated that poaching even had become a problem in the well-protected Gombe National Park of Tanzania.

E. Other natural or manmade factors affecting its continued existence. Dr. Goodall’s response also pointed out that the naturally slow reproductive rate of chimpanzees (very few adult females raise more than two young to maturity during their approximately 27 years of reproductive life), combined with increasing human pressures, places the chimpanzee in a precarious survival position. It is her opinion that “the continued removal of infants from wild populations (even if this does not involve the killing of breeding females) will, within a relatively short period of time, bring wild chimpanzees to the verge of extinction in Africa.” In a separate response to an inquiry from the United States Embassy in Tanzania, made at a request from the Service during its recent review, Dr. Goodall added that the chimpanzee population of Gombe National Park had become isolated by surrounding human agricultural activity, and there were thus doubts about the long-term genetic viability of the population.

The problems indicated by Dr. Goodall are unfortunately becoming prevalent throughout the range of the chimpanzee. All populations are undergoing fragmentation into ever smaller and more isolated units. This process is most advanced in the western and eastern populations, but is underway even in Zaire. It restricts natural interbreeding and increases vulnerability to decimation by various intrinsic and extrinsic factors. Small, isolated groups of chimpanzees are more easily eliminated by human hunting, disease, or any local environmental disruption. Fragmentation and associated disturbance may also have adverse long-term effects relating to social structure and reproduction.

In her response to the proposal, Dr. Margery L. Oldfield of the University of Texas supported an endangered classification for all wild chimpanzee populations. Her studies indicate that the selective removal of breeding females from a population of long-lived, slow-reproducing animals will inevitably lead to extinction. As explained above, this process is occurring relative to the chimpanzee, as adult females are being killed in order to obtain their young for trade.

The decision supporting reclassification to endangered status for the chimpanzee in the wild, and for the pygmy chimpanzee in the wild and in captivity, was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the two species. Wild populations of the chimpanzee have been reduced to a small fraction of their original size, and the species has disappeared entirely from a number of countries. Its status continues to deteriorate through habitat destruction, expansion of human activity, hunting, commercial exploitation, and other problems. Such deterioration is likely to continue or accelerate with respect to wild populations, though in the United States and certain other countries there are captive groups sufficiently large to be maintained independently; current efforts to enhance the care and breeding potential of these groups could reduce the demand for additional wild individuals. The pygmy chimpanzee, which evidently is rarer and more restricted in range than is the other species, has suffered from similar problems in the wild and is represented by only a few captive individuals. To retain a classification of threatened for the pygmy chimpanzee, and for the chimpanzee in the wild, would not adequately reflect the decline of these species and the multiplicity of long-term problems confronting them. Critical habitat is not being determined, as its designation is not applicable outside of the United States.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. The chimpanzee and pygmy chimpanzee long have been listed as threatened and are already fully covered by section 7(a), and their reclassification to endangered will add no new requirements in this regard.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general
prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service. With respect to the case at hand, these prohibitions will not apply to live members of the species Pan troglodytes held in captivity in the United States on the effective date of this final rule, or to the progeny of such animals, or to the progeny of animals legally imported into the United States after the effective date of this final rule.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species, including individuals and parts and products thereof, under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d) thereof. Reclassification to endangered status will preclude issuance of permits to import wild-caught individuals solely for zoological exhibition or educational purposes, as is now allowed for threatened species pursuant to 50 CFR 17.32. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Revision of Special Rules

This rule will continue the original special regulation, described above under "Background," with respect to captive individuals of the species Pan troglodytes in the United States, but there also will be an additional provision. Since all members of that species in captivity will be classified as threatened, there may be potential for individuals to be taken from the wild and then for such individuals or their progeny to be imported into the United States pursuant to regulations covering threatened species, which are less restrictive than those covering endangered species. To assure that removal of animals from the wild is not encouraged by less restrictive regulations, which might result in a decline of wild populations, the special rules provide that the regulations covering endangered species will apply to any individual chimpanzee within the historic range of the species, regardless of whether in the wild or in captivity. This provision also will apply to any chimpanzee not within the historic range, but which originated within this range after the effective date of this rule, and also will apply to the progeny of any such chimpanzee, other than to the progeny of animals legally imported into the United States after the effective date. This last exception is made so that a chimpanzee, born to parents already legally imported into the United States under the restrictive endangered species regulations, will not have to be tracked and treated separately from the rest of the captive population.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for the determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

§ 17.11 Endangered and threatened wildlife.

<table>
<thead>
<tr>
<th>Species</th>
<th>Historic range</th>
<th>Vertebrate population where endangered or threatened</th>
<th>Status</th>
<th>When listed</th>
<th>Critical habitat</th>
<th>Special rules</th>
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</thead>
<tbody>
<tr>
<td>Chimpanzees</td>
<td>Pan troglodytes</td>
<td>Africa—see 17.40(c)(3)</td>
<td>Wherever found in the wild</td>
<td>E</td>
<td>16</td>
<td>NA</td>
</tr>
<tr>
<td>Do.</td>
<td>do</td>
<td>do</td>
<td>Wherever found in captivity</td>
<td>T</td>
<td>16</td>
<td>NA</td>
</tr>
<tr>
<td>Chimpanzees, pygmy</td>
<td>Pan paniscus</td>
<td>Zaire</td>
<td>Entire</td>
<td>E</td>
<td>16</td>
<td>NA</td>
</tr>
</tbody>
</table>

3. Amend § 17.40 by revising paragraph (c)(1), and by adding, after the concluding paragraph of (c)(2), a new paragraph (c)(3) to read as follows:

§ 17.40 Special rule—mammals.

(c) Primates.—(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all provisions of § 17.31 shall apply to the lesser slow loris, Nycticebus pygmaeus; Philippine tarsier, Tarsius syrichta; white-footed tamarin, Saguinus leucopus; black howler monkey, Alouatta pigra; stump-tailed

References Cited


Author

The primary authors of this rule are Dr. Charles W. Dane and Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703-358-1708 or FTS 921-1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

1. The authority citation for part 17 continues to read as follows:


2. Amend § 17.11(h) by revising the entries for "Chimpanzee" and "Chimpanzee, pygmy" under "MAMMALS," in the List of Endangered and Threatened Wildlife, to read as follows:

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
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<tbody>
<tr>
<td>MAMMALS</td>
<td></td>
</tr>
<tr>
<td>Chimpanzee</td>
<td>Pan troglodytes</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
</tr>
<tr>
<td>Chimpanzee</td>
<td>Pan paniscus</td>
</tr>
</tbody>
</table>
macaque, Macaca arctoides; gelada baboon, Theropithecus gelada; Formosan rock macaque, Macaca cyclopis; Japanese macaque, Macaca fuscata; Toque macaque, Macaca sinica; long-tailed langur, Presbytis potenziani; purple-faced langur, Presbytis senex; Tonkin snub-nosed langur, Pygathrix (Rhinopithecus) avunculus; and, in captivity only, chimpanzee, Pan troglodytes.

(3) The provisions of §§ 17.21, 17.22, and 17.23 shall apply to any individual chimpanzee (Pan troglodytes) within the historic range of the species, regardless of whether in the wild or captivity, and also shall apply to any individual chimpanzee not within this range, but which has originated within this range after the effective date of these regulations, and also shall apply to the progeny of any such chimpanzee, other than to the progeny of animals legally imported into the United States after the effective date of these regulations. For the purposes of this paragraph, the historic range of the chimpanzee shall consist of the following countries: Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Cote d’Ivoire, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Nigeria, Rwanda, Senegal, Sierra Leone, Sudan, Tanzania, Togo, Uganda, and Zaire.

Constance B. Harriman,
Assistant Secretary for Fish and Wildlife and Parks.

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