

permit could receive an award. Therefore, no information collection is involved.

#### National Environmental Policy Act

OHA has reviewed this proposed rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

#### Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 4.1294). (5) Is the description of the proposed rule in the "SUPPLEMENTARY INFORMATION" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: [exsec@ios.doi.gov](mailto:exsec@ios.doi.gov).

#### List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Lawyers, Surface mining.

Dated: July 3, 2000.

**John Berry,**

*Assistant Secretary, Policy, Management and Budget.*

For the reasons set forth in the preamble, OHA proposes to amend 43 CFR Part 4 as follows:

#### PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority citation for part 4, Subpart L, continues to read as follows:

**Authority:** 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1271, 1275, 1293; 5 U.S.C. 301.

2. 43 CFR 4.1294(b) and (c) are revised to read as follows:

#### § 4.1294 Who may receive an award.

\* \* \* \* \*

(b) From OSM to any person, other than an applicant or permittee or his or her representative, who initiates or participates in any proceeding under the Act, who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues.

(c) To an applicant or permittee from OSM when the applicant or permittee demonstrates that OSM denied an application or issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the applicant or permittee; or

\* \* \* \* \*

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#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants: 12-Month Finding on Petition To Reclassify the Cheetah (*Acinonyx jubatus*) in the Republic of Namibia From Endangered to Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** 12-month finding on petition.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the 12-month finding on a petition to reclassify the cheetah (*Acinonyx jubatus*) population of Namibia from endangered to threatened. We have determined that the petitioned action is not warranted because available information is inadequate to determine that the factors that caused the cheetah to become endangered have been reduced sufficiently. Specifically, the lack of reliable, long-term population estimates for cheetah in Namibia make it impossible to determine whether the population is of adequate size to withstand most natural catastrophes or whether the population is increasing, decreasing, or stable. Such population trend information is necessary to determine the extent to which the substantial regulatory mechanisms initiated by the Government of Namibia are reducing the killing of cheetahs by Namibian farmers. This killing has been

an important mortality factor for cheetahs in Namibia over the past three decades.

**DATES:** The 12-month finding was made on June 28, 2000.

**ADDRESSES:** If you have any questions about this decision, you may send correspondence or questions to the Chief, Office of Scientific Authority; Mail Stop: Room 750, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number: 703-358-2276; E-mail address: [r9osa@fws.gov](mailto:r9osa@fws.gov)). Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Susan Lieberman, Chief, Office of Scientific Authority (Telephone number: 703-358-1708; Fax number: 703-358-2276; E-mail address: [r9osa@fws.gov](mailto:r9osa@fws.gov)) or Dr. Kurt A. Johnson, Office of Scientific Authority (same telephone and fax numbers as above; E-mail address: [kurt\\_johnson@fws.gov](mailto:kurt_johnson@fws.gov)).

#### SUPPLEMENTARY INFORMATION:

#### Background

On August, 11, 1995, the Service received a petition from the government of the Republic of Namibia and Safari Club International requesting that the Namibian population of the cheetah (*Acinonyx jubatus*) be reclassified from endangered to threatened under the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*). The petition gives three reasons for requesting the reclassification of the cheetah in Namibia: (1) The original listing of the Namibian cheetah population was in error; (2) the cheetah population in Namibia has recovered; and (3) the current endangered classification puts the species at greater risk because it impedes the conservation efforts of the Government of Namibia.

In the **Federal Register** of March 19, 1996 (61 FR 11181), we announced a 90-day finding that the petition presented substantial information indicating that the requested action (*i.e.*, reclassification from endangered to threatened) may be warranted. We initiated a status review of the cheetah in Namibia, with the original comment period ending on July 17, 1996. Before a decision was taken we received two new documents of importance to this issue. The first was the final report of a 1996 cheetah and lion (*Panthera leo*) workshop sponsored by the World Conservation Union/Species Survival Commission (IUCN/SSC) Conservation Breeding Specialist Group (CBSG) in

Otiwarango, Namibia, and attended by a scientist from the Service. The report, entitled "Population and Habitat Viability Assessment for the Namibian Cheetah and Lion," included a predictive population model for the cheetahs in Namibia. The second was a draft cheetah management plan for the species entitled "Namibian Cheetah Conservation Strategy" that was prepared for the Ministry of Environment and Tourism (MET) of the Government of Namibia. In order to consider this new information and any public comments on either report, we announced in the **Federal Register** on December 9, 1997 (62 FR 64800), our decision to reopen the comment period until February 1, 1998.

Section 4(b)(3)(B) of the Act requires us, within 12 months of receipt of a petition, to make a finding on whether that petition is warranted, not warranted, or warranted but precluded by other pending proposals. We herein announce our 12-month finding on this petition.

#### **How Do We Determine if Reclassification of the Namibian Cheetah Population Is Warranted Under the Act?**

The cheetah is listed as endangered under the Act. The criteria that we must use in evaluating its potential reclassification under the Act are explicit. First, we must determine if the Namibian cheetah population qualifies as a "Distinct Population Segment" as defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS Policy) (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?).

Second, section 4(a)(1) of the Act requires that we determine if any one or a combination of the following five factors cause the cheetah in Namibia to be endangered or threatened, as defined by the Act:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; and

(E) other natural or man-made factors affecting its continued existence.

Endangered is defined as "in danger of extinction throughout all or a significant portion of its range" and threatened is defined as "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." It is our assessment of these five factors using the best scientific information available, including public comments received during the two public comment periods, that determines whether the cheetah should be reclassified as threatened (or even delisted).

#### **What Are the Population Estimates and Population Trends for the Cheetah in Namibia?**

The cheetah population worldwide has declined from an estimated 100,000 in 1900 to the current estimate of 12,000 (Marker-Kraus *et al.* 1996). Except for a population of fewer than 200 cheetahs in Iran, all wild cheetahs occur in Africa.

In the 1970s, the Namibian cheetah population was variously estimated to number from 1,500–3,000 (Myers 1975) to 6,252 (Joubert and Mostert 1975) individuals. This disparity in population estimates may have been caused in part by whether cubs were excluded from or included in the count.

During the 1980s, the Namibian cheetah population was estimated to have declined significantly (up to 50 percent by some estimates). Morsbach (1987) estimated the mid-1980s population to be between 2,000 and 3,000, on the basis of extrapolations from his field study of cheetah population density on a small number of Namibian farms (Nowell 1996). Population declines in the 1980s are thought to have been caused by several factors, but primarily (1) declines in natural prey populations brought about by drought and disease, and (2) increased killing of cheetahs by farmers in defense of livestock (Nowell 1996). For example, kudu (*Tragelaphus strepsiceros*) are a primary cheetah prey species, and 58 percent of the kudu population was lost by 1983 due to a rabies epidemic (Marker-Kraus *et al.* 1996). This reduction in natural prey created greater conflicts with landowners because of actual and/or perceived increases in cheetah predation on domestic livestock. From 1978 through 1995, 9,588 cheetahs were removed from the wild in Namibia according to the MET permit system

(Nowell 1996). The actual number of cheetahs killed by farmers is believed to have been under-reported, potentially by as much as 50 to 70 percent (Nowell 1996). If the level of under-reporting was 50 percent, then upwards of 14,000 cheetahs may have been killed from 1978 through 1995 (Nowell 1996). Reported removals were greater in 1978 through 1985 (annual average of 827 cheetahs) than in 1986 through 1995 (annual average of 297 cheetahs) (Nowell 1996).

The current population estimate for cheetah in Namibia is between 2,000 and 3,000 adults and subadults (Nowell 1996, Seal *et al.* 1997). This estimate is based on four studies in addition to Morsbach's previously cited field study of cheetah populations: (1) A nationwide farm survey conducted in 1992 by the MET; (2) a separate farm survey conducted by the Cheetah Conservation Fund (Marker-Kraus *et al.* 1996); (3) an analysis of cheetah sightings in Etosha National Park in 1992 through 1994 (Nowell *et al.* 1994); and (4) a transect survey of cheetah spoor in eastern Bushmanland (Stander *et al.* 1996).

#### **What Information Was Provided by Those Who Commented in 1996?**

We received 19 responses to our first request for public comment on the cheetah petition. Most of those were from organizations, and in some instances, groups made more than one submission. Those organizations that sent comments favoring reclassification included the IUCN/SSC Cat Specialist Group, Africa Resources Trust, Namibia Professional Hunting Association, and the American Zoo and Aquarium Association. Those organizations that opposed reclassification included the Humane Society of the United States, the Cheetah Conservation Fund, The Fund For Animals, and the National Museums of Scotland. We also received comments from cheetah conservation projects conducted by the Smithsonian Institution and the Zoological Society of London.

A central argument advanced by many of those favoring reclassification was that, by giving the cheetah value (*i.e.*, as a trophy animal), farmers on whose lands cheetahs naturally occur would become more tolerant of the cheetahs and more selective in killing them. The Service has typically been unable to make the necessary enhancement finding to allow the import of a sport-hunted trophies for a species listed as endangered, and taken from the wild under the Act. In contrast, import permits for sport-hunted trophies of species listed as threatened

under the Act are often issued for animals taken from the wild when it can be demonstrated that the range country has established a conservation program that meets enhancement as defined in Section 10 of the Act.

The Africa Resources Trust noted that competition for habitat with agricultural uses has contributed more to the decline of cheetahs than the trade in skins or the quest for sport-hunted trophies. The Namibia Professional Hunting Association emphasized this point with Namibian government records from 1980 to 1991; these records show that 190 cheetahs were taken by trophy hunters, 958 were live-captured, and 5,670 were shot by farmers. The Director of the Centre for Wildlife Management at the University of Pretoria favored the reclassification because it would support the game ranching industry in Namibia that has created more cheetah habitat. The American Zoo and Aquarium Association stated that the cheetah population had stabilized at about 2,500 adult animals.

Many of the submissions opposing the reclassification focused on the long-term decline of the species and the lack of scientific data on the current size of the population. The American Society of Mammalogists noted that data on cheetah numbers, distribution, and current harvest are needed to set biologically meaningful quotas, and data on sex and age ratios would also be necessary to predict population responses to different harvest levels. The Curator of Mammals and Birds of the National Museums of Scotland also questioned the reliability of the current population estimate. The Humane Society of the United States evaluated the proposal in terms of each of the Act's factors, but particularly pointed out that landholders have already become increasingly tolerant of cheetah without allowing importation of trophies by the United States.

Several commenters joined the Humane Society of the United States in noting that cheetahs are lacking in genetic variation and are, therefore, more vulnerable to disease. However, Peter Jackson, Chairman of the IUCN/SSC Cat Specialist Group, included in his comments information that field biologists working on cheetah had found no impact on genetic viability. Since the estimated initial population is greater than 1,000, the Population and Habitat Viability Assessment projected no additional effects due to inbreeding depression (Seal *et al.* 1997).

Paule Gros and Tim Caro, biologists who have studied cheetahs in the wild and have compared several methods of estimating carnivore densities,

concluded that there is no biological evidence that the Namibian cheetah population is stable and secure. They stated that hunting of cheetahs could only be justified if there is some reliable measure of sustainable yield based on the total cheetah population estimated in the field. Chris Stuart, Director of the African-Arabia Wildlife Research Centre, while concurring with the population estimate of 2,500 to 3,000 animals, submitted that the population is not stable but had undergone considerable decline over the last 15 years. While giving no opinion on reclassification, Stuart concluded that putting a "price-tag" on the cheetah could improve its conservation standing, as had been his experience with leopards in South Africa.

The Fund for Animals questioned why considering reclassification of the cheetah is a priority within the May 16, 1996, Listing Priority Guidance (61 FR 24722) on allocation of resources for the endangered species listing process. The evaluation of the cheetah's status under the Act was stimulated by a formal petition requesting reclassification; the Act itself mandates a specific time frame for completing a review and evaluation of a petition. The notice of the 90-day petition finding and initiation of status review was published in the **Federal Register** on March 19, 1996, almost two months prior to publication of the listing guidance. The Office of Scientific Authority subsequently complied with the Listing Priority Guidance in assigning priority to the cheetah petition in relation to the Office's other pending actions to be carried out under section 4 of the Act.

#### **What New Information Was Contributed by the Namibian Cheetah Conservation Strategy?**

In conjunction with proposed changes in policy toward cheetahs in Namibia, Kristin Nowell of the IUCN/SSC Cat Specialist Group was retained by the Government of Namibia to draft the Namibian Cheetah Conservation Strategy (Strategy). The Strategy was submitted to the MET in 1996, and has subsequently become the working policy (Dr. P. Stander, pers. comm. with Office of Scientific Authority). While the Strategy addresses many of the Act's listing criteria, one of the most important contributions is a population model that was developed to assess what impact cheetah removals (by any means) would have on the population (Nowell 1996). The model, developed at the Etosha Ecological Institute in Namibia and referred to as the Erb model, suggests that in the early 1980s removal of up to 50 percent of males

and 10 percent of females each year reduced the population from 3,700 adults and sub-adults in 1970 to about 2,000 in 1985. The model concluded that lower levels of cheetah removals in the 1990s have allowed the population to rebound to an estimated 2,500 in 1996.

The Strategy assumes that, because the cheetah has a higher reproductive rate than those of other big cats, the population should be resilient in rebounding from periods of high mortality and offtake (*i.e.*, removal of individuals from the population by any means, including killing by farmers because of actual or perceived predation on domestic livestock, called "depredation offtake"). The Erb model projects that an annual offtake of 20 percent of adult males and 5 percent of adult females is biologically sustainable. The Strategy suggests that the MET, which has responsibility for management of the cheetah, establish a target for total removals at 200 per year, and consider stopping the issuance of permits if total removals approach 300 per year.

The Strategy suggests that the MET hire a Predator Coordinator to monitor total cheetah removals reported nationwide each year, as well as the sex and age of those animals. The annual removal data would be used to refine the cheetah population models that have been developed to date. Dr. Philip Stander subsequently was hired for the position of Large Carnivore Coordinator.

#### **What New Information Was Contributed by the Population and Habitat Viability Assessment (PHVA)?**

The workshop organized by the IUCN/SSC Conservation Breeding Specialist Group to provide a population and habitat viability assessment for the Namibian cheetah and lion was held in Otjiwarongo, Namibia, in 1996. We participated in that workshop. The viability of the Namibian cheetah population was modeled using the VORTEX population simulation program (Lacy 1993). The VORTEX model measures the likelihood of the cheetah population going extinct given particular population parameters and incorporating the stochastic (or random) factors that often drive small populations to extinction.

The VORTEX modeling exercise started with an approximation of current conditions, as follows. The total Namibian cheetah population was estimated to be 2,500 including cubs (this may be an underestimate of the total Namibian population; the Strategy, in contrast, uses a population estimate of 2,500 excluding cubs). The

proportion of adult females in the population was estimated at 27 percent, while the adult female mortality rate was estimated at 20 percent (10 percent natural mortality and 10 percent human-related offtake). With an initial population estimate of 2,500, the VORTEX model assumed no additional inbreeding depression that would reduce offspring viability. The model also assumed no immigration of cheetahs from Botswana. Given the aforementioned approximation of current conditions, the report concluded that the Namibian cheetah population could tolerate a human-related offtake of 60 to 70 adult females per year and maintain a stable population of around 2,500.

The modeling exercise then continued by evaluating factors that could affect population growth characteristics, specifically by varying the number, frequency, and severity of natural catastrophes (such as drought and disease outbreaks), varying adult mortality, varying the ratio of adult male-to-female mortality, varying the starting population size, and varying the carrying capacity. Factors that tended to cause the population to decline included adult female mortality greater than 30 percent per year and frequent natural catastrophes (e.g., disease outbreaks, drought) resulting in over 50 percent mortality across age classes.

The Executive Summary of the VORTEX Modeling Workshop states that "if the cheetah population continues to decline at the 4 to 7 percent annual rate experienced over the past 15 years, there is a 50 to 100 percent probability of extinction in the next 100 years." This estimate of population decline over the last 15 years would suggest that the population is still being overutilized.

#### **What Additional Public Comments Did the Cheetah Conservation Strategy and the PHVA Stimulate?**

We received 122 comments during the second comment period, from December 1997 to January 1998. Fifteen of those comments came from conservation and animal protection organizations such as The International Wildlife Coalition, Beauty without Cruelty, and the Animal Protection Institute. Of the comments of private individuals, 82 were from four groups and all of those opposed reclassifying the cheetah.

Olive D. Butler and Erin Boddicker joined 19 other private individuals in stating that there are no accurate, standardized methods for determining the cheetah population in Namibia. The Animal Protection Institute was among commenters stating that cheetah are

inbred and, therefore, more vulnerable to disease. Irene Ballinger and 16 other commenters wrote that the cheetah was still in decline, with the population worldwide dropping more than 60 percent in the last 30 years. Leslie Ann Adams and 22 others stated that there are at present no accurate, standardized methods for determining how many cheetahs are killed each year, whether for depredation control, hunting, or other purposes. We concur that, until there is an established census for the cheetah, conducted over several years, any contention that the population is continuing to decline or has stabilized is conjecture.

Representative George Miller of the U.S. House of Representatives (D-CA) and ranking minority member of the Committee on Resources opened his letter by stating that any decision to reclassify a species must address whether the conditions that led to the listing have been removed. He points out that, while it is useful to encourage other countries to find innovative ways to conserve predators, we must base any decision not on the promise of such programs but evidence of their success.

The American Zoo and Aquarium Association wrote again during the second comment period, reversing their earlier support for reclassification because the provisions they had stipulated in their initial comments had not been met. While acknowledging the "tremendous strides" made by the Government of Namibia, they concluded that neither the annual census nor the conservation program funded in part by trophy fees were yet in place.

Kristin Nowell, a member of the IUCN/SSC Cat Specialist Group who participated in the PHVA workshop and drafted the Namibian Cheetah Conservation Strategy, commented that the conclusion in the Executive Summary of the VORTEX Modeling Workshop report on the extinction probability did not reflect the consensus of the workshop. Most of the scenarios that were run by the VORTEX model did not result in extinction within 100 years according to Nowell. She went on to express her view that Namibia has the world's best cheetah conservation program, and there is broad support for the reclassification within the country's conservation community.

Wildlife Biologist James Teer of the Welder Wildlife Foundation emphasized the point made most frequently in support of reclassification: it is the opportunistic, indiscriminate killing of cheetahs by farmers to protect livestock that represents the greatest threat to the species. Teer called for increasing field studies of cheetahs, as

well as further genetic and disease work.

John J. Jackson III of Conservation Force wrote in support of the Namibian Cheetah Conservation Strategy. He stated that there was an error in the Executive Summary of the PHVA report, specifically that the population decline in the early 1980s had been reversed and the population had been stable for the last 15 years. Mr. Jackson pointed out that the PHVA workshop used 2,500 as the total cheetah population figure and interpolated the estimate for adults to 1,300, whereas the biologists in Namibia consider 2,500 to be the estimate excluding cubs. Finally, Jackson stated that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) had approved a quota of cheetah trophies from Namibia, and the United States had not objected. Not allowing these trophies to be imported amounted to a trade sanction, according to Jackson, that would only work in the short term.

In response to Jackson's comments, we believe that there is no consensus on cheetah population trends over the past 15 years. We also believe that, in determining the status of any species, population trends must be evaluated over the long term. In the Namibian cheetah's case, long-term trends indicate a population decline. Furthermore, our decision on reclassification must be based on whether the species has recovered sufficiently so that it is no longer endangered by the five factors specified in the Act, rather than only if the species has ceased to decline within the past 15 years. We disagree that the endangered listing under the Act amounts to a trade sanction, noting that the Act constitutes a "stricter domestic measure," which is specifically authorized in CITES. Whether cheetah trophies can be imported into the United States is not a factor in our decision on whether the species has recovered sufficiently to warrant reclassification under the Act. However, the Fish and Wildlife Service is now reviewing its current practice regarding import of foreign species to determine whether any new policy should be proposed.

#### **Can the Cheetah Population of Namibia Be Considered a Distinct Population Segment Under the Act?**

The cheetah in Namibia, *A. j. jubatus*, is a subspecies that occurs in four other African countries. It is not genetically isolated from populations in other countries, particularly Botswana. Nonetheless, the cheetah population of Namibia qualifies as a distinct

population segment because it meets the criteria for discreteness and significance in the Service's DPS Policy (61 FR 4722). One criterion for discreteness under the DPS Policy is: "[The population] is delimited by international government boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist \* \* \*". The Namibian cheetah population satisfies this criterion. The measures taken by the Government of Namibia, including the development of the Namibian Cheetah Conservation Strategy, are steps that indicate that the population will be managed differently than in the countries that border Namibia. The cheetah population of Namibia also satisfies the following criterion for significance: "Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon." Clearly, the extinction of the Namibian cheetah population would represent a significant loss to the range of the cheetah in Africa.

**After Assessing the Five Factors Specified by the Act, Should the Cheetah Population of Namibia Remain as Endangered or Does It Warrant Reclassification From Endangered to Threatened?**

While acknowledging the great strides that have been made by the MET and cooperating groups, we cannot conclude that the cheetah population of Namibia has recovered or that the factors that caused the cheetah to become endangered have been reduced to the extent that the species warrants reclassification from endangered to threatened. Our assessment of the five factors specified in the Act is as follows.

**A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range**

With regard to the first factor, there is agreement that at least 90 percent of cheetah habitat in Namibia is on privately owned farmlands (Marker-Kraus *et al.* 1996). Moreover, because of competition with other carnivores, there is little likelihood of public lands becoming a significant refuge for cheetahs (Caro 1994).

Because of the abundance of prey on game ranches and farms with domestic animals, the fact that most cheetah habitat is in private ownership does not constitute an inherent threat to the species. It is a threat if farmers shoot cheetahs indiscriminately, and the effort to substantially reduce these killings on private lands is the critical component of the current management program.

Those efforts are not likely to be fully tested until drought or disease again take a significant portion of the cheetah's primary natural prey, and predation on domestic livestock increases, or is perceived to have increased, as a consequence.

**B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes**

With regard to the second factor, we believe there is substantial evidence to indicate that overutilization, in the form of depredation offtake, contributed substantially to a decline of the Namibian cheetah population in the past three decades (especially from the late 1970s until the late 1980s or early 1990s). However, we cannot determine if overutilization is still occurring because the lack of reliable, long-term population estimates (*i.e.*, estimates obtained through standard survey methodology repeated at regular intervals over the past 30 years) for cheetah in Namibia make it impossible to determine whether the population has been increasing, decreasing, or stable over the past 30 years (but especially the past 10–15 years).

Both the Erb and VORTEX models have been used to derive estimates of offtake that would not drive the population to the point of extinction based on estimates of initial population size and other population parameters. Combining the MET figures for trophy and reported depredation offtake in Namibia, 125 cheetahs were killed in 1997 and 175 in 1998 (P. Stander, pers. comm. with OSA) in contrast to a yearly average of 568 for 1980 through 1991. The 1997 and 1998 totals fall within the sustainable offtake limits set by both models, assuming a 2:1 ratio of males to females in all kills, and assuming a current population of 2,500. However, these results cannot be used to conclude that overutilization is not occurring, because the accuracy of the current population estimate of 2,500 is debatable and the exact level of offtake is not known. The current population estimate should be expressed with a confidence interval (*i.e.*, 2,500  $\pm$  500), as it is derived from an estimate of 2,000 to 3,000 cheetahs made over a decade ago by Morsbach (1997). Even with such a confidence interval, the accuracy of the estimate is still unknown. Recent depredation offtake, averaging 96 animals in 1997 and 1998, is consistent with a steady decline from a high of 850 in 1982. This decline could be attributed to a change in farmer attitudes but may also be a result of increased levels of under-reporting. Nowell (1996; page 28) has stated that

"\* \* \* there are indications that under-reporting is becoming increasingly common."

The MET has made the development of indirect survey methods and establishment of a population monitoring program its top priorities. It has acknowledged that mark-and-recapture methods have not been very successful, due to the difficulty of capturing the necessary number of cheetahs. Spoor counts have shown potential in the current monitoring program (Stander 1998). We strongly support the implementation of a standardized survey methodology and population monitoring program in Namibia. To that end we have made funds available to co-sponsor a workshop to help evaluate currently used methods and to help adopt a standardized survey strategy and population monitoring program for Namibian cheetahs that has widespread professional acceptance. Data from such a population monitoring program would be needed to determine whether the cheetah population in Namibia has recovered sufficiently to warrant reclassification.

**C. Disease or Predation**

With regard to disease and predation, it is known that cheetahs have died from feline infectious peritonitis (Brown *et al.* 1993) and anthrax (Jager *et al.* 1990). The low level of genetic variation in cheetahs as a result of historical and recent "bottlenecks" due to small population size heightens the concern about disease susceptibility (O'Brien *et al.* 1994). Moreover, outbreaks of foot and mouth disease and rabies had a major impact on natural prey populations in the 1980s, increasing the likelihood that cheetahs would prey on domestic livestock (Marker-Kraus *et al.* 1986) and thereby make them more susceptible to depredation offtake by farmers. In this way, disease has contributed to the overutilization of cheetah in Namibia and thus has been an indirect factor in their endangerment.

Predation on cheetah cubs by lions and hyenas has reduced cheetah numbers in protected areas such as Etosha National Park and elsewhere (Laurenson 1994, Caro 1994). We do not, however, consider this to be a factor contributing to their endangered status.

**D. Inadequacy of Existing Regulatory Mechanisms**

The fourth factor, the inadequacy of existing regulatory mechanisms, has been the area of greatest change in the last decade. While the cheetah has been classified as "Protected Game" in Namibia's Nature Conservation

Ordinance of 1975, and protected game cannot be hunted without a permit, there is an important exception for predators. Article 27.5 allows killing of protected game in protection of livestock "whilst the life of such livestock, poultry or domestic animal is actually being threatened." It also states that anyone who kills a predator must report it in writing within 10 days to the nearest nature conservator or police office. In practice, cheetahs were killed by farmers as a precautionary measure, particularly in the 1980s when cheetahs were a major threat to livestock. Cheetah kills were seldom reported unless the skin was going to be kept. The Namibian Cheetah Conservation Strategy represents a change not in the law but in its application (Nowell 1996).

The cheetah's protected status also precludes trophy hunting, but the government decided to allow trophy hunting of cheetah and leopard due to the problems of predation on livestock, in the hope that increasing their value would reduce the overall number killed. This rationale was explained in a 1982 letter from the Namibian Secretary of the Department of Agriculture to our Office of Scientific Authority. The experiment in conservation hunting of cheetahs in Namibia has been taking place since 1983 and was supported in 1992 at the eighth meeting of the CITES Conference of the Parties (COP8). At COP8, Parties voted to retain the cheetah in Appendix I, but to allow an annual export quota for Namibia of 150 live animals and trophies as well as smaller export quotas for Zimbabwe (50) and Botswana (5).

In 1997, 49 cheetahs were exported (32 males and 17 females). In 1998, 59 cheetahs were tagged, but only 40 were exported (30 males and 10 females) (P. Stander, pers. comm. with OSA). Though significantly fewer cheetahs have been removed than allowed under the quota, we are unable, at present, to evaluate the effects of that removal as well as the depredation offtake on the population.

#### *E. Other Natural or Man-made Factors Affecting its Continued Existence*

With regard to other natural factors affecting the existence of the cheetah, drought has had a substantial impact on populations of the cheetah's natural prey. As with disease, this has increased the likelihood that cheetahs would prey on domestic livestock (Marker-Kraus *et al.* 1986), thereby making them more susceptible to depredation offtake by farmers.

The single most important man-made factor affecting the existence of the cheetah is the attitude of farmers with

respect to the value of cheetahs relative to the threat they pose to domestic livestock. The Government of Namibia and non-government organizations have worked together to change public attitudes toward this predator. The decrease in the reported depredation offtake, as well as personal interviews with many of the people working in cheetah conservation in Namibia, suggest that attitudes are changing. This factor will become less of a significant issue as attitudes change sufficiently so that most cheetahs on farmlands are tolerated and only problem cheetahs are removed as trophies.

#### **What Is Our Assessment of the Petition's Three Reasons To Reclassify the Cheetah From Threatened to Endangered?**

The petition states three reasons why the petitioners believe that the cheetah population of Namibia qualifies for reclassification from endangered to threatened. We do not concur with any of these reasons, as explained in the following assessment.

##### *A. Was the Original Listing of the Cheetah as Endangered Throughout Its Range in Error?*

At the time the cheetah was originally considered for listing under the Act, we considered different levels of protection for different populations. It was ultimately decided that the species should be considered endangered throughout its range. Though some populations and subspecies, such as the Asian cheetah, were under greater immediate threat, there were substantial reasons for considering the entire species to be endangered in 1972. The worldwide decline in the last century of the cheetah from 100,000 to 12,000 and the restriction of its range from 44 to 29 countries (Marker-Kraus *et al.* 1996) support this classification. While the cheetah population in Namibia has remained larger than in almost all other African nations, there is evidence that this population has declined substantially as a result of reductions in prey populations and overutilization by people in the form of depredation offtake. We believe that such declines endanger the continued survival of cheetah in Namibia.

##### *B. Has the Cheetah Population of Namibia Recovered to the Point It Is No Longer Endangered?*

In order to reclassify the cheetah in Namibia from endangered to threatened, we must have information showing that the factors that led to its endangerment have been reduced sufficiently. That requirement must be met with data

supporting the contention that the population is stable or increasing, and of sufficient size to withstand most natural catastrophes. We currently do not have such information for the cheetah population of Namibia. Such information would include reliable, long-term population estimates for the country, data on the demographics of the population, and better information on depredation offtake, and would be used with the existing data on trophy offtake and live capture.

##### *C. Does the Endangered Status of the Cheetah Reduce Its Value to Namibian Farmers, Who Will Then Be More Likely To Kill the Animals Indiscriminately?*

This reason is the core of the Namibian Government's effort to have the cheetah reclassified under the Act. Because it is estimated that 90 percent of the cheetahs in Namibia have their primary habitat on farmland, due in part to the density of other carnivores in protected areas, working out conservation measures with private landowners on farmlands is crucial to the long-term survival of the species in Namibia. We agree that cooperative conservation efforts with private landowners are vital to the recovery of the species, as we have seen with endangered and threatened predator species in the United States.

It is important to acknowledge the major effort undertaken by the Government of Namibia during the past decade in developing conservation measures to maintain a stable cheetah population. The MET has worked closely with local non-governmental organizations such as Africat and the Cheetah Conservation Fund to understand and sometimes change the attitudes of farmers toward cheetahs on their land. The MET has adopted a strategy for conserving the cheetah that foremost seeks to give the animals value and avoid having them shot as a precaution against assumed livestock or game predation. The decision in this Notice should not in any way be seen as a rejection of Namibia's conservation efforts, which we applaud. Rather, this decision is based on our evaluation of the five factors specified in the Act.

The MET has worked with the Namibia Professional Hunting Association (NAPHA), which has encouraged its members to sign compacts in which they "agree to take reasonable steps to control the indiscriminate killing of cheetahs on their properties and to educate their employees, tenants and others living in the vicinity of their properties on the importance of the conservation of the cheetah." In November 1998, more than

190 properties comprising 1.5 million hectares were in compact lands. While this does not represent a large percentage of cheetah habitat in the country, more than 70 percent of the land where NAPHA members hunt is covered by compacts.

The second important development is the formation of farm conservancies under the 1996 amendments to the Nature Conservation Ordinance. Conservancies are groups of farms that join together for the purpose of conserving and utilizing wildlife. With the encouragement and participation of the MET, the conservancy movement has greatly expanded in the last few years. Cheetahs should benefit from the formation of conservancies in several ways. Because conservancies are groups of farms that comprise the ranges of game species, they should enhance the cheetah prey base. Also, because cheetahs have such large home ranges, population monitoring as well as identifying depredating individuals is likely to be more reliable at the conservancy level. Merging of the NAPHA compact scheme and the formation of farmland conservancies would also increase the potential benefits of cheetah sport hunting to a larger number of farmers.

The models developed both in conjunction with the PHVA and the Strategy are important steps toward determining what would constitute a stable cheetah population size with a low probability of extinction in the next 100 years. While several scientists submitting comments pointed out limitations with both models, the numbers in these reports have provided a first estimate of the level of offtake that would still sustain a healthy population. The models also point to the need for a monitoring program to provide an accurate estimate of the present population and its demographic composition.

The next significant development in cheetah conservation in the country is the Namibia Carnivore Monitoring Program. While it includes monitoring of other predators as well, it represents a recognition that the success of any conservation effort can only be determined with scientific measurement of cheetah abundance as well as natural mortality and offtake. The monitoring program establishes a priority of developing reliable survey and monitoring techniques within three years. Field personnel have been hired to carry out some of the initial work, and cooperating organizations have been enlisted to work on developing these methods as well. There has been an effort to calibrate the less intensive

methods and to compare estimation methods across carnivore species. A determination to reclassify the cheetah under the Act depends critically on the success of the monitoring program.

Finally, one of the most important recent developments in cheetah conservation is the initiation of the Large Carnivore Management Forum. Having met more than 15 times over the past two years, the Forum has brought together all stakeholders in cheetah management in Namibia. The permanent members include Afrileo, Africat, the Conservancy Association of Namibia (formed among farmers to deal with free-ranging wildlife), the Cheetah Conservation Fund, MET, NAPHA, Namibia Agricultural Union, Namibian Game Sanctuary Association, Namibian Carnivore Monitoring Program, Namibian Nature Foundation, OKATUMBA Wildlife Research, and six veterinary clinics. Other groups with issues to bring to the forum are invited, as is the press. The Forum has been directly involved in developing the monitoring program. It also provides a place for discussion when there are conflicts among stakeholders.

In total, the programs undertaken by the Namibian Government in conjunction with interested non-governmental organizations constitute a conservation infrastructure that can contribute to the long-term survival of the species.

#### **Does That Mean That Reclassification of the Cheetah Population of Namibia Will Occur Eventually?**

A decision on reclassification can only be made when the threats identified as endangering the species have been reduced, and there is evidence of the species' recovery. Such evidence can only come from reliable estimates of the total population and the sources of annual offtake. Those data must support the contention that the population is stable or increasing, and of sufficient size to withstand most natural catastrophes. The MET is collecting data on the sources of cheetah offtake, and has begun establishing parameters for a census and monitoring program. It is possible that, after population monitoring has taken place for several years, we would have sufficient information to conclude that reclassification is warranted. We do not have that information today. If reliable means of population estimation are established, and those estimates show that the cheetah population is of sufficient size and has remained stable or increased for at least six consecutive years (*i.e.*, the time period during which four biennial or three triennial surveys

would take place), then the Service could again consider the Namibian cheetah population for reclassification under the Act.

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**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00-18692 Filed 7-27-00; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 071200B]

#### Gulf of Mexico Fishery Management Council; Public Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on a Draft Fishery Management Plan for the Dolphin and Wahoo Fishery in the Atlantic, Caribbean, and Gulf of Mexico (draft Dolphin/Wahoo FMP).

**DATES:** The Council will accept written comments on the draft Dolphin/Wahoo FMP until final action is taken. The public hearings will be held in August. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

**ADDRESSES:** Written comments should be sent to, and copies of the draft Dolphin/Wahoo FMP are available from, Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813-228-2815; fax: 813-769-4520. See **SUPPLEMENTARY**

**INFORMATION** for specific hearing locations.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The intent of the draft Dolphin/Wahoo FMP is to provide a comprehensive management structure for dolphin and wahoo in the Atlantic, Gulf, and Caribbean exclusive economic zone (EEZ). The draft Dolphin/Wahoo FMP will take a precautionary approach to conserve and manage these fishery resources to maintain both optimum yield in the fishery and current allocations among user groups. The draft Dolphin/Wahoo FMP's first 10 proposed management actions, with options, contain measures that are applicable to the dolphin and wahoo stocks in the jurisdictions of the South Atlantic Fishery Management Council, the Caribbean Fishery Management Council, and the Gulf of Mexico Fishery Management Council. These actions include measures to define the management units; address dealer, vessel, and operator permits; establish data reporting requirements; estimate maximum sustainable yield, optimum yield, and establish overfishing/overfished criteria; and establish a framework procedure that would allow seasonal adjustments to the management structure. Other actions, with options, are separately applicable to each council's area of jurisdiction, and include actions that may be implemented through the framework procedure, (minimum size limits, bag limits, trip limits, and allocations, among others).

#### Time and Location for Public Hearings

Public hearings for the Dolphin/Wahoo FMP will be held at the following locations and dates from 7 p.m. to 10 p.m.

1. July 31, 2000, Port Aransas Community Center, 408 North Allister,

Port Aransas, TX 78373; telephone: 361-749-4111.

2. August 1, 2000, Texas A&M, Auditorium, 200 Seawolf Parkway, Galveston, TX 77553; telephone: 409-740-4416.

3. August 7, 2000, New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone: 504-469-5000.

4. August 8, 2000, Mississippi Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530; telephone: 228-374-5000.

5. August 9, 2000, Orange Beach Community Center; 27235 Canal Road, Orange Beach, AL 36561; telephone: 334-981-6028.

6. August 10, 2000, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408; telephone: 850-234-6541.

7. August 14, 2000, City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL 33708; telephone: 727-391-9951.

8. August 15, 2000, Edison Community College, Corbin Auditorium, Room J-103, 8099 College Parkway, Fort Myers, FL 33919; telephone: 941-489-9412.

9. August 16, 2000, Pier House, 1 Duval Street, Key West, FL 33040; telephone: 305-296-4600.

The Council will also hear public testimony on the draft Dolphin/Wahoo FMP at the September 2000 Council meeting.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council office (see **ADDRESSES**) by July 24, 2000.

Dated: July 24, 2000.

**Bruce Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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