

**List of Subjects in 48 CFR Parts 1828 and 1852**

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1828 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1828—BONDS AND INSURANCE**

2. Revise sections 1828.311-1 and 1828.311-2, and add section 1828.311-270 to read as follows:

**1828.311-1 Contract clause.**

The contracting officer must insert the clause at FAR 52.228-7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311-1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

**1828.311-2 Agency solicitation provisions and contract clauses.****1828.311-270 NASA solicitation provisions and contract clauses.**

(a) The contracting officer must insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228-80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at 1852.228-81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228-82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Amend Part 1852 by adding sections 1852.228-80, 1852.228-81, and 1852.228-82 to read as follows:

**1852.228-80 Insurance—Immunity From Tort Liability.**

As prescribed in 1828.311-270(b), insert the following provision:

**INSURANCE—IMMUNITY FROM TORT LIABILITY**

(XXX)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance—Liability To Third Persons, and the associated clause 1852.22881, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution. The clause at 1852.228-82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

**1852.228-81 Insurance—Partial Immunity From Tort Liability.**

As prescribed in 1828.311-270(c), insert the following clause:

**INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY**

(XXX)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract.

(b) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228-7, Insurance—Liability To Third Persons, provided that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228-7, for liabilities to third person for which the Contractor has obtained insurance coverage as provided in this paragraph (b), but for which such coverage is insufficient in amount.

(End of clause)

**1852.228-82 Insurance—Total Immunity From Tort Liability**

As prescribed in 1828.311-270(d), insert the following clause:

**INSURANCE—TOTAL IMMUNITY FROM TORT LIABILITY**

(XXX)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor will immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-day Finding on Petition To List the Tibetan Antelope as Endangered Throughout Its Range**

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the 90-day finding that a petition to list the Tibetan antelope (*Pantholops hodgsonii*) as endangered throughout its range has presented substantial information indicating that the action may be warranted. A status review of the species is initiated.

**DATES:** This finding was made on April 14, 2000. Comments and information may be submitted until June 26, 2000.

**ADDRESSES:** Submit comments, information, and questions to the Chief, Office of Scientific Authority; Mail Stop; Room 750, Arlington Square; U.S. Fish and Wildlife Service; Washington,

D.C. 20240 (Fax number: 703-358-2276; E-mail address: r9osa@fws.gov). Address express and messenger-delivered mail to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. You may inspect the petition finding, supporting data, and comments received, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Arlington, Virginia, address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kurt A. Johnson, Office of Scientific Authority, at the above address (Telephone number: 703-358-1708; E-mail address: r9osa@fws.gov).

#### SUPPLEMENTARY INFORMATION

##### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the requested action may be warranted. To the maximum extent practicable, we make this finding within 90 days following receipt of the petition, and we promptly publish a notice in the **Federal Register**. If the finding is positive, section 4(b)(3)(A) of the Act also requires us to commence a status review of the species. We now announce a 90-day finding on a recently received petition.

On October 6, 1999, the Service received a petition from the Wildlife Conservation Society (Joshua R. Ginsberg, Ph.D., Director, Asia Program, and George B. Schaller, Ph.D., Director of Science) and the Tibetan Plateau Project of Earth Island Institute (Mr. Justin Lowe, Director) requesting that the Tibetan antelope be listed as endangered throughout its entire range. Dr. Schaller is considered to be the world's leading expert on the Tibetan antelope. The Tibetan antelope is also known by its Tibetan name "chiru." These two common names will be used interchangeably in this document.

The Tibetan antelope (*Pantholops hodgsonii*; sensu Wilson and Reeder 1993) is a medium-sized bovid endemic to the Tibetan Plateau in China (Tibet Autonomous Region (TAR), Xinjiang/Uyghur Autonomous Region, and Qinghai Province) and small portions of India (Ladakh) and western Nepal (although no evidence exists that the species still occurs in Nepal). Adult males are characterized by long, slender, antelope-like black horns. Although the Tibetan antelope has been placed in the subfamily Antilopinae, recent morphological and molecular research

indicate that the species is most closely allied to the goats and other members of the subfamily Caprinae (Gentry 1992, Gatesy *et al.* 1992; both cited in Ginsberg *et al.* 1999). The species is uniquely adapted to the high elevation and cold, dry climate of the Tibetan Plateau (Schaller 1998). The sexes segregate almost completely during the spring and early summer (May and June), when adult females and their female young migrate north to certain calving grounds and return south by late July or early August, covering distances as long as 300 kilometers (186 miles) each way (Schaller 1998). Seasonal migrations by chiru constitute a critical aspect of the species' ecology and help define the ecosystem as a whole.

There are no accurate estimates of Tibetan antelope numbers in the past, although the few early western explorers who ventured onto the Tibetan Plateau noted the presence of large herds in many areas (Bonvalot 1892, Deasy 1901, Hedin 1903, Hedin 1922, Rawling 1905, and Wellby 1898; all cited in Schaller 1998). Schaller (1999) suggested that upwards of 1 million Tibetan antelope roamed the Tibetan Plateau as recently as 40-50 years ago. Historical population estimates of 500,000 to 1 million appear to be reasonable based on the limited information available.

Although data on the current population dynamics of chiru are fragmentary and preliminary (Schaller 1998), it is clear that the total population has declined drastically in the past 30 years and is continuing to decline. Schaller (1998) estimated that the total population in the mid-1990's may have been as low as 65,000-75,000 individuals. If one assumes that the historical population of chiru was 500,000 individuals, the mid-1990's estimate represents a population decline of 85 percent. Although overall mortality rates are not known, poaching mortality has been estimated to be as high as 20,000 individuals per year (SFA 1998). Annual recruitment of young has been estimated at around 12 percent, although recruitment failures have been documented in certain areas as a result of bad winter weather (Schaller 1998). If one assumes that the total current population of chiru is 75,000 individuals and that the population is currently declining at a rate of 1,000-3,000 individuals per year, then barring any changes, the species is likely to go functionally extinct within the next 25 to 75 years. The species' role as the dominant, native, grazing herbivore of the Tibetan Plateau ecosystem has already been diminished, and its influence on ecosystem structure

and function would likely be substantially reduced or eliminated well before the species actually goes extinct.

Changes in Chinese Government policy have led to increasing human development and activity on the Tibetan Plateau, including road development, settlement by pastoralists, resource extraction activities, and rangeland use for domestic livestock grazing (Ginsberg *et al.* 1999). These activities have already adversely modified or destroyed Tibetan antelope habitat in some areas and threaten to modify or destroy habitat over a large area in the near future. However, Tibetan antelope populations are declining principally because large numbers of chiru are being killed illegally for their wool, known in trade as shahtoosh ("king of wool"), which is one of the finest animal fibers known (Ginsberg *et al.* 1999). In China, the chiru is a Class 1 protected species under the Law of the People's Republic of China on the Protection of Wildlife (1989); all killing of Class 1 animals is prohibited except by special permit from the central government.

Most chiru poaching takes place in the Arjin Shan, Chang Tang, and Kekexili Nature Reserves in China by a variety of hunters, including local herders, residents, officials, military personnel, gold miners, and truck drivers (Schaller 1993, Schaller and Gu 1994). Organized, large-scale poaching rings have developed in some areas. Tibetan antelope are always killed to collect their fiber. No cases of capture-and-release wool collection are known, nor is naturally-shed fiber collected from shrubs and grass tufts as is often stated (primarily by people within the shahtoosh industry). Hunters shear the hides and collect and clean the underfur of the antelope, or sell the hides to dealers who prepare the shahtoosh (Wright and Kumar 1997).

Shahtoosh is smuggled out of China by truck or animal caravan, through Nepal or India, and into the region of Jammu and Kashmir. This activity is in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well as Indian and Chinese law. In Jammu and Kashmir, shahtoosh is processed into expensive, high-fashion shawls and scarves which are greatly valued by some people from around the world, including the United States. To reach consumer markets, the shawls must be smuggled out of India and into the consumer countries, in violation of CITES and domestic laws of those countries. The international demand for chiru fiber and shahtoosh products is the most serious threat to

the continued existence of the Tibetan antelope.

Schaller speculates that, during the 1980's and 1990's, tens of thousands of chiru were killed for their wool (Ginsberg *et al.* 1999). One chiru carcass yields about 125–150 grams (4–5 ounces) of fiber. In the winter of 1992, an estimated 2,000 kilograms (kg) (4,420 pounds) of wool reached India, and consignments of 600 kg (1,325 pounds) were seized (and released) in India during 1993 and 1994 (Bagla 1995, cited in Ginsberg *et al.* 1999). This amount alone represents 17,000 chiru. In October 1998, 14 poachers in the TAR were convicted of collectively killing 500 chiru and purchasing 212 hides, and were sentenced to 3 to 13 years imprisonment (Xinhua 1998, cited in Ginsberg *et al.* 1999). The largest enforcement action to date within China, involving several jurisdictions and dubbed the “Hoh Xil Number One Action” by Chinese authorities, resulted in the arrest of 66 poachers and the confiscation of 1,658 chiru hides in April and May, 1999 (Liu 1999, cited in Ginsberg *et al.* 1999).

Despite an Appendix-I listing under CITES, and protection by domestic legislation at the national level by China, Nepal, and India, existing regulatory mechanisms have been inadequate to prevent the poaching of

Tibetan antelope or the international smuggling of raw shahtoosh and finished shahtoosh products.

We find that the petition presents substantial information indicating that the requested action may be warranted. Specifically, substantial information indicates that the total population of Tibetan antelope has declined drastically over the last three decades, and that this decline has resulted primarily from overutilization for commercial purposes and inadequacy of existing regulatory mechanisms. Habitat impacts, especially grazing of domestic livestock, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future.

Pursuant to section 4(b)(3)(A), we hereby commence a review of the status of *Pantholops hodgsonii*. We encourage the submission of appropriate data, opinions, and publications regarding the subject petition or the status of the species. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we may also withhold

from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Section 4(b)(3)(B) of the Act requires that we make a finding within 12 months of receipt of the petition as to whether the listing of *P. hodgsonii* as threatened or endangered is warranted.

#### References Cited

You may request a complete list of references cited in this Notice from the Office of Scientific Authority (see ADDRESSES section).

#### Authority

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

Dated: April 14, 2000

**Jamie Rappaport Clark,**

*Director.*

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