DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2010–0086]

[4500030115]

RIN 1018–AZ52

Endangered and Threatened Wildlife and Plants; Listing All Chimpanzees as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list all chimpanzees (*Pan troglodytes*) as endangered under the Endangered Species Act of 1973, as amended (Act). We are taking this action in response to a petition to list the entire species, whether in the wild or in captivity, as endangered under the Act. This proposal constitutes our 12-month finding on the petition and announces our finding that listing all chimpanzees as endangered is warranted. This document also serves as our 5-year review of the species. If we finalize this rule as proposed, we would eliminate the separate classification of captive and wild chimpanzees under the Act and extend the Act's protections to captive chimpanzees in the United States. In addition, we propose to amend the special rule for primates to remove chimpanzees from the rule. If the listing of all chimpanzees as endangered is finalized, the provisions of the special rule can no longer be applied to captive chimpanzees. We seek comments from the public on this proposed rule.

DATES: We will consider comments and information received or postmarked on or before **[**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit information by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R9–ES–2010–0086, which is the docket number for this rulemaking. You may submit a comment by clicking on "Comment Now!" If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov*, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–ES–2010–0086; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments **only** by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see **Information Requested** under **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

We are proposing to list all chimpanzees, whether in the wild or in captivity, as endangered under the Endangered Species Act of 1973, as amended (Act). We have determined that the Act does not allow for captive-held animals to be assigned separate legal status from their wild counterparts on the basis of their captive state, including through designation as a separate distinct population segment (DPS). It is also not possible to separate out captive-held specimens for different legal status under the Act by other approaches. Therefore, we are proposing to eliminate the separate classification of chimpanzees held in captivity and list the entire species, wherever found, as endangered under the Act.

II. Major Provision of the Regulatory Action

If adopted as proposed, this action will eliminate separate classifications for wild and captive chimpanzees under the Act. All chimpanzees, whether in the wild or in captivity, will be listed as one entity that is endangered in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). This action will also remove the chimpanzee and paragraph (c)(3) from the special rule for primates, found at 50 CFR 17.40(c), extending the Act's protections to all chimpanzees.

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq*.) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition ("12-month finding"). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

In this document, we announce that listing all chimpanzees, whether in the wild or in captivity, as endangered is warranted, and are proposing to revise the entry of this species in the Federal List of Endangered and Threatened Wildlife. Additionally, this action, if finalized as proposed, will eliminate a special rule under section 4(d) of the Act that exempts captive chimpanzees in the United States from the general prohibitions of the Act.

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

Petition History

On March 16, 2010, we received a petition dated the same day, from Meyer Glitzenstein & Crystal on behalf of The Humane Society of the United States, the American Association of Zoological Parks and Aquariums, the Jane Goodall Institute, the Wildlife Conservation Society, the Pan African Sanctuary Alliance, the Fund for Animals, Humane Society International, and the New England Anti-Vivisection Society (hereafter referred to as "petitioners") requesting that captive chimpanzees (*Pan troglodytes*) be reclassified as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). The petition contained information on what the petitioners reported as potential threats

to the species from habitat loss, poaching and trafficking, disease, and inadequate regulatory mechanisms. In a September 15, 2010, letter to Katherine Meyer, we responded that we were required to complete a significant number of listing and critical habitat actions, including complying with court orders and court-approved settlement agreements, that required nearly all of our listing and critical habitat funding for fiscal year 2010. We also stated that we anticipated making an initial finding during fiscal year 2011, as to whether the petition contained substantial information indicating that the action may be warranted.

On October 12, 2010, we received a letter from Anna Frostic, Staff Attorney with the Humane Society of the United States, on behalf of the petitioners clarifying that the March 16, 2010, petition was a petition to list the entire species (*Pan troglodytes*) as endangered, whether in the wild or in captivity, pursuant to the Act. We acknowledged receipt of this letter in a letter to Ms. Frostic dated October 15, 2010.

Previous Federal Actions

On October 19, 1976, we published in the **Federal Register** a rule listing the chimpanzee and 25 other species of primates under the Act (41 FR 45990); the chimpanzee and 13 of the other primate species were listed as threatened. The chimpanzee was found to be threatened based on (1) Commercial logging and clearing of forests for agriculture and the use of arboricides; (2) capture and exportation for use in research labs and zoos; (3) diseases, such as malaria, hepatitis, and tuberculosis contracted from humans;

and (4) ineffectiveness of existing regulatory mechanisms. We simultaneously issued a special rule that the general prohibitions provided to the threatened species would apply except for live animals of these species held in captivity in the United States on the effective date of the rulemaking, progeny of such animals, or the progeny of animals legally imported into the United States after the effective date of the rulemaking.

On November 4, 1987, we received a petition from the Humane Society of the United States, World Wildlife Fund, and Jane Goodall Institute, requesting that the chimpanzee be reclassified from threatened to endangered. On March 23, 1988 (53 FR 9460), we published in the **Federal Register** a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted and initiated a status review. We opened a comment period, which closed July 21, 1988, to allow all interested parties to submit comments and information.

On December 28, 1988 (53 FR 52452), we published in the **Federal Register** a finding that the requested reclassification was warranted with respect to chimpanzees in the wild. This decision was based on the petition and subsequent supporting comments that dealt primarily with the status of the species in the wild and not with the viability of captive populations. We did not propose reclassification of captive chimpanzees. We found that the special rule exempting captive chimpanzees in the United States from the general prohibitions may encourage propagation, providing surplus animals and reducing the incentive to remove animals from the wild. On February 24, 1989 (54 FR 8152), we published in the **Federal Register** a proposed rule to implement such reclassification.

Following publication of the proposed rule, we opened a 60-day comment period to allow all interested parties to submit comments and information.

On March 12, 1990, we published in the **Federal Register** (55 FR 9129) a final rule reclassifying the wild populations of the chimpanzees as endangered. The captive chimpanzees remained classified as threatened, and those within the United States continued to be covered by the special rule allowing activities otherwise prohibited.

On September 1, 2011, we published in the **Federal Register** a finding that the March 16, 2010, petition (discussed above under "Petition History") presented substantial scientific or commercial information indicating that the requested action may be warranted, and we initiated a status review (76 FR 54423).

On November 1, 2011, we published in the **Federal Register** a notice correcting an incorrect Docket Number given under the **ADDRESSES** section of the September 1, 2011, petition finding. We also gave notice that we were making the large volume of supporting documents submitted with the petition available to the public. To allow the public adequate time to review the supporting documents, we extended the period of time for submitting information to January 30, 2012 (74 FR 67401).

5-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. A 5-year review is conducted to ensure that the classification of a listed species is appropriate. Section 4(c)(2)(B) requires that we determine on the basis of this review: (1) whether a species no longer meets the definition of endangered or threatened and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. This 12-month finding serves as our 5-year review of this species.

Information Requested

We intend that any final action resulting from this proposed rule be based on the best scientific and commercial data available. Therefore, we seek comments and information on this proposed rule, particularly but not limited to:

(1) Information on taxonomy, distribution, habitat selection, diet, and population abundance and trends of this species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of this species and its principal food sources over the short and long term.

(3) Information on whether changing climatic conditions are affecting the species, its habitat, or its prey base.

(4) Information on the effects of other potential threat factors, including live capture and collection, domestic and international trade, predation by other animals, and diseases of this species.

(5) Information on management programs for chimpanzee conservation, including mitigation measures related to conservation programs, and any other private or governmental conservation programs that benefit this species.

(6) Information relevant to whether any populations of this species may qualify as distinct population segments.

(7) Information on captive breeding and domestic trade of this species in the United States.

(8) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq*.), which are:

(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; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as full references) to allow us to verify the information you provide. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that

determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in **FOR FURTHER INFORMATION CONTACT** by the date specified above in **DATES**.

Evaluation of Listable Entities

Under section 3(16) of the Act, we may consider for listing any species, which includes subspecies of fish, wildlife, and plants, or any distinct population segment (DPS) of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for separate listing status under the Act (and, therefore, referred to as listable entities) should we determine that they meet the definition of an endangered species or threatened species.

The Service was petitioned to list all chimpanzees, whether in the wild or in captivity, as endangered. Essentially, this request is to eliminate the separate classification of captive chimpanzees from chimpanzees located in the wild. This petition raised questions regarding whether the Service has any discretion to differentiate the listing status of specimens in captivity from those in the wild.

The Service has not had an absolute policy or practice with respect to this issue, but generally has included wild and captive animals together when it has listed species. The example set by the separate chimpanzee listings was used as support for two petitions the Service received in 2010 to delist U.S. captive and U.S. captive-bred members of three antelope species in the United States. In the 2005 listing determination for the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*) (70 FR 52310, September 2, 2005), the Service found that a differentiation in the listing status of captive specimens of these antelopes in the United States was not appropriate. The petitioners, Exotic Wildlife Association, Safari Club International, and

Safari Club International Foundation, asserted that the treatment by the Service of chimpanzees in 1990 warrants similar treatment now for these antelope species. Because the Service has not formally stated whether the current statute, regulations, and applicable policies provide any discretion to differentiate the listing status of specimens in captivity from those in the wild, we reviewed the issues raised by these petitions to ensure the Act is implemented appropriately.

As discussed below, we find that the Act does not allow for captive-held animals to be assigned separate legal status from their wild counterparts on the basis of their captive state, including through designation as a separate distinct population segment (DPS)[1]. It is also not possible to separate out captive-held specimens for different legal status under the Act by other approaches (see *Other Potential Approaches for Separate Legal Status*).[1]

Provisions of the Act

[1] As compared to populations that exist in the wild, "captivity" is defined as "living wildlife… held in a controlled environment that is intensively manipulated by man for the purpose of producing wildlife of the selected species, and that has boundaries designed to prevent animal [sic], eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food" (50 CFR 17.3).

The legal mandate of section 4(a)(1) is to determine "whether any *species* is an endangered species or threatened species . . . ." (emphasis added). In the Act, a "species" is defined to include any subspecies and any DPS of a vertebrate animal, as well as taxonomic species. Other than a taxonomic species or subspecies, captive-held specimens (of a vertebrate animal species) would have to qualify as a "distinct population segment . . . which interbreeds when mature" to qualify as a separate DPS[2]. Nothing in the plain language of the definitions of "endangered species," "threatened species," or "species" expressly indicates that captive-held animals can or cannot have separate status under the Act on the basis of their state of captivity. However, certain language in the Act is inconsistent with a determination of separate legal status for captive-held animals.

Under section 4(c)(1), the agency is to specify for each species listed "over what portion of its range" it is endangered or threatened.[3] "Range," while not defined in the Act, consistently has been interpreted as that general geographical area where the species is found *in the wild*. Thus, a group of animals held solely in captivity and analyzed as a separate listable entity has no "range" separate from that of the species to which it belongs, at least as that term has been applied under the Act. The Service has consistently interpreted "range" in the Act as a geographical area where the species is found *in the wild.*

[2] The analysis in this document addresses only situations where it is not disputed that the specimens are members of a wildlife species. This analysis does not address situations where members of a species have been held in captivity for a sufficiently long period that they have developed into a separate domesticated form of the species, including where the domesticated form is sufficiently distinct to be considered a separate taxonomic species or subspecies (e.g., domesticated donkey vs. the African wild ass).

[3] Even though the Service has taken the position in its draft SPR policy (76 FR 76987) that the range information called for under section 4(c)(1) is for information purposes, this statutory language still informs the question of Congress' intent under the statute.

As demonstrated in various species' listings at 50 CFR 17.11 and 17.12, information in the "Historic Range" column is the range of the species in the wild. For none of these species does the "range" information include countries or geographic areas on the basis of where specimens are held in captivity, even though the Service knows that specimens of many of these species have long been held in facilities outside their native range, including in the United States.

Also, in analyzing the "present or threatened destruction, modification, or curtailment of [a species'] habitat or *range*" (emphasis added) (see section 4(a)(1)(A) of the Act), the Service has traditionally analyzed habitat threats in the native range of wild specimens and not included other geographic areas where specimens have been moved to and are being held in captivity. We are not aware of any Service listing decision where analysis of threats to the "range" has included geographic areas outside the native range where specimens are held in captivity.

In analyzing other threats to a species (see sections 4(a)(1)(B), 4(a)(1)(C), 4(a)(1)(D), and 4(a)(1)(E) of the Act), the Service has also limited its analysis to threats acting upon wild specimens within the native range of the species, and has not included analysis of "threats" to animals held in captivity except as those threats impact the potential for the captive population to contribute to recovery of the species in the geographic area where wild specimens are native.

Finally, the Service's 2011 draft policy on the meaning of the phrase "significant portion of its range" (SPR) (76 FR 76987; December 9, 2011) defines "range" as the "general geographic area within which that species can be found at the time the Service or National Marine Fisheries Service (NMFS) makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitat). Lost historical range in relevant to the analysis of the status of the species, but it cannot consitutute a significant portion of a species' range. The "general geographic area within which the species can be found" is broad enough to include geographic areas where animals have been moved by humans and are being held in captivity. However, the Service has not applied the definition in this manner in the past and does not intend to do so in the future. SPR analyses have been and will be limited to geographic areas where specimens are found in the wild.

In addition to the use of "range" in sections 4(a)(1) and 4(c)(1), the definitions of "endangered species" and "threatened species," found in section 3 of the Act, also discuss the role of the species range in listing determinations. The Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range," and a threatened species as "any species which is likely to become an endangered species… throughout all or a significant portion of its range." As noted above, "range" has consistently been interpreted by the Service as being the natural range of the species *in the wild*.[4]

[4] *See also* Endangered Species Act: Hearings on H.R. 37, H.R. 470, H.R. 471, H.R. 1461, H.R. 1511, H.R. 2669, H.R. 2735, H.R. 3310, H.R. 3696, H.R. 3795, H.R. 4755, H.R. 2169 and H.R. 4758 Before the House Subcomm. on Fisheries and Wildlife Conservation and the Environment, House Comm. on Merchant Marine and Fisheries, 93d Cong. 198 (1973) (hereinafter 1973 Hearing on H.R. 37 and others) (Letter from S. Dillon Ripley, Secretary of Smithsonian Institute, to Chairman, House Comm. on Merchant Marine and Fisheries, April 23, 1973 (lauding H.R. 4758, the Administration's legislative proposal that contained a definition of "endangered species" substantially similar to the statutory definition eventually adopted by Congress in the 1973 Act: "In effect the bill

For all the reasons discussed above, a group of animals held in captivity could not have separate legal status under the Act because they have no "range," that is separate from the range of the species in the wild to which they belong as that term is used in the Act.

Certain provisions in sections 9 and 10 of the Act show that what Congress intended was that captive-held animals would generally have the same legal status as their wild counterparts by providing certain exceptions for animals held in captivity. Section 9(b)(1) of the Act provides an exemption from certain section 9(a)(1) prohibitions for listed animals held in captivity or in a controlled environment as of the date of the species listing (or enactment of the Act), provided the holding in captivity and any subsequent use is not in the course of a commercial activity. Section 9(b)(2) of the Act provides an exemption from all section 9(a)(1) prohibitions for raptors held in captivity or in a controlled environment as of 1978 and their progeny. Section 10(a)(1)(A) of the Act allows permits to "enhance the *propagation* or survival" of the species (emphasis added). This demonstrates that Congress recognized the value of captive-holding and propagation of listed specimens held in captivity, but intended that such specimens would be protected under the Act, with these activities generally regulated by permit.[5] If captive-held specimens could simply be excluded through the listing process, none of these exceptions and permits would have been needed.

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offers a great deal of flexibility by providing that a species may be placed on the list if the Secretary determines that it is presently threatened with extinction, not only in all of its *natural* range, but in a significant part thereof, as well.") (emphasis added)).

[5] *See* Endangered Species Conservation Act of 1972: Hearing on S. 249, S. 3199 and S. 3818 Before the Senate Subcomm. on the Environment, Senate Comm. on Commerce ,92nd Cong. 211-12 (1972) (statement of Deborah Appel, Assistant to the Director for Public Information, National Audubon Society) (endorsing S. 3199, a bill considered by the Senate that contained similar language eventually adopted by Congress in the purpose section of the 1973 Act, but advising against a specific mandate requiring captive propagation because"the capture of specimens for experiment in captive propagation may in itself endanger the chances of some rare species for survival in the wild.").

Purpose of the Act

Meaning of Section 2(b) of the Act

The full purposes of the Act, stated in section 2(b), are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [hereafter referred to as the first purpose], to provide a program for the conservation of such endangered species and threatened species [hereafter referred to as the second purpose], and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section [hereafter referred to as the third purpose]". It has been stated, without explanation, that the language of section 2(b) of the Act supports protecting only specimens that occur in the wild. However, the purposes listed in section 2(b) indicate that the three provisions are intended to have independent meaning, with little to indicate that Congress' intent was to protect only specimens of endangered or threatened species found in the wild. The treaties and conventions under the third purpose are expressly those listed in section 2(a)(4) of the Act, all of which are for the protection of wildlife and plants, and none of which are limited to protection of endangered or threatened specimens in the wild.[6] The first purpose calls for conservation of ecosystems, independent of conservation of species themselves (which is separately listed as the second purpose). This does focus on protection of native habitats (those inhabited by the species in the wild in its native range), as it is generally the ecosystems or habitats within which a species has evolved that are those upon which it

[6] Nor are these treaties and conventions limited to protection of species listed as endangered or threatened under the Act.

"depends." However, the phrase "upon which endangered species and threatened species depend" indicates only that ecosystem (i.e., habitat) protection should be focused on that used by endangered and threatened species, and does not indicate that the sole focus of the Act is conservation of species within their native ecosystems. Several provisions in the Act provide authority to protect habitat, independent of authorities applicable to protection and regulation of specimens of listed species themselves. See, for example, section 5 (Land Acquisition), section 6 (Cooperation With the States), section 7 (Interagency Cooperation), and section 8 (International Cooperation).

It is the second purpose under section 2(b) of the Act that speaks to the conservation of species themselves that are endangered or threatened. However, nothing in the language of the second purpose indicates that conservation programs should be limited to specimens located in the wild. The plain language of section 2(b) refers to "species," with no distinction between wild specimens of the species as compared to captive-held specimens of the species. Thus, nothing in the plain language indicates that captive-held specimens should be excluded from the Act's processes and protections that would contribute to recovery (i.e., "conservation") of the entire taxonomic species. It is true that the phrasing of the second purpose ("to provide a program for the conservation of *such* endangered species and threatened species" (emphasis added)) links the second purpose of species recovery to the first purpose of ecosystem (i.e., native habitat) protection, thus making the *goal* of the statute recovery of endangered and threatened species in their natural ecosystems. But there is nothing in the phrasing to indicate that the specific provisions of the statute for meeting this goal should be limited to specimens of the species located within the ecosystems upon which they depend.

Separate Legal Status Is Inconsistent with Section 2(b)

The potential consequences of captive-held specimens being given separate legal status under the Act on the basis of their captive state, particularly where captive-held specimens would have no legal protection while wild specimens are listed as endangered or threatened[7], indicate that such separate legal status is not consistent with the section 2(b) purpose of conserving endangered and threatened species. Congress specifically recognized "overutilization for commercial, recreational, scientific, or educational purposes" as a potential threat that contributes to the risk of extinction for many species. If captive-held specimens could have separate legal status under the Act, the threat of overutilization would likely increase. For example, the taxonomic species would potentially be subject to increased take and trade in "laundered" wild-caught specimens to feed U.S. or foreign market demand because protected wild specimens would be generally indistinguishable from unprotected captive-held specimens. Because there would be no restriction or regulation on the taking, sale, import, export, or transport in the course of commercial activities in interstate or foreign commerce of captive specimens by persons subject to U.S. jurisdiction, there would be a potential legal U.S. market in captive-held endangered or threatened specimens and their progeny operating parallel to any illegal U.S. market (or U.S. citizen participation in illegal foreign markets) in wild specimens. With the difficulty of distinguishing captive-held from wild specimens,

[7] If it were determined that captive-held animals can have separate legal status on the basis of their captive state, proponents of separate legal status could argue that these captive specimens do not qualify as endangered or threatened species because they do not face "threats" that create a substantial risk of extinction to the captive specimens such as those faced by the wild population (see *Section 4: Listing Captive-held Specimens*).

especially when they are broken down into their parts and products, illegal wild specimens of commercial value could likely easily be passed off as legal captive specimens and thus be traded as legal specimens.

If captive-held specimens could have separate legal status under the Act, the taxonomic species would potentially be subject to increased take of animals from the wild and illegal transfer of wild specimens into captivity. The United States is one of the world's largest markets for wildlife and wildlife products.[8] Poachers and smugglers would have increased incentive to remove animals from the wild and smuggle them into captive-holding facilities in the United States for captive propagation or subsequent commercial use of either live or dead specimens, because once in captivity there would be no Act restrictions on use of the captive-held specimens or their offspring. This would be a particular issue for foreign species where States regulate native wildlife (and therefore captive-held domestic endangered or threatened specimens would continue to be regulated under State law), but often do not regulate use of nonnative wildlife. This could be a particularly lucrative trade for poachers and smugglers because many endangered and threatened species (particularly foreign species) are at risk of extinction because of their high commercial value in trade (as trophies or pets, or for their furs, horns, ivory, shells, or medicinal or decorative use).

Congress included the similarity-of-appearance provision in section 4(e) to allow the Service to regulate species under the Act where one species so closely resembles an endangered or threatened species that enforcement cannot distinguish between the

[8] See USFWS Office of Law Enforcement Annual Report for FY 2009 p. 7.

protected and unprotected species and this difficulty is a threat to the species. The Service's only option in the cases of "take" described above would be to complete separate similarity-of-appearance listings for captive-held animals. A similarity-of-appearance listing under the Act for captive-held specimens would make captive specimens subject to the same restrictions as listed wild specimens.

Operation of Key Provisions of the Act

As described in the following subsections, operation of key provisions in sections 4 and 7 of the Act also indicate that it would not be consistent with Congressional intent or the purpose of the Act to treat groups of captive-held specimens as separate listable entities on the basis of their captive state.

Section 4: Listing Captive-held Specimens

The section 4 listing process is not well suited to analyzing threats to an entirely captive-held group of specimens that are maintained under controlled, artificial conditions.

If wild populations and captive-held specimens could qualify as separate listable entities, and it was determined that captive-held specimens do not qualify as endangered or threatened, captive-held specimens would receive no assistance or protection under the Act even in cases where wild populations continue to decline, even to the point of the species being extirpated in the wild, with the specimens in captivity being the only remaining members of the species and survival of the species being dependent on the survival of the captive-held specimens. This would not be consistent with the purposes of the Act.

Groupings of captive-held specimens might not meet the definition of endangered or threatened under the statutory factors because the scope of the section 4 analysis for a captive-specimen listing would be the conditions under which the captive-held specimen exists, not the conditions of the members of the species in the wild, as the captive-held members of the species and wild members of the species would be under separate consideration for listing under the Act and therefore under separate 5-factor analyses. Groupings of solely captive-held specimens might not meet the definition of endangered (in danger of extinction throughout all or a significant portion of their range) or threatened (likely to become endangered within the foreseeable future) when the conditions for individual specimens' survival are carefully controlled under human management, especially for species that readily breed in captivity, where breeding has resulted in large numbers of genetically diverse specimens, or where there are no known uncontrollable threats such as disease.

The majority of the section 4(a)(1) factors would be difficult to apply to captive-held specimens with a range independent of wild specimens because they are not readily suited to evaluating specimens held in captivity or might contribute to a determination that the entity under consideration (separate groupings of captive -held specimens) does not qualify as endangered or threatened. There may be situations where only disease threats (factor C) and other natural or manmade factors (factor E) would be applicable to consideration of purely captive-held groups of specimens. The present or threatened destruction, modification, or curtailment of habitat or range (factor A) may not be a threat for a listable entity consisting solely of captive-held specimens, because the physical environment under which captive specimens are held is generally readily controllable and, in many cases, optimized to ensure the physical health of the animal. Overutilization (factor B) is unlikely to be a factor threatening the continued existence of groups of captive-held specimens where both breeding and culling are managed to ensure the continuation of stock at a desired level based on ownership interest and market demand. Predation (factor C) may rarely be a factor for captive-held specimens because predators may be more readily controlled. Human management may provide for all essential life functions, thereby eliminating selection or competition for mates, food, water resources, and shelter.

It is unclear how the "inadequacy of existing regulatory mechanisms" (factor D) would apply to captive-held specimens with a range independent of wild specimens because this factor generally applies in relationship to threats identified under the other factors. Regulatory mechanisms applicable to wild specimens usually include measures to protect natural habitat and laws that regulate

activities such as take, sale, and import and export. However, there might be no regulatory mechanisms applicable when the group of specimens under consideration is in captivity (except perhaps general humane treatment or animal health laws).

That the section 4 process is not well suited to listings of entirely captive specimens is demonstrated by the previous listing action for the chimpanzee. The chimpanzee was originally listed in its entirety as a threatened species (41 FR 45990; Oct. 19, 1976). On March 12, 1990 (55 FR 9129), the Service reclassified wild populations of chimpanzees as a separate endangered species, noting that wild populations had declined due to massive habitat destruction, excessive hunting and capture by people, and lack of effective national and international controls. But the final reclassification rule never analyzed whether the newly designated DPS consisting of chimpanzees "wherever found in captivity" separately met the definition of a threatened species based on the five factors found in section 4(a)(1) of the Act. Instead, the rule discussed estimated numbers of animals in captivity and known captive-breeding programs, stating in response to a comment that some chimpanzee breeding groups were being managed in the United States with the objective of achieving self-sustainability. The five-factor analysis in both the proposed and final listing rules considered only information applicable to wild populations and within the taxanomic species' native range.

Section 4: Delisting Captive-held Specimens

If wild populations and groups of captive-held specimens could qualify as separate listable entities, and because groupings of captive-held specimens may not meet the definitions of endangered or threatened under the statutory factors (as discussed above), captive-held specimens currently listed as endangered or threatened (because they were originally listed along with wild specimens as a single listed entity) could be petitioned for, and might qualify for, delisting. These specimens would therefore lose any legal protections of the Act, even as wild populations continue to decline, including to the point of extirpation in the wild. This likewise would not be consistent with the purpose of the Act.

Section 4: Listing Effects on Wild Populations

If wild specimen populations and groups of captive-held specimens could qualify as separate listable entities, and because the analysis for determining legal status of wild populations would be separate from the analysis for determining legal status of captive specimens, the wild population would likely qualify for delisting in the event that all specimens are lost from the wild (in other words, if they became extinct in the wild), thereby removing both incentives and protections for conservation of the species in the wild and the conservation of its ecosystem.

Under the Service's standard section 4 process, both captive-held and wild specimens of the species are members of the listed entity and have legal status as endangered or threatened. In situations where all specimens in the wild are gone, either because they

are extirpated due to threats or because, as a last conservation resort, the remaining wild specimens are captured and moved into captivity, the species remains listed until specimens from captivity can be reintroduced to the wild and wild populations are recovered. However, if captive specimens and wild populations could have separate legal status, once all members of the wild population were gone from the wild, the wild population could be petitioned for and would likely qualify for delisting under 50 CFR 424.11(d)(1) as a "species" that is now extinct. As shown above, the separate captive-held members of the taxonomic species might not qualify for legal status as endangered or threatened, due to the lack of "threats" that create a risk of extinction to the viability of a sustainable, well-managed pool of captive animals. With no listed entities and therefore no authority to use funding or other provisions of the Act for the species, the Service would lose valuable tools for recovery of the species to the wild. This would clearly not be consistent with the purpose of the Act.

Section 7: Consultation

All Federal agencies have a legal obligation to ensure that their actions are not likely to jeopardize the continued existence of endangered and threatened species. This means that for separately listed captive-held endangered or threatened specimens, any Federal agency that is taking an action within the United States or on the high seas that may affect the captive-held listed species arguably would have a legal duty to consult with the Service. However, the section 7 consultation process is not well suited to

analysis of adverse impacts posed to a purely captive-held group of specimens given that such specimens are maintained under controlled, artificial conditions.

Section 4: Designation of Critical Habitat

For any listed entity located within the United States or on the high seas, we have a section 4 duty to designate critical habitat unless such habitat is not prudent.[9] Although it is appropriate not to designate critical habitat for foreign species or to limit a critical habitat designation to natural habitats for U.S. species when a listing is focused on the species in the wild (even when some members of the species may be held in captivity within the United States), it is not clear how the Service would support not designating critical habitat when the listed entity would consist entirely of captive-held specimens (when the focus of captivity is within the United States). As with the consultation process, the critical habitat designation duty is not well suited for listings that consist entirely of captive-held specimens, especially given the anomaly of identifying the physical and biological features that would be essential to the conservation of a species consisting entirely of captive animals in an artificial environment. These complexities related to section 7 consultations and designation of critical habitat indicate that Congress did not intend the Service to treat groups of captive-held specimens as separate listable entities on the basis of their captive state.

[9] Making a not determinable finding is also an option under section 4(b)(6) of the statute, but only delays the requirement to designate such critical habitat.

Legislative History

Legislative history surrounding the 1978 amendment of the definition of "species" in the Act indicates that Congress intended designation of a DPS to be used for wild vertebrate populations, not separation of captive-held specimens from wild members of the same taxonomic species. The original (1973) definition of species was "any subspecies… and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature" (Pub. L. 93-205). In 1978, Congress amended the Act to the Act's current definition of species, substituting "distinct population segment" for "any other group" and "common spatial distribution" following testimony on the inadequacy of the original definition, such as the exclusion of one category of populations commonly recognized by biologists: disjunct allopatric populations that are separated by *geographic barriers* from other populations of the same species and are consequently reproductively isolated from them physically (See Endangered Species Act Oversight: Hearing Before Senate Subcommittee on Resource Protection, Senate Committee on Environment and Public Works, 95th Cong. 50 (July 7, 1977) (here after 1977 Oversight Hearing) (letter from Tom Cade, Program Director, The Peregrine Fund, to Director of the Service). Although there was discussion regarding population stocks and reproductive isolation generally, particularly in association with development of the 1973 definition[10], discussions that provide additional context on the scope of the definition of "species" show that Congress thought of the population-based listing authority as appropriate for populations that are distinct for

[10] *See* 1973 Hearing on H.R. 37 and others p. 286 (statement of John Grandy, National Parks and Conservation Assoc.) p. 307 (statement of Stephen Seater, Defenders of Wildlife), and pp. 299–300 (statement of Tom Garrett, Friends of the Earth).

natural and evolutionary reasons. For example, one witness discussed "species" as associated with the concept of geographic reproductive isolation and including characteristics of a population's ability or inability to freely exchange genes *in nature* (See 1977 Oversight Hearing at 50 (Cade letter)). There is no evidence that Congress intended for the agency to use the authority to separately list groups of animals that have been artificially separated from other members of the species through human removal from the wild and maintenance in a controlled environment. Examples in testimony for which population-based listing authority would be appropriately used were all for wild populations (See 1973 Hearing on H.R. 37 and others at 307 (statement of Stephen Seater, Defenders of Wildlife); Endangered Species Act of 1973: Hearings on S. 1592 and S. 1983 Before the Senate Subcomm. on Environment, Senate Comm. on Commerce, 93d Cong. 98 (1973) (statement of John Grandy, National Parks and Conservation Assoc.); Endangered Species Authorization: Hearings on H.R. 10883 Before the House Subcomm. on Fisheries and Wildlife Conservation and the Environment, House Comm. on Merchant Marine and Fisheries, 95th Cong. 560 (1978) (statement of Michael Bean, Environmental Defense Fund)). No examples were given suggesting designation of captive-held vertebrates as a DPS.

Other Potential Approaches for Separate Legal Status

In addition to separate designation as "species," there are two other approaches under which it could be argued that captive-held specimens could be given separate legal status from their wild counterparts: (1) Simply excluding captive-held members of the taxonomic species, subspecies, or DPS from the Act's protections, or (2) designating only wild members of the taxonomic species as a

DPS, with captive-held specimens not included in the DPS. However, neither approach would be consistent with Congress' intent for the Act.

One court already determined that captive-held specimens of a listable entity cannot simply be excluded when they are members of the listable entity and the Service agrees with the court's reasoning in this case. The Service cannot exclude captive-held animals from a listing once these animals are determined to be part of the species. This case—*Alsea Valley Alliance* v. *Evans*—involved the listing of coho salmon by the NMFS. NMFS's 1993 Hatchery Policy (58 FR 17573; April 5, 1993) stated that hatchery populations could be included in the listing of wild members of the same evolutionary significant unit (equivalent to a DPS), but only if the hatchery fish were "essential to recovery." In 1998, NMFS listed only "naturally spawned" specimens when it listed an evolutionary significant unit (ESU) of coho salmon (63 FR 42587; August 10, 1998). This decision was challenged in court, and the Court found NMFS's listing decision invalid because it excluded hatchery populations (which are fish held in captivity) even though they were part of the same DPS (or ESU) *Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001). The Court held that "Congress expressly limited the Secretary's ability to make listing distinctions below that of subspecies or a DPS of a species," which was the practical result of excluding all hatchery specimens. NMFS subsequently changed its Hatchery Policy in 2005, stating that all hatchery fish that qualify as members of the ESU would be considered part of the ESU, would be considered in determining whether the ESU should be listed as endangered or threatened, and would be included in any listing under the Act (70 FR 37204; June 28, 2005). NMFS's 2005 Hatchery Policy was upheld by the Ninth Circuit Court in *Trout Unlimited* v. *Lohn,* 559 F. 3d 946 (2009).

For the same reasons as discussed earlier in this document, the Service also cannot simply designate wild members of the taxonomic species as a DPS, leaving all captive-held animals unlisted. Although this would avoid designating captive-held animals as a separate DPS and would not technically be excluding animals that otherwise have been found to be members of a DPS (and thereby avoid the error the court found in the *Alsea Valley Alliance* v. *Evans* decision), the result would be separate legal status and no legal protections for captive-held specimens, and many of the same legal and conservation consequences discussed above would occur. For these reasons, we also find this outcome to be inconsistent with Congress' intent for the Act, primarily as inconsistent with the purposes of the Act.

Now that we have determined that all chimpanzees, including captive and wild animals, should be considered as a single listable entity under the Act, we will next assess the status of the species and determine if the species meets the definition of endangered or threatened under the Act. In 1990, we determined that chimpanzees in the wild are endangered. This analysis

considers new information in light of that previous determination and includes the extent to which captive-held chimpanzees create or contribute to threats to the species or remove or reduce threats to the species by contributing to the conservation of the species.

Species Information

Taxonomy and Species Description

In 1990, when the wild populations of chimpanzees were reclassified to endangered, only three subspecies were recognized. Since that time, the correct taxonomic labeling for chimpanzees has been debated and includes the use of a two-subspecies system, a four-subspecies system, and the use of the species level without subspecific designations (Carlsen *et al*. 2012, p. 5; Morgan *et al*. 2011, p. 7; Plumptre *et al*. 2010, p. 2; Ghobrial *et al*. 2010, p. 2; Oates *et al*. 2008, unpaginated). Today, four subspecies are commonly recognized and include the Central African chimpanzee (*Pan troglodytes troglodytes*), East African chimpanzee (*P. t. schweinfurthii*), West African chimpanzee (*P. t. verus*), and Nigeria–Cameroon chimpanzee (*P. t. ellioti*) (Morgan *et al*. 2011, p. 7; Oates *et al*. 2008, unpaginated).

Characteristics of the chimpanzee include an opposable thumb and prominent mouth. The skin on a chimpanzee's face, ears, palms, and soles of the feet are bare, whereas the rest of the body is covered with brown to black hair. Arms extend beyond the knees.

This species walks "on all four" but are able to walk on just their legs for more than a kilometer (0.6 miles (mi)) (WWF n.d., unpaginated). The male stands over 1.2 meters (m) (4 feet (ft)) tall and weighs 59 kilograms (kg) (130 pounds (lb)); the female is closer to 0.9 m (3 ft) tall and weighs under 45 kg (100 lb) (AZA 2000, p. 1).

Chimpanzees live in social communities that range from 5 to 150 individuals (Oates *et al*. 2008, unpaginated). A male dominance hierarchy forms the core of the community. Males work together to defend a home range and will occasionally attack and kill individuals from another community (Lonsdorf 2007, pp. 72, 74). These communities do not move around in a group like gorillas or monkeys, but rather spend most of their time in subgroups called parties (Pusey *et al*. 2007, p. 626; Plumptre *et al*. 2003, p. 9). Members of a community may join, or leave, at any time and parties may change frequently in size and composition depending on presence of receptive females, food availability, and activity of the party (Lonsdorf 2007, p. 72; Lehmann and Boesch 2004, p. 207; Humle 2003, p. 17; Plumptre *et al*. 2003, p. 9).

Males remain in the community in which they were born; however, once females become sexually mature, between the ages of 9 and 13, they leave the community to join a new one (Humle 2003, p. 16). Chimpanzees are slow breeders; females do not give birth until they are 12 years of age or older and only have one infant every five or six years. Infants are weaned around four years old, and stay with their mothers until they are about eight to ten years old (Lonsdorf 2007, p. 72; Kormos 2003, p. 1; Plumptre *et al*. 2003, pp.

8, 10, 13). The relationship between the mother and her offspring is critical; young may not survive being orphaned, even after they are weaned (Lonsdorf 2007, p. 72).

Essential Needs of the Species

The chimpanzee lives in a variety of moist and dry forest habitats including savanna woodlands, mosaic grassland forests, and tropical moist forests (Oates *et al*. 2008, unpaginated; Pusey *et al*. 2007, p. 626; GRASP 2005a, p. 6; Butynski 2003, p. 6). In general, chimpanzees need large areas to provide sufficient resources for feeding, nesting, and shelter (Carter 2003b, p. 158). However, home ranges may vary depending on the quality of habitat and community size; competition for food and predation risk may also play a role. Home ranges average 12.5 km^2 (8 mi^2), but can range from 5–400 km^2 (3–249 mi^2) (Oates *et al*. 2008, unpaginated; Humle 2003, pp. 17–18).

Chimpanzees are omnivores; half their diet is ripe fruit, but they also feed on leaves, bark, stems, insects, and mammals, including red colobus (*Procolobus spp.*), black-and-white colobus (*Colobus guereza*) and red-tailed guenons (*Cephalophus monticola*). Diets vary seasonally and between populations, depending on food availability and habitat type (Oates *et al*. 2008, unpaginated; Pusey *et al*. 2007, p. 626; Humle 2003, pp. 13–14; Watts and Mitani 2002, p. 7).

Chimpanzees build arboreal nests in which they sleep at night and may rest during the day (Plumptre *et al*. 2003, p. 10; Humle 2003, p. 15). Nests are constructed by preparing a foundation of solid side branches, bending, breaking, and interweaving side branches crosswise, then bending smaller twigs in a circle around the rim. Chimpanzees exhibit strong preferences for certain tree species for nesting, independent of their availability in the habitat. Choice of nesting sites is variable across populations and communities of chimpanzees and is dependent on habitat structure, resource distribution, predation levels, and human disturbance. Chimps can be deterred from nesting in certain areas where human habitation is concentrated. As a result, human presence influences nesting behavior and can put chimpanzees at risk of predators, since habitats where they relocate nests to avoid humans may not provide sufficient protection (Humle 2003, pp. 15–16).

Range and Population

Historically, this species may have spanned most of Equatorial Africa, from Senegal to southwest Tanzania, ranging over 25 countries (Butynski 2003, p. 6). Today, the chimpanzee has been lost from Benin, Togo, and Burkina Faso. The species now occurs in a wide but discontinuous distribution over 22 countries in an area approximately 2,342,000 square kilometers (km^2) (904,000 square miles (mi^2)) (Carlsen *et al*. 2012, p. 5; Oates *et al*. 2008, unpaginated; Kormos and Boesch 2003, p. 1; Butynski 2003, p. 6).

Chimpanzees are thought to have numbered in the millions at the beginning of the 20th Century, although there are no hard data to support this. Chimpanzee populations are believed to have declined by 66 percent, from 600,000 to 200,000 individuals before the 1980s (Kormos and Boesch 2003, p. 1). Since the 1980s, estimates for the chimpanzee have varied, but in general have increased over the past three decades (See Table 1) (Oates 2006, pp. 102–104; Butynski 2003, p. 10). Using the latest population estimates for each subspecies, the chimpanzee, today, totals between 294,800 and 431,100 individuals; although we note that this estimate does not factor in a recent 90 percent decline in the chimpanzee population of Côte d'Ivoire (see below). The range countries and most recent population estimates for each subspecies are outlined in Table 2.

Table 1. Historical population estimates for chimpanzee.

Year	Estimated Population	Source
1900	1,000,000	Teleki in Butynski 2003, p. 10; Oates 2006, p. 104
1900	2,000,000	Goodall 2000 in Butynski 2003, p. 10
1960	> 1,000,000	Goodall 2000 in Butynski 2003, p. 10
1979	20,000-200,000	Lee *et al*. 1988 in Oates 2006, p. 103
1987	151,000-235,000	Teleki 1989 in Butynski 2003, p. 10; Oates 2006, p. 104
1989	≤ 150,000	Goodall 2000 in Butynski 2003, p. 10
1989	145,000-228,000	Teleki 1991 in Butynski 2003, p. 10
2000	152,200-254,600	Butynski 2001 in Oates 2006, p. 104
2003	173,000-300,000	Butynski 2003, p. 10

Table 2. Range countries and populations estimates for each chimpanzee subspecies.

Subspecies	Range Countries	Population Estimate	Reference
Eastern (*P.t. schweinfurthii*)	Burundi, Central African Republic, Democratic Republic of Congo, Rwanda, Sudan, Tanzania, Uganda	**200,000-250,000**	Plumptre *et al*. 2010, p. 22
Nigeria-Cameroon (*P.t. ellioti*)	Cameroon, Nigeria	**3,500-9,000**	Morgan *et al*. 2011, p. 4
Central (*P.t. troglodytes*)	Angola, Cameroon, Central African Republic, Congo, The Democratic Republic of Congo, Equatorial Guinea, Gabon	**70,000-116,500**	Butynski 2003, p. 8
Western (*P.t. verus*)	Burikina Faso, Côte d'Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Nigeria, Senegal, Sierra Leone	**21,300-55,600**	Kormos and Boesch 2003, p. 3; Butynski 2003, p. 8
Total		**294,800-431,100**	

The increase in the chimpanzee population estimates is believed to be a result of the difficulty in producing accurate estimates and the availability of new information, rather than an actual increase in chimpanzee numbers (Oates 2006, p. 104). Accurate data is lacking for most of the chimpanzee populations. Few areas have been adequately surveyed; some chimpanzee populations survive at densities too low for accurate detection; survey methods lack precision to enable extrapolation to large areas of potential habitat; some surveys are outdated; and in many cases estimates are simply best guesses (Morgan *et al*. 2011, p. 9; Plumptre *et al*. 2010, pp. 5, 7, 9, 31, 41; Campbell *et al*. 2008, p. 904; Oates 2006, p. 102; Tutin *et al*. 2005, p. 6; GRASP 2005a, p. 7; Butynski 2003, p. 5; Kormos and Bakarr 2003, p. 29;).

Despite the appearance of an increase in chimpanzee numbers, experts agree that chimpanzee populations are declining (Plumptre *et al*. 2010, p. 1; Greengrass 2009, pp. 77, 80–82; Kabasawa 2009, p. 37; Campbell *et al*. 2008, pp. 903–904; Oates *et al*. 2008, unpaginated; Oates 2006, p. 110; Tutin 2005, p. 2; GRASP 2005a, p. 3; Kormos and Boesch 2003, p. 2; Butynski 2003, p. 11; Nishida *et al*. 2001, pp. 45–46). Data to support a declining trend comes from nationwide surveys of Gabon, Côte d'Ivoire, and Tanzania, data from long-term chimpanzee research sites, a questionnaire survey of great ape field researchers, and the expansion and increasing intensity of threats (Junker *et al*. 2012, p. 3; Plumptre *et al*. 2010, p. 8; Oates 2006, pp. 105–106; Nishida *et al*. 2001, p. 45; Campbell *et al*. 2008, pp. 903–904; Tutin *et al*. 2005, p. 32). One of the greatest documented losses of chimpanzees comes from a 2007 survey of Côte d'Ivoire which found a 90 percent decline in chimpanzees since the last survey conducted in 1989–1990, indicating a significant loss of chimpanzees from a country once thought to be one of the final strongholds of the western chimpanzee (Campbell *et al*. 2008, p. 903). Many remaining populations are now small, isolated, and face serious threats (Oates 2006, pp. 104, 110). Furthermore, the chimpanzee has already been extirpated from three countries. Due to the high risk of extinction for populations under 600 individuals (Oates 2006, p. 108), the chimpanzee could be extirpated from an additional four countries: Nigeria, Senegal, Ghana, and Guinea–Bissau (Carlsen *et al*. 2012, p. 5; Butynski 2003, p. 11; Kormos and Boesch 2003, p. 3).

In addition to wild populations, chimpanzees are held in captivity in several countries around the world, including African countries and the United States. We do not have detailed information on the number, subspecies, or the location of captive chimpanzees. However, we did find information indicating that 70 chimpanzees are living in sanctuaries in Cameroon and Nigeria

(Morgan *et al*. 2011, p. 9). Approximately 171 chimpanzees are living in sanctuaries throughout West Africa; another 478 chimpanzees in the region are known to be held outside of sanctuaries (e.g., homes or hotels) (Kormos and Boesch 2003, p. 4). Within the United States, approximately 2,000 chimpanzees are in captivity (ChimpCare 2013, unpaginated; Ross *et al*. 2008, p. 1,487).

Summary of Threats

Threats to the chimpanzee have intensified and expanded since 1990, when wild populations of the chimpanzee were listed as endangered. Across its range, high deforestation rates are destroying, degrading, and fragmenting forests the chimpanzee needs to support viable populations and provide food and shelter. Widespread poaching, capture for the pet trade, and outbreaks of disease are removing individuals needed to sustain viable populations; recovery from the loss of individuals is more difficult given the slow reproductive rates of chimpanzees. These actions are exacerbated by an increasing human population, the expansion of settlements, and increasing pressure on natural resources to meet the needs of the growing population (Morgan *et al*. 2011, p. 10; Plumptre *et al*. 2010, p. 2; Kabasawa 2009, p. 37; Campbell *et al*. 2008, p. 903; Lonsdorf 2007, p. 72; Unti 2007a, p. 4; Unti 2007b, p. 5; Bennett 2006, p. 885; Tutin *et al*. 2005, p. 1; GRASP 2005a, p. 3; Kormos 2003, pp. ix, 1; Kormos and Boesch 2003, p. 4; Nisbett *et al*. 2003, p. 97; Walsh *et al*. 2003, pp. 611–612; Carter *et* al. 2003, p. 38).

Deforestation, with consequent access and disturbance by humans, remains a major factor in the decline of chimpanzee populations across their range. Although some large forest blocks remain, commercial logging and the conversion of forests to agricultural land continue to severely reduce and fragment chimpanzee habitat (Morgan *et al*. 2011, pp. 12, 18, 19, 26, 31; Plumptre *et al*. 2010, p. 2; Oates *et al*. 2008, unpaginated; Unti 2007a, p. 4; Unti 2007b, p. 5; CBFP 2006, p. 16; Fa *et al*. 2006, p. 498; Tutin *et* al. 2005, pp. 1, 2, 10, 12, 14–17, 21–23; Humle 2003, p. 150; Carter *et al*. 2003, p. 38; Duvall *et al*. 2003, p. 47; Gippoliti *et al*. 2003, p. 57; Hanson-Alp *et* al. 2003, p. 83; Herbinger *et al*. 2003, pp. 106, 109; Kormos *et al*. 2003b, p. 71; Kormos *et al*. 2003c, p. 151; Magnuson *et al*. 2003, p. 113; Nisbett *et al*. 2003, pp. 95, 97; Oates *et* al. 2003, p. 129; Walsh *et al*. 2003, p. 613; Parren and Byler 2003, p. 135). As the human population and economic development have increased, pressure on forest resources has also increased. This increasing pressure has led to uncontrolled legal and illegal forest conversion within and outside of protected areas (e.g., national parks and forest reserves), leaving them destroyed and fragmented (Greengrass 2009, pp. 77, 80; Campbell *et al*. 2008, p. 903; CBFP 2006, pp. 16, 33; Nasi *et al*. 2006, p. 14; Carter *et al*. 2003, p. 38; Duvall *et al*. 2003, p. 47; Herbinger *et al*. 2003, p. 109; Magnuson *et al*. 2003, p. 113; Oates *et al*. 2003, p. 129; Parren and Byler 2003, pp. 135, 137).

The natural protection once afforded to chimpanzees by large blocks of suitable habitat, isolated from human activities, is disappearing due to logging activity. Much of the chimpanzee's range is already allocated to logging concessions, and logging operations, both legal and illegal, are expanding (Morgan *et al*. 2011, pp. 12, 26; Laporte *et al*. 2007, p. 1451; Morgan and Sanz 2007, pp. 3, 5; CBFP 2006, p. 29; Hewitt 2006, p. 43; Nasi *et al*. 2006, p. 14; Tutin 2005, pp. 2, 4, 12, 30, 32; Kormos *et* al. 2003a, p. 29).

Heavy pressures on timber resources have led to cutting cycles that occur too frequently in an area to allow for proper regrowth, resulting in rapid degradation of forests (Parren and Byler 2003, p. 135). In addition to clearing forests, logging operations often create a network of roads for transporting timber. These roads provide greater access to forests that were once inaccessible, facilitate the establishment of human settlements, and are accompanied by further deforestation from the conversion of forests to agriculture (Junker *et al*. 2012, p. 7; Morgan *et al*, 2011, p. 12; Plumptre *et al*. 2010, p. 2; Greengrass 2009, p. 80; Laporte *et al*. 2007, p. 1451; Hewitt 2006, p. 44; Duvall 2003, p. 143; Oates *et al*. 2003, p. 129; Parren and Byler 2003, pp. 133, 137–138).

Human population growth and agricultural expansion have destroyed and fragmented forests across the range of the chimpanzee and are two of the greatest threats to chimpanzee survival. Plantations and farms have been established in suitable chimpanzee habitat, including within protected areas (Plumptre *et al*. 2010, p. 9; Greengrass 2009, p. 80; Unti 2007a, p. 4; Unti 2007b, p. 5; Tutin *et al*. 2005, p. 20; Duvall 2003, p. 143; Gippoliti *et* al. 2003, pp. 55, 57; Hanson-Alp *et al*. 2003, p. 83; Humle 2003, p. 147; Kormos *et al*. 2003b, p. 63; Magnuson *et* al. 2003, p. 113; Parren and Byler 2003, p. 138). In West Africa, most unreserved forests have been converted to cultivation (Parren and Byler 2003, p. 138). Agricultural practices are largely unsustainable and are encroaching into additional forested areas (Parren and Byler 2003, p. 133).

Chimpanzees are highly adaptive and occur in a variety of habitats, including primary, secondary, and regenerating forests, logged forests, and plantations; they have even been found living in close proximity to humans. However, the loss, or even the

degradation, of the chimpanzee's traditional habitat can affect their survival by impacting its food resources, behavior, susceptibility to disease, and abundance and distribution, (Morgan and Sanz 2007, p. 1; Carter *et al*. 2003, p. 36; Hanson-Alp *et al*. 2003, p. 83; Kormos and Boesch 2003, p. 18; Nisbett *et al*. 2003, p. 97; Parren and Byler 2003, p. 137).

Although chimpanzees feed on a wide variety of foods, their energy requirements, as large primates with large home ranges, predispose them to a reliance on high-energy fruits (Greengrass 2009, p. 81). Removal, or lowering the quality, of habitat through logging activity or establishment of agricultural lands destroys the structure and composition of the forest, eliminating essential food sources, which can affect sociability, condition of individuals, and female reproductive success, and increase vulnerability to diseases or parasites and infant and juvenile mortality (Greengrass 2009, pp. 81–82). Even in areas with lower levels of logging where essential food sources were unaffected, chimpanzee densities have declined significantly and remained low for years. Clear-cutting results in total habitat loss, and because of severe soil erosion, the potential for future forest regeneration is also lost (Parren and Byler 2003, pp. 137–138).

The loss or reduction of food sources and the noise and disturbance from logging activity can cause chimpanzee communities to abandon their home range to find a new home range with sufficient resources and less human activity. These chimpanzees may enter another community's territory which can lead to further competition for resources and conflict that can lead to death. As habitat is lost or fragmented and chimpanzee populations are forced into smaller forest fragments, lethal interactions with other chimpanzees

may increase. Furthermore, chimpanzees may be cautious about reinhabiting previous home ranges where they were displaced by humans (Morgan *et al*. 2011, p. 12; Lonsdorf 2007, p. 74; Carter *et al*. 2003, p. 36; Parren and Byler 2003, pp. 137–138). If the displacement of chimpanzees forces them into suboptimal habitat, they may not have sufficient protection from predators, especially at night (Humle 2003, pp. 15–16).

The loss or reduction of food sources due to expanding logging, agriculture, and human settlements into chimpanzee habitat has also resulted in increased conflicts between humans and chimpanzees (Tacugama Sanctuary 2013, unpaginated; Unti 2007b, p. 5; Tweheyo *et al*. 2005, pp. 237–238, 244; Herbinger *et al*. 2003, p. 106; Humle 2003, p. 147; Kormos *et al*. 2003b, p. 71; Naughton-Treves *et al*. 1998, pp. 597, 600). Lack of sufficient wild food and an increase in farming and human presence have increased the occurrence of crop raiding to supplement their diet. Crop raiding can cause substantial losses to farmers, reduce the tolerance of humans to chimpanzee presence, and increase killing chimpanzees to protect valuable crops or in retaliation for the destruction of crops (Tacugama Chimpanzee Sanctuary 2013, unpaginated; Oates *et al*. 2008, unpaginated; Bennett *et al*. 2006, p. 885; Tweheyo *et al*. 2005, p. 245; Duvall 2003, p. 144; Carter *et al*. 2003, p. 36; Gippoliti *et al*. 2003, p. 57; Humle 2003, pp. 147, 150; Parren and Byler 2003, p. 138; Naughton-Treves 1998, p. 597).

Unsustainable hunting for the bushmeat trade is one of the major causes of the decline in chimpanzees, and continues to be a major threat to the survival of chimpanzees in protected and unprotected areas (Ghobrial *et al*. 2011, pp. 1, 2, 11; Morgan *et al*. 2011,

p. 10; Hicks *et al*. 2010, pp. 1, 3, 6, 11; Plumptre *et al*. 2010, p. 2; Kabasawa 2009, p. 37; Campbell *et al*. 2008, p. 903; Oates *et al*. 2008, unpaginated; Lonsdorf 2007, p. 74; Unti 2007b, p. 5; Tutin *et al*. 2005, pp. 1, 10–23, 27–28; Herbinger *et al*. 2003, p. 109; Humle 2003, p. 17; Kormos and Boesch 2003, pp. 2, 14, 16, 19; Kormos *et al*. 2003b, p. 63; Kormos *et al*. 2003c, p. 151; Magnuson *et al*. 2003, pp. 111, 113; Nisbett *et al*. 2003, p. 95; Oates *et al*. 2003, pp. 123, 129; Nishida *et al*. 2001, p. 47; Bowen-Jones 1998, p. 12). Growth in the human population in Africa has increased the demand for wild animal meat, or bushmeat. Expansion of logging activities, including the construction of logging roads, has facilitated a significant market, much of it illegal, for commercial bushmeat to meet this demand (Amati *et al*. 2009, p. 6; Kabasawa 2009, pp. 50–51; AV Oates *et al*. 2008, unpaginated; Fa *et al*. 2006, pp. 503, 506; Magazine 2003, p. 7; Kormos *et al*. 2003c, p. 151; Walsh *et al*. 2003, p. 613; Nishida *et al*. 2001, p. 47; Bowen-Jones 1998, pp. 1, 11). Logging roads and vehicles provide access to the forests and a means to export meat to markets and cities. Logging operations are accompanied by an onslaught of workers who are encouraged to hunt to provide for their own needs and commercial hunters who operate in forests to supply the needs of forestry workers and to trade outside of the forested areas (Plumptre *et al*. 2010, p. 2; Kormos *et al*. 2003c, p. 151; Nisbett *et* al. 2003, p. 95; Walsh *et al*. 2003, p. 613; Nishida *et al*. 2001, p. 47; Bowen-Jones 1998, p. 1). Furthermore, bushmeat trade is also an important livelihood and the primary source of protein for humans in much of the chimpanzee's range (Abwe and Morgan 2008, p. 26; Fa *et al*. 2006, p. 507; Bennett *et al*. 2006, p. 885; Kormos *et al*. 2003c, p. 155; Wilkie and Carpenter 1999, p. 927).

The intensity of hunting chimpanzees varies by country and region (Kormos *et al*. 2003c, pp. 151–152). Religious, traditional, and familial taboos against the killing of chimpanzees and the consumption of their meat exist in many areas (Hicks *et al*. 2010, p. 9; Plumptre *et al*. 2010, p. 2; Greengrass 2009, p. 81; Kabasawa 2009, p. 51; Unti 2007a, p. 4; Carter *et* al. 2003, pp. 31, 38; Duvall *et al*. 2003, p. 47; Gippoliti *et al*. 2003, pp. 55, 57; Humle 2003, p. 18; Kormos and Boesch 2003, pp. 10, 13; Kormos *et al*. 2003b, pp. 63, 71; Kormos *et al*. 2003c, pp. 152, 154; Nisbett *et* al. 2003, p. 95; Oates *et* al. 2003, p. 129;Waller and Reynolds 2001, p. 135; Bowen-Jones 1998, pp. 19, 27). However, these areas may be hunted by people from surrounding areas where there is demand for chimpanzee meat (Kormos *et* al. 2003b, p. 72). Furthermore, these traditions and beliefs are not necessarily being passed down to younger generations and cannot be relied on to protect chimpanzees in the future (Hicks *et al*. 2010, p. 9; Unti 2007a, p. 4; Oates *et al*. 2003, p. 129).

Despite the high demand for bushmeat, primates do not represent the majority of animals killed for the bushmeat trade (AV Magazine 2003, p. 7; Magnuson *et al*. 2003, p. 113; Walsh *et al*. 2003, p. 613; Nishida *et al*. 2001, p. 47; Bowen-Jones 1998, p. 1). In fact, studies have found that chimpanzee meat makes up only a small fraction of the meat found in markets; estimates from different regions have ranged from 0.01 to 3 percent (Kabasawa 2009, p. 38; Fa *et al*. 2006, p. 502; Herbinger *et* al. 2003, p. 106; Kormos and Boesch 2003, p. 2; Kormos *et al* 2003c, pp. 151–152). However, because the sale of ape meat is often hidden and the meat may be eaten in villages and never make it to markets, the proportion of chimpanzee meat in bushmeat markets could be greater than reported (Kabasawa 2009, p. 38; Kormos *et al*. 2003c, pp. 151–152; Bowen-Jones 1998, pp. 21–11). Hunting pressure even at a low level is

enough to result in the local extirpation of large chimpanzee populations. Low population densities and slow reproductive rates prevent chimpanzees from recovering easily from the loss of several individuals (Oates *et al*. 2008, unpaginated; Fa *et al*. 2006, p. 503; AV Magazine 2003, p. 7; Duvall *et al*. 2003, p. 47; Herbinger *et al*. 2003, p. 106; Kormos and Boesch 2003, p. 2; Kormos *et al*. 2003c, pp. 151, 153; Nisbett *et* al. 2003, p. 95; Magnuson *et* al. 2003, p. 113;Bowen-Jones 1998, p. 13).

Threats to the chimpanzee from habitat loss and commercial hunting have been exacerbated by civil unrest that has occurred in several chimpanzee range countries (Plumptre *et al*. 2010, pp. 4–5; Campbell *et al*. 2008, p. 903;CBFP 2006, p. 16; Hanson-Alp *et al*. 2003, p. 85; Nisbett *et al*. 2003, pp. 89, 95; Draulans and Van Krunkelsven 2002, pp. 35–36). During civil conflict, many people, including refugees, military groups, and rebels take shelter in interior forests and protected areas (Plumptre *et al*. 2010, p. 4; CBFP 2006, p. 16). The presence of soldiers and displaced refugees increases the number of people that rely on bushmeat for protein. Not only do soldiers hunt, but they also supply locals with weapons and ammunition to hunt them (Plumptre *et al*. 2010, p. 5; Hanson-Alp *et* al. 2003, p. 85; Draulans and Van Krunkelsven 2002, pp. 35–36;). Civil unrest has contributed to a significant loss of wildlife, including chimpanzees (Campbell *et al*. 2008, p. 903; Hanson-Alp *et al*. 2003, p. 85).

Capture of live chimpanzees for the international pet trade has been one of the major causes of the decline in chimpanzees. Today, illegal capture and smuggling of chimpanzees continue for the pet trade across Africa and, to some extent, the international market (Ghobrial *et al*. 2010, pp. 1, 2, 11; Kabasawa 2009, pp. 37, 48–49; Oates *et* al. 2008, unpaginated; Carter 2003b, p. 157;

Kormos and Boesch 2003, p. 4; Nisbett *et al*. 2003, p. 95). A recent increase in orphaned chimpanzees has been attributed to the growing bushmeat crisis. Killing a mother with an infant earns twice the income for the hunter; the mother's body is sold in the bushmeat trade while the infant enters the pet trade (Kabasawa 2009, p. 50; Carter 2003b, p. 157). Furthermore, hunters have found a lucrative market for pet chimpanzees with military personnel, police, government officials, and traditional chiefs (Hicks *et* al. 2010, p. 8; Draulans and Van Krunkelsven 2002, pp. 35–36). The intensity of trade differs among countries, but is reportedly a substantial problem in The Democratic Republic of the Congo, Côte d'Ivoire, Sierra Leone, Ghana, and Guinea (Hicks *et al*. 2010, pp. 3, 6, 11; Plumptre *et al*. 2010, p. 2; Unit 2007, p. 5; Unti 2007a, p. 4; Hanson-Alp *et al*. 2003, p. 84; Herbinger *et al*. 2003, p. 106; Kormos *et al*. 2003b, p. 72; Magnuson *et al*. 2003, p. 113). It is not possible to determine how many wild chimpanzees are captured for the pet trade, but the number of chimpanzees in sanctuaries indicates it is a significant problem. Since 2000, the number of chimpanzees in African sanctuaries has increased 59 percent (Kabasawa 2009, pp. 37, 50).

The petitioners assert that the exploitation of chimpanzees in the United States' entertainment and pet industries is seen around the world and misleads the public into believing chimpanzees are well protected in the wild and make good pets, further fueling the demand for chimpanzees. Studies suggest a link between seeing chimpanzees portrayed in the media and misperceptions about the species' status in the wild. This misperception may also affect conservation efforts (Ross *et al*. 2011, pp. 1, 4–5; Schroepfer *et al*. 2011, pp. 6–7; Ross 2008a, pp. 25–26; Ross *et al*. 2008b, p. 1487). However, we did not find evidence that this situation was a significant driver in the status of the species.

The effects of the pet trade are particularly devastating to wild populations because the mother and other family members may be killed to capture an infant. Researchers estimate that as many as 10 chimpanzees may be killed for every infant that enters the pet trade. Furthermore, the infant is likely to die of malnutrition, disease, or injury (Hicks *et al*. 2010, p. 8; Kabasawa 2009, p. 49; Lonsdorf 2007, p. 74; Carter 2003b, p. 157; Hanson-Alp *et al*. 2003, p. 84; Kormos and Boesch 2003, p. 4). The loss of even just a few individuals from a population can have devastating effects due to the slow reproductive rate of chimpanzees. Because so many chimpanzees may be killed to secure an infant, the pet trade has a significant draining effect on remaining populations, and threatens the survival of wild chimpanzees (Kabasawa 2009, p. 49; Carter 2003b, p. 157; Magnuson *et al*. 2003, p. 113).

Historically, wild chimpanzees were captured and exported to meet a significant demand for chimpanzees in biomedical research in countries around the world, significantly impacting chimpanzee distribution and abundance (Unti 2007a, p. 4; Unti 2007b, p. 5; Kormos *et al*. 2003b, p. 72). A substantial number of countries do not permit or conduct research on chimpanzees and the international research community is no longer seeking access to wild chimpanzees (Hicks 2011, pers. comm.; Unti 2007a, p. 4; Unti 2007b, p. 5). Although some biomedical research on captive chimpanzees continues in the United States and Gabon, in the United States, there is a decreasing scientific need for chimpanzee studies due to the emergence of non-chimpanzee models and technologies (Institute of Medicine 2011, pp. 5, 66–67).

As previously stated, chimpanzees are held in captivity in several countries around the world, including African countries and the United States. Chimpanzees in captivity are bred and sold as pets, used in the entertainment industry (e.g., movies, television, and advertisements), exhibited in hotels and roadside shows, used as party entertainment or animal encounters, displayed in zoos, and used for biomedical research. It is thought that self-sustaining breeding groups of captive chimpanzees provide surplus animals for research and other purposes, thereby reducing the demand for wild individuals. Given that threats to the chimpanzee have expanded and intensified, and capture for the illegal pet trade continues to be a major threat to remaining chimpanzee populations, it does not appear that the availability of captive chimpanzees has reduced any threats to the species.

National laws exist within all range countries to protect chimpanzees. In general, hunting, capture, possession, and commercial trade of chimpanzees are prohibited. Laws also protect chimpanzee habitat, including the establishment of protected areas, in many of the range countries. However, as evidenced by the continuing and increasing habitat destruction and hunting and trading of this species, even within protected areas, these laws are not often enforced. A lack of resources, limited training, limited personnel, lack of basic logistical support, corrupt officials, and weak legislation prevent government agencies charged with the protection of wildlife and forest management from providing effective protection. Furthermore, penalties for violations are not adequate to serve as a deterrent (Ghobrial *et al*. 2010, pp. 1, 2, 11; Hicks *et al*. 2010, pp. 8–9; Kabsawa 2009, p. 39; Laporte *et al*. 2009, p. 1451; Unti 2007a, pp. 4, 6, 8, 10–11; Unti 2007b, pp. 6–10; Bennett *et al*. 2006, p. 885; AV Magazine 2003, p. 7; Carter 2003a, p. 52; Carter 2003b, p. 157; Carter *et al*. 2003, pp. 31, 32, 38; Duvall *et al*. 2003, p. 47; Hanson-Alp *et* al. 2003, p. 79, 87;

Herbinger *et al*. 2003, pp. 100, 106; Kormos and Boesch 2003, p. 6; Kormos *et al*. 2003b, p. 64; Kormos *et al*. 2003c, p. 155; Magnuson *et al*. 2003, p. 112; Nisbett *et* al. 2003, pp. 90, 95; Oates *et al*. 2003, pp. 123, 125).

The chimpanzee is also protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. Under this treaty, CITES Parties (member countries or signatories) regulate the import, export, and reexport of specimens, parts, and products of CITES-listed plant and animal species. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Management Authority of each CITES Party. With the exception of Angola, all chimpanzee range countries are Parties to CITES.

The chimpanzee is listed in Appendix I of CITES. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species generally requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

Based on CITES trade data from 1990–2011, obtained from United Nations Environment Programme–World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database, there has been significant legal trade of chimpanzees and their parts, and products worldwide. However, legal trade in wild specimens, including live animals, bones, scientific specimens, and hair has been limited. Trade of these wild specimens for commercial purposes was reported for 14 live specimens, 121 scientific specimens, and 10 skulls. From 2002–2011, exports and re-exports of wild specimens from the United States have numbered 8 scientific specimens for scientific purposes. Imports of wild specimens into the United States have been limited and have included hairs, scientific specimens, a skull, and one unspecified specimen for personal, scientific, educational, and medical purposes.

As human settlements expand and populations of chimpanzees and their habitat are reduced, interactions between chimpanzees and humans or human waste increases, leading to greater risks of disease transmission. A close genetic relationship allows for easy transmission of infectious diseases between chimpanzees and humans (Plumptre *et al*. 2010, p. 2; Oates *et al*. 2008, unpaginated; Lonsdorf 2007, p. 73; Tutin *et al*. 2005, p. 29; Formenty *et al*. 2003, p. 169; Huijbregts *et al*. 2003, p. 437). Rural communities that share the same habitat as chimpanzees have no access to health care and are not vaccinated against diseases that can spread through ape populations and result in high mortality rates. Additionally, exposure to humans through conservation and research activities, such as habituation, ecotourism, and reintroductions can also increase the risk of disease transmission (Plumptre *et al*. 2010, p. 2;

Köndgen *et al*. 2008, p. 260; Oates *et al*. 2008, unpaginated; Tutin *et* al. 2005, p. 29; Huijbregts *et al*. 2003, p. 437; Nishida *et al*. 2001, p. 48).

Disease transmission is a major threat to remaining populations of the central and eastern chimpanzees (Morgan *et al*. 2011, p. 10; Plumptre *et* al. 2010, p. 2; GRASP 2005a, p. 7; Tutin *et al*. 2005, p. 2; Leendertz *et al*. 2004, p. 451; Walsh *et al*. 2003, p. 612). Repeated epidemics of Ebola virus have resulted in dramatic declines in ape populations in Côte d'Ivoire, Gabon, Democratic Republic of the Congo, and the Republic of Congo (Plumptre *et al*. 2010, p. 2; Köndgen *et al*. 2008, p. 261; Oates *et al*. 2008, unpaginated; Tutin *et al*. 2005, p. 29; Leendertz *et al*. 2004, p. 451; Huijbregts *et al*. 2003, pp. 437, 441; Walsh *et al*. 2003, pp. 612–613; Formenty *et al*. 2003, pp. 169–172). Other infectious diseases have resulted in the death of chimpanzees at Gombe, Mahale, and Taï national parks (Rudicell *et al*. 2010, pp. 1, 10; Oates *et al*. 2008, unpaginated; Köndgen *et al*. 2008, pp. 260–262; Williams *et al*. 2008, pp. 766, 768–770; Leendertz *et al*. 2004, pp. 451–452; Nishida *et al*. 2001, p. 48).

Once a chimpanzee population has been reduced, whether by hunting, capture for the pet trade, or disease, its ability to recover is limited due to very slow reproductive rates and complex social behavior (Plumptre *et al*. 2010, p. 1; Kabasawa 2009, p. 49; Bennett *et al*. 2006, p. 885; Tutin *et al*. 2005, p. 32; Kormos *et al*. 2003c, pp. 151, 155; Wilkie and Carpenter 1999, p. 927;). Even low levels of hunting can have a devastating effect on the population. The loss of reproductive-age female chimpanzees can be particularly devastating, further reducing the population's ability to recover from the loss (Carter 2003b, p. 157; Kormos *et al*. 2003b, p. 72). The

occurrence of chimpanzees at low densities coupled with slow reproductive rates can lead to the rapid extinction of even large populations (Oates *et al*. 2008, unpaginated; Kormos and Boesch 2003, p. 2).

The current threats to the chimpanzee, as described above, are not likely to improve in the future, resulting in a continuing decline of chimpanzee populations. Threats to this species are driven by the needs of an expanding human population. Within the range countries of the chimpanzee, the human population is expected to continue to increase and will inevitably increase the pressures on natural resources. Therefore, impacts to remaining populations of chimpanzees, as described above, from deforestation, hunting, commercial trade, and disease are likely to continue or even intensify (Morgan *et al*. 2011, p. 10 Plumptre *et al*. 2010, pp. 50, 71; Fitzherbert *et al*. 2008, pp. 538–539, 544; Oates *et al*. 2008, unpaginated; CBFP 2006, p. 33; Fa *et al*. 2006, p. 506; Hewitt 2006, pp. 44, 48–49; Nasi *et al*. 2006, p. 14; Carter *et al*. 2003, p. 38; Duvall 2003, p. 145; Parren and Byler 2003, p. 137; Nishida *et al*. 2001, p. 45; Wilkie and Carpenter 1999, pp. 927–928).

Continuing threats acting on chimpanzee populations, coupled with the species' inability to recover from population reductions, will likely lead to the loss of additional populations. Chimpanzees could be lost from an additional three countries due to threats acting on populations that fall below what is considered the minimum for a viable population (Carlsen *et al*. 2012, p. 5; Butynski 2003, p. 11; Kormos and Boesch 2003, p. 3). Many remaining populations are small and isolated, putting them at an increased risk of extinction (Morgan *et al*. 2011, p. 12).

Many management plans have been developed to conserve the chimpanzee (e.g., Morgan *et al*. 2011; Plumptre *et al*. 2010; GRASP 2005a; GRASP 2005b; Tutin *et al*. 2005; Kormos and Boesch 2003; Kormos *et al*. 2003). These plans lay out goals and research needs to address the threats faced by chimpanzees. Development of forest management plans with the goal of sustainable forestry practices has increased (Hewitt 2006, p. 43; Nasi *et al*. 2006, pp. 17–19). However, implementation of these management plans faces challenges, and the effect of these plans has yet to be determined. There is no evidence that management plans have reduced threats to the species. Chimpanzees are found in numerous protected areas. In some cases, these areas provid adequate protection and support substantial populations of chimpanzees. Unfortunately, many protected areas have weak or nonexistent management with poor law enforcement and are illegally logged, converted to agricultural lands, and hunted (Campbell *et al*. 2011, p. 1). Furthermore, we have no evidence that enforcement of legislation to protect chimpanzees and their habitat, including protected areas, will improve.

Finding

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR Part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(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; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the chimpanzee is in danger of extinction throughout all or a significant portion of its range or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the chimpanzee. We reviewed the petition, information available in our files, and other available published and unpublished information. We find that the chimpanzee is endangered by all five factors.

In 1990, wild chimpanzees were listed as endangered due to habitat loss, excessive hunting, capture for the pet trade, disease, and lack of effective national and international laws. Since then, threats to the chimpanzee have only expanded and intensified. Habitat that is needed to support viable populations is being lost to logging operations and conversion to agriculture. Individuals needed to maintain viable populations are being lost to hunting for the bushmeat trade, trade in pet chimpanzees, disease, and conflicts with humans.

Chimpanzees need large areas to provide sufficient resources for feeding, nesting, and shelter. Although some large forest blocks remain, logging and agricultural expansion have destroyed and fragmented much of the chimpanzee's habitat. The loss of suitable habitat is driving chimpanzees into smaller fragments of habitat closer to human settlements and creating competition for resources, increasing conflicts with humans, and increasing the risk of disease transmission. Human population growth and expansion of human activities have created a lucrative market for bushmeat and trade in live chimpanzees. Although chimpanzee meat constitutes only a small fraction of bushmeat found in markets, and the exact number of chimpanzees captured for the trade is unknown, these actions have drained chimpanzee populations. They are especially devastating because chimpanzees have slow reproductive rates and cannot easily recover from the loss of individuals. Laws exist throughout the range countries and internationally to protect the chimpanzee, but enforcement of national laws is lacking. Many populations are now small and isolated,

putting them at a greater risk of extinction. Impacts to the chimpanzee are expected to continue into the future as the human population continues to expand and pressures on natural resources to meet the demands of the human population increase.

The status of the chimpanzee has not improved since the wild population of the species was reclassified from threatened to endangered in 1990. Threats to the species have intensified and expanded across its range. Therefore, we find that endangered is the correct status for the chimpanzee throughout its range. We also examined the chimpanzee to analyze if any other listable entity under the definition of "species," such as subspecies or distinct population segments, may qualify for a different status. However, because of the magnitude and uniformity of the threats throughout its range, we find that there are no other listable entities that may warrant a different determination of status. Since threats extend throughout the entire range, it is unnecessary to determine if the chimpanzee is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we have determined that the chimpanzee meets the definition of an endangered species under the Act. Consequently, we propose to revise the listing of chimpanzees under the Act so that all chimpanzees, wherever found, are listed as endangered.

Special Rule

For threatened species, section 4(d) of the Act gives the Service discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, as well as include provisions that are necessary and advisable to provide for the conservation of the species. A special rule allows us to develop regulatory provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions for threatened species at 50 CFR 17.31.

Currently, the captive chimpanzees in the United States, classified as threatened, are exempt from the general prohibitions for threatened species at 50 CFR 17.31 under a special rule for primates found at 50 CFR 17.40(c). Because special rules can be applied only to threatened species, the special rule for captive chimpanzees will no longer be available if the proposed revision to the classification of all chimpanzees to endangered is finalized. Therefore, we also propose to remove the chimpanzee, including a provision specific to the chimpanzee, from the special rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and state governments, private agencies and 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 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 critical habitat, if any is being designated. However, given that the chimpanzee is not native to the United States, we are not designating critical habitat for this species under section 4 of the Act.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

In 2000, the United States Congress passed the Great Ape Conservation Act to protect and conserve the great ape species, including the chimpanzee, listed under both the Endangered Species Act and CITES. The Great Ape Conservation Act granted the Service the authority to establish the Great Ape Conservation Fund to provide funding for projects that aim to conserve great apes through law enforcement training, community initiatives, and other conservation efforts. The Service's Wildlife Without Borders program, through the Great Ape Conservation Fund, is supporting efforts to fight poaching and trafficking in great apes; to increase

habitat protection by creating national parks and protected areas; and to engage the community through local initiatives to conserve the most threatened great ape species.

The Endangered Species Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. To possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act is also illegal. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. For endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding the proposal to list all chimpanzees as endangered under the Act.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Required Determinations

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act for the listing,

delisting, or reclassification of species. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new information collections or recordkeeping requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.). We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2010–0086**,** or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.11(h) in the List of Endangered and Threatened Wildlife by:

a. Revising the entry for "Chimpanzee (*Pan troglodytes*)" ("Wherever found in the wild"); and

b. Removing the entry for "Chimpanzee (*Pan troglodytes*)" ("Wherever found in captivity").

The revision reads as follows:

§17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	**Scientific name**						
Mammals							
*	*	*	*	*	*	*	
Chimpanzee	*Pan troglodytes*	Africa	Entire	E	16, 376	NA	NA
*	*	*	*	*	*	*	

3. Amend § 17.40 by:

a. Revising paragraph (c)(1); and

b. Removing paragraph (c)(3).

The revision reads as follows:

§ 17.40 Special rules—mammals.

(c) * * *

(1) Except as noted in paragraph (c)(2) of this section, all provisions of § 17.31 apply to the lesser slow loris *(Nycticebus pygmaeus)*; Philippine tarsier *(Tarsius syrichta)*; white-footed tamarin *(Saguinus leucopus*); black howler monkey *(Alouatta pigra)*; stump-tailed 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)*; and Tonkin snub-nosed langur *(Pygathrix [Rhinopithecus] avunculus).*

* * * * *

Dated: May 31, 2013

Daniel M. Ashe

Director, U.S. Fish and Wildlife Service

Billing Code 4310-55-P

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