

production of shahtoosh products, most recently at the 1999 International Workshop on Conservation and Control of Trade in Tibetan Antelope held in Xining, China, in October 1999 and in a Resolution adopted at the 11th Meeting of the Conference of the Parties to CITES in Kenya in April 2000 (Resolution Conf. 11.8). China reiterated its commitment to Tibetan antelope conservation at the 12th Meeting of the Conference of the Parties to CITES in Santiago, Chile, in November 2002 (Resolution Conf. 11.8 Rev. COP12 and Decision 12.40).

In Nepal, the chiru is listed as an endangered species under Schedule I of Nepal's National Parks and Wildlife Conservation Act (1973) (Wright and Kumar 1997). Smugglers use Nepal as a transit route from China to India (Government of Nepal 1999), and recent investigations by WWF Nepal Program and TRAFFIC India have documented the routes used. Although Nepal has made some effort to stop the illegal trade, including the confiscation of several shahtoosh shipments, it has been unable to eliminate or control the trade. This has, in part, resulted from the lack of CITES-implementing legislation at a national level (Government of Nepal 1999). In its national report to the International Workshop on Conservation and Control of Trade in Tibetan Antelope in October 1999, the Government of Nepal indicated that it had recently prepared CITES-implementing legislation, which was awaiting approval by the Government (Government of Nepal 1999). That legislation apparently had not yet been enacted as of the 46th Meeting of the CITES Standing Committee (SC) in March 2002 (SC46 Doc. 11.1).

In India, the chiru is listed on Schedule I of the Wildlife Protection Act (1972), which prohibits hunting and trade in any part of the species (Wright and Kumar 1997). The northern Indian State of Jammu and Kashmir has a separate wildlife act, The Jammu and Kashmir Wild Life Protection Act (1978) (J&K Act), which is independent of national law. Chiru are listed on Schedule II of the J&K Act. Trade in Schedule II species, including shahtoosh, is permitted under certain conditions. The J&K Act specifies that state permission is required to possess Schedule II wildlife products, that unlicensed dealers are prohibited from selling these products, and that licensed dealers are required to report to the government any import of Schedule II animal products (Ginsberg *et al.* 1999). Despite the fact that no shahtoosh dealers have ever been licensed

(Government of India 1999), the production and sale of shahtoosh shawls and other products have continued in Jammu and Kashmir. On May 1, 2000, in response to public interest litigation filed by the Wildlife Protection Society of India (WPSI), the High Court of Jammu and Kashmir ruled that the shahtoosh trade was in violation of the J&K Act, CITES, and India's Export-Import Policy (IFAW/WTI 2001). The Government of Jammu and Kashmir set about to bring its law into compliance with national legislation and CITES, but that has not yet been completed, and the shahtoosh trade has continued. In May 2001, WPSI and WTI filed a contempt of court petition against the Jammu and Kashmir Government.

Sale of shahtoosh shawls occurs elsewhere in India as well, although prohibited by national law. And, despite the fact that CITES and India's Customs Law prohibit the commercial import and export of shahtoosh and shahtoosh products, raw shahtoosh fiber still enters India and finished products still leave. Indian authorities have made a number of seizures of raw fiber and finished products over the years (Wright and Kumar 1997, Government of India 1999), but, because of the conflict with Jammu and Kashmir, have been unable to end the production of shahtoosh products.

In the United States, the Appendix-I listing for the Tibetan antelope has not been adequate to control the import and sale of shahtoosh products. Although several investigations have revealed a market for shahtoosh products in the United States, the first successful prosecution was in 2001. On May 29, 2001, a Los Angeles-based clothier agreed to pay a \$175,000 civil settlement for importing and selling shahtoosh shawls in violation of the ESA and the Lacey Act (Press Release from the U.S. Attorney's Office, District of New Jersey, dated May 29, 2001).

CITES provisions of the Endangered Species Act prohibit engaging in trade contrary to CITES and the possession of any specimen traded contrary to CITES. Thus, once a shahtoosh shawl is successfully smuggled into the United States, enforcement officers must prove the unlawful import in order to seize that shawl. Listing the Tibetan antelope under the Act would prohibit the sale or offering for sale of shahtoosh products in interstate or foreign commerce. This would give U. S. prosecutors additional means of fighting shahtoosh smuggling and the illegal market within the United States.

E. Other Natural or Manmade Factors

Tibetan antelope are known to have died from exposure and malnutrition associated with severe winter weather (Schaller 1998). A blizzard in Qinghai Province killed a disproportionate number of young and yearlings, and resulted in reproductive failure in the following year.

Summary of Findings

The Service has reviewed the information presented in the original petition, the literature cited in that petition, all public comments received, and other available literature and information. On the basis of the best scientific and commercial information available, the Service's 12-month finding is that the petitioned action is warranted. The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we herein propose to list the Tibetan antelope as endangered throughout its range, pursuant to the Endangered Species Act of 1973, as amended. Public comments on this proposed rule will be solicited, as will peer review (*see* subsequent sections of this **Federal Register** document).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing 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 the impact of their actions within the United States or on the high seas on any species that is proposed or listed as endangered or threatened, and on critical habitat of an endangered or threatened species, if any is designated. Because the Tibetan antelope is not native to the United States, we are not proposing to designate critical habitat