

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

[Docket No. FWS–R9–IA–2009–0033]

[96300-1671-0000-R4]

RIN 1018–AW93

**Inclusion of the Hellbender, Including the Eastern Hellbender and the Ozark
Hellbender, in Appendix III of the Convention on International Trade in Endangered
Species of Wild Fauna and Flora (CITES)**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing the hellbender (*Cryptobranchus alleganiensis*), a large aquatic salamander, including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender

(*Cryptobranchus alleganiensis bishopi*), in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). This listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of this species and its subspecies. Listing hellbenders in Appendix III of CITES is necessary to allow us to adequately monitor international trade in the taxon; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies.

DATES: This listing will become effective **[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may obtain information about permits for international trade in this species and its subspecies by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703–358–2104 or 800–358–2104; facsimile: 703–358–2281; e-mail: managementauthority@fws.gov; website: <http://www.fws.gov/international/index.html>.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone 703–358–2104; facsimile 703–358–2280. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2010, we published in the **Federal Register** (75 FR 54579) a document proposing the listing of the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in Appendix III of CITES. We accepted public comments on that proposal for 60 days, ending November 8, 2010. We have reviewed and considered all public comments we received on the proposed rule (see the **Summary of Comments and Our Responses** section below). Our final decision reflects consideration of the information and opinions we have received.

Species Information

The hellbender (*Cryptobranchus alleganiensis*) is a large aquatic salamander attaining a maximum length of 29 inches (74 centimeters) (Petranka 1998, p. 140). Native to cool, fast-flowing streams of the central and eastern United States (Briggler *et al.* 2007, p. 8), the hellbender usually avoids water warmer than 68 °Fahrenheit (20 °Celsius) (Stuart *et al.* 2008, p. 636). Although two hellbender subspecies are recognized, the eastern hellbender and the Ozark hellbender, the taxonomic differentiation between hellbender subspecies is not agreed upon by experts, and discussion continues on whether the eastern hellbender and the Ozark hellbender are distinct species or subspecies (Mayasich *et al.* 2003, p. 2).

Hellbender subspecies are most easily identified by geographic range (Mayasich *et al.* 2003, p. 2). The Ozark hellbender inhabits streams that drain south out of the Ozark Plateau in the highlands of Missouri and Arkansas (Sabatino and Routman 2008, p. 2). All other populations of hellbenders, including those inhabiting streams draining northward from the Ozarks, belong to the eastern hellbender subspecies (Sabatino and Routman 2008, p. 2). Irrespective of the taxonomic differentiation of hellbenders, all currently recognized hellbender subspecies of *Cryptobranchus alleganiensis* are included in this CITES Appendix- III listing. For further information about hellbenders, you may refer to our proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54579).

CITES

CITES, an international treaty, regulates the import, export, re-export, and introduction from the sea of certain animal and plant species. CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Convention on September 13, 1973, and it entered into force on July 1, 1975, after it had been ratified by the required 10 countries. Currently 175 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

The text of the Convention and the official list of all species included in its three Appendices are available from the CITES Secretariat's website at <http://www.cites.org> or upon request from the Division of Management Authority at the address provided in the **ADDRESSES** section above.

Section 8A of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10462, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Convention and on amendments to the list of species in CITES Appendices I and II. The current U.S. CITES regulations (50 CFR part 23) took effect on September 24, 2007.

CITES Appendices

Species covered by the Convention are listed in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that CITES must regulate so that trade in other listed species may be brought under effective control (e.g., because of similarity of appearance between listed species and other species). Appendix III includes native species, identified by any Party, that are regulated to prevent or restrict exploitation, where the Party requests the help of other Parties to monitor and control the trade of the species.

To include a species in or remove a species from Appendices I or II, or to transfer a species between these two Appendices, a Party must propose an amendment to the

Appendices for consideration at a meeting of the CoP. The adoption of such a proposal requires approval of at least two-thirds of the Parties present and voting. However, a Party may add a native species to Appendix III unilaterally at any time, without the vote of other Parties, under Articles II and XVI of the Convention. Likewise, if the status of an Appendix-III species improves or new information shows that it no longer needs to be listed, the listing country may remove the species from Appendix III without consulting the other CITES Parties, although consultation with other range countries is recommended prior to adding or removing a species to Appendix III.

Inclusion of native U.S. species in Appendix III provides the following benefits:

(1) An Appendix-III listing ensures the assistance of the other CITES Parties, through the implementation of CITES permitting requirements in controlling international trade in the species.

(2) Listing U.S. native species in Appendix III would, in appropriate cases, enhance the enforcement of State and Federal conservation measures enacted for the species by regulating international trade in the species, particularly by preventing trade in illegally acquired specimens. Shipments containing CITES-listed species receive greater scrutiny from border officials in both the exporting and importing countries. When a shipment containing a non-listed species is exported from the United States, it is a lower inspection priority for the Service than a shipment containing a CITES-listed species. Furthermore, many foreign countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these importing countries the legal basis to inspect such shipments and deal with CITES violations when they detect them.

(3) Another practical outcome of listing a species in Appendix III is that records are kept and international trade in the species is monitored. We will gain and share new information on such trade with State fish and wildlife agencies, and others who have jurisdiction over resident populations of the Appendix-III species. They will then be able to better determine the impact of the trade on the species and the effectiveness of existing State management activities, regulations, and cooperative efforts.

(4) When any live CITES-listed species (including an Appendix-III species) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival and humane treatment of the animals while they are in transport.

Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of CITES states that “Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.” Article XVI, paragraph 1, of the Convention states further that “Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or

derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I.”

At the ninth meeting of the Conference of the Parties to CITES (CoP9), held in the United States in 1994, the Parties adopted Resolution Conf. 9.25 (amended at the 10th, 14th and 15th meetings of the CoP), which provides additional guidance to Parties regarding listing species in Appendix III. The Resolution provides specific criteria for listing species in Appendix III, and we have adopted these criteria in our CITES-implementing regulations (50 CFR 23.90(c)), which state that, for a Party to list a species in Appendix III, all of the following criteria must be met:

- (1) The species must be native to the country listing the species.
- (2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.
- (3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.
- (4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

We have complied with the criteria outlined in 50 CFR 23.90(c) as follows:

23.90(c)(1): Hellbenders are native to the United States.

23.90(c)(2): Hellbenders occur in Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Maryland, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. Hellbenders are regulated by State

laws and regulations throughout their range. In most States, the species is protected and take is generally prohibited. For further information on the conservation status of hellbenders, you may refer to our proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54579).

23.90(c)(3): We have documented hellbenders in international trade. At the 2005 Hellbender Symposium (June 19–22, 2005, Lakeview, Arkansas), it was reported that U.S.-origin hellbenders were found for sale in Japanese pet stores, which is likely the largest overseas market for this species (Briggler, pers. comm. with Okada, 2005). Listing all hellbenders in Appendix III would enlist the assistance of other Parties in our efforts to monitor and control trade in hellbenders.

23.90(c)(4): Because hellbenders are endemic to the United States, consultation with other range countries is not applicable. Although we have documented hellbenders in international trade, the information on the number of hellbenders that enter international trade is limited to such an extent that there are no known major importers of hellbenders. We have consulted with the CITES Secretariat and the Animals Committee regarding our proposal to list hellbenders in Appendix III. The Secretariat and the Animals Committee have informed us that our proposal to list hellbenders in Appendix III is consistent with Resolution Conf. 9.25 (Rev. CoP15) and they have not raised any objections to this proposed listing.

For further information about the listing process, you may refer to our proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54579).

Permits and Other Requirements

The export of an Appendix-III species listed by the United States requires an export permit issued by the Service's Division of Management Authority (DMA). DMA will issue a permit only if the applicant obtained the specimen legally, without violating any applicable U.S. laws, including relevant State wildlife laws and regulations, and the live specimen is packed and shipped according to the IATA Live Animals Regulations to reduce the risk of injury and cruel treatment. DMA, in determining if the applicant legally obtained the specimen, is required to consult relevant State and Federal agencies. Since the conservation and management of these species is primarily under the jurisdiction of State agencies, we will consult those agencies to ensure that specimens destined for export were obtained in compliance with State laws and regulations. Unlike species listed in Appendices I and II, a non-detriment finding is not required by the Service's Division of Scientific Authority (DSA) for export of an Appendix-III species. However, DSA will monitor and evaluate the trade to assess whether there is a conservation concern that would require any further Federal action. With a few exceptions, any shipment containing wildlife must be declared to a Service Wildlife Inspector upon export and must comply with all applicable regulations.

Process, Findings, and Fees

To apply for a CITES permit, an applicant is required to furnish to DMA a completed CITES export permit application (with a check or money order to cover the cost of processing the application). You may obtain information about permits for international trade in this species and its subspecies by contacting the U.S. Fish and Wildlife Service,

Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703-358-2104 or 800-358-2104; facsimile: 703-358-2281; e-mail: managementauthority@fws.gov; website: <http://www.fws.gov/international/index.html>. We will review the application to decide if the export meets the criteria in 50 CFR part 23.

In addition, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES requirement by stating clearly on all CITES permits that shipments must comply with the IATA Live Animals Regulations. The Service's Office of Law Enforcement (OLE) is authorized to inspect shipments of CITES-listed species during export to ensure that they comply with these regulations. Additional information on permit requirements is available from DMA (see the **ADDRESSES** section above); additional information on declaration of shipments, inspection, and clearance of shipments is available upon request from OLE at: U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 North Fairfax Drive, MS-LE-3000, Arlington, VA 22203; telephone 703-358-1949; facsimile 703-358-2271; e-mail: lawenforcement@fws.gov; website: <http://www.fws.gov/le>. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

Lacey Act

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of

the United States. This prohibition of the Lacey Act would apply in instances where hellbenders were unlawfully collected from Federal lands, such as those Federal lands within the range of hellbenders that are owned and managed by the U.S. Forest Service or the National Park Service.

It is unlawful under section 3372(a)(2)(A) of the Lacey Act to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State. Because many State laws and regulations prohibit or strictly regulate the take of hellbenders, certain acts with hellbenders acquired unlawfully under State law would result in a violation of the Lacey Act Amendments of 1981 and thus provide for federal enforcement due to a violation of State law.

Previous Federal Actions

In a series of five notices published in the **Federal Register** between 1982 and 1994 (47 FR 58454, 50 FR 37958, 54 FR 554, 56 FR 58804, and 59 FR 58982), we identified the hellbender (*Cryptobranchus alleganiensis*) as a taxon native to the United States with a listing candidate status under the Endangered Species Act of category 2. At that time, taxa included in category 2 were those taxa for which we had information indicating that it was possibly appropriate to list such taxa as endangered or threatened, but for which persuasive data were not sufficiently available to support proposed rules.

We first identified the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) as a candidate species in a notice of review published in the **Federal Register** on October 30,

2001 (66 FR 54808). We gave the Ozark hellbender a listing priority number (LPN) of 6 due to nonimminent threats of a high magnitude.

On May 11, 2004, we received a petition dated May 4, 2004, from the Center for Biological Diversity to list 225 candidate species, including the Ozark hellbender. We received another petition on September 1, 2004 (dated August 24, 2004), from The Missouri Coalition for the Environment and Webster Groves Nature Study Society requesting emergency listing of the Ozark hellbender. Based on information presented in that petition, we determined that emergency listing was not warranted at that time. We notified the petitioners of this determination in November 2004.

In a May 11, 2005, notice published in the **Federal Register** (70 FR 24870), we changed the LPN of the Ozark hellbender from 6 to 3 because of the increased immediacy of threats since the Ozark hellbender was elevated to candidate status in 2001. The threat of particular concern was the annual increases in recreational pressures on rivers the Ozark hellbender inhabits.

On September 8, 2010, we published two documents in the **Federal Register**: (1) A proposed rule to list the Ozark hellbender as federally endangered under the Endangered Species Act of 1973, as amended (75 FR 54561); and (2) a proposed rule to list the hellbender, including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender, in Appendix III of CITES (75 FR 54579). The proposed CITES Appendix-III listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of the species and its subspecies.

Summary of Comments and Our Responses

In our proposed rule (September 8, 2010; 75 FR 54579), we asked all interested parties to submit comments or suggestions, particularly comments concerning:

(1) Biological, trade, or other relevant data concerning any threats (or lack thereof) to this species (including subspecies), and regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population size of this species (including subspecies).

(3) Any information on the biological or ecological requirements of this species (including subspecies).

(4) Any information regarding legal or illegal collection of or trade in this species (including subspecies).

The comment period for the proposed rule lasted for 60 days, ending November 8, 2010. We received a total of 17 comments during the comment period. We received comments from seven State agencies, seven private individuals providing five comments, three zoos, one Federal agency, and one nongovernment organization. Of these commenters, 16 supported the proposal, and 1 expressed support for restoring the Ozark hellbender population; no commenters opposed the CITES Appendix-III listing of the hellbender and its subspecies. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: Several commenters provided supporting data and information regarding the biology, range, distribution, life history, threats, and current conservation efforts affecting hellbenders.

Our Response: We thank all the commenters for their interest in the conservation of hellbenders and thank those commenters who provided information for our consideration in

making this CITES Appendix-III listing determination. Some information submitted was duplicative of the information contained in the proposed rule; some comments contained information that provided additional clarity or support to information contained in the proposed rule.

The New York Division of Fish, Wildlife & Marine Resources (DFWMR) commented that the eastern hellbender is present in just two watersheds and is in serious decline in the State of New York. DFWMR reports that estimates of hellbender populations at historic locations in one watershed have shown declines of 44 percent from as recently as the 1980s and that a recent basin-wide survey in the other watershed turned up only two individual hellbenders at sites occupied by numerous hellbenders as recently as the 1990s.

The West Virginia Division of Natural Resources Wildlife Resources Section (WVDNR Wildlife Resources) commented that it surveyed 23 known sites for the eastern hellbender during the summer of 2010. WVDNR Wildlife Resources found hellbenders occurring at just 12 of the 23 sites and reports that sedimentation is one of the greatest threats to hellbenders in West Virginia.

The Tennessee Wildlife Resources Agency (TWRA) commented that hellbender populations in middle Tennessee appearing healthy in the early to mid-1990s were in obvious decline in the last decade. TWRA reports that the cause of this decline is uncertain but that habitat degradation from anthropogenic sources appears to be a contributing factor. Further, TWRA reports that, although hellbender populations in eastern Tennessee are more abundant and more widely distributed than those in middle Tennessee, several of those hellbender populations may be declining similarly to those in middle Tennessee.

The Georgia Department of Natural Resources Wildlife Resources Division

(GADNR) commented that the known distribution of the eastern hellbender in Georgia is largely confined to watersheds within the Tennessee River drainage. GADNR reports that a 2005 survey of stream segments in 21 different locations in the proximity of historic hellbender occurrence records found hellbenders occurring in 13 locations, 9 of which were thought to be habitats sustaining healthy hellbender populations. Hellbenders were not found at eight of the sites sampled, suggesting extirpation or significant declines of hellbender populations within these watersheds. GADNR provided information indicating that sedimentation originating from unimproved road surfaces, makeshift campsites along stream banks, past agricultural practices, and other forms of land disturbance have impacted numerous hellbender streams, with some streams degraded to such an extent that they may never again support hellbenders.

The Missouri Department of Conservation (MDC) commented that population numbers of both the Ozark and eastern hellbender subspecies continue to decline since the 1970s and have shifted in age structure, with large, mature individuals being most prevalent and young age classes being virtually absent. MDC reports that population viability models show that all hellbender populations have a high probability of extinction in the future.

The North Carolina Zoological Park (NCZP) commented that, since 2004, it has collaborated with the North Carolina Wildlife Commission to survey four of the five North Carolina river drainage systems known to support hellbender populations. NCZP surveys found hellbenders completely absent from at least 10 sites where they occurred historically and found numerous other sites with significantly depleted hellbender populations. NCZP surveyed several sites that continue to support large hellbender populations with normal age-class distributions, which indicates populations are stable at these sites. However, several

other sites surveyed by NCZP maintained hellbender communities with abnormal age-class distributions. These sites contained large numbers of adult hellbenders without juveniles or larvae present or with only small numbers of juveniles or larvae present. Accordingly, NCZP disputes the conclusions of two recent publications (Mayasich *et al.* 2003 and Briggler *et al.* 2007) that characterize hellbender populations in North Carolina as stable.

Issue 2: Several comments concerned trade and the illegal collection of hellbenders. WVDNR Wildlife Resources commented that, while hellbenders have no legal protection in West Virginia, hellbenders can be illegally collected from States bordering West Virginia, and that if the collector is confronted by law enforcement, the collector could fraudulently state that the hellbenders were legally taken in West Virginia. Similarly, one commenter stated that, with at least one State allowing for the commercial take of hellbenders, exporters are provided a loophole by which all exported hellbenders may be easily declared as having been collected legally from a State allowing commercial take. GADNR commented that informal surveys over the past 10 years of a hellbender population at a location anecdotally reputed to be a location for illegal collection of hellbenders for the pet trade suggest a recent population decline resulting at least in part from illegal collection. Citing an internet blog posting, MDC commented that illegal collection of and trade in hellbenders may be on the rise. MDC commented further that a participant from Japan at the 4th Hellbender Symposium held in Corbin, Kentucky, in 2009 provided some relevant information relating to the high demand for U.S. hellbenders in Japan.

Our Response: Existing State laws have not been completely successful in preventing the unauthorized collection of and trade in hellbenders. A CITES Appendix-III listing will lend additional support to State wildlife agencies in their efforts to regulate and manage

hellbenders, improve data gathering to increase our knowledge of trade in hellbenders, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade. Furthermore, listing hellbenders in CITES Appendix III will enlist the assistance of other Parties in our efforts to monitor and control trade in this species.

Issue 3: Two comments concerned the threat of chytridiomycosis (also known as chytrid fungus disease). WVDNR Wildlife Resources commented that hellbenders from two counties in 2010 were positive for chytrid fungus and that, given the virulent nature of this pathogen and the consequences of shipping it worldwide, any hellbenders originating from West Virginia should be quarantined and tested (at the exporter's expense) or confiscated.

Our Response: Our September 8, 2010, proposed rule (75 FR 54579) did not specifically address chytridiomycosis, a highly infectious amphibian disease caused by the pathogen Batrachochytrium dendrobatidis, as a threat to hellbenders, but rather directed those interested in more information on the threats contributing to the decline of hellbenders to see our proposal to list the Ozark hellbender as federally endangered (75 FR 54561) under the Endangered Species Act of 1973, as amended, which published on the same day as our proposed rule to include hellbenders in CITES Appendix III. We agree that chytrid fungus is recognized to have a significant negative effect on hellbenders. However, unless a State or Federal law specifically requires quarantine or testing because of the threat posed by chytrid fungus, a CITES Appendix-III listing will not address this particular threat.

Issue 4: One commenter suggested that hellbenders would be better protected if they were listed in CITES Appendix I or II, rather than Appendix III. While supporting an Appendix-III listing of both subspecies of hellbenders, the commenter requests that the Service propose listing the Ozark hellbender in Appendix I and the eastern hellbender in

Appendix II at the next CoP. In addition, while the Maryland Department of Natural Resources (MDNR) commented that it fully supports an Appendix-III listing of hellbenders, MDNR further stated that it would be supportive of including hellbenders in Appendix I or Appendix II if these additional measures are deemed necessary in the future.

Our Response: To implement the Convention, the CITES Parties meet periodically to review what species in international trade should be regulated and other aspects of the implementation of CITES. Prior to a CoP, we solicit recommendations for amending Appendices I and II, as well as recommendations for resolutions, decisions, and agenda items for discussion at the CoP. We invite such recommendations via a notice published in the **Federal Register** that includes a public comment period. The appropriate time to request inclusion of the species in Appendix I or II is during that public comment period. We will publish in the **Federal Register** notices that, together with announced public meetings, provide an opportunity to participate in the development of the U.S. submissions to and negotiating positions for the next meeting of the Conference of the Parties to CITES (CoP16). Our regulations governing this public process are found in 50 CFR 23.87. CoP16 is tentatively scheduled to be held in Pattaya, Thailand, during March 3-16, 2013.

In the interim, international trade data and other relevant information gathered as a result of a CITES Appendix-III listing will help us determine whether we should propose the species for inclusion in Appendix I or II, remove it from Appendix III, or retain it in Appendix III. If, after monitoring the trade of any U.S. CITES Appendix-III species and evaluating its status, we determine that the species meets the CITES criteria for listing in Appendix I or II, based on the criteria contained in 50 CFR 23.89, we will consider whether to propose the species for inclusion in Appendix I or II.

Decision to List All Hellbenders in CITES Appendix III

Based on the recommendations contained in Resolution Conf. 9.25 (Rev. CoP15) and the listing criteria provided in our regulations at 50 CFR 23.90, analysis of the public comments received on our proposed rule (75 FR 54579), and all information available to us, the hellbender qualifies for listing in CITES Appendix III. Despite the protected status of hellbenders in many States, declines have been evident throughout the range of the hellbender. Listing hellbenders in CITES Appendix III is necessary to allow us to adequately monitor international trade in the taxon; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies.

Accordingly, we are listing the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of this species and its subspecies. The term “readily recognizable” is defined in our regulations at 50 CFR 23.5 and means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or 50 CFR part 23.

Our regulations at 50 CFR 23.90 require us to publish a proposed rule and a final rule for a CITES Appendix-III listing even though, if a proposed rule is adopted, the final rule would not result in any changes to the Code of Federal Regulations. Instead, this final rule will result in DMA notifying the CITES Secretariat to amend Appendix III by including the hellbender, including its two subspecies, the eastern hellbender and the Ozark hellbender, in Appendix III of CITES for the United States.

Subsequent to today's publication in the **Federal Register** of this final rule to list this species and its subspecies in CITES Appendix III, we will notify the CITES Secretariat. An Appendix-III listing becomes effective 90 days after the Secretariat notifies the CITES Parties of the listing. The effective date of this rule has been extended to give the CITES Secretariat sufficient time to notify all Parties of the listing. The listing will take effect on the date listed in the **DATES** section of this document.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

- (b) Whether the rule will create inconsistencies with other Federal agencies' actions.
- (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- (d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Department of the Interior certifies that this action will not have a significant effect on a substantial number of small entities for the reasons discussed below.

This final rule establishes the means to monitor the international trade in a species native to the United States and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of hellbenders, we estimate that the costs to implement this rule will be less than \$2,000,000 annually due to the costs associated with obtaining permits.

According to the Small Business Administration, small entities include small

organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. This final rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes the following findings:

- (a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are

defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments,” with two exceptions. It excludes “a condition of federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or tribal governments “lack authority” to adjust accordingly. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

(b) This rule will not impose a legally binding duty on non-Federal Government entities or private parties and will not impose an unfunded mandate of more than \$100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This final rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act

of 1995. Information that we will collect under this final rule on FWS Form 3–200–27 is covered by an existing OMB approval and has been assigned OMB control number 1018–0093, which expires on 2/28/2014. 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.

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

This rule has been analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500-1508). This rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement or evaluation is not required. This rule is a regulation that is of an administrative, legal, technical, or procedural nature, and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA. The Service has determined that this rule is categorically excluded from further NEPA (42 U.S.C. 4321 *et seq.*) review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures and 43 CFR 46.210(i). No further documentation will be made.

Takings (Executive Order 12630)

In accordance with Executive Order (E.O.) 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have determined that this final rule will not have significant takings implications because there are no changes in what may be exported.

Federalism (Executive Order 13132)

In accordance with E.O. 13132 (Federalism), this final rule will not have significant Federalism effects. A Federalism assessment is not required because this final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this final rule will generate information that will be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs will need to be developed to fulfill the purpose of this final rule. We have consulted the States, through the Association of Fish and Wildlife Agencies, on this action. The CITES Technical Work Group of the Association of Fish and Wildlife Agencies has concluded that including hellbenders in CITES Appendix III is warranted in order to help ensure conservation of the species in the wild and to assist State agencies in regulating harvest and trade.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly

burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that this final rule will have no effect on Tribes or tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this final rule

is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available on the Internet at <http://www.regulations.gov> or upon request from the Division of Management Authority, U.S. Fish and Wildlife Service (see the **ADDRESSES** section above).

Author

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Amendment to CITES Appendix III

For the reasons given in the preamble, we amend Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by adding the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*). This listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of this species and its subspecies.

As a result of this action, exporters must obtain an export permit issued by the

Service's Division of Management Authority, pack and ship live specimens according to the IATA Live Animals Regulations, and follow all applicable regulations pertaining to the export of wildlife, including declaration of the shipment to a Service wildlife inspector upon export.

Dated: September 26, 2011

/s/ Rowan W. Gould

Acting Director, U.S. Fish and Wildlife Service

Billing Code 4310-55-P

[FR Doc. 2011-25689 Filed 10/05/2011 at 8:45 am; Publication Date: 10/06/2011]