August 9, 2013

VIA CERTIFIED U.S. MAIL

Hon. Sally Jewell
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington D.C., 20240

Dan Ashe
Director, U.S. Fish & Wildlife Service
Department of the Interior
1849 C Street, N.W. Room 3331
Washington D.C., 20240

Re: 60-Day Notice of Intent to Sue for Violations of the Endangered Species Act

Dear Secretary Jewell and Director Ashe:

Friends of Animals ("FoA") writes to inform you that you are in violation of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544, by issuing a Section 10(a)(1), 16 U.S.C. § 1532(a)(1), permit to Corley Ranch to authorize the take of a listed species—scimitar-horned oryx (*oryx dammah*). (Docket No. FWS-HQ-IA-2013-N131; FXIA16710900000P5-123-FF09A30000). This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision in the ESA. 16 U.S.C. § 1540(g)(2)(C). The following more thoroughly details your violations of the ESA in issuing the Corley Ranch permit.

A. Status of the Scimitar-horned Oryx and Addax.

The scimitar-horned oryx was listed as endangered in 2005 wherever they are found. 70 Fed. Reg. 52319. As of April 4, 2012, a sport-hunting exemption for these species was removed. 77 Fed. Reg. 431. On September 19, 2012, FWS issued a positive 90-day finding on two petitions to remove the U.S. captive-bred and U.S. captive populations of three antelope species,

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the scimitar-horned oryx, dama gazelle (*gazella dama*), and addax, from the List of Endangered and Threatened Wildlife as determined under the ESA. 77 Fed. Reg. 58084. FWS found that the petitions presented substantial information indicating that delisting the U.S. captive animals or U.S. captive-bred members of these species may be warranted. *Id.* However, on June 5, 2013, FWS issued its 12-month finding, concluding that delisting the U.S. captive animals or U.S. captive-bred members of these three antelope species was not warranted. 78 Fed. Reg. 33790.

B. <u>The Corley Ranch Permit</u>.

On or about April 26, 2013, Corley Ranch requested a permit from FWS to "authorize[e] interstate and foreign commerce, export, and call of excess" scimitar-horned oryx (*oryx dammah*) "for the purpose of enhancement of the survival of the species." Corley Ranch's request was published in the Federal Register on June 6, 2013. 78 Fed. Reg. 34118-34120. On June 21, 2013, FoA submitted comments to FWS urging it to deny Thursday River Ranch's permit request.[1] On July 9, 2013, FWS sent an e-mail to FoA stating that the FWS intended "to issue the ESA take permit for Corley Ranch ten days from this date."

C. <u>Legal Standard for Permitting Set Forth in the ESA</u>.

The permit sought by Corley Ranch is for an exemption from take prohibitions provided under ESA Section 10(a)(1)(A), which states:

> SEC. 10. (a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—
> (A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j)…

16 U.S.C. § 1539(a)(1)(A).

There are, thus, two circumstances in which this permit can be issued: 1) for scientific purposes; or 2) if it enhances the propagation or survival of the affected species. To approve the permit, FWS <u>**must**</u> find that Corley Ranch's activities enhance the propagation or survival of listed species. To make this determination, Section10(a)(1)(A) must be read in conjunction with Section 10(d), which further defines what is intended by "enhance the propagation or survival of the affected species." Section 10(d) states:

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[1] A copy of FoA's comment letter is attached to this notice letter and is incorporated by reference.

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> (d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

16 U.S.C. § 1539(d). There is, therefore, a 3-pronged test for deciding whether Corley Ranch's activities—which is raising scimitar-horned oryx and other endangered species to be sold and killed for trophy hunting purposes—enhances the propagation or survival of listed species.

D. Violation of the ESA.

1. FWS's Special Application Process for Hunting Ranches Is Illegal.

FWS' Application Guidelines for Conducting Interstate Commerce and Culling for the Three Antelope impermissibly: (1) deny the public the right to necessary information regarding whether the applicant will meet the requirements of Section 10 of the Act; and (2) make it impossible for FWS to make a determination that the 3-prongs in Section 10(d) are met. *See* http://www.fws.gov/international/pdf/factsheet-application-guidelines-for-interstate-commerce-and-culling-for-three-antelope.pdf.

Catering to the complaints of hunting ranches that do not wish to disclose the exact nature of their operations, FWS impermissibly has provided this subset of Section 10 applicants a shortcut intended to expedite permit approval. *See* http://www.huffingtonpost.com/2012/04/04/antelope-hunting-texas_n_1403853.html. The Guidelines essentially assume that the applicants are entitled to a permit, and then tell the applicant how to answer (in fact, FWS calls these guidelines a "cheat sheet" on its website http://www.fws.gov/international/permits/by-species/three-antelope.html).

FWS's permitting process cannot be sped up by unabashedly giving sport hunters assumed answers to ensure their applications will be approved. It is a mockery of Section 10(a)(1) of the ESA—and of Congress—to establish a process that does nothing more then provide hunting ranches a privileged means of obtaining permits. FWS has told ranchers that if they just follow the "cheat sheet" they will get their permit in 90 days. It has provided a *pro forma* application that in essence maintains the blanket hunting exemption found illegal by the U.S. District Court for the District of Columbia.

As a result, the applicant is not required to provide any specific information establishing why he or she meets the requirements established by Congress for obtain a permit under Section 10(a)(1)(A). Indeed, given the guidelines, it is impossible for FWS to actually evaluate the

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application and ensure, as is required by the ESA, that the conditions of Sections 10(a) and (d) are met by the applicant.

In short, the use of these guidelines is contrary to the requirements of Section 10, deprive the public of its right to have sufficient information regarding the application, and result in FWS not meeting its obligation to evaluate each of the 3-prongs in Section 10(d) regarding an individual permit application. In issuing the Corley Ranch permit (and others) under these guidelines, FWS did not fulfill its legal obligations to the public, or the antelope, under Section 10.

2. The Corley Ranch Permit Application Is Legally Deficient.

Similarly, the application in this case lacked sufficient—and legally required—information for either the public or FWS to make a determination that the 3-prongs in Section 10(d) are met or that the issuance of permit is otherwise warranted.

First, Corley Ranch's application—which is a mere 1 page long and includes no supporting information—is entirely deficient. It contains none of the required information and rather honestly admits that the purpose of seeking a permit is simple a private one (to "cull the most mature animals to stop over population and deterioration of our herds").

Second, the applicant fails to provide any analysis or basis for concluding how it plans to cull animals in a way that are a "surplus" to its "collection." There is no evidence that Corley Ranch conducts genetic testing, tests for disease, examines herd dynamics, or employs trained biologists to conduct these or any other analyses or observations that would allow a decision on whether a given individual belonging to an endangered species is a "surplus."

Third, the applicant asserts that it will achieve compliance with Section 10 of the Act by supporting the activities of other organizations, specifically the Exotic Wildlife Association and the Conservation Force. The application discloses that the applicant plans "to donate 10% of the trophy fee of each sport-hunted, ESA-listed bovid taken on the ranch" to the Exotic Wildlife Association and will support the Conservation Force for in-situ conservation projects. *Id.* Corley Ranch has not met its conservation requirements under the Section 10 of the Act for a number of reasons. Corley Ranch's permit lacks sufficient information to allow both FWS and the public to verify: (1) that these payments are going towards conservation efforts; (2) are sufficient to allow FWS to make a determination that the permit is consistent with Section 10(a) and (d); or (3) that there is a system in place to ensure that the payments will be made.

Corley Ranch's application does not specifically illustrate what conservation purposes its donations would be allocated towards or whether such donations would be adequate to compensate for the killing of endangered species occurring at the ranch. Indeed, the permit application does not even illustrate that the donations would go towards conservation purposes.

Indeed, as with the applicant itself, there is nothing in the application to indicate that these groups provide access to these animals by biologists or other scientists for purposes of conserving these species, or use them to educate the public about the plight of these species. Nor does the application indicate that these organizations do any tracking of DNA, keep breeding records, or engage in any specific activity that would be beneficial to these species as a whole.

Finally, the application fails to comply with the requirements set for in 50 C.F.R. § 17.22. Notably, 50 C.F.R. § 13.21(b), provides that FWS **shall not issue** a permit if "[t]he applicant has failed to disclose material information required." The inadequacies of the Corley Ranch's application under 50 C.F.R. § 17.22 are indicated in Table 1.

Table 1. Application Requirements Under 50 C.F.R. § 17.22

50 CFR Section 17.22	Analysis of Application
(a)(1)(i) The common and scientific names of the species sought to the covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce)	Age and sex of the individuals to be killed are not disclosed in the application.
(a)(1)(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born	Not adequately disclosed in the application.
(a)(1)(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained	Not disclosed in the application.
(a)(1)(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit	A full statement of why Corley Ranch is justified in obtaining a permit and the details of the activities sought are not disclosed in the application.
(a)(1)(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook	Not disclosed in the application.

3. The Permit Was Issued Contrary To Section 10.

As stated above, although, the Secretary may grant issue permits to allow take under Section 10(a)(1)(A), it she can only do so: "(1) [if] such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) [if the permit] will be consistent with the purposes and policy set forth in section 2 of this Act. 16 U.S.C. § 1539(d). Corley Ranch's permit (1) was not applied for in good faith; (2) operates to the disadvantage of such endangered species; and (3) is inconsistent with the purposes and policy set forth in section 2 of this Act. 16 U.S.C. § 1531(b), (c).

First, there is no indication that the permit was applied for in good faith. Corley Ranch's permit application fails to provide any information to demonstrate that it will enhance the propagation or survival of the scimitar-horned oryx. The applicant's primary purpose for keeping these animals is simple—the animals are, as the application indicates, **"inventory,"** the **"surplus"** of which is offered for sale to those wishing to kill one. Corley Ranch's interests in keeping these animals alive are purely for economic gain; the ranch is not concerned with conserving the species for the benefit of preventing its extinction.[2]

Second, issuing the permit would clearly operate to the disadvantage of the species. For example, Corley Ranch lacks a program to regulate and assure the genetic health of these animals. It is essential to monitor the genetics of individual animals so as to prevent possible contamination of the genetic species pool through excessive inbreeding of small populations or cross-breeding. Absent a program by the applicant to regulate and assure the genetic health of these animals, issuance of this permit will unquestionably act to the disadvantage to these species. As the entire purpose of this permit is to kill "surplus" animals, Corley Ranch's permit will indisputably operate to the disadvantage of its captive population.

Additionally, allowing the lawful culling of these animals in the United States may have an impact on wild populations. As detailed in FoA's comments on the Corley Ranch permit application, this type of trophy hunting on private ranches works to both encourage the killing of these animals overseas, as well as aid in the illegal trafficking of these animals and their parts. FWS' own regulations required that the agency consider this potential impact as part of its consideration of a Section 10(a)(1) permit application. 50 C.F.R. § 17.22(a)(2)(iii) ("Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed.)

[2] In fact, FoA notes that the applicant has not had a valid captive wildlife registration or Section 10 permit since the exemption was removed by FWS. The applicant, however, indicates that this ranch has had scimitar-horned oryx in its "inventory" since 1988. Thus, any handling or culling of these species by the applicant since April 4, 2012 was in violation of the Section 9 of the ESA and subject to civil and criminal penalties. This demonstrates the applicant's lack of good faith in that it chose to violate the law as its first option.

Likewise, researchers have asserted that, theoretically, ranched animals could be used to restock wild populations or provide a genetic safety net for wild populations and the profit made from the ranching facilities could go towards funding conservation measures. Erwin H. Bulte & Richard Damania, *An Economic Assessment of Wildlife Farming and Conservation,* Conservation Biology 1224 (2004). But research to validate this theory does not exist, and globally there are an increasing number of reports suggesting that for many species the true impact of captive animals is far more negative. *See* Jessica A. Lyons & Daniel J.D. Natusuch, *Wildlife laundering through breeding farms; Illegal harvest, population declines and a means of regulating the trade of green pythons (Morelia viridis) from Indonesia,* Biological Conservation 1 (2011). FWS also did not fulfill is duty in not addressing these studies. 50 C.F.R. § 17.22(a)(2)(v) ("The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application.")

Third, issuance of Corley Ranch's permit is contrary to the conservation purpose of the ESA. Corley Ranch is not fulfilling any of the purposes illustrated in Section 2(b): it is not conserving the ecosystems on which these listed animals depend; it is not providing a program for their conservation; and it is not helping to achieve the purposes of treaties and conventions spelled out in ESA Section 2(a). 16 U.S.C. § 1531(b), (c).

It is clear that FWS ignored its duty to ensure that each of the 3 requirements in Section 10 would be met by issuing the permit. This both violates the ESA and interferes with the public's right to information regarding issuance of Section 10 permits.

4. Section 10 Does Not Authorize Payments to Third-Parties In-lieu of Conserving the Species.

There is no legal basis for FWS to allow the applicant to meet the requirements set forth in Section 10 by making a monetary donation to a third party. First, the ESA requires the actual permit holder to do the conserving, not to instead pay someone else to "conserve" the animal, so that he or she can then kill the endangered species. *See* 16 U.S.C. 1539 (a)(2)(A)(ii); 16 U.S.C. 1539 (a)(2)(B)(ii), (iii). Second, the "conservation" groups that these hunting ranchers are often paying are not actually even conservation groups, but rather groups that work to promote the hunting of these species in Africa and Asia. Third, FWS's permit application requirements lead ranchers to provide insufficient information to allow FWS and FWS or the public to verify: (1) that these payments are going towards conservation efforts; (2) are sufficient to allow FWS to make a determination that the permit is consistent with Section 10(a) and (d); or (3) that there is a system in place to ensure that the payments will be made. Finally, in issuing the guidelines, FWS never explained to the public how it concluded that a 10 percent donation would satisfy Section 10(d)'s requirements.

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E. Conclusion and Notice.

FoA contends that the authorization of Corley Ranch's take permit is in violation of the ESA in the numerous ways outlined above. The purpose of the 60-day notice provision in the ESA is for violators of the law to come into compliance, therefore avoiding the need for litigation. Accordingly, if you have any plans to voluntarily withdraw authorization of Corley Ranch's permit in the reasonably prompt future or would like to discuss this matter further, please inform us immediately. If they agency does not do so, we intend to file suit to ensure that the mandates of the ESA are fulfilled, and to ensure that the antelope species receive the legal protections to which they are entitled to under the ESA.

Sincerely,

Michael R. Harris
Director, Wildlife Law Program