

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAFARI CLUB INTERNATIONAL,)
)
 Plaintiff,)
)
 v.) Civil No. 11-cv-01564 (BAH)
)
 KEN SALAZAR, Secretary of the Interior, *et al.*,)
)
 Defendants.)

TERRY OWEN, *et al.*,)
)
 Plaintiffs,)
)
 v.) Civil No. 12-cv-00194 (BAH)
)
 UNITED STATES DEPARTMENT OF THE)
 INTERIOR, *et al.*,)
)
 Defendants.)

EXOTIC WILDLIFE ASSOCIATION, *et al.*,)
)
 Plaintiffs,)
)
 v.) Civil No. 12-cv-00340 (BAH)
) (Consolidated Cases)
)
 UNITED STATES DEPARTMENT OF THE)
 INTERIOR, *et al.*,)
)
 Defendants.)

**MOTION TO MODIFY DEADLINE IN PARAGRAPH 1
OF STIPULATED SETTLEMENT AGREEMENT**

Federal Defendants Ken Salazar, in his official capacity as Secretary of the Interior, U.S. Fish and Wildlife Service (“Service”), U.S. Department of the Interior, and Daniel M. Ashe, in his official capacity as Director of the Service (“Federal Defendants” or “DOI”), respectfully move to modify the deadline in paragraph 1 of the Stipulated Settlement Agreement (“Agreement”) this Court approved on June 12, 2012 (ECF Nos. 94 and 95). Paragraph 1 of the Agreement provides that, Federal Defendants shall submit to the Federal Register on or before August 31, 2012 a “90-day” finding, pursuant to 16 U.S.C. § 1533(b)(3)(A), on Plaintiffs Safari Club International’s and Terry Owen, et al.’s petitions to delist the U.S. captive herds of three African antelope species. ECF No. 94 ¶ 1.

On August 31, 2012, Federal Defendants filed a motion to hold the deadline in paragraph 1 in abeyance until the Court had a chance to rule on a supplement to the motion, to be filed today. ECF No. 104. As explained in the motion, Federal Defendants would seek to modify the August 31, 2012 deadline through the supplemental motion. The Court granted the motion to hold the deadline in paragraph 1 in abeyance in a Minute Order on September 4, 2012.

As explained in the attached Declaration of David J. Hayes, Deputy Secretary of the Interior, Federal Defendants respectfully request that the deadline for completing the 90-day finding be extended to September 13, 2012. Declaration of David J. Hayes (attached hereto as Exhibit 1) ¶ 6. Plaintiffs’ petitions on the three antelope species raise similar issues regarding the Service’s discretion to differentiate on a species by species basis the listing status of captive and wild specimens of the same species that are also raised by another pending petition to reclassify captive chimpanzees as endangered. *Id.* ¶ 5. Because of the potential overlap of issues presented by these petitions, the Federal Defendants require additional time to more fully analyze the issues and ensure that the Act is applied consistently in responding to the petitions. *Id.*

Plaintiffs and Federal Defendants attempted to resolve this matter without involvement of the Court, per the terms of the Agreement. Plaintiff Safari Club International indicated that it does not oppose the relief requested in this motion. Plaintiffs Terry Owen, et al., have indicated that they will oppose this motion. In response, Federal Defendants note that they do not believe Plaintiffs will be prejudiced if the Court grants the modest extension requested herein. If Federal Defendants make a negative 90-day finding on September 13, 2012, Plaintiffs will have that finding within a matter of days, and will not have lost any rights to challenge that finding if they so choose. On the other hand, if Federal Defendants make a positive 90-day finding, that finding is not subject to judicial review because the petition moves to the next step in the process, the 12-month finding. Since Federal Defendants are not seeking to modify the deadline for completing the 12-month finding (May 31, 2013 per paragraph 2 of the Agreement), Plaintiffs will not suffer any prejudice from a slight delay in receiving the 90-day finding.

Wherefore, Federal Defendants respectfully request that the Court modify the deadline in paragraph 1 of the Stipulated Settlement Agreement from August 31, 2012 to September 13, 2012.

September 6, 2012

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
SETH M. BARSKY, Section Chief

/s/ Meredith L. Flax
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Attorneys for Federal Defendants

EXHIBIT 1

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Declaration of David J. Hayes

I, David J. Hayes, declare as follows:

1. Since 2009, I have served as the Deputy Secretary for the Department of the Interior.

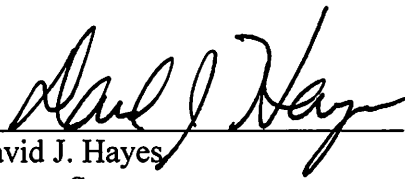
2. The Secretary of the Department of the Interior (“the Secretary”) bears the ultimate responsibility for making listing determinations under the Endangered Species Act (“the Act”) for certain species committed under Interior’s jurisdiction. In particular, when receiving a petition from an interested person to remove a species from the Federal List of Endangered and Threatened Wildlife (“List”), the Secretary of the Interior shall determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. 16 U.S. C. § 1533(b)(3)(A). As the Deputy Secretary, I have the delegated authority of the Secretary. 209 Departmental Manual 2.1.
3. On June 28 and 29, 2010, respectively, the Service received two petitions, one from Nancie Marzulla, submitted on behalf of the Exotic Wildlife Association (“EWA”), and one from Anna M. Seidman submitted on behalf of Safari Club International and Safari Club International Foundation (“SCI”). The SCI petitioner requested that the “U.S. captive populations” of three antelope species, the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*), be removed from the List (“antelope petition”). The SCI petitioner also requested that the Service “correct the Endangered Species Act listing of scimitar-horned oryx, dama gazelle, and addax to specify that only the populations in the portion of their range outside of the United States are classified as endangered.” The EWA petitioner requested that the “U.S. captive-bred populations” of these same three species be removed from the List. Pursuant to a court-approved settlement agreement, the Service agreed to on or before August 31, 2012, submit to the Federal Register a “90-day” finding, pursuant to 16 U.S.C. § 1533(b)(3)(A), as to whether these petitions to remove the U.S. captive herds of the three antelope species present substantial scientific or commercial information indicating that the petitioned action may be warranted.
4. On March 16, 2010, the Service received a petition from Meyer Glitzentein & 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 (“chimpanzee petition”) requesting that chimpanzees (*Pan troglodytes*) be reclassified as endangered under the Act. On October 12, 2010, the Service received a letter from the Humane Society of the United States, on behalf of these petitioners, clarifying that the March 16, 2010 petition was a petition to list the entire species (*Pan troglodytes*) as endangered under the Act, including the U.S. captive population. On September 1, 2011, the Service made a “90-day” finding, pursuant to 16 U.S.C. § 1533(b)(3)(A), that the chimpanzee petition presented substantial scientific or commercial information indicating that listing the entire species of chimpanzee as endangered may be warranted. Accordingly, the Service promptly initiated a “status” review of the species pursuant to 16 U.S.C. § 1533(b)(3)(A). Based on the results of the status review, the Department is

working to complete its “12-month” finding on the chimpanzee petition, pursuant to 16 U.S.C. § 1533(b)(3)(B), and determine whether that petitioned action is warranted.

5. Late in the intradepartmental review process for the proposed “90-day” finding on the antelope petitions before submission to the Office of the Federal Register, it became clear to senior Departmental management that the antelope proposed finding raised similar issues to those under consideration in the pending 12-month finding for the chimpanzee. A concern emerged that the petitions needed further review to ensure that the Department applies its statutory and regulatory provisions consistently. Management further realized that the petition effectively raised the question of whether there is discretion to differentiate on a species by species basis the listing status of captive specimens from those in the wild. Due to these developments, the Department needs a limited amount of additional time to further review and refine its proposed 90-day finding on the antelope petitions in light of this potential overlap.
6. Accordingly, the Department respectfully requests until September 13, 2012, to submit the pending 90 day findings to the Federal Register. This extension will enable the Department to give additional consideration that is needed to ensure that our response to the petition is appropriate under the applicable provisions of the statute, regulations and published policies of the Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of September, 2012.



David J. Hayes
Deputy Secretary

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**[PROPOSED] ORDER GRANTING FEDERAL DEFENDANTS' MOTION TO MODIFY
DEADLINE IN PARAGRAPH 1 OF STIPULATED SETTLEMENT AGREEMENT**

Upon consideration of Federal Defendants' Motion to Modify Deadline in Paragraph 1 of Stipulated Settlement Agreement, and good cause appearing, it is hereby ORDERED that the Motion is GRANTED. The deadline in paragraph 1 is modified to September 13, 2012.

Dated this ____ day of _____, 2012

BERYL A. HOWELL
United States District Judge