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Quality Matters

Equus asinus and the Endangered Species Act

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In August 2010, two shipments of herbal products containing Colla Corii Asini, known by the pinyin name, ē jiāo (阿膠) were seized at Mayway by the US Fish and Wildlife Service (USFWS), who had determined that the herb came from a species protected under the 1973 Endangered Species Act (ESA).



Mayway's position has been that it stretches credulity to imagine that a product that is grown, manufactured, and imported from China, where there are 11 million domesticated donkeys, would be obtained from an endangered, feral population from the Horn of Africa. Because of this, Mayway appealed on its own behalf and on behalf of Chinese medicine.

E jiāo, commonly referred to as donkey-hide glue or gelatin is an important Chinese herb that has been used for centuries, and, according to Traditional Chinese Medicine theory, functions to Tonify and Nourish Xuě (血), Nourish and Moisten the Yīn (陰), and Stop Bleeding (止血). E jiāo is often mixed with almonds and sesame seeds and serves as a popular snack in China.

Most ē jiāo comes from donkeys raised as domestic livestock in Shandong province in the People's Republic of China. There are, as of 2006, an estimated 41 million donkeys all over the world with one quarter of that number, 11 million, living in China. Donkeys

are primarily used for transport either for riding, packing of goods, or pulling of carts. They are also raised for meat and milk. One of the uses of donkey carcasses is to make glue out of the collagen found in their hide.

While it is difficult to imagine that donkeys that have been raised as domesticated farm animals are considered an endangered or threatened species, all donkeys, burros, and asses share the same scientific name, *Equus asinus*, and this creates a problem. *Equus asinus* is listed in the 1973 Endangered Species Act (ESA) and a monograph can be found at the US Fish and Wildlife Service website at: <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A00M>

Examination of this document reveals that the animal that is actually endangered is the ancestor of the domestic donkey, the African Wild Ass, which also shares the same genus and species name. However, if one researches the taxonomy of this animal, one finds that this specific animal often bears the subspecies designation *africanus*. In fact, as this monograph also makes clear, the countries in which this endangered, wild (not domesticated), African (not Asian) Ass are known to occur include: Ethiopia, Somalia, and Sudan. This monograph also includes further clarification in a PDF file found at: http://ecos.fws.gov/docs/federal_register/fr128.pdf which reiterates that the animal(s) referred to in the ESA are the Somali wild ass (*Equus asinus somaliensis*) and the Nubian wild ass (*Equus asinus africanus*). However, the final rulemaking published on June 2, 1970, 35 FR 8491 condensed these entries into one: Common Name, African wild ass; Scientific Name, *Equus*

asinus; Where found, Ethiopia, Somalia, Sudan. In a 1977 additional clarification (Federal Register, Vol. 42 No.57; see: www.fws.gov/ecos/ajax/docs/federal_register/fr128.pdf), the FWS states that the wild burros of the Southwest US are specifically excluded from the ESA and the populations that are covered are the African ones.

Yet, according to the USFWS's interpretation in 2010, all populations of *Equus asinus* were restricted and or prohibited under the 1973 US Endangered Species Act (ESA) and prior legislation including The Endangered Species Conservation Act of 1969. Since the USFWS and the National Marine Fishery Service are in charge of enforcement of all products derived from and containing derivatives of species listed in the 1973 ESA, regardless of where the listed species is found or whether they were raised domestically, these products are thus prohibited from importation and interstate trade and possession or sale of ESA listed species or products without an ESA importation permit can be prosecuted as a felony.

On June 5, 2012, the Fish and Wildlife Service issued a proposed rule and Technical Correction for the African Wild Ass, which was published in the Federal Register at 77 Fed. Reg. 33100. The full text can be found here: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-05/html/2012-13421.htm>. This rule will become effective on August 6, 2012, without further action, unless significant adverse comments are received by July 5, 2012.

Key provisions of the final rule include:

- Revision of the List of Endangered and Threatened Wildlife to reflect the current scientifically accepted taxonomy and nomenclature of the African wild ass, the scientific name of this species shall be: *Equus africanus* (formerly *E. asinus*).
- A differentiation between the taxonomy of the African wild ass and the domesticated burro and/or donkey which was not accomplished in a prior rule in 1977.
- The Service intended to list the African wild ass in its entirety, but not to list feral populations of once-domesticated burros and donkeys; confusion was created by "clerical ambiguity".
- The use of *Equus asinus* to describe both domestic and wild populations of the descendants of a

common ancestor was a retrograde step that confused not only biologists, paleontologists, archaeologists and those in applied fields of ecology, conservation, behavior studies and physiological resources, but also enforcement officials who had the job of sorting out endangered species.

- The use of the *Equus africanus* was also adopted by the International Union for Conservation of Nature (IUCN-www.iucn.org) Red List of Threatened Animals in 2008.
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) adopted the name *Equus africanus* for the wild form of the African wild ass (listed in CITES Appendix I) and retained the name *Equus asinus* for the domesticated form, which is not listed under CITES, as of December 2010.

If/once the proposed FWS Rule and Technical Correction for the African Wild Ass becomes effective on August 6th, Chinese Medicine will have dodged the bullet on losing yet another valuable herb. While it was frustrating to have to contend with an issue that seemed so obvious, clerical ambiguity can be very powerful. Once again, we learn the lesson from the I Ching: If you are sincere, you have light and success. Perseverance brings Good Fortune. It furthers one to cross the Great Water.

Additional references that may prove interesting:
Endangered Species Act (1973, as amended) 16 USC CHAPTER 35
<http://uscode.house.gov/download/pls/16C35.txt>

ESA List of Species (as amended) 50 CFR 17.11 (30 pages)
http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp

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