

Commission's Wireless Telecommunications Bureau (Wireless Bureau) released a Public Notice, 68 FR 2252 (January 16, 2003), seeking comment on the Petition.

3. The *Order* finds that telematics units provided by OnStar that are not capable of providing wireless calling service are not within the definition of § 20.3, and therefore, not subject to the E911 requirements of § 20.18(g) of the Commission's rules. On the other hand, although OnStar telematics units do not have the appearance of "traditional" portable handsets, some units are also capable of providing a commercial mobile radio service (CMRS) in addition to telematics services. 911 calls may be made from them over the underlying CMRS network of the carrier licensees, with whom OnStar has reached agreements to provide that wireless service. Their capability to function as mobile phones and to provide commercial wireless service through a licensee qualifies them as mobile phones within the definition § 20.3 and, thus, within the scope of the E911 requirements pursuant to § 20.18(g) of the Commission's rules.

4. The *Order* further determines that licensees who provide CMRS service in accordance with § 20.18 have a responsibility in terms of the requirements of that section with respect to OnStar telematics units that are capable of providing CMRS.

5. The *Order* concludes that the circumstances regarding OnStar's telematics units that provide commercial calling service warrant granting a waiver to (1) cover carriers who currently providing underlying wireless service to OnStar, and (2) its prospective wireless partners with whom it is attempting to work out arrangements as it migrates from analog to digital based equipment and service. Grant of a waiver of the E911 Phase II rules serves to clarify the obligations of CMRS licensees by resolving that OnStar telematics units that provide CMRS do not have to be included in the count for the equipment activation requirements under § 20.18(g) prior to December 31, 2005. The grant of the waiver is conditioned on the determinations the Commission makes on the larger telematics issues in its *Further Notice of Proposed Rulemaking*, 68 FR 3214 (January 23, 2003), proceeding in the same docket, CC Docket No. 94–102.

#### Ordering Clauses

6. It is ordered that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and §§ 0.131, 0.331, 1.3, of the

Commission's rules, 47 CFR 0.131, 0.331, 1.3, the Petition for Ruling filed by OnStar Corporation on December 3, 2002 is denied in part and granted in part.

7. It is further ordered that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and §§ 0.131, 0.331, 1.3, of the Commission's rules, 47 CFR 0.131, 0.331, 1.3, a waiver of the Commission's E911 Phase II rules pursuant to part 20 of the Commission's rules is granted to wireless licensees with respect to OnStar Corporation's telematics equipment that is capable of providing a commercial wireless service, as described, and subject to the conditions set forth, herein.

8. It is further ordered that this waiver is granted until December 31, 2005, unless otherwise modified by the Commission.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-A181

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Dugong (*Dugong dugon*) in the Republic of Palau

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the United States Fish and Wildlife Service (Service), determine endangered status for the population of dugong (*Dugong dugon*) in the Republic of Palau pursuant to the Endangered Species Act of 1973, as amended (Act). Currently, the dugong is listed under the Act as endangered throughout its entire range, except in the Republic of Palau. It is believed that Palauan waters support one of the most isolated populations of dugong in the world, and it is unlikely that this population is receiving any recruitment from other areas. The Palauan population is seriously threatened by poaching.

**EFFECTIVE DATE:** January 16, 2004.

**ADDRESSES:** The complete supporting file for this rule is available for public

inspection, by appointment, during normal business hours at the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

#### FOR FURTHER INFORMATION CONTACT:

Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, [ScientificAuthority@fws.gov](mailto:ScientificAuthority@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The dugong (*Dugong dugon*) is the only extant species in the Family Dugongidae and is one of only four extant members of the mammalian Order Sirenia. It is the only herbivorous mammal that is strictly marine; other members of the Order Sirenia, including three species of manatees, all use fresh water to varying degrees (Marsh *et al.* 1995). It has a large range that spans the waters of at least 37 countries and includes tropical and subtropical coastal and inland waters from East Africa to the Solomon Islands (Marsh *et al.* 2002). Historically, the dugong's distribution is believed to be broadly coincident with the tropical Indo-Pacific distribution of its food plants, phanerogamous, or flowering, seagrasses of the families Potamogetonaceae and Hydrocharitaceae (Husar 1978). Currently, throughout much of its range, the dugong is represented by relict populations separated by large areas where its numbers have been greatly reduced or it is already extirpated (Marsh *et al.* 2002).

It is thought that most dugong populations around isolated archipelagoes have always been small. This is mostly due to the fact that dugongs are largely restricted to a diet of rooted vascular macrophytes, such as seagrass, found only in protected inshore waters (Brownell *et al.* 1981). It has been suggested that dugongs select seagrasses that are lower seral or pioneer species, and species of genera such as *Halophila* and *Halodule* are favored in many areas. Dugongs optimize their diet by selecting species that are more digestible and have higher nutrients and/or species that can compensate for grazing. Dugongs generally frequent coastal waters that support extensive seagrass meadows (Marsh and Lawler 1998) where these food species can be found. Major concentrations of dugong tend to occur in wide, shallow, protected bays; wide, shallow mangrove channels; and in the lees of large inshore islands (Heinsohn *et al.* 1979). Shallow waters, such as tidal sandbanks (Marsh *et al.* 1984) and

estuaries, have also been reported as sites for calving.

Dugongs do not appear to be well adapted to activity in rough seas, where the necessity to surface frequently to breathe may impose heavy energy costs (Anderson and Birtles 1978). Food requirements and energy demands combine to force dugongs to use inshore areas frequently, where they may be taken by hunters with even the smallest watercraft. It has been reported that animals subject to hunting pressure frequent deeper waters during the daytime (Brownell *et al.* 1981) and move toward the shore to feed at night. However, Nishiwaki and Marsh (1985) found that there is diurnal (daytime) inshore feeding in some areas.

Dugongs are long-lived, with a low reproductive rate, long generation time, and a high investment in each offspring. Marsh (2002) has suggested that females do not bear their first calf until they are at least 10 and up to 17 years old. The gestation period is 13–15 months, and the litter size is usually one. The calf suckles for 14–18 months, and periods between successive calving range from 2.4 to 7 years (Nowak 1991). Population simulations by Marsh (1995, 1999) have revealed that, even with the most optimistic combinations of life-history parameters (low natural mortality and no human-induced mortality), a dugong population is unlikely to increase more than 5 percent per year.

In the Micronesian area, dugongs occur only in Palau, except for occasional sightings around Yap and Guam (Nishiwaki *et al.* 1979, as cited in Marsh *et al.* 1995). It is believed that Palauan waters support one of the most isolated populations of dugong in the world. The closest dugong populations are found in Papua Barat, 800 km to the south, and in the Philippines, 850 km to the west. In both of these areas, dugongs are under threat from human exploitation, and it is unlikely that the Palauan population is supplemented by recruitment from either of these areas (Marsh *et al.* 1995). The dugong's close ties to the shore increase its chances of local extinction and may limit the chances of long-distance dispersal and recolonization or recruitment through immigration (Brownell *et al.* 1981).

Full aerial surveys have been conducted in these waters around Palau in 1977–1978, 1983, and 1991. One survey was partially completed in 1998, but was halted because of the loss of the aircraft (The Nature Conservancy 2002). The numbers of individuals observed were 15 in 1977 and 34 in 1978 (Brownell *et al.* 1981). Of these numbers, 13 percent of the specimens seen in 1977 were calves, whereas 24

percent were calves in 1978, indicating an apparent increase in the reproductive rate (Eldredge 1991). The population in Palau was resurveyed in 1983 by Rathbun *et al.* (1988), with the total number of individuals observed being 38, including three calves. A survey conducted in 1991 by Marsh *et al.* (1992) covered 55 percent of the waters inside the barrier reefs. Twenty-six dugongs were sighted, including four calves. This is a minimum count because some dugongs on the surface are missed by observers and others are not seen because they are too far below the water surface (Marsh and Lawler 1998). The number of dugongs sighted in the 1991 survey suggests a reduction in the number of dugongs in Palauan waters over the earlier estimates from the 1980s. After the 1991 survey, the total dugong population for Palau was considered to be a few hundred animals at most (The Nature Conservancy 2002). While incomplete, the 1998 survey yielded more adults with calves than did the 1991 survey, indicating that the population was, at a minimum, still reproductively viable (*ibid.*). The latest survey in this area was completed in March 2003. Although the final report is not yet complete, results from the overflight are 20 adults and 7 calves (Chris Swenson, Service, pers. com. 2003).

#### Previous Federal Action

The dugong is currently listed under the Act as endangered throughout its entire range, except in the Republic of Palau. Prior to the enactment of the Act, species were afforded protection through the Endangered Species Conservation Act of 1969. Under this 1969 Act, the Service prepared two lists: a “Native” list and a “Foreign” list. Originally, the dugong was included in the “Foreign” list of protected species and was listed on December 2, 1970 (35 FR 18320). When the Act became effective in 1973, it supplanted the Endangered Species Conservation Act of 1969. The “Foreign” and “Native” lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). On this list, the dugong was listed as endangered throughout its entire range.

When the lists were combined, the United Nations Trust Territory of the Pacific Islands (Republic of Palau) was under the jurisdiction of the United States (U.S.). Section 4(b)(5) of the Act requires that notice of proposed regulations be given to affected States in which the species occurs. The U.S. population of dugong was included on the list without prior notice to the Republic of Palau. Therefore, in 1988,

the Service amended the Code of Federal Regulations to exclude the U.S. population from the listing. The Republic of Palau was then formally notified, and on August 5, 1993, we published a proposal to extend the endangered classification to the dugong population in Palau (58 FR 41688) and opened a 60-day public comment period.

The proposal was not finalized, however, because of budget limitations and subsequent litigation-driven listing priorities. Additionally, after three decades as part of the UN Trust Territory of the Pacific under U.S. administration, this westernmost cluster of the Caroline Islands opted for independence in 1978 rather than joining the Federated States of Micronesia. A Compact of Free Association with the United States was approved in 1986, but not ratified until 1993. It entered into force the following year when the islands gained independence (Central Intelligence Agency 2002). Finally, on December 2, 2002 (67 FR 71529), we published a notice to reopen the comment period on our proposal to list the dugong as endangered in the Republic of Palau for 90 days to allow all interested parties to submit additional information and written comments for our consideration.

All populations of the dugong are also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition, dugong are also listed as vulnerable to extinction in the IUCN Red List (The World Conservation Union [IUCN] 2002).

#### Summary of Comments and Recommendations

In the August 5, 1993, proposed rule (58 FR 41688), we requested all interested parties to submit factual reports or information that might contribute to the development of a final listing decision. We contacted appropriate Federal agencies, State agencies, county governments, scientific organizations, and other interested parties to request information and comments. We published a legal notice in the *Pacific Daily News* on August 16, 1993. The first public comment period was open for 60 days and closed on October 4, 1993. We re-opened a second comment period on December 2, 2002, for an additional 90 days, closing on March 3, 2003 (67 FR 71529). During this time, we contacted the government in the Republic of Palau for comment. The Ministry of State responded positively, indicating that Palau was fully committed to coordinating its efforts with the United States and other

countries in protecting the dugong population from becoming extinct. We did not receive any requests for a public hearing during either comment period.

We received 10 comment letters, including 1 letter from a peer-reviewer. Nine of the comment letters supported the proposal, and one was opposed. Some additional information was provided and has been incorporated into the "Summary of Factors" of this final rule. Comments of a similar nature or point regarding the proposed rule have been grouped into issues and are discussed below.

**Issue 1:** Two commenters questioned our ability to declare a species endangered in countries outside U.S. jurisdiction. One of these respondents believed that, if we declared a species endangered in another country, this would open the way for individuals in other countries to declare something endangered in the United States for political reasons and not for conservation purposes.

**Our Response:** We have the jurisdiction to list foreign species under section 4 of the Act. In fact, the listing of foreign species predates the Act with the Endangered Species Conservation Act of 1969. Initial publication of the "United States List of Endangered Foreign Fish and Wildlife" appeared in the **Federal Register** on June 2, 1970 (35 FR 8491). In addition, the Endangered Species Act of 1973 requires that foreign species (including subspecies and distinct vertebrate populations) be given the same consideration as native U.S. species with regard to addition to the Lists of Endangered and Threatened Wildlife and Plants.

Individuals in other countries cannot list species under the U.S. Federal Endangered Species Act. The Fish and Wildlife Service in the Department of the Interior and the National Oceanic and Atmospheric Administration-National Marine Fisheries Service in the Department of Commerce share responsibility for administration of the Act. These two agencies are the only ones that can list a species under the Act. However, members of the public may petition to have a foreign species listed, delisted, or reclassified under the Act, and the Service can initiate its own review process for foreign species.

Conservation measures provided to foreign species listed as endangered or threatened under the Act include recognition and awareness of the species' status, international cooperation, requirements for Federal protection in the United States and its territories, and prohibitions against certain activities. Recognition through listing also encourages conservation

measures by Federal, international, and private agencies, groups, and individuals.

**Issue 2:** One respondent stated that, while the Palauan population of dugong should be listed as endangered, a more appropriate status for the Australian population of dugong would be "vulnerable."

**Our Response:** The dugong, which included the Australian population, was part of a rulemaking involving foreign species that were listed as endangered on December 2, 1970 (35 FR 18319). The Australian population of dugongs is not currently the focus of this rulemaking. The Act requires that we conduct periodic reviews of listed species at least once every 5 years. On the basis of such a review, we make a determination of whether a species is listed appropriately or should be removed from the List (delisted) or reclassified (from endangered to threatened, or threatened to endangered). The status of dugong will be reviewed as part of this process and reclassified if needed. A classification of "vulnerable" does not exist under the Act.

**Issue 3:** One respondent indicated that critical habitat should be designated for the dugong population in Palau and extended well beyond the areas delimited by the current distribution.

**Our Response:** Although habitat loss can become a serious threat for the dugong, we do not designate critical habitat outside the United States or on the high seas. The Solicitor for the Department of Interior has noted that the provisions found in the Act do not involve the Secretary of State or consultations with foreign governments when it comes to matters involving critical habitat. In addition, there are obvious difficulties and constraints on U.S. entities operating in other countries to designate critical habitat. Therefore, we have adopted the position that critical habitat may not be determined in foreign countries.

### Summary of Factors Affecting the Species

Section 3 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife. After a thorough review and consideration of all information available, we determine that the population of dugong in the Republic of Palau should be classified as an endangered species. We may determine a species to be endangered or threatened due to one or more of the five factors

described in section 4(a)(1) of the Act. These factors, and their application to the population of dugong (*Dugong dugon*) in the Republic of Palau, are as follows:

#### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The most important dugong habitat in Palau is around Malakal Harbour and in the waters between Babelthuap Island and the barrier reef, especially to the west (Marsh *et al.* 2002). Dugongs typically graze in lagoons with relatively low seagrass biomass in waters more than 7 meters deep. They feed on virtually all species of seagrasses, and are seldom found far from seagrass beds (Anderson and Birtles 1978). Impacts on, or destruction of, these seagrass beds may have future implications for the sustainability of dugong populations in Palauan waters. Palau is experiencing an increase in development. Seagrass ecosystems are very sensitive to human influence (Poiner and Peterken 1996).

With no land-use plans in place, deteriorating water quality from activities such as land clearing and other non-point-source impacts are likely to be more serious threats than point-source impacts such as sewage discharge or anchor damage (Marsh *et al.* 2002). These activities cause increases in sedimentation and turbidity which, in turn, lead to degradation through smothering and lack of light (*ibid.*). *Halophila ovalis*, one of the preferred food species of dugongs, appears to be particularly sensitive to light reduction (Longstaff *et al.* 1999). Duration and frequency of light deprivation events are apparently the primary factors affecting the survival of this seagrass in environments that experience light deprivation (*ibid.*). Habitat destruction associated with increased development and water projects could become a serious threat (Marsh *et al.* 2002).

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The most serious threat to the dugong population in Palau is from poaching activities. Although hunting is illegal, dugongs are still poached regularly in the Koror area and along the western coast of Babeldaob (Marsh *et al.* 2002). Hunting of dugong in this area is a deliberate act, not an opportunistic one. The meat of dugong is oftentimes obtained for special occasions, particularly festive occasions, rather than sold. The meat is often served to guests without their knowledge because

there is disapproval of killing dugongs among many people, especially women (Marsh *et al.* 1995). All of the hunters indicated that they preferred the meat of females and juveniles rather than that of adult males. If females and immature animals are preferentially taken, future recruitment will be reduced more significantly than if hunting targets males or takes animals at random.

Although the main motive for hunting dugongs is for their meat, these animals are also killed for the creation of jewelry items made from the animals' ribs. In the past, atlas vertebrae from dugongs were obtained to make bracelets that were only worn by chiefs (Brownell *et al.* 1981). Although this traditional use has diminished in importance, Marsh *et al.* (1995) found jewelry that was locally crafted from dugong ribs on sale at four stores in Koror. At least two of the retailers knew this activity was illegal (*ibid.*).

Traditionally dugongs were hunted from canoes with heavy spears (Rathbun *et al.* 1988). More recently, dugongs have been hunted mainly at night from small outboard-powered boats (>35hp) with spears, firearms, or dynamite (Brownell *et al.* 1981). Most dugongs are harpooned after being chased (Marsh and Lawler 1998). The dugongs are ambushed from boats as they move with the tide onto or off the shallow seagrass beds where they feed at night (Brownell *et al.* 1988). Residents indicate that dugong movements are predictable and they are relatively easy prey. In 1992, 23 knowledgeable locals (including 5 admitted dugong hunters) were interviewed by Marsh *et al.* (1995). These informants claimed that at least 13 dugongs had been killed in 1990. At least five dugongs were taken between December 1996 and December 1997. Marsh (2002) found that all hunters were aware that killing dugongs was illegal and that the motive for the hunting was that it is an exciting way to obtain meat.

Marsh *et al.* (1995) considered that any deliberate exploitation of dugongs in Palau is unsustainable. Population modeling by Marsh (1986) has suggested that a sustainable level of exploitation of dugongs may be as low as 2 percent of females per year. This means that at least 250 females would be needed to support an annual take of 5 females from Palauan waters. A population of this size is considered to be extremely unlikely given the low number of dugongs sighted during the aerial surveys, suggesting that documented levels of take are not sustainable and will lead to further declines of the species. Marsh (1994) considers that any deliberate exploitation of dugongs in

Palau is unsustainable and the current small population found in Palau is unlikely to be able to sustain the current level of poaching (Marsh and Lawler 1998).

#### *C. Disease or Predation*

Dugongs are susceptible to a wide range of diseases. Some of these diseases are infectious or parasitic and include pneumonia, pancreatitis, and dermatitis. Wild dugongs support a range of parasites, including at least 19 species of trematodes and one species of nematode internally, and a barnacle and a copepod externally (Eros *et al.* 2000). Bryden *et al.* (1998) and Smith *et al.* (1978) found that dugongs may also carry a range of other diseases documented in marine mammals such as leptospirosis, lobomycosis, cryptococcosus, blastomycosis, caliciviruses, salmonellosis, morbillivirus, toxoplasmosis, tuberculosis, and hepatitis. Any outbreak of disease could have devastating effects on this isolated population.

While it appears that people have had the most serious and long-term impacts on dugong populations, sharks are probably the main natural enemy of dugongs. It has been reported that dugongs will defend themselves against sharks, however. Lekagul and McNeely (1977) found that individual dugongs will "gang up" on sharks in shallow waters and drive them off by butting them with their heads. Even so, a devastating attack was reported by Anderson and Prince (1985), during which 10 killer whales surrounded and killed approximately 40 dugongs.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

Marsh and Lawler (1998) identified strengthening and enforcing laws to protect dugongs in Palau as the highest conservation priority in "Action Plan for the Management of the Dugong in Palau". Until recently, Palauan legislation relevant to the dugong was found in the chapter entitled Protected Sea Life, subchapter iv, on dugongs. The first section of the law stated that "no person shall kill, trap, capture, wound, possess, transport, restrain or otherwise have under his control any dugong or any part or product." A person found guilty of violating this section for the first time could face a jail term of not more than 6 months, or a fine of not more than \$50.00, or both. For any subsequent offense, the convicted person would be imprisoned for not more than 1 year, or fined not more than \$100.00, or both. If a dugong was accidentally caught in a fishing net or

by any other fishing method and was still alive, it was required to be released immediately. If found dead, and this fact was affirmed by the chief executive officer of the state, the dead dugong would be released to the person who found it. Marsh *et al.* (1995) found that the hunters they interviewed were not willing to stop hunting while others were continuing to do so, especially when the punishment itself was of little consequence.

In 1996 and 1997, the Palau Conservation Society began a Dugong Management and Education Program (Marsh *et al.* 2002). The dugong was used as a target species to raise awareness and establish pride in Palau's natural heritage. This effort was aimed, in part, at raising the understanding of the general public about the status of the dugong in Palau as well as trying to increase public support for tougher laws to protect dugongs. The effort seemed to be effective in changing attitudes. In 1998, although hunting activities continued, it was being conducted secretly, as opposed to occurring more openly as was found in 1991 (Marsh *et al.* 2002).

On October 31, 2002, a new law was passed in Palau to help protect the dugong. It sharply increased penalties and may be more effective in deterring poachers than the previous law. First-time offenders now face a \$5,000 to \$10,000 fine and a jail term of 3 months to 1 year. Each subsequent offense can result in a fine of \$10,000 to \$20,000 and a jail sentence of 6 months to 3 years. The government can seize the dugong or part of the dugong that was taken in violation of the law as well as any assets used in the taking of the dugong, including boats, cars, and nets. The new law also encourages citizens to protect dugongs by lodging complaints against violators. If the case is won, the citizen responsible for the complaint can receive any expenses incurred in the action and a reward of 50 percent of any fine actually collected from the violator. In addition, the new law calls for the establishment of educational programs for Palauan citizens and the general public about the dugong. Finally, there is a section that requires the completion of Environmental Impact Statements before any new development occurring in dugong habitat. This would allow the Ministry of Resources and Development or the Environmental Quality Protection Board to deny any construction permits or require appropriate mitigation if dugong habitats are adversely affected.

As discussed, the Republic of Palau has significantly strengthened its legislation banning dugong hunting.

Poaching, which is considered to be the most serious threat to dugongs in Palau, needs to be stopped if dugong are to survive in this area. However, the strengthening of any law must also be accompanied by effective enforcement. The effectiveness of this new law is unknown at this time.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Fishing and boating activities around dugong populations could have potential impacts on the species. In Palau, mortality of dugongs caused by collisions with speedboats has not been a major problem. However, this has the potential to become a problem in Malakal Harbor, which is an important dugong area (Marsh *et al.* 2002). Additionally, there is some circumstantial evidence that dugongs cease to use previously favored habitats when the volume of boat traffic becomes high (Marsh and Lawler 1998). In Palau, this boat traffic may be from recreational or fishing boats. In many other parts of the world, dugongs often drown in gill nets (Paterson 1990). In Palau, fishermen have the knowledge and gear to catch dugongs in this manner. However, they do not purposely use their fishing gear to catch dugongs because of the potential for damage to their nets (Marsh and Lawler 1998).

#### **Conclusion**

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing this species. The dugong population in Palau is imperiled primarily by poaching activities. The current small population found in this area is unlikely to be able to sustain the current level of poaching. It is believed that Palauan waters support one of the most isolated populations of dugong in the world, and it is unlikely that this population is receiving any recruitment from other areas. Currently, the dugong is listed under the Act as endangered throughout its entire range, except in the Republic of Palau. This species is in danger of extinction "throughout all or a significant portion of its range" (section 3(6) of the Act), and because of the high potential that these threats could result in the extinction of the dugong in Palau, the preferred action is to list the population of dugong in the Republic of Palau as endangered. This action will result in the classification of the entire species of dugong as endangered, wherever it occurs.

#### **Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of conservation status, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies and groups, and individuals. The protection required of Federal agencies and the prohibitions against take and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or upon the high seas, with respect to any species that is proposed to be listed or is listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. Because the dugong is not native to the United States, no critical habitat is being proposed for designation with this rule. Regulations implementing the interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, with respect to the dugong, no Federal activities are known that would require conferral or consultation.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. As such, these prohibitions are applicable to the population of dugong in Palau. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" (includes

harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

#### **National Environmental Policy Act**

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, 50 CFR chapter I is amended as follows:

#### PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the following entry under Mammals in the List of Endangered and Threatened Wildlife:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Dugong .....	<i>Dugong dugon</i> .....	East Africa to southern Japan, including Palau.	Entire .....	E	4,740	NA	NA.
*	*	*	*	*	*		*

Dated: October 16, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

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