

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

25 August 2008

Mr. Michael Franz
Attn: FWS-R9-ES-2008-0063
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, Suite 222
Arlington, VA 22203

Dear Mr. Franz:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the proposed rule, published by the Fish and Wildlife Service in the 5 August 2008 *Federal Register*, to revise the format of the Lists of Endangered and Threatened Wildlife and Plants. We offer the following recommendation and comments.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Fish and Wildlife Service adopt the proposed rule subject to the following changes and clarifications:

- modify section 17.11(b) to require that the acronyms ESU (Evolutionarily Significant Unit) or DPS (Distinct Population Segment) be inserted in the list immediately after any bracketed ESU or DPS common name to indicate the basis on which it is listed;
- clarify in the preamble to the final rule that any change in a species' name associated with the change to the Integrated Taxonomic Information System will not result in a change in listing status for that species or any part thereof, including the geographic area over which it is listed, unless that change is preceded by a formal listing or delisting process; and
- either (a) use the same description of geographic range provided in the current list of endangered or threatened wildlife when developing the new "where listed" column under the proposed rule or (b) ensure that any new descriptions of geographic range include, at a minimum, all areas currently encompassed by the existing list.

RATIONALE

The proposed rule would rearrange the order of columns and change some of the column titles and/or information in the tables that make up the official lists of threatened and endangered wildlife and plants protected under the Endangered Species Act. The stated purpose of the proposed changes is to update the regulations governing the lists' format to include current practices and standards; ensure that the lists are easy for the public to understand; standardize entries; and correct numerous anomalies, ambiguous entries, and confusing formats. According to the notice, "none of the proposed changes are regulatory in nature (and) no revisions will be made to the species, as defined in current (regulations) or its status."

Both the current and proposed formats for the list of wildlife include eight columns. In the following table, the eight existing column titles are presented above the proposed titles.

Common Name	Scientific Name	Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common Name [ESU or DPS]	Scientific Name	Status	Where listed	Historic range	Citations	Special rules	Critical habitat

Under the proposed rule, the first four columns describe the species in accordance with the Act (i.e., common name, scientific name, status, and where listed). The remaining columns (i.e., historic range, citations, special rules, and critical habitat) are provided solely for information purposes. This change seems sensible.

The proposed rule also would modify information presented in the first four columns. First, if a taxon has been listed as an ESU or DPS, the names of those units or segments would be provided in brackets following the species' common name. Although few marine mammals are currently listed as an ESU or DPS, many are likely composed of such units that are recovering at different rates and may warrant different listing status. Distinguishing such units or segments is appropriate and helpful. As currently proposed, however, the new rule does not indicate whether the tables would specify whether a listed taxon was an ESU or DPS. For purposes of clarity, the Marine Mammal Commission recommends that the Fish and Wildlife Service modify section 17.11(b) of the proposed rule to specify that the acronyms ESU or DPS be inserted in the list immediately after any bracketed common name to indicate the basis on which it is listed.

Second, the proposed rule would change the authority used for identifying scientific names from the International Code of Zoological Nomenclature to the Integrated Taxonomic Information System. This new authority incorporates the International Code standards and the standard references adopted by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This change seems appropriate. However, to avoid any confusion, the Marine Mammal Commission recommends that the Fish and Wildlife Service clarify in the preamble to the final rule that any change in a species' name associated with the switch to the Integrated Taxonomic Information System will not result in a change in listing status for that species or any part thereof, including the geographic area over which it is listed, unless that change is preceded by a formal listing or delisting process.

Third, the proposed rule expands the list of status categories. Currently the categories include "threatened," "endangered," and species that are listed by virtue of their "similarity in appearance" to a listed species. The proposed additions also would indicate essential and non-essential experimental populations authorized under the Act. The Commission supports this change.

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Fourth, the existing column entitled “vertebrate population where threatened or endangered” would be renamed “where listed,” and would “set forth the geographic area where the species is listed for purposes of the Act.” The term “entire” in this column would be defined to mean that the taxon is covered wherever it is found (i.e., throughout its entire range). For most marine mammals currently listed as endangered or threatened, their geographic range is listed as “entire.” The Commission supports these changes as long as they do not alter the current definition of range for any listed species. To prevent any confusion on this point, the Marine Mammal Commission recommends that the Fish and Wildlife Service either (a) use the same description of geographic range provided in the current list of endangered or threatened wildlife when developing the new “where listed” column or (b) ensure that any new descriptions of geographic range include, at a minimum, all areas now encompassed by the existing list.

The principal change with regard to the four columns provided solely for information purposes is renaming the “when listed” column as “citations” and incorporating directly on the new list the footnotes that are now provided in a separate table. These footnotes reference *Federal Register* publications announcing listing and reclassification decisions for various species. This change also appears appropriate and helpful.

I hope that our recommendation and comments are helpful. Please contact me if you or your staff has any questions.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director