

§ 17.11 [Amended]

It is proposed to amend § 17.11(h) by revising the entry under BIRDS for "Hawk, Hawaiian" to read as "T" under "Status".

Dated: July 8, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-18638 Filed 8-4-93; 8:45 am]

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50 CFR Part 17

RIN 1018-AB97

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Dugong in the Trust Territory of the Pacific Islands, the Republic of Palau

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposed to extend endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the dugong (*Dugong dugon*) throughout its range. Due to an inadvertent oversight, individuals of the dugong that occur in the United States, specifically those that occur in the Trust Territory of the Pacific Islands (Republic of Palau), are not officially listed as endangered; however, all individuals that occur in foreign countries are listed as endangered. The dugong population in the Republic of Palau currently numbers fewer than 200 individuals and is the most isolated dugong population in the world. The Palauan population is seriously threatened by poaching. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited from the public.

DATES: Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:**Background**

The dugong (*Dugong dugon*) (Muller 1776, as cited by Eldredge 1991) is the only species in the genus *Dugong* and one of only four extant species in the order Sirenia. The dugong is a strictly marine species that inhabits shallow, coastal waters in tropical seas. It was once distributed from the east coast of Africa to Australia and the Western Pacific. It has been exterminated throughout much of this range, mostly from hunting by humans, and few insular populations remain. One remnant population is found in the coastal waters of the Trust Territory of the Pacific Islands (the Republic of Palau). Surveys were conducted by the Service in 1977, 1978, 1983, and 1991. Results from these surveys indicate that fewer than 200 dugongs remain in Palau, and their numbers are decreasing (Marsh et al. 1991). The decrease in dugong numbers is mainly attributable to illegal hunting for meat, jewelry, and sport. Poaching, coupled with the dugong's naturally low reproductive potential (about one calf every 3 years) (Brownell et al. 1988), may lead to the extinction of the Palauan population by the end of this century (Brownell et al. 1979).

Previous Federal Action

Currently, the dugong is listed as endangered throughout its range, except in the United States (50 CFR 17.11). The exclusion of protection in the United States stems from the Service's former practice of preparing a "Native" list and a "Foreign" list under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275). Under this former Act, the Service listed the dugong on the "Foreign" list of protected species (35 FR 18320; December 2, 1970). When the Endangered Species Act of 1973 (Pub. L. 93-205; 87 Stat. 884) became effective on December 28, 1973, it supplanted the Endangered Species Conservation Act of 1969, and the "Native" and "Foreign" lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When the lists were combined, the dugong was listed as endangered wherever found, including within the United States. This inclusion of the United States, however, was made without prior notice to the affected State (i.e., the Republic of Palau), which is required under section 4(b)(5) of the Act. When this oversight was discovered in 1988, the Service amended the Code of Federal Regulations (50 CFR 17.11), deleting the United States from the range within

which the dugong receives protection. Hence, the dugong population in Palau has been afforded no protection under the Act since 1988. Since the Republic of Palau has now been formally notified of this proposed action, the Service proposes to extend the Act's protection to the dugong within the United States.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the (*dugong dugon*) are as follows:

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

Habitat degradation associated with increased development and water projects in Palau could develop into a more serious threat as tourism and development in Palau continue to increase. Since the dugong is dependent on limited, near-shore waters with abundant sea grasses, any destruction or modification of these areas in Palau could have a serious effect on the already stressed dugong population.

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

Poaching of the dugong is the most serious threat to the species' survival. The animals are killed for their meat and hides and for creation of jewelry items crafted from the animal's ribs. Traditionally, the dugong was effectively conserved by the local chiefs of Palau. A bracelet made from the atlas vertebra of a dugong was worn only by chiefs. Now that the traditional role of chiefs in Palau has diminished, the species is afforded little protection from poaching, and people using speed boats, explosives, spear guns, and other items, are able to take much larger numbers of the animal than was possible in the past. Since the animals' habits are so well known and they stay in such close proximity to the shoreline to feed, they are easily located and hunted.

C. Disease or Predation

It is not known whether disease has been a factor in the decline of the dugong. However, given their low numbers and seclusion in the waters of Palau, any outbreak of disease could

foreseeably lead to the extirpation of that population. The most likely natural predator of dugong is the tiger shark (*Galeocerdo curvieri*) (John Naughtin, National Marine Fisheries Service, pers. comm., 1993). An attack by killer whales on a group of 40 dugongs has also been documented (Novak 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

The purpose of this proposed rulemaking is to extend the protective status afforded by the Endangered Species Act of 1973, as amended, to the dugong population of Palau, since this population is not currently protected by the Act. Although Palauan law provides protection to the dugong, it is inadequately enforced, due to limited personnel and resources. As a marine mammal, the dugong should be afforded full protection under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), under which it should bear the designation of "depleted." However, the definition of "United States" in section 3 of that Act does not include the Trust Territory of the Pacific Islands. As a result, it is difficult to extend the protection of the Marine Mammal Protection Act as it is currently worded to the dugong population in Palau.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The dugong population of Palau numbers fewer than 200 individuals and has a very low reproductive potential (about one calf every 3 years) (Brownell *et al.* 1988). The combination of these two factors leads to the risk of genetic inbreeding and makes the population extremely vulnerable to extinction from catastrophic events, such as floods, hurricanes, pollution, and disease.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to propose the dugong (*Dugong dugon*) as endangered throughout its range. The lack of protection under the Act for the Palauan population of the dugong since 1988 is due to an uncorrected technicality, rather than biological data. The dugong is endangered throughout its range, especially in the secluded archipelago of the Republic of Palau, where it numbers fewer than 200 and is seriously threatened by poaching activities. Critical habitat is not being proposed at this time for the dugong for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to the dugong. The population is small and localized and is highly threatened by poaching. Publication of detailed critical habitat maps and descriptions in the Federal Register would very likely lead to increased poaching, and could, therefore, increase enforcement problems. Protection of habitat will be addressed through the recovery process. The Service, therefore, finds that designation of critical habitat for the dugong is not prudent at this time, because such a designation would increase the degree of threat from poaching or other human activities, and because it is unlikely to aid in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following a listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2)

requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal action or involvement in the Republic of Palau that would affect the dugong is expected or known at this time.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered species of wildlife. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because the species is not common in captivity or in the wild.

On July 1, 1975, the dugong (*Dugong dugon*) was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), except the Australian population which was included in Appendix II. The effect of this listing is that both export and import permits are generally required before international shipment may occur. Requests for copies of the regulations on protected wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;
 - (2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
 - (3) Additional information concerning the range, distribution, and population size of this species; and
 - (4) Current or planned activities in the subject area and their possible impacts on this species.
- Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be

made in writing and addressed to the Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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 Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Brownell, R.L., P.K. Anderson, R.P. Owen, and K. Ralls. 1979. The status of dugongs at Palau, an isolated island group. Pp. 11-23 in Proceedings of a Seminar/Workshop on the Dugong, 8-13 May 1979. Department of Zoology, James Cook University of North Queensland.

Brownell, R.L., J. Engbring, K. Ralls, and G.B. Rathbun. 1988. Status of dugongs in waters around Palau. Marine Mammal Science 4(3):265-270.

Eldredge, L.G. 1991. Annotated checklist of the marine mammals of Micronesia. Micronesia 24(2):217-230.

Marsh, H., T. O'Shea, T. Preen, G.B. Rathbun. 1991. An assessment of the status of the dugong in Palau: A preliminary report to the Palauan Government. Unpublished, 3 pp.

Nowak, R.M. 1991. Walker's mammals of the world, fifth edition. The Johns Hopkins University Press, Baltimore and London, pp. 1294-1296.

Author

The primary author of this proposed rule is Karen W. Rosa, Pacific Islands Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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. It is proposed to amend § 17.11(h) by revising the entry for the Dugong (*Dugong dugon*) under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 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	Dugon, dugon	East Africa to southern Japan, including U.S.A. (Trust Territories).	Entire	4	NA	NA	

Dated: July 7, 1993.
Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.
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50 CFR Part 17
RIN 1018-AC01
Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Royal Snail and Anthony's Riversnail
AGENCY: Fish and Wildlife Service, Interior.
ACTION: Proposed rule.
SUMMARY: The Fish and Wildlife Service (Service) proposes to list the royal snail (*Pyrgulopsis* (= *Marstonia*) *ogmorhapse*)

and Anthony's riversnail (*Athearnia anthonyi*) as endangered species under the Endangered Species Act of 1973, as amended (Act). The royal snail is known from only two spring runs on public and private lands in the Sequatchie River system, Marion County, Tennessee. The extremely limited distribution of the royal snail and the limited amount of occupied habitat make this species extremely vulnerable to extirpation. Anthony's riversnail is known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and