

**Fish and Wildlife Service
ENDANGERED AND THREATENED
SPECIES**

**Notice of Clarification of Status of Wild
Burros**

This notice is issued by the United States Fish and Wildlife Service in order to clarify the status of the wild burro under the Endangered Species Act of 1973. (16 U.S.C. §§ 1531-43) (Supp V) (hereinafter the 1973 Act). It has recently been determined that confusion exists concerning the relationship between the burros in this country and the African wild ass (*Equus asinus*), an endangered species. For the reasons set forth below, it is the conclusion of the Service that the American population of burros has never been listed under the 1973 Act or any of its predecessors.

The problem recently arose when taxonomic similarities were noted between the African wild ass and the wild burro, an exotic species introduced out west during the earlier development of our country. Further taxonomic investigation indicated that the burro and the African wild ass were in fact the same species. This conclusion does not support the inference, however, that the western wild burro is presently listed as an endangered species.

The first endangered species act was passed in 1966 and was limited in scope to "native" or resident species of fish or wildlife threatened with extinction. (Public Law 89-669, 80 Stat 926) (hereinafter the 1966 Act). Section 1(c) of the 1966 Act stated that native species of fish or wildlife could be regarded as endangered if the Secretary of the Interior found, after consultation with the affected States, that their existence was threatened because of certain enumerated factors. The Secretary was directed

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to publish in the FEDERAL REGISTER a list of those native species determined by the Secretary to be endangered. Such a list was published on March 8, 1969 at 34 FR 5034 without a reference to either the wild burro or *Equus asinus*. Nor were any of the "affected" western States ever consulted over the possible listing of the wild burro as an endangered species.

The Endangered Species Conservation Act of 1969, (Public Law 91-135, 83 Stat. 275) (hereinafter the 1969 Act); expanded the 1966 Act by authorizing the listing of foreign species of fish or wildlife which were threatened with worldwide extinction. By a proposed rulemaking on April 14, 1970, 35 FR 6060, the Secretary set forth the original list of endangered foreign species. Appendix A, entitled "Secretary of the Interior's List of Species and Subspecies Threatened With Extinction in Other Countries", contained the following entries:

Common name	Scientific name	Where found
Somali wild ass.	<i>Equus asinus somaliensis</i>	Ethiopia, Somalia.
Nubian wild ass.	<i>Equus asinus africanus</i>	Ethiopia.

When the final rulemaking for the foreign list was published on June 2, 1970, 35 FR 8491, Appendix A was retitled to read "United States List of Endangered Foreign Fish and Wildlife." The above entries were condensed into one:

Common name	Scientific name	Where found
African wild ass.	<i>Equus asinus</i>	Ethiopia, Somalia, Sudan.

It is interesting to note that for those Appendix A species which included resident populations in the United States, the "where found" entry included a specific reference to the United States. Thus the entry for the whooping crane read as follows:

Common name	Scientific name	Where found
Whooping crane.	<i>Grus americana</i>	Canada, United States.

The entry for the African wild ass contained no such reference to the United States, and hence is additional evidence that the native population of wild burros was never considered for listing under the 1969 Act.

This conclusion is further supported by the first list of native endangered species developed under the 1969 Act. Published as a proposed rulemaking on August 25, 1970, 35 FR 13519, and a final rulemaking on October 13, 1970, 35 FR 16047, the native list was again devoid of any mention of the wild burro or *Equus asinus*.

Except in very limited circumstances, the 1973 Act retained the lists published under the 1969 Act. The new Act also abandoned the distinction between native and foreign lists and a combined list was eventually published on September 26, 1975 at 40 FR 44412. The present listing for the African Wild ass is as follows:

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened			
MAMMALS							
Ass, African wild.	<i>Equus asinus</i>	(1)	Ethiopia, Somalia, Sudan.	Entire	E		3

(1) Not available.

The existing confusion over the status of the wild burro stems from the fact that the present listing for *Equus asinus* covers its entire range and is not specifically limited to the African population in Ethiopia, Somalia and Sudan. Thus, the "population" column for the African wild ass entry contains the notation "N/A" for "not applicable." This was quite logical when the list was published in September of 1975 because the African population was the only known one in existence, as evidenced by the reference to Ethiopia, Somalia and Sudan under the "known distribution" column. There was no need, therefore, to be specifically selective in the listing process since the African population was synonymous with the entire known range of the African wild ass. The Service only utilizes the population concept in listing when it deems it necessary to discriminate between two or more known populations of a particular species. This was simply not the case with the African wild ass in September of 1975.

In summary, it has been clearly shown that throughout the entire listing and relisting process under three endangered species acts, the western wild burro has never been considered for designation as an endangered species. *Equus asinus* has always been treated administratively as a foreign species and was never included on a native list of endangered species. Furthermore, the procedural requirements for consultation with affected States during the listing of a native species were never complied with. An undesignated native population of a listed foreign species cannot be bootstrapped into coverage under the 1973 Act because of a clerical ambiguity with the list.

Congress, itself, has implicitly recognized the unlisted status of the wild burro with the passage in 1971 of the Wild Free-Roaming Horses and Burros Act (16 U.S.C. §§ 1331-40) (Supp. V). Throughout the entire legislative history of the Act, there is not a single reference to the wild burro's classification as an endangered species. Congressional silence on this matter would have been highly unlikely if the wild burro had been actually listed under the 1969 Act.

The Service intends to correct the technical deficiency of the present entry for the African wild ass when it republishes the updated list of endangered and threatened species in the fall. The word "Ethiopia, Somalia and Sudan" will be inserted under the "population" column in place of the present letters "N/A". This will be a purely clerical

modification and in no way should be interpreted as evidence that the wild burro is presently listed under the 1973 Act.

Dated: March 11, 1977.

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