

73, 101.76, 101.78, 101.90, 101.97; PARTs Air 102-103.
 • CHAPTER Air 200, PARTs Air 201-204; PARTs Air 206-210.
 • CHAPTER Air 300, PART Air 304.
 • CHAPTER Air 500.
 • CHAPTER Air 800, PART Air 803.
 • CHAPTER Air 1000, PART Air 1002.
 • CHAPTER Air 1100.
 • CHAPTER Air 1200, PART Air 1201, section 1201.07; PART Air 1206.

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 BILLING CODE 6560-50-M

40 CFR Part 81

[A-10-FRL 2937-8]

Designation of Areas for Air Quality Planning Purposes; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving the redesignation of the Grants Pass, Oregon, from "attainment" to "nonattainment" for carbon monoxide. This action was requested by the State of Oregon Department of Environmental Quality based on carbon monoxide violations recorded during the period of 1981 through 1984.

EFFECTIVE DATE: December 16, 1985.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-85-7),

Environmental Protection Agency,
 1200 Sixth Avenue, Seattle,
 Washington 98101

State of Oregon, Department of
 Environmental Quality, 522 S.W. Fifth,
 Yeon Building, Portland, Oregon 97204

FOR FURTHER INFORMATION CONTACT:

Loren C. McPhillips, Air Programs
 Branch, M/S 532, Environmental
 Protection Agency, 1200 Sixth Avenue,
 Seattle, Washington 98101, Telephone:
 206/442-4233, FTS: 399-4233.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 10, 1984, the State of Oregon Department of Environmental Quality (ODEQ) submitted a request to redesignate the Grants Pass area to nonattainment for carbon monoxide (CO). Specific boundaries were identified in the submittal. Based on this request, ODEQ has devised a State Implementation Plan schedule for

development of the CO control strategy. The schedule currently calls for the SIP to be submitted to EPA by May 1986, consistent with the EPA's policy for newly designated nonattainment areas contained in the Guidance Document for Correction of Part D SIPs for Nonattainment Areas, January 27, 1984 and EPA's regulations, 40 CFR 52.24(k) (1984).

II. Response to Comments

On April 18, 1985 (50 FR 15463), EPA solicited public comment on the proposed approval of this redesignation. One comment was received concerning the actual boundaries of the proposed nonattainment area for Grants Pass. A minor correction was published on June 13, 1985 (50 FR 24784).

III. Summary of Rulemaking Action

Today's notice approves the redesignation of the Grants Pass central business district to nonattainment for carbon monoxide. The boundaries of the nonattainment area are as follows:

Beginning at the intersection of B Street and Fifth Street; extending easterly along B Street to Eighth Street; thence southerly along Eighth Street to M Street; thence westerly along M Street to Fifth Street; thence northerly along Fifth Street to the starting point.

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 9, 1985.

Lee M. Thomas,
 Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 is as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 81.338 the attainment status designation table for carbon monoxide is revised to read as follows:

§ 81.338 Oregon.

* * * * *
 OREGON—CO

Designated Area	Does not meet primary standards	Cannot be classified or better than national standards
Portland-Vancouver AQMA (portion of the Oregon portion).	X	
Eugene-Springfield AQMA	X	
Grants Pass	X	
Medford—an area contained within the central commercial area of the city.	X	
City of Salem	X	
Remainder of State		X

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Addition of the Guadalupe Fur Seal to the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service adds the Guadalupe fur seal to the List of Endangered and Threatened Wildlife. This measure, required by section 4(a)(2)(A) of the Endangered Species Act, corresponds with a determination of threatened status by the National Marine Fisheries Service, which has jurisdiction of the Guadalupe fur seal pursuant to the Act.

DATES: The effective date of this rule is January 15, 1986.

ADDRESSES: Questions regarding the Service's role in this matter may be addressed to the Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Broyhill Building, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, at the above address (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION: Pursuant to the Endangered Species Act of 1973, as amended, and in accordance with Reorganization Plan Number Four of 1970, responsibility for the Guadalupe fur seal (*Arctocephalus townsendi*), as well as most other marine mammals, lies with the National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration, Department of Commerce. Section 4(a)(2)(A) of the Act provides that the NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife (FWS), however, is responsible for the actual addition of such species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h). In the Federal Register of January 3, 1985 (50 FR 294), the NMFS proposed a determination of threatened status for the Guadalupe fur seal and requested comments from the public by March 4, 1985.

In this issue of the Federal Register, the NMFS is publishing its final determination of threatened status for the Guadalupe fur seal (see document in Final Rules section under the Department of Commerce, National Oceanic and Atmospheric Administration). Accordingly, the FWS hereby concurrently adds the Guadalupe fur seal, as a threatened species, to the

List of Endangered and Threatened Wildlife. Because this FWS action is nondiscretionary, and in view of the public comment period provided by the NMFS on its proposed determination, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b) as unnecessary and impractical with respect to this ministerial rule. The FWS also has determined that an Environmental Assessment, as defined under 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 the reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "MAMMALS," to 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							
Guadalupe fur seal	<i>Arctocephalus townsendi</i>	U.S.A. (Farallon Islands of CA south to Mexico (Islas Revillagigedo).	Entire	T	212	NA	227.11

Dated: December 5, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-29677 Filed 12-13-85; 8:45 am]

BILLING CODE 4310-65-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 41264-5160]

Threatened Fish and Wildlife; Guadalupe Fur Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The NMFS has determined that the Guadalupe fur seal (*Arctocephalus townsendi*) should be listed as a threatened species according to the Endangered Species Act of 1973 (ESA). This determination is based on information contained in a petition to list the species submitted by the Center

for Environmental Education/Seal Rescue Fund, in a Status Review conducted by the NMFS, and in comments received in response to publication of the proposed rule to list the species. The NMFS has determined that such listing is warranted because: (1) The population was reduced to very low numbers by 19th century commercial exploitation; (2) the current population remains small (about 1,600) relative to the presumed minimum pre-exploitation population size (30,000); and (3) the population has been increasing slowly but persistently since its rediscovery in 1954. Critical habitat is not being established at this time because the only areas that are essential to the conservation of the species and may require special management considerations or protection are outside of the jurisdiction of the United States. Concurrent with this rule, the Fish and Wildlife Service, Department of the Interior, is amending the U.S. List of Endangered and Threatened Wildlife by adding the Guadalupe fur seal as a threatened species. The intended effect of listing the Guadalupe fur seal is to provide it with the protection afforded threatened species under the ESA.

EFFECTIVE DATE: The effective date of this rule is January 15, 1986.

ADDRESSES: The complete file for this rule is available for review in the Office of Protected Species and Habitat Conservation, NMFS, 3300 Whitehaven Street, NW., Washington, DC 20235, or the Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio (Office of Protected Species and Habitat Conservation), 202-634-7529, or Dana J. Seagars (Southwest Region), 213-548-2518.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1983, the NMFS received a petition from the Center for Environmental Education, Seal Rescue Fund to list the Guadalupe fur seal (*Arctocephalus townsendi*) as an endangered species under the ESA (16 U.S.C. 1531) for the following reasons:

1. Overutilization of the species by 19th century commercial sealing operations reduced the population to extremely low numbers.

2. Population growth has been slow since a breeding colony was discovered at Guadalupe Island, Mexico in 1954.

3. The restricted breeding area and overall distribution increases the vulnerability of Guadalupe fur seals to human disturbance through direct or indirect intrusion into these areas. Disruption of normal activities at both breeding and hauling out areas could adversely affect population growth.

4. *A. townsendi* is listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Such listed species are considered by CITES to be threatened with extinction; trade in the species or its products for commercial purposes is banned by Convention members.

5. The International Union for Conservation of Nature and Natural Resources (IUCN) Red Data Book lists *A. townsendi* as vulnerable.

6. *A. townsendi* was listed according to the Endangered Species Protection Act of 1966 as threatened with extinction. The omission of this species from a revised list published in 1970 (and subsequent lists) was without explanation.

The Assistant Administrator for Fisheries, NOAA, determined that the petition presented substantial information indicating that the petitioned action may be warranted and commenced a review of the status of this species to determine whether or not it should be listed under the ESA (February 8, 1984, 49 FR 4804). On January 3, 1985, the NMFS published its proposed determination that the Guadalupe fur seal should be listed as threatened (50 FR 294-298) and requested comments and information by March 4, 1985. After a thorough review of all information available, the NMFS has determined that the Guadalupe fur seal should be classified as threatened under the terms of the ESA. The list of threatened species under the jurisdiction of the NMFS is contained in 50 CFR 227.4, and is amended to reflect this final determination. The Fish and Wildlife Service (FWS), Department of the Interior, maintains the U.S. List of Endangered and Threatened Wildlife (50 CFR Part 17) of all species determined by the NMFS or the FWS to be endangered or threatened. Concurrent with this rule, the FWS is amending the List by adding the Guadalupe fur seal as a threatened species (see document in the Final Rules section of this issue under Department of the Interior, Fish and Wildlife Service).

Summary of Comments and Recommendations

The NMFS solicited comments and information concerning the Guadalupe fur seal in the Federal Register documents noted above. The following individuals and organizations provided information and/or comments: The Conservation Monitoring Center, IUCN; Center for Environmental Education; Department of the Air Force; Department of the Navy; Marine Mammal Commission; Minerals Management Service; Channel Islands National Park, National Park Service; Fish and Game Commission, County of Santa Barbara; Smithsonian Institution; American Society of Mammalogists; Chevron U.S.A., Inc.; Exxon Company, U.S.A.; Union Oil Company of California; Western Oil and Gas Association; Mr. Brent Stewart, Hubbs-Sea World Research Institute; and Dr. Bruce Mate, Oregon State University. Comments from the Wild Flora and Fauna Directorate, Urban Development and Ecology Secretariat (SEDUE), Government of Mexico were received by the U.S. Embassy, Mexico City and transmitted to the NMFS.

Reviewers' comments focused primarily on two issues of the proposed rule: the listing classification to be assigned and the establishment of critical habitat.

Eight commenters supported or had no objection to the proposed listing of *A. townsendi* as "threatened." Three commenters recommended listing the species as "endangered" rather than "threatened." Five commenters felt the species should not be listed or questioned the basis for making a listing determination. Of these five, two believed the economic cost of listing would outweigh any potential benefits to the species or the ensuing restrictions would be onerous and excessive to industry. In accordance with the Conference report on the 1982 amendments to the ESA, § 424.11(b) of 50 CFR requires that the NMFS make a listing determination "solely on the basis of the best available scientific and commercial information . . . without reference to possible economic or other impacts of such determination." Therefore, this determination does not consider any economic factors.

Exxon Company, U.S.A. stated that a listing determination is premature due to the lack of detailed information concerning the species' life history and ecology. While the NMFS believes that delaying a final decision to list might provide additional information concerning population parameters (see *Research*, below), the regulations

require the NMFS to make a listing determination using the best available information within one year of the publication of the proposed rule, unless there is substantial disagreement among knowledgeable scientists concerning the sufficiency or accuracy of the available information. The NMFS believes sufficient information is available to support listing the species as threatened (see *Listing Procedures*, below) and is not aware of any disagreement in the scientific community regarding the sufficiency or accuracy of the information used in making this determination. Therefore, the NMFS thinks that issuing the final rule at this time is appropriate.

The Minerals Management Service believes the evidence presented in the proposed rule did not satisfy any of the listing criteria. It is the judgment of the NMFS that criterion (2)—"overutilization for commercial . . . purposes" is supported by the current scientific estimates of population size and the written history of the decimation of the population by commercial sealing. Additional details are discussed in the *Listing Procedures* section, below.

The Union Oil Company of California stated that evaluation of the species status should be restricted to the portion of the population in Mexican waters as those individuals in U.S. waters are not intrinsic to survival of the population. The definitions provided in the ESA and the listing regulations of "endangered" and "threatened" status require evaluation of a species' status throughout its range. The current distribution of the Guadalupe fur seal is largely restricted to a remnant of its historic range. Only few individuals are found within the historic range in U.S. waters; these individuals may be recolonizing a portion of their historic range. Reoccupation of historic rookery sites is one indication that the population is recovering. Since the purpose of the ESA is to provide for the recovery of listed species, the NMFS believes that consideration of the individuals occurring in U.S. waters is appropriate.

The United States Air Force requested that the potential impact to *A. townsendi* on the Channel Islands from Space Shuttle sonic booms not be used as justification for listing. The NMFS believes it appropriate to present an analysis respective to the factors outlined by the regulations for listing. While the analysis under factor 1 (present or threatened destruction, modification, or curtailment of . . . habitat or range) noted that

these proposed activities may alter the acoustic environment of the Channel Islands and have the potential to cause short-term disturbance to individuals, the NMFS concluded these activities were not likely to result in significant adverse impacts to the species, and therefore would not, taken alone, support a listing determination.

Based on information from the Red Data Book, the IUCN recommended an endangered status. The NMFS believes the available information supporting listing most closely corresponds with the definition of a "threatened" species provided by the ESA. The Guadalupe fur seal is listed by IUCN as "vulnerable." Included in this category are species "believed likely to move into the 'Endangered' category in the near future . . ." and species whose populations "have been seriously depleted and whose ultimate security has not yet been assured." This classification corresponds more closely with the ESA definition of "threatened" than "endangered" and therefore, it appears that the "threatened" status is consistent with the IUCN category of vulnerable.

The American Society of Mammalogists recommended listing the species as "endangered" based on prior drastic depletion, current low numbers and restricted range, and a potential threat to the species in southern Californian waters due to gillnet fishing operations. The NMFS agrees that there is a potential for *A. townsendi* to be taken in gillnets. However, this potential is low because the number of Guadalupe fur seals in U.S. waters is small. Studies of marine mammal mortality in gillnets conducted by the NMFS and the California Department of Fish and Game since 1978 (Miller *et al.*, 1983; Hanan, 1985) have not reported any incidental taking of *A. townsendi*. If the numbers of *A. townsendi* in the Southern California Bight increase, the potential for incidental taking could increase. The level of take that might occur is difficult to predict because feeding areas of the species have not been identified, routes to these areas are unknown, and the distribution of fishing effort is variable. The NMFS believes that listing the species as "threatened" is justified because currently the potential for incidental taking is low and because the level of incidental take that might occur in California in the future is not expected to have a significant effect on the population. Should incidental taking become a problem as the number of *A. townsendi* increases in U.S. waters, the Service will initiate appropriate action to ensure the recovery of the species.

The Center for Environmental Education, Seal Rescue Fund (CEE/SRF) recommended listing the species as endangered because (1) the recovery of the population has been slow in comparison with the recovery of another pinniped, the northern elephant seal (*Mirounga angustirostris*), and (2) the only breeding site currently use by the species is being used for commercial and recreational purposes. CEE/SRF concluded that the population's slow growth is likely to be jeopardized by potential increases in human activities at this breeding area. The NMFS believes it is inappropriate to evaluate the population growth of *A. townsendi* based entirely on a comparison with *M. angustirostris* because of the differences in size, social structure, and reproductive behavior between otariid and phocid pinnipeds. Because surveys of *A. townsendi* have been conducted at different times of the year, the estimation of the population growth rate of *A. townsendi* is difficult and the factors which may have influenced this rate remain uncertain. However, the NMFS has not been provided with any information to date indicating that recreational or commercial activities at Guadalupe Island have influenced this growth rate. The Government of Mexico and NMFS biologists have provided information indicating that current commercial and recreational use of Guadalupe Island is restricted to areas away from the rookery. Access to rookery beaches is prohibited except for authorized scientific investigations. Additional military personnel have been stationed on the Island in recent years to provide for enforcement of all regulations. Because of this protection, the NMFS finds that recovery is not likely to be jeopardized by these activities and that listing the species as "threatened" is justified.

Five commenters supported the proposed determination not to establish critical habitat. Only the CEE/SRF recommended establishment of critical habitat in a portion of the U.S. Channel Islands off southern California. The specific areas mentioned included San Miguel Island and available ocean waters within U.S. jurisdiction. CEE/SRF noted that one of the criteria proposed for evaluating the recovery of *A. townsendi* was establishment of one or more additional rookeries within the historic range, concluding that if the Channel Islands are the only area where recolonization appears to be taking place, then "this area is essential for the conservation of the species." CEE/SRF further asserted that the NMFS declined to designate critical habitat in the

proposed rule "due to a lack of information on the seals' foraging habits."

While recolonization may occur in the Channel Islands, the NMFS does not agree that rookery sites on the Channel Islands or feeding areas in U.S. waters are essential to the conservation of the species and in need of special management measures. Activities considered as essential for recovery include breeding and feeding. The NMFS has identified recolonization of one or more historic breeding sites as one indication of a recovering population. The Channel Islands are only one of several island groups where recolonization may eventually occur. While space for population expansion is certainly essential to the conservation of the species, this space also is available on several islands in Mexico; additional space also is available at Guadalupe Island. Therefore, the NMFS does not find that reoccupation of the Channel Islands in particular is essential to the conservation of the species.

Even if the areas in the Channel Islands were essential to the conservation of the species, the Service does not believe that those areas in the Channel Islands require special management consideration or protection that would be afforded by a critical habitat designation. San Miguel Island is managed by the National Park Service and San Nicolas Island by the U.S. Navy. Both agencies restrict entry to pinniped haul-out areas to all but those persons conducting authorized research or for activities essential to the agency's mission. There is no indication that these activities are, or have the potential for, impeding the recovery of the species.

While the pelagic distribution of feeding Guadalupe fur seals is unknown, it is unlikely that the existing population is dependent on forage in U.S. waters for its continued existence. The decision not to designate U.S. waters as critical habitat was based on the fact that most seals are likely to forage in Mexican waters and not because there was insufficient information to determine the extent of critical habitat. Mexican waters are exempt from consideration as critical habitat; therefore, no foraging habitat has been designated as critical. Two sections (*Listing Decision* and *Criteria for Initiating a Status Review*) have been revised in order to clarify the NMFS' position on the issue of critical habitat.

Comments received concerning "Delisting Criteria" indicated some confusion regarding the NMFS' intent and the procedures proposed to be

followed after listing of the species. It is the NMFS' intent to identify several specific criteria to be used to identify potential recovery of the population. The NMFS recognizes that these criteria are not absolute or all inclusive, and could be independent of each other. Other specific criteria could be used to identify recovery. The achievement of any one or a combination of these or any other criteria would not make delisting automatic, but would serve to initiate a Status Review. Analyses within the Status Review would culminate with the NMFS proposing a course of action which could include delisting, reclassification, or maintenance of listing status. The section has been retitled and revised slightly to clarify our position on this topic.

Several commenters provided information clarifying the legal status of the nature reserve at Guadalupe Island, calling attention to sightings not noted in the petition or proposed rule, and on additional details of the species biology. While the comments provided additional information about the species, they did not include substantive data which would alter the listing decision. This information has been incorporated into the following sections where appropriate.

Status Review

Detailed information concerning the biology and the status of the species is contained in the petition submitted by CEE/SRF (1983), the NMFS Status Review (Seagars, 1984), and other references cited at the end of this document. This information was summarized in the proposed rule (50 FR 294-298; January 3, 1985).

Listing Procedures

Section 4(a) of the ESA provides that the Secretary of the Interior or Commerce, depending upon the species involved, shall, by regulation, determine if any species is endangered or threatened based upon any one or a combination of the following factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) of the ESA requires that such determinations are to be made "solely on the basis of the best scientific and commercial data available" and must take into account any efforts being made to protect the species under consideration. The following discussion considers the

history, status and biology of *A. townsendi* and current conditions in relation to the listing factors.

(1) *The present or threatened destruction, modification or curtailment of the species' habitat or range.* Habitat loss has not been the primary factor causing the reduced abundance of this species. Several actions that have been proposed within the species' range have the potential to modify or curtail portions of the habitat or range. Offshore oil and gas development activities are intensifying in central and southern California waters. The habitat in the Channel Islands area has a history of low level, chronic occurrence of oil from natural seeps; however, larger scale, catastrophic oil spill events are not a typical component of the habitat. While the occurrence of such events is considered to be unlikely, large amounts of spilled oil could affect individual fur seals in their pelagic habitat or on haulout areas at San Miguel and San Nicolas Islands. There are no data available to evaluate if *A. townsendi* can detect or would avoid oil encountered at sea. As fur seals rely on their thick pelage for insulation from the cold marine environment, contact with oil either at sea or on a haulout could adversely affect individual fur seals.

The U.S. Air Force's Space Shuttle Program proposes to launch and return vehicles over the northern Channel Islands during the 1980's and 1990's. Over the ten year life of the program, a maximum of 7 launches are predicted to cause high intensity sonic booms over the northern Channel Islands, San Miguel Island in particular. The effects of these sonic booms on pinnipeds are unknown at the present time. High intensity sonic booms are not a normal component of the habitat. Sonic booms of a lesser intensity may impact the islands from approximately 73 other launches and all returns. Any of these sonic booms could cause short-term disturbance to any individuals present. The Air Force has indicated that they will monitor the initial Shuttle launches from Vandenberg A.F.B. to determine the degree, if any, of impact to marine mammal species.

There is potential for disturbance to breeding and resting *A. townsendi* on Guadalupe Island or San Miguel Island by tourists and fishing vessels. However, there are no data that indicate this is a problem now or is likely to become a problem in the future.

There are a number of protective measures in place which either directly or indirectly provide protection to the species and its habitat. These are discussed in detail in listing factor (4)

and in the NMFS Status Review (Seagars, 1984).

The NMFS concludes that activities discussed above, particularly those with a potential for oil spills or high-intensity sonic booms, may adversely affect individual Guadalupe fur seals. However, they are not likely to pose a threat to the continued existence of the population breeding on Guadalupe Island or those individuals which haul out on the California Channel Islands.

(2) *Overutilization for commercial, scientific, and educational purposes.* The original population size probably included at least 30,000 individuals. Commercial hunting for the fur of this species resulted in overutilization and its nearly complete eradication in the mid to late 19th century. Archeologic and historic evidence indicates that the species' former breeding range probably was from San Miguel Island, California, to Socorro Island, Baja California. Two specimens were collected for scientific and educational purposes in 1928 when it was unlikely that the population exceeded 60 individuals. Shortly after this time, all known remaining animals were harvested, reportedly for furs sold in Panama. The current breeding distribution is likely restricted to the eastern shore of Guadalupe Island; this area is used by at least 1,600 animals. Although the factors involved are complex and uncertain, the population growth rate may have been influenced by repeated reductions in numbers, reduced genetic variability, or other unknown factors.

(3) *Disease or predation.* There is no information concerning disease or predation for this species.

(4) *Inadequacy of existing regulatory mechanisms.* Current regulatory mechanisms appear to be providing adequate protection of the species within areas subject to Mexican and U.S. jurisdiction. Guadalupe Island was designated as a wildlife refuge and sanctuary by the Government of Mexico in 1928, specifically to protect the northern elephant seal and the Guadalupe fur seal. A prohibition on the hunting of these two species was made permanent by Mexico in 1967. A fine of 1.5 million pesos was set in 1983 for any illegal taking; at the same time, provisions for taking for scientific research were established. The Guadalupe fur seal has been protected in the United States under the provisions of the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361) since December 21, 1972. It is also listed on Appendix I to CITES which prohibits trade for commercial purposes between signatory parties to the Convention.

Although Mexico is not a party to CITES, these prohibitions apply to trade with signatory nations. Listing of the Guadalupe fur seal according to the ESA would provide it with additional protection through the Section 7 consultation process, the prohibitions of this rule, and the potential to designate critical habitat in the future should it become warranted.

(5) *Other natural or manmade factors affecting its continued existence.* The recent levels of human activities around Guadalupe Island have not prevented the continued increase in the population, and there is no evidence that human activities are increasing to levels that will halt the population's growth or threaten its continued existence. However, a potential exists for the expansion of several fisheries into waters adjacent to Guadalupe Island or the (as yet unknown) feeding grounds of *A. townsendi*. In the event that pelagic gillnet fisheries develop offshore Baja California, Guadalupe fur seals would likely be susceptible to entanglement. However, the potential impact from such a fishery is impossible to predict because it is unknown where feeding areas are located, what routes are taken to these areas, and where fishing effort would be located. If these areas coincided, competition for food resources or the incidental taking of seals could occur.

Discussion

Listing Decision

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; a threatened species is any species that is likely to become an endangered species within the foreseeable future. The ESA requires that a determination to list a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species relative to the criteria reviewed above. Of these, a decision to list *A. townsendi* is best supported by evidence presented according to criterion (2)—“overutilization for commercial . . . purposes.” The species is not currently being taken for commercial purposes and is protected from such taking by both Mexican and U.S. legislation. Given the apparent persistence of the species over the past 40 years and continued growth of the population, the NMFS does not find that the species is in danger of extinction throughout all or a significant portion of its range. However, despite the shortcomings of the available scientific information, it is

apparent that the population was reduced to, and remains at, a level where the species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus the NMFS determines that listing this species as “threatened” under the provisions of the ESA is appropriate and issues these protective regulations.

Criteria for Initiating a Status Review

The goal of the ESA is to provide for the recovery of listed populations to a point at which the protective measures of the ESA are no longer necessary. Recovery of a listed population is judged relative to the general listing criteria (50 CFR 424.11(c)).

After a review of the species' status, a species may be delisted on the basis of recovery if it is determined that the species is neither endangered nor threatened (50 CFR 424.11(d)). The general criteria for determining recovery (50 CFR 424.11(c)) are not species-specific, as they are designed to apply to a broad range of species and situations. For example, a population that was listed because of habitat degradation could be delisted when the habitat is restored and the population stabilized, or a population that was listed because of overutilization could be delisted when the use is curtailed and the population returns to a safe level.

Because the general criteria are not species-specific, evaluation of the recovery of a species using the general criteria alone may be difficult and may make the delisting process cumbersome. Therefore, the NMFS is proposing specific criteria to identify recovery of the Guadalupe fur seal population to supplement the general criteria of 50 CFR 424.11(c). These criteria can be evaluated with data from a long-term monitoring program and can be evaluated independently. When one or more of the criteria are attained, the NMFS will initiate a Status Review to determine if the listed status of the Guadalupe fur seal should be changed. In addition, other specific criteria not identified here could be used to initiate a Status Review.

The specific criteria are (1) growth to a population size of 30,000 animals, (2) establishment of one or more additional rookeries within the historical range, and (3) growth to the level at which maximum net productivity of the population occurs.

The estimated minimum size of the pre-exploitation population is 30,000 animals (Seagars, 1984). The NMFS believes this level to be a reasonable indication of recovery of the species

sufficient to warrant reassessment of its status.

The establishment of additional breeding colonies within the historic range provides an indication of recovery, because it implies population growth. Establishment of a geographically isolated breeding site reduces the potential for adverse effects on a population due to a localized catastrophic event or human interactions, thereby diminishing the need for the protective measures of the ESA. Therefore, if one or more additional rookeries within the historical breeding range are established, the NMFS will initiate a status review.

The maximum net productivity level (MNPL) is a definitive point in the dynamics of a recovering population. The growth rate of the population begins to decrease at the MNPL as density dependent factors begin to operate. A qualitative determination that a population has passed the point at which the MNPL occurs can be made by monitoring the rate of population growth over time. A population above its MNPL is resilient and can respond to reductions (e.g. from an incidental take) by increasing productivity (DeMaster *et al.*, 1982; Goodman, 1980 and 1982). This resiliency provides some protection to the population, and may indicate that the protective measures of the ESA are not necessary. Therefore, the NMFS will use the MNPL of the Guadalupe fur seal population as a criterion for assessing recovery. If the population monitoring program indicates that the population is above its MNPL, the NMFS will initiate a status review.

Meeting one or all of the delisting criteria does not mean that the NMFS will propose delisting the species, but rather that the NMFS will conduct a status review. If, based on the status review, the NMFS determines that the species is neither threatened nor endangered, then it will propose to delist the species. The NMFS thinks that establishing specific criteria for assessing the recovery of a population at the time it is listed will facilitate monitoring the recovery of the population and facilitate the process of initiating a Status Review and the delisting process, if warranted.

Critical Habitat

Critical habitat is defined as “(1) the specific areas within the geographical area currently occupied by a species . . . on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which may require special management

considerations or protection and (2) specific areas outside the geographical area occupied by the species . . . upon a determination . . . that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). The 1982 amendments to the ESA provide, in Section 4(a)(3), that the Secretary shall designate critical habitat, to the maximum extent prudent and determinable, concurrent with listing a species as endangered or threatened. The criteria for designating critical habitat are set forth in § 424.12 of the regulations which implement Section 4 of the ESA (50 CFR Part 424). Those regulations state that "[c]ritical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction" (50 CFR 424.12(h)).

Guadalupe fur seals are known currently to breed only on Guadalupe Island in Mexico. Food habits have not been studied and foraging habitat has not been defined. A few non-breeding individuals have been observed on San Miguel Island each year since 1969 during the breeding season; solitary individuals have been sighted sporadically at San Nicolas, Santa Barbara, and San Clemente Islands and a few widely scattered pelagic locations. However, the areas in southern California waters are not known to be essential to the conservation of the species and are occupied only by a very small number of non-breeding individuals.

The NMFS finds that currently the only areas that meet the definition for critical habitat are outside of U.S. jurisdiction. Therefore, no critical habitat is being designated. If information indicates that any area within the U.S. is essential to the conservation of the species and may require special management considerations or protection, the NMFS will then reconsider designating critical habitat.

Research

Under the authority of Section 108 of the NMPA, the NMFS has informally cooperated with the Government of Mexico in marine mammal scientific research programs that can be continued or expanded. A cooperative research program with the Government of Mexico would facilitate research into various aspects of population dynamics and life history of the Guadalupe fur seal through cooperation in funding, personnel, and shared expertise. This information would provide a sound basis for management throughout the species range. These projects may include a review of historical sealing records (logbooks); periodic surveys

designed to assess the population status throughout the range of the species on a consistently repeatable basis; description of natality and mortality rates; identification of food habits and distribution of feeding grounds; development of models used to assess population trends and status; and the monitoring or potential actions which could adversely affect the population—such as anthropogenic disturbance or fishery interactions.

Classification

The NOAA Directives Manual 02-10 (49 FR 29644-29657; July 23, 1984) implementing the National Environmental Policy Act (NEPA), categorically excludes ESA listing actions from the environmental assessment and environmental impact statement requirements of NEPA.

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291 and the Regulatory Flexibility Act are not applicable to the listing process.

This rule does not result in an increase in public information collection burden as defined by the Paperwork Reduction Act. The permitting and reporting requirements for the Guadalupe fur seal under the Marine Mammal Protection Act of 1972 include the requirements set forth in these regulations under the Endangered Species Act of 1973. Since the Marine Mammal Protection Act requirements satisfy the current rule, no additional burden results. The Marine Mammal Protection Act requirements for the Guadalupe fur seal are approved under OMB control numbers 0648-0084 and 0648-0099.

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List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife, Exports, Fish, Import, Marine mammals, Transportation.

Dated: September 23, 1985.

Carmen J. Blondin

Deputy Assistant Administrator for Fisheries Resource Management National Marine Fisheries Service.

For the reasons set out in the preamble, Part 227 of Title 50 of the Code of Federal Regulations is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.4 of Subpart A is amended by adding a new paragraph (d) below the flush paragraph which now follows paragraph (c), to read as follows:

§ 227.4 Enumeration of threatened species.

(d) Guadalupe fur seal (*Arctocephalus townsendi*).

3. A new Subpart B, consisting of § 227.11 is added to read as follows:

Subpart B—Threatened Marine Mammals**§ 227.11 Guadalupe fur seal.**

(a) *Prohibitions.* The prohibitions of Section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of Part 222 Subpart C—Endangered Fish or Wildlife Permits.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:

- (i) Is accomplished in a humane manner;
- (ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Director, Southwest Region.

4. Section 227.71 of Subpart D is amended by revising the introductory text to read as follows:

§ 227.71 Prohibitions.

Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed in any of the following acts with respect to any species of threatened marine reptile enumerated in § 227.4(a), (b) and (c):

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