

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