CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[EX PART No. 241]

PART 1033—CAR SERVICE

Cars for Shippers' Exclusive Use (Rule 16); Order

INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES AND PRACTICES; (MODIFICATION OF CAR SERVICE RULE 16)

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 28th day of December 1976.

It appearing, That in the report herein, 353 I.C.C. 264, decided August 21, 1969, as modified in 353 I.C.C. 874, Car Service Rules were prescribed for mandatory observance, including rule 16 concerning the assignment of cars;

It further appearing, That by petition filed on May 5, 1976, the Association of American Railroads seeks modification of the said Car Service Rule 16, whereby the present 10-day notice requirement before a car can be released from an assignment would be amended so as to require only 1 day's written notice; and that other modifications be made for purposes of clarification and efficiencies in assignment of cars; and that said petition was served upon all parties to this proceeding: and that no replies thereto have been received;

And it further appearing, That on the date herein, the Commission entered its order in accordance finding that the petitioner's proposed modifications of paragraph (A) (3) of rule 16 is unacceptable and requires further modification by the Commission for clarification purposes and that modification of paragraphs (C) and (D) is also warranted; and that the proposed modifications, if adopted, would be in the overall public interest; therefore,

It is ordered, That the said Car Service Rule 16, set forth in appendix B to the report, 353 I.C.C. 264, at pages 353-354, be, and it is hereby, modified, effective January 31, 1977, by substituting in lieu of rule 16, paragraphs (a) (3), (c), and (d) the following:

§ 153.16 Cars for shippers' exclusive use.

(a) . . .

(b) When cars are assigned in accordance with this Rule, they shall remain and be treated as assigned cars until the shipper, originating road haul carrier(s), pool operator or owning railroad serves notice on each of the remaining parties and in writing at least one (1) day in advance that such assignment is modified or cancelled.

(c) The present and future assignment by a carrier of specific cars for the exclusive use of a shipper at a particular point shall be reported by such carrier to the Operating-Transportation Division of the Association of American Railroads by car initial, number, car type code and specific assignment. Each carrier assigning such cars shall advise the Operating-Transportation Division of the Association of American Railroads of any change in assignments not later than the last working day of the month in which a change in assignment occurs on the last two days of the month, then notice of change shall be as soon as possible, but not more than 5 days after any change in assignment.

The Operating-Transportation Division of the Association of American Railroads will maintain a current record of cars assigned, and distribute such information to car owners assigning cars to a specific shipper at each location, as well as to the roads originating traffic from such assignment, including originating switching line serving the shipper involved. The foregoing provisions of this paragraph shall not apply when all cars assigned to the exclusive use of a shipper at a particular point are system cars of a single road haul carrier serving the shipper at such point.

(d) Assigned cars are exempt from Car Service Rules 1 and 2.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission.

Robert L. Oswald, Secretary.

[FR Doc. 77-1397 Filed 1-18-77; 8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, PURCHASE, SALE, EXPORT, IMPORTATION AND MULTIPLICATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That the Southern Sea Otter Is a Threatened Species

The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a rulemaking pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the act) which determines that the Southern Sea Otter (Enhydra lutris nerita) is a threatened species.

BACKGROUND

On May 22, 1975, the Fund for Animals, Inc. requested the Service to list as endangered species, pursuant to the Act, 216 taxa of plants and animals which appear on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which were not already on the U.S. List of Endangered and Threatened Wildlife. One of these 216 taxa was the Southern Sea Otter (Enhydra lutris nerita). Acting on this request, the Service published in the Federal Register of October 26, 1975 (40 FR 44329) a Proposed Rulemaking that would propose all 216 taxa to be endangered species under the Act. In the Federal Register of June 14, 1976 (41 FR 24962-24967) the Service issued a Final Rulemaking which increased the number of species designated to 159 of the 216 to be endangered species. One of the remaining taxa was determined to be neither endangered nor threatened, and reasons were given for delaying determinations on the other 56 taxa.

One of the species which was not acted upon in the June 14, 1976, Rulemaking was the Southern Sea Otter. It was stated at that time that a considerable amount of data had been received which was still being analyzed. Although most responses had favored listing the species as Endangered, the State of California opposed such a measure and submitted a large amount of supporting data. In contrast, several conservation groups submitted objections which supported their contention that the Southern Sea Otter was Endangered and should be determined as such pursuant to the Act. In view of the quantity and complexity of the information on hand, the Service stated that a determination on the Southern Sea Otter would be delayed.

Another problem which arose in connection with the Southern Sea Otter concerned its proper taxonomic status. This Sea Otter was long treated as a subspecies, Enhydra lutris nerita, distinct from the Northern Sea Otter in Alaskan waters (Enhydra lutris): Recently, some parties have argued that the Southern Sea Otter is not a separate subspecies, but is a population of Enhydra lutris, and, since the Northern Sea Otter is relatively common, should not be considered as an endangered or threatened species. Other parties have presented evidence that the Southern Sea Otter is a distinct subspecies. This question actually is not relevant to the matter at hand, because sections 3 and 4 of the Act allows the listing of populations of species in portions of their range, as well as entire species and subspecies. Since the Southern Sea Otter does form a significant population, it can be treated independently under the Act, regardless of its taxonomic status. The Service decided, however, to utilize the subspecific designation Enhydra lutris nerita in this rulemaking, though this decision had no bearing on the decision to list as threatened.

All pertinent data, comments, and recommendations now have been analyzed, and a Final Rulemaking Rulemaking pertaining to the Southern Sea Otter is in preparation.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4 (b) (1) (C) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register. In addition to adding any species to the list of Endangered and Threatened Wildlife, in the September
28, 1976. Proposed Rulemaking (40 FR 44329) all interested persons were in-

tivated to submit written comments to the Service, which would be considered if received not later than October 28, 1976. This was a clerical error which was cor-

rected on October 22, 1975 (40 FR 10347), when the comment period was extended to November 24, 1975. 

As stated in the Final Rulemaking of June 14, 1976 (41 FR 24062), 291 re-

sponses were received during the comment period that dealt specifically with the Southern Sea Otter. Of these re-

ponses, 289 favored listing as Endan-

ergized. In addition, many hundreds of persons signed petitions supporting the Endangered classification. Only two par-

ties opposed listing, one being the State of California, and the other being a uni-

versity professor whose reason largely paralleled those of the State.

The State of California's response, as provided by the Director of the Dept-

ment of Fish and Game on November 21, 1975, consisted of a two-page letter and ap-

proximately 90 pages of excerpts from the State's various documents and support of the State's application for waiver of the moratorium of the California Sea Mammal Protection Act. The letter spe-

cifically requested that the Southern Sea Otter not be declared Endangered or 

Threatened, because it met none of the five listing criteria in section 4(a) of the Act. The supporting data included some infor-

mation on taxonomy and other sub-

jects, but a large volume of material was sub-

mitted. The State's application for the Endangered classification was recog-

nized, but it was held extremely unlikely that a Sea Otter could be endangered, but several threats were held to be problems, the most serious being the potential impact of oil spills. It was suggested that a large number of animals could be jeop-

ardized by a major oil spill. The Commis-

sion therefore recommended that the Southern Sea Otter be listed as threaten-

ed.

CONCLUSION

After a thorough review and consider-

ation of all available information, the Director has determined that the Southern Sea Otter is not endangered, but is threa-

tened as defined in Section 3 of the Act. Section 4(a) of the Act states that a species may be determined to be en-

dangered or threatened because of any of five factors. These factors, and their implications for the Southern Sea Otter are discussed below.

1. The present or threatened destruc-

tion, modification, or curtailment of its

habitats or range.—There seems no ques-

tion that the range of the Southern Sea Otter is currently much reduced from what it was at the beginning of the 20th century. The original range extended at least 1,500 miles from Morro Herald to the Pacific

Coast of Baja California, to the Strait of Juan de Fuca, separating the Olympic Peninsula from Van-

cover Island, British Columbia. The present range covers only about ten per-

cent of this area. Recent information, supporting recognition of the Southern Sea Otter as a distinct subspecies, sug-

gests that the subspecific line should have been drawn in the vicinity of Prince William Sound, Alaska, which would have given the subspecies a range of about 2,700 miles. Although small groups of Sea Otters from Alaska waters have been at various points on the coast of southeastern Alaska, Washington, and Oregon, the original stock that once occupied the region from southeastern Alaska to Baja California now is repre-

sented only by a group off the central California coast. The otter population is currently less than 1,000, and population is potentially jeopardized by oil spills, and possibly by pollution and competition with man. The fact that less than 2,000 (possibly as few as 1,000) otters occupy the present range makes the species particularly vulnerable to any sort of disruption.

None theless, there also seems no doubt that the Southern Sea Otter has made a significant comeback from a formerly much more dangerous status. The population now seems to be relatively dense in the area that is occupied, and there is no known immediate problem that could result in extinction. An endangered classification, therefore, is not warranted at this time.

2. Overutilization for commercial, 

sporting, scientific, or educational pur-

poses.—The original decline in Sea Otter numbers caused largely by 

commercial exploitation. Through State, Federal, and International protection 

this factor is not now a problem. Illegal 

killing does occur, but probably is not a 
threat at present.

3. Disease or predation.—These factors 
cannot be shown to constitute a serious threat at present.

4. The inadequacy of existing regula-

tory mechanisms.—Existing Federal and State laws probably are adequate to pro-

tect the Sea Otter from direct taking. 

Habitat protection, however, is not ade-

quate and would be improved through application of section 7 of the Act.

5. Other natural or manmade factors 
affecting its continued existence.—It has been suggested, though not proven, that the former severe reduced state of the Southern Sea Otter may have greatly 

restricted the genetic diversity of the population, leaving it less adaptable to 

confronting potential problems.

A major spill of oil from a tanker in 

the waters in the vicinity of the range of the Southern Sea Otter is probably the 

most serious potential threat to the species. There seems little question that 

oil would be harmful to these animals.
and, indeed, they are more susceptible to this problem than most species. Unlike other marine mammals they lack an insulating layer of blubber and depend entirely on their thick air-filled fur for protection from chill waters. Should the fur become contaminated with oil, a process which has been noted in this section, it would lose its insulating properties, resulting in overexposure and death.

There are major oil unloading facilities at Sea Landing, near the present northern end of the Sea Otter’s range, and at Ester0 Bay, near the southern edge of this range. Currently, these terminals are used by tankers of 50,000 DWT. Proposed are landing facilities for an additional 120,000 DWT tanker mooring terminal at Moss Landing, and a 70,000 DWT mooring, with provisional extension to moor 125,000 DWT tankers carrying light loads under optimum conditions, at Ester0 Bay. Increasing shipments of foreign oil, and the expected large-scale movement of oil from the southern terminal of the Alaska Pipeline, probably will result in the considerable increase of oil tanker traffic in and near the range of the Sea Otter.

There is some question regarding the likelihood of a major oil spill and the extent to which it could affect the overall Sea Otter population. Although it does not appear probable that the entire population could be wiped out by a single spill, a significant portion thereof could be eliminated, especially under certain weather and sea conditions. Even though there may be surviving groups, these could be so reduced in number, disrupted, and vulnerable to further problems that they might justifiably be termed endangered. Therefore, while the chances of an oil spill cannot be predicted, the possibility of such a disaster and its consequences under optimum conditions, coupled with the prospects for increasing oil activity in the area, constitutes substantially to the decision to list the population as threatened.

EFFECTS OF THE RULEMAKING

The effects of this determination and this rulemaking include, but are not necessarily limited to those discussed below:

No special regulations, as provided for by section 4(d) of the Act in the case of threatened species, are deemed necessary or advisable for the protection of the Southern Sea Otter. The general prohibitions and exceptions concerning the Threatened Species are published in Title 50, §17.31, of the Code of Federal Regulations as follows:

SUBPART D—THREATENED WILDLIFE

§17.31 Prohibitions.

(a) Except as provided in Subpart A of this Part, or in a permit issued under this Subpart, all of the provisions in §17.21 (a) through (d) shall apply to threatened wildlife.

(b) In addition to any other provisions of this Part 17, any employee or agent of the Service, or of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by the agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such action is necessary to result in: (i) The death of or permanent disfigurement of the specimen; (ii) the removal of the specimen from the State where a “taking” requires a permit, the introduction of the specimen to or of any progeny derived from such a specimen, into the territorial sea of the United States; (iii) the range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days.

(c) Whenever a special rule in §17.40 to 17.46 applies to a threatened species, none of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions.

The above regulations refer to §17.21 of Title 50 which is reprinted below:

SUBPART C—ENDANGERED WILDLIFE

§17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to §17.22 or §17.23, it is unlawful for any person subject to the jurisdiction of the Service, or in the case of the Marine Mammal Protection Act of 1972, the Interstate Committee, to attempt to obtain, issue, sell, deliver, carry, transport, or ship any endangered wildlife. Any shipper, the United States is an importation and an exportation, whether or not it has entered the country for custom purposes.

(b) Import or export. It is unlawful to import or export any endangered wildlife. Any shipper through the United States is an importation and an exportation, whether or not it has entered the country for custom purposes.

(c) Take. (1) It is unlawful to take endangered wildlife within the United States, its territorial sea, or the territorial sea of any other State, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) In paragraph (c) (1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c) (1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by an agency for such purposes may, while acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to: (i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve stunning or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

Any animal killed pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20008, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with the requirements of 16 U.S.C. 1361 et seq.

(d) Possession and other acts with unlawfully taken wildlife. (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three persons violated the Federal law.

(2) Notwithstanding paragraph (d) (1) of this section, or any State law, it is unlawful to import, sell, deliver, carry transport or ship any endangered wildlife in violation of the Act to another State, or to transport or ship any endangered wildlife in violation of State law.

(e) Interstate or foreign commerce. It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) Sale or offer for sale. (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

Section 17 of the Endangered Species Act provides that, as otherwise provided in the Act, none of its provisions will take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972. 16 U.S.C. 1361 et seq.

The Marine Mammal Protection Act is more restrictive in circumstances where a “taking” requires a permit. Under the Endangered Species Act, all proposed takings of Threatened Species, except those by persons covered by 50 CFR 17.31 (b), would have to satisfy the general permit requirements of 50 CFR 17.22, and would be considered a “taking” for all purposes. Permit takings under the Marine Mammal Protection Act are more restrictive because section 101(a) (3) (B) states that except for scientific research purposes, no takings are permitted during the moratorium (directed by section 101(a) of the Marine Mammal Protection Act) which would authorize the taking of a marine mammal listed under the Endangered Species Act. It must be noted, furthermore, that this restriction applies only when the taking must be done pursuant to a permit and only...
RULES AND REGULATIONS

Although no Critical Habitat yet has been determined for the Southern Sea Otter, the other provisions of section 7 are applicable. The Service now is collecting data relative to preparing a proposed determination of Critical Habitat for the Southern Sea Otter, and all persons with pertinent information are invited to send the same to the Director.

EFFECTIVE DATE


LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, Part 17, Subpart B, § 17.11 Title 50 of the Code of Federal Regulations, is amended as set forth below:

§ 17.11 Endangered and threatened wildlife.

<table>
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<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Population</th>
<th>Known distribution</th>
<th>Portion of range where threatened or endangered</th>
<th>Status</th>
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<td>Enhydra lutris neris</td>
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<td>California</td>
<td>Entire</td>
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[FR Doc. 77-1264 Filed 1-13-77; 8:45 am]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

PART 602—GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

Extension of Period for Public Comment Upon Interim Regulations

Interim Final Regulations were published in the FEDERAL REGISTER September 15, 1976 (41 FR 33430) to provide the Regional Fishery Management Councils with uniform standards for Council operations and guidelines for developing management plans pursuant to Public Law 94-285, Comments from interested parties, Regional Councils and governmental agencies were requested by December 2, 1976. Two Regional Councils have requested additional time for review. Therefore, the period for public comment is extended to February 1, 1977. All submissions directed to the Director, National Marine Fisheries Service, Washington, D.C., 20235, on or before that date will be considered prior to the publication of final regulations.


ROBERT W. SCHONTING, 
Director, National Marine Fisheries Service.

[FR Doc. 77-1264 Filed 1-13-77; 8:45 am]

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

EGGS AND POULTRY

Miscellaneous Amendments

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), and the Egg Products Inspection Act (84 Stat. 1620 et seq., 21 U.S.C. 1031-1056), the U.S. Department of Agriculture hereby amends the Regulations Governing the Voluntary Inspection and Grading of Egg Products (7 CFR Part 55); the Regulations Governing the Grading of Shell Eggs (7 CFR Parts 8 and 9); Title 2, Weight Classes for Shell Eggs (7 CFR Part 59); the Regulations Governing the Inspection of Eggs and Egg Products (7 CFR Part 59); and the Regulations...