

6. A three-generation rat reproduction study indicated no reproductive effects up to 125 mg/kg bw/day dose level under the conditions of the study.

7. Two rat metabolism studies that adequately identified the major metabolites.

Based on the 2-year dog feeding study, the NOEL is 2.5 mg/kg bw/day. Using a 100-fold safety factor, the acceptable daily intake (ADI) is 0/025 mg/kg bw/day and the maximum permissible intake (MPI) is 1.5 mg/day for a 60-kg person. The maximum theoretical residue contribution from currently established and these added tolerances is 0.19 mg/day and utilizes 12.76 percent of the ADI.

The nature of the residue in almonds is adequately understood. The residue of concern consists of triforine per se. An adequate analytical method, gas chromatography using an electron capture detector, is available for enforcement purposes.

No actions are currently pending against the continued registration of triforine. Other considerations in the registration of triforine include the exemption from the requirement of a tolerance for residues of the inert ingredients, *N*-methylpyrrolidone and dimethylformamide, used in the formulated product.

The tolerances established for almond nutmeats and hulls will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, 30 days after the date of publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(j)(2)))

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Raw agricultural commodities, Pesticides and pests.

Dated: December 31, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, 40 CFR 180.382 is amended by adding and alphabetically inserting the following commodities, to read as follows:

#### § 180.382 Triforine; tolerances for residues.

Commodities	Parts per million
Almond hulls	0.20
Almond (nutmeats)	0.01

[FR Doc. 85-584 Filed 1-8-85; 8:45 am]

BILLING CODE 6560-50-M

#### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

#### 43 CFR Public Land Order 6581

[W-88021]

#### Withdrawal for Public Housing; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 5.55 acres of land in which the United States may hereafter acquire interests from settlement, sale, location, or entry under the public land laws, but not the mining laws, for the purpose of protecting the equity of the Department of Housing and Urban Development in the development of public housing. The mineral estate of the land is owned by the State of Wyoming. This withdrawal shall remain in effect for a period of 20 years.

**EFFECTIVE DATE:** January 9, 1985.

**FOR FURTHER INFORMATION CONTACT:** Scott Gilmer, Wyoming State Office, 307-772-2089.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Should the United States acquire any interest in the title of the land by operation of the reversionary clause contained in the patent for these lands, Patent No. 49-83-0027, in conformance with the Recreation and Public Purposes Act of June 14, 1926, 43 U.S.C. 869 et seq. (1982), subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location, or entry under the public land laws, but not the mining laws, 30 U.S.C. Ch. 2 (1982), and transferred to the jurisdiction of the Department of Housing and Urban Development.

#### Sixth Principal Meridian, Wyoming

A tract of land, being a portion of Parcel A, Township 50 and 51 North, Range 82 West, 6th P.M., Johnson County, Wyoming, being further described as follows:

Commencing at an existing brass cap which marks the center of Section 34, Township 51 North, Range 82 West, 6th P.M., in Johnson County, Wyoming; thence S. 00°28'00" E. a distance of 79.03 feet to an aluminum capped rebar stamped LS 2335, said aluminum capped rebar being the true point of beginning; thence N. 89°58'15" E. a distance of 331.71 feet to an aluminum capped rebar stamped LS 2335; thence S. 18°59'05" E. a distance of 181.79 feet to an aluminum capped rebar stamped LS 2335; thence S. 79°29'04" E. a distance of 122.52 feet to an aluminum capped rebar stamped LS 2335; thence S. 00°28'00" E. a distance of 328.52 feet to an existing iron pipe; thence S. 89°01'06" W. a distance of 209.65 feet to an existing iron pipe; thence S. 89°04'17" W. a distance of 300.09 feet to an existing iron pipe; thence N. 00°28'00" W. a distance of 531.06 feet to the point of beginning.

Said tract containing 5.55 acres, more or less.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

January 2, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-601 Filed 1-8-85; 8:45 am]

BILLING CODE 4310-84-M



**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Addition of the Cochito to the List of Endangered and Threatened Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service adds the cochito (Gulf of California harbor porpoise) 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 endangered status by the National Marine Fisheries Service, which has jurisdiction of the cochito pursuant to the Act.

**DATES:** The effective date of this rule is February 8, 1985.

**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, Washington D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Z. 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 cochito, or Gulf of California harbor porpoise

(*Phocoena sinus*), 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 species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (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 April 25, 1984 (49 FR 17781-17783), the NMFS proposed determination of endangered status for the cochito and requested comments from the public by June 25, 1984. In the Federal Register of June 19, 1984 (49 FR 25017), the comment period was extended until July 25, 1984.

In this issue of the Federal Register, the NMFS is publishing its final determination of endangered status for the cochito (see document in Final Rules section under the Department of Commerce, National Oceanic and Atmospheric Administration). Accordingly, the FWS hereby concurrently adds the cochito, as an endangered species, to the List of Endangered and Threatened Wildlife. Because this FWS action is nondiscretionary, and in view of the public comment period allowed 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 reads 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, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

**§ 17.11 Endangered and threatened wildlife.**

(h) \* \* \*

Species	Common name	Scientific name	Historic range	Verte-brata population where endangered or threat-ened	Status	When listed	Critical habitat	Special rules
MAMMALS								
	Cochito (—Gulf of California harbor porpoise).	<i>Phocoena sinus</i>	Mexico (Gulf of California)	Entire	E	168	NA	NA

Dated: December 12, 1984.  
**G. Ray Arnett,**  
*Assistant Secretary for Fish and Wildlife and Parks.*  
 [FR Doc. 85-603 Filed 1-8-85; 8:45 am]  
**BILLING CODE 4310-55-M**

**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**50 CFR Part 222**  
**[Docket No. 41034-4134]**  
**Endangered Fish or Wildlife; Cochito**  
**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.  
**ACTION:** Final rule.

**SUMMARY:** The NMFS has determined that the cochito (*Phocoena sinus*) should be listed as an endangered species pursuant to the Endangered Species Act of 1973 (ESA) based principally on the presumed low number of animals, the known mortality associated with incidental takings in fisheries for over 40 years, and the continuation of similar fisheries. Since this species does not occur within the jurisdiction of the United States, no critical habitat is being designated. 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 cochito as an endangered species. The intended effect of listing the cochito is to provide it with the protection afforded endangered species under the ESA.

**EFFECTIVE DATE:** The effective date of this rule is February 8, 1985.

**ADDRESS:** The complete file for this rule is available for review in the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Patricia Montanio, Protected Species Division, Office of Protected Species and Habitat Conservation (202-634-7529).

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 5, 1978, the NMFS received a petition from the Defenders of Wildlife to list the cochito (*Phocoena sinus*) as a threatened species under the ESA (16 U.S.C. 1531) for the following reasons:

1. The cochito comprises a single, restricted population.
2. *P. sinus* is vulnerable to gillnet fishing operations.
3. The paucity of biological data and the failure to sight *P. sinus* on extended cruises is evidence of the increasing rarity of the species.

4. The IUCN-SSC Whale Specialist Group recommended that *P. sinus* be listed as vulnerable in the IUCN Red Data Book.

The Assistant Administrator for Fisheries, NMFS, determined that the petition presented substantial information indicating that the petitioned action may be warranted and commenced a review of the status of the cochito to determine whether or not it should be listed under the ESA (June 3, 1983; 48 FR 24903). On April 25, 1984, the NMFS published its proposed determination that the cochito should be listed as endangered (49 FR 17781) and requested comments and information by June 25, 1984. The comment period was extended until July 25, 1984 (49 FR 25017). After a thorough review of all information available, the NMFS has determined that the cochito should be classified as endangered under the terms of the ESA. The list of endangered species under the jurisdiction of the NMFS, Department of Commerce, is contained in 50 CFR 222.23(a), and is amended to reflect this final determination. The Fish and Wildlife Service, 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 cochito as an endangered 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 cochito in its notice of status review (June 3, 1983; 48 FR 24903) and proposed rule (April 25, 1984; 49 FR 1181).

The following individuals and organizations provided information and/or comments: Defenders of Wildlife; Dr. Robert Brownell, Jr., U.S. Fish and Wildlife Service; Smithsonian Institution; Marine Mammal Commission; Whale Protection Fund, Center for Environmental Education; Whale Center; Friends of Animals; American Cetacean Society; Conservation Monitoring Centre, IUCN; and Monitor. The Direccion General de Flora y Fauna Silvestres, Government of Mexico also provided information regarding the cochito.

In general, reviewers believed that the apparent small population size and limited range of the cochito make it extremely vulnerable, and recommended that it be listed as either endangered or threatened under the ESA. The following potential threats to the species were cited:

- Incidental capture in gillnet fisheries and shrimp trawling.
- Reduction of the available nutrients in the Gulf of California and possible declines in fish prey abundance as a result of the damming of the Colorado River which has reduced the water flow into the Gulf of California.
- Reduction of the cochito's available food supply from overfishing.
- Increased harassment from the tourboat industry.
- Impacts to the species' habitat from pesticide runoff.

**Status Review**

The cochito (*Phocoena sinus*), also known as the Gulf of California harbor porpoise or the vaquita, was described by Norris and McFarland in 1958. The size of the population is not known, but is believed to be extremely small. The range of this species is thought to be confined to the northern portion of the Gulf of California, Mexico, and is the smallest known range of any marine mammal. Only 26 confirmed records of this species exist. Since 1978, there have

been only five sightings at sea, the most recent being in 1980.

Little is known about the behavior and food habits and nothing is known about the genetics or physiology of the cochito. Knowledge of food habits is based on the examination of one specimen that contained parts of bronze-striped grunts (*Orthopristis reddingsi*) and Gulf croakers (*Bairdiella icistius*). Both these fish are abundant throughout the upper Gulf of California.

**Summary of Factors Affecting the Species**

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; and, a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(a)(1) of the ESA and implementing regulations (50 CFR Part 424) establish procedures and criteria for listing, delisting or reclassifying species. A species may be determined to be an endangered or threatened species based on the best scientific and commercial data available due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors and their applicability to *P. sinus* are described below:

**1. The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range**

Damming of the Colorado River has reduced the flow of water into the upper Gulf of California. Increased pesticide runoff into the Gulf may also affect the cochito's habitat. However, it is not known how these factors have affected the species.

**2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes**

There is no evidence that the cochito has ever been utilized for commercial or recreational purposes or taken for scientific or educational purposes. All scientific specimens were obtained from animals found dead.

**3. Disease or Predation**

There is no information indicating that disease or predation constitutes a threat to the continued welfare of this species.

**4. Inadequacy of Existing Regulatory Mechanisms**

*P. sinus* is listed on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which prohibits trade for commercial purposes of this species.



Although Mexico is not a party to the Convention, these prohibitions would apply to trade with a signatory party to the Convention.

The cochito is also protected under the provisions of the Marine Mammal Protection Act of 1972 (MMPA, 16 U.S.C. 1361) which prohibits the import of marine mammals into the U.S. except for scientific research or public display. Section 108 of the MMPA establishes an international program which directs the Secretary of Commerce, through the Secretary of State, to initiate the development of bilateral or multilateral agreements with other nations for the protection and conservation of marine mammals. Under the authority of this section, the NMFS has informally cooperated with the Government of Mexico in marine mammal scientific research programs that can be continued or expanded.

The Whaling Convention Act of 1949 (WCA, 16 U.S.C. 916) implements the International Convention for the Regulation of Whaling and authorizes U.S. participation in all activities of the International Whaling Commission (IWC). The participation of U.S. scientists in the standing Subcommittee on Small Cetaceans of the IWC's Scientific Committee allows a continuous access to the status reports developed for all species of cetaceans and opportunity to contribute to small cetacean research programs as they develop.

#### 5. Other Natural or Manmade Factors Affecting Its Continued Existence

The cochito was frequently taken incidentally to the gillnet fishery for totoaba (*Cynoscion macdonaldi*). This fishery operated from the late 1940's through 1975 in the northern Gulf of California, Mexico, coinciding with the known range of the cochito. There is no information on the total or annual incidental catch of cochito associated with the fishery, but estimates have been made placing incidental catch at tens to hundreds of animals per year. The Government of Mexico has placed a continuing ban on the totoaba gillnet fishery since 1975. A gillnet fishery for sharks still operates in the Gulf of California as does a shrimp fishery, both with unknown fishing effort and incidental take of smaller cetacean species. All legal measures regarding these fisheries are under the jurisdiction of the Government of Mexico. The

apparent rarity of the cochito and the fact that this species historically has been taken incidentally by gillnet fisheries suggest that the use of this type of fishing gear anywhere within the range of *P. sinus* constitutes a threat to the continued existence of the species.

#### Discussion

Although there is little information available concerning the abundance, biology, and ecology of *P. sinus*, the biological information available indicates that the species is in danger of extinction. This determination is based upon the presumed small population size, limited range, and the mortality of *P. sinus* associated with the totoaba and other fisheries for over 40 years. This threat continues since some of these fisheries continue in the Gulf of California. The reduction of the population size from past fishing activities combined with continued fishing with an unknown incidental mortality throughout the species' range warrant the listing of *P. sinus* as endangered under the ESA.

#### Critical Habitat

Section 4(a)(3) of the ESA requires that the maximum extent prudent and determinable the Secretary should designate critical habitat at the time the species is determined to be endangered or threatened. However, the critical habitat provisions do not apply to areas outside the jurisdiction of the United States. This policy is reflected in the regulations implementing section 4 of the ESA (49 FR 38900; October 1, 1984). Because the entire known range of the cochito is located within Mexican territory, no critical habitat has been designated.

#### Classification

As noted in the Conference Report on the 1982 Amendments to the ESA economic consideration have no relevance to determinations regarding the status of species. Therefore, the NMFS has determined that the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

NOAA has categorically excluded all ESA listing actions from the environmental assessment and environmental impact statement requirements of the National Environmental Policy Act (NOAA Directives Manual 02-10, July 23, 1984;

49 FR 29644) because these actions do not normally have the potential to significantly affect the human environment. Thus, no NEPA document has been prepared for the listing of the cochito as an endangered species.

#### References

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- Noble, B.A. and F.C. Fraser. 1971. Description of a skeleton and supplementary notes on the skull of a rare porpoise, *Phocoena sinus*. *J. Nat. Hist.* 5:447-464.
- Norris, K.S. and W.N. McFarland. 1958. A new porpoise of the genus *Phocoena* from the Gulf of California. *J. Mammal.* 39(1):29-39.
- Norris, K.S. and J.H. Prescott. 1961. Observations on Pacific cetaceans of California and Mexican waters. *Univer. Calif. Publ. Zool.* 63:294-402.
- Villa, R.B. 1977. Report on the status of *Phocoena sinus*. Norris and McFarland 1958, in the Gulf of California. *Anal. del Instituto de Biología, Serie Zoología*, (2):203-208.
- Wells, R.S., B.G. Wursig, and K.S. Norris. 1981. A summary of the marine mammals of the upper Gulf of California, Mexico, with an assessment of the status *Phocoena sinus*. Final Report to the Marine Mammal Commission. National Technical Information Service. PB81-188791. 51 pp.
- #### List of Subjects in 50 CFR Part 222
- Administrative practice and procedure, Endangered and threatened wildlife, Exports, Fish, Import, Marine mammals, Reporting and recordkeeping requirements, Transportation.
- Dated: October 22, 1984.
- William G. Gordon,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.



**PART 222—ENDANGERED FISH OR WILDLIFE**

For the reasons set out in the preamble, Part 222 of Title 50 of the Code of Federal Regulations is amended as follows:

1. The authority citation to Supart C of Part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531-1543.

**§ 222.23 [Amended]**

2. Section 222.23(a) of Subpart C, is amended by adding the phrase "Cochito (*Phocoena sinus*);" immediately after the phrase "Sperm whale (*Physeter catodon*);" in the second sentence.

[FR Doc. 85-602 Filed 1-8-85; 8:45 am]

BILLING CODE 3510-22-M