

### **1.4.1 Similarity of Appearance Cases and Experimental Populations**

Rulemakings associated with the listed species include treatment of species on the List due to similarity of appearance under section 4(e) of the ESA and release of experimental populations under section 10(j) of the ESA. These regulations are associated with a threatened or endangered species and are used to facilitate enforcement and reduce threats (similarity of appearance), or promote recovery (experimental populations) of the listed species. Similarity of appearance cases and experimental populations appear as separate entries on the List but should not be treated as separate listed entities for the purposes of 5-year reviews.

The Services place a species on the List due to similarity of appearance because it resembles a threatened or endangered species so closely that distinguishing each species is difficult, resulting in difficulty in enforcement and thus an additional threat to the listed species. In these cases, the species is treated as endangered or threatened in order to facilitate enforcement and further the purposes and policies of the ESA (50 CFR 17.50 – 17.52). Although the status of the species on the List due to similarity of appearance should not be considered in the review of the listed species, the success of the similarity of appearance regulations in reducing threats to the species under review may be relevant information for the review.

Experimental populations of listed species are established to further the conservation of threatened or endangered species (section 10(j)(2)(A) of the ESA). Regulations exist for experimental populations of species under the jurisdiction of FWS (50 CFR 17.80 – 17.83), but no regulations exist for species under NMFS jurisdiction. Although experimental populations appear separately on the List, the experimental and non-experimental populations are considered to constitute a single listed species. Regardless of their classification as essential or non-essential, experimental populations must, by definition, contribute to the species' recovery (50 CFR 17.81), and thus the status of these experimental populations and their effects on the status of the species as a whole must be considered in the 5-year review.