

and Wildlife Service hereby issue a notice of final rulemaking listing the Hawaiian monk seal (*Monachus schauinslandi*) as an endangered species throughout its range, pursuant to section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (hereinafter the "Act"). This final rulemaking adds the Hawaiian monk seal to the List of Endangered and Threatened Wildlife found in 50 CFR 17.11 and references such listing in 50 CFR 222.23. This listing is based on a final determination by the Director, National Marine Fisheries Service (hereinafter the "Director" and the "NMFS," respectively), that the Hawaiian monk seal is an endangered species. The Hawaiian monk seal is found throughout the Hawaiian Archipelago, but is known to breed only on the islands of the Leeward Chain, including French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Atoll.

BACKGROUND

Notice of the proposed determination to list this species as an "endangered" species was published on August 11, 1976, at 41 FR 33922-33924.

SUMMARY OF COMMENTS

The several comments received were unanimous in supporting the NMFS/FWS proposal to list the Hawaiian monk seal as an endangered species. The Governor of Hawaii indicated that the State had no objection to the proposal and conveyed their belief that "listing of the Hawaiian monk seal as an endangered species throughout its range in the Northwestern Hawaiian Islands will assure that its management will focus on perpetuating a viable population."

One organization commenting on the proposal is particularly concerned over the future of the Hawaiian Islands National Wildlife Refuge and the dependence of the Hawaiian monk seal on this area. Other commenting individuals urged that critical habitat of the seal be protected, although no new specific habitat information or requests were submitted. No requests for a public hearing were received.

MODIFICATION OF PROPOSED REGULATIONS

Since only support with no substantive changes (except one comment pertaining to harassment by dogs) was received on the proposal, the proposed regulations are being adopted as the final regulations without change. Subsequent to the publication of the proposed regulations, all dogs were removed from Kure Atoll.

Since no new information was submitted on specific habitat and since no requests were made to designate specific habitat, no critical habitat designations for the Hawaiian monk seal are being proposed at this time.

EFFECT OF FINAL REGULATIONS

The general prohibitions of section 9(a) of the Act apply to all endangered species of fish and wildlife. Therefore, with respect to any Hawaiian monk seal (including any part or product thereof),

it is unlawful for any person subject to the jurisdiction of the United States to:

- (1) Import any such species into, or export any such species from, the United States;
- (2) Take any such species within the United States or the territorial sea of the United States;
- (3) Take any such species upon the high seas;
- (4) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of (2) and (3) above;
- (5) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;
- (6) Sell or offer for sale in interstate or foreign commerce any such species; or
- (7) Violate any regulation pertaining to such species and promulgated by the Secretary pursuant to authority provided by the Act.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

There are certain limited exceptions to these general prohibitions including a grandfather clause for species held in captivity or a controlled environment on December 28, 1973, and not for commercial purposes (section 9(b) of the Act); a one-year limited exemption to minimize undue economic hardship tied to a previous contract commitment (section 10(b) of the Act); and permits for scientific purposes or enhancement of propagation or survival of the species (section 10(a) of the Act).

In addition, NMFS regulations published in Parts 217-222 and Part 225 of Title 50 of the Code of Federal Regulations, set forth rules and procedures which apply to all endangered species under the jurisdiction of the Secretary of Commerce. These regulations provide for general provisions, civil procedures, seizure and forfeiture procedures, importation and exportation at designated ports, general and specific permit provisions, and Federal/State cooperation and financial assistance. These regulations are now applicable, of course, to the Hawaiian monk seal.

INTERAGENCY COOPERATION

This listing also makes available the protection afforded by section 7 of the Act. That section reads as follows:

"Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall in consultation with and with the assist-

**Title 50—Wildlife and Fisheries**  
**CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR**  
 Subchapter B—Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife  
**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**  
**CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE**  
 Subchapter C—Marine Mammals  
**PART 222—ENDANGERED FISH OR WILDLIFE**  
**Hawaiian Monk Seal Final Regulations**

The Director, National Marine Fisheries Service and the Director, U.S. Fish

<sup>1</sup> Populations are taken from the 1970 U.S. Census.

**RULES AND REGULATIONS**

ance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

While no "critical habitat" has yet been designated by NMFS for the Hawaiian monk seal, the other provisions of section 7 are applicable.

These regulations are effective on December 23, 1976.

This notice of final rulemaking is issued under the authority of the Endan-

gered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: November 15, 1976.

JACK W. GEHRINGER,  
Deputy Director, National  
Marine Fisheries Service.

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

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended by adding to § 17.11(i) under the class entitled "Mammals" and immediately before "Seal, Mediterranean Monk" the following:

**§ 17.11 Endangered and threatened wildlife.**

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Seal, Hawaiian monk.	<i>Monachus schauinslandi</i> .	NA	Hawaiian Archipelago.	Entire.....	E	16	NA

17-41 FR 51612; November 23, 1976.

**PART 222—ENDANGERED FISH OR WILDLIFE**

**§ 222.23 [Amended]**

In addition, § 222.23(a) of Subpart C, Part 222 of Chapter II, Title 50 of the Code of Federal Regulations is amended by adding "Hawaiian monk seal (*Monachus schauinslandi*)" immediately before "Mediterranean monk seal (*Monachus monachus*)" in the second sentence.

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**SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE**

**PART 20—MIGRATORY BIRD HUNTING**  
Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds in the United States; Correction

In FR Doc. 76-27463 appearing at page 43163 in the FEDERAL REGISTER of Sep-

tember 30, 1976, the following correction is made in order to reflect the State of Oregon's intent and to bring Federal and State regulations into agreement:

**§ 209.105(f) [Amended]**

In section 20.105(f), in the table on page 43174, under Oregon, in Baker and Malheur Counties, the season dates on the same line as "Ducks" are corrected to read "October 9-January 16." The remainder of the table remains unchanged.

Dated: November 18, 1976.

JAMES W. PULLIAM, Jr.,  
Acting Director,  
U.S. Fish and Wildlife Service.

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