

**PART 552—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

552.215–71 [Redesignated as 552.238–XX]

552.215–72 [Redesignated as 552.238–YY]

4. Sections 552.215–71 and 552.215–72 are redesignated as 552.238–XX and 552.238–YY, respectively.

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DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

50 CFR Part 226

[Docket No. 0809161218–81253–01]

RIN 0648–AX23

**Listing Endangered and Threatened
Wildlife and Designating Critical
Habitat; 90–day Finding for a Petition
to Revise the Critical Habitat
Designation for the Hawaiian Monk
Seal**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90-day finding for a petition to revise Hawaiian monk seal (*Monachus schauinslandi*) critical habitat under the Endangered Species Act (ESA) of 1973, as amended. The Hawaiian monk seal is listed as endangered throughout its range, and currently designated critical habitat consists of all beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms (36.6m) around specific areas in the Northwestern Hawaiian Islands. The petition seeks to include key beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 200 meters around the main Hawaiian Islands, and to extend critical habitat designation in the Northwestern Hawaiian Islands to Sand Island and ocean waters out to a depth of 500 meters. We are initiating a review of currently designated critical habitat of the species to determine whether revision is warranted. To ensure a comprehensive review, we solicit

information and comments pertaining to this species' essential habitat needs from any interested party.

DATES: Written comments and information related to this petition finding must be received [see ADDRESSES] by December 2, 2008.

ADDRESSES: You may submit comments, identified by [0648–AX23], by any one of the following methods: (1) Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>; (2) Fax: 808–973–2941, attention: Krista Graham; or (3) mail: addressed to Krista Graham, National Marine Fisheries Service, Pacific Islands Regional Office, Protected Resources Division, 1601 Kapiolani Boulevard Suite 1110, Honolulu, HI 96814.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain more information about critical habitat designated for the Hawaiian monk seal online at the NMFS Pacific Islands Regional Office website: http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html

FOR FURTHER INFORMATION CONTACT: Krista Graham by phone 808–944–2238, fax 808–973–2941, or e-mail krista.graham@noaa.gov; Lance Smith by phone 808–944–2258, fax 808–973–2941, or e-mail lance.smith@noaa.gov; Lisa Van Atta by phone 808–944–2257, fax 808–973–2941, or e-mail alecia.vanatta@noaa.gov; or Marta Nammack by phone 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Critical habitat is defined in the ESA (16 U.S.C. 1531 *et seq.*) as:

“(i) the specific areas within the geographical area currently occupied by the species, at the time it is listed... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection;

and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.”

Our implementing regulations (50 CFR 424.12) describe those essential physical and biological features to include, but not limited to: (1) space for individual and population growth, and normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. We are required to focus on the primary constituent elements (PCEs) which best represent the principal biological or physical features. PCEs may include, but are not limited to: nesting grounds, feeding sites, water quality, tide, and geological formation. Our implementing regulations (50 CFR 424.02) define “special management considerations or protection” as any method or procedure useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned. We are required to consider whether the petition contains information indicating that areas petitioned contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species. Section 4(b)(3)(D)(i) of the ESA requires us to make a finding as to whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR 424.14) define “substantial information” as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists, we take into account several factors, including

information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the revision may be warranted, within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**. See ESA Section 4(b)(3)(D)(ii).

Analysis of Petition

On July 9, 2008, we received a petition from the Center for Biological Diversity, Kahea, and the Ocean Conservancy (Petitioners) to revise the Hawaiian monk seal critical habitat designation (Center for Biological Diversity *et al.*, 2008). Currently designated critical habitat consists of all beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms (36.6m) around the following areas in the Northwestern Hawaiian Islands: Kure Atoll; Midway Islands, except Sand Island and its harbor; Pearl and Hermes Reef; Lisianski Island; Laysan Island; Maro Reef; Gardner Pinnacles; French Frigate Shoals; Necker Island; and Nihoa Island (53 FR 18988; May 26, 1988). The Petitioners seek to revise the critical habitat designation to include key beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 200 meters around the main Hawaiian Islands, and to extend critical habitat designation in the Northwestern Hawaiian Islands to Sand Island and ocean waters out to a depth of 500 meters.

The petition contains a detailed description of the species' natural history and status, including information on distribution and movements, feeding and prey selection, reproduction, population status and trends, and factors contributing to the current status of the species in the Pacific Ocean. The petition describes the importance of the terrestrial and marine habitat for monk seals around the entire Hawaiian Archipelago. The Petitioners cite studies indicating that, while a significant portion of the species' population is found throughout the Northwestern Hawaiian Islands

(NMFS, 2007), it is likely that monk seals are recolonizing the main Hawaiian Islands (Baker, 2006) since Hawaiian monk seals have been sighted on each of the eight main Hawaiian Islands and their presence is increasing (NMFS, 2007). The petition cites studies demonstrating that births have increased on the main Hawaiian Islands since the mid-1990s (NMFS, 2007), and that pups born on the main Hawaiian Islands have been healthier and more likely to survive to adulthood than those born on the Northwestern Hawaiian Islands (Baker *et al.*, 2006). The Petitioners further cite studies that assert that these larger sizes and healthier physical condition reflects greater prey availability and, thus, better foraging conditions in the main Hawaiian Islands (Baker *et al.*, 2006; Baker, 2006; Baker and Johanos, 2004).

The Petitioners claim that the population of monk seals on the main Hawaiian Islands is likely below the carrying capacity of those islands. The Petitioners believe that the petitioned habitat area contains the PCEs or the physical and biological features essential to the conservation of Hawaiian monk seals. The Petitioners claim that the petitioned area provides space for population growth and normal behavior, and thus the main Hawaiian Islands will provide important habitat for recovery of the species. They offer that the habitat components essential for feeding, pupping, nursing, resting, molting, and migrating include all marine waters, along with associated marine aquatic flora and fauna in the water column, as well as the underlying marine benthic community, all of which occur in the main Hawaiian Islands. The Petitioners assert that this is evidenced by the increasing use of the area by monk seals as well as their visibly healthier body condition. As for extending the area of designation in the Northwestern Hawaiian Islands, the Petitioners cite new studies that have contradicted the previous belief that monk seals foraged only on shallow reef habitats (Parrish and Littnan, 2007). The Petitioners cite from Baker *et al.* (2007) that monk seals forage in a variety of marine habitats within approximately 500 meters of the surface in the Northwestern Hawaiian Islands. Thus, the Petitioners suggest that the designation of critical habitat for the Hawaiian monk seal in the main Hawaiian Islands and the extension of the designation in the Northwestern Hawaiian Islands are consistent with the recovery plan for the species.

Finally, the Petitioners request that, if we determine some portion of the petitioned area does not meet the

criteria for critical habitat, we analyze whether some subset of this area should be designated as critical habitat.

Petition Finding

Based on the above information and information readily available in our files, and pursuant to criteria specified in 50 CFR 424.14(c), we find the Petitioners present substantial scientific information indicating that a revision to the critical habitat designation for Hawaiian monk seals may be warranted. Our Pacific Islands Fisheries Science Center has conducted research on Hawaiian monk seals foraging, pupping, nursing, resting, and migrating within the petitioned area, in both the main and Northwestern Hawaiian Islands, and the area in general represents principal habitat for Hawaiian monk seals. The Petitioners have requested broad areas to be considered as critical habitat for this species. It is not clear whether such a broad designation is warranted at this time, but we will review the best scientific information available to determine whether these petitioned areas or a subset of these petitioned areas meet the definition of critical habitat.

To ensure that the review of critical habitat for Hawaiian monk seals is complete and based on the best available data, we solicit information and comments on whether the petitioned area, or some subset thereof, qualifies as critical habitat. Areas that include the physical and biological features essential to the conservation of the species and that may require special management considerations or protection should be identified. As stated earlier, essential features include, but are not limited to, space for individual growth and for normal behavior, food, water, air, light, minerals, or other nutritional or physiological requirements, cover or shelter, sites for reproduction and development of offspring, and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12).

We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

Peer Review

The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all “influential scientific information” and “highly influential scientific information” disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered “influential scientific information,” we solicit the names of recognized experts in the field that could serve as peer reviewers of such information we may disseminate as we evaluate this petition. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

- Baker, J.D. 2006. The Hawaiian Monk Seal: Abundance Estimation, Patterns in Survival, and Habitat Issues. Unpublished Ph. D. Thesis. University of Aberdeen, UK. 182 p.
- Baker, J.D., and T.C. Johanos. 2004. Abundance of the Hawaiian Monk Seal in the Main Hawaiian Islands. *Biological Conservation* 116: 103–110.
- Baker, J.D., C.L. Littnan, and D.W. Johnston. 2006. Potential Effects of Sea Level Rise on the Terrestrial Habitats of Endangered and Endemic Megafauna in the Northwestern Hawaiian Islands. *Endangered Species Research* 2:21–30.
- Baker, J.D., J.J. Polovina, and E.A. Howell. 2007. Effect of Variable Oceanic Productivity on the Survival of an Upper Trophic Predator, the Hawaiian Monk Seal *Monachus schauinslandi*. *Marine Ecology Progress Series* 346: 277–283.
- Center for Biological Diversity, Kahea, and Ocean Conservancy. 2008. Petition to Revise Critical Habitat for the Hawaiian Monk Seal (*Monachus schauinslandi*) Under the Endangered Species Act. 41 pp. http://www.biologicaldiversity.org/species/mammals/Hawaiian_monk_seal/pdfs/Petition-Monk-Seal-CH-07-02-08.pdf
- National Marine Fisheries Service (“NMFS”). 2007. Recovery Plan for the Hawaiian Monk Seal (*Monachus schauinslandi*). Second Revision. National Marine Fisheries Service, Silver Spring, MD. 165 pp.
- Parrish, F.A. and C.L. Littnan. 2007. Changing Perspectives in Hawaiian Monk Seal Research Using Animal-Borne Imaging. *Marine Technology Society Journal* 41:30–34.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 29, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–23467 Filed 10–2–08; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 080721859–81206–01]

RIN 0648–AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This action is necessary because the risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar gear fishery is minor and insufficient to justify the costs of VMS. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Comments must be received no later than November 3, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AX01, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be

posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907–586–7356.

SUPPLEMENTARY INFORMATION:

Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP designates essential fish habitat and habitat areas of particular concern (HAPCs) in the Gulf of Alaska. HAPCs are areas within essential fish habitat that are of particular ecological importance to the long-term sustainability of managed species, are of a rare type, or are especially susceptible to degradation or development. The Council may designate specific sites as HAPCs and may develop management measures to protect habitat features within them. In order to protect HAPCs, certain habitat protection areas and habitat conservation zones have been designated. A habitat protection area is an area of special, rare habitat features where fishing activities that may adversely affect the habitat are restricted.

Two HAPCs are designated in the Fairweather Grounds and one HAPC is designated near Cape Ommaney in the Gulf of Alaska. Within these HAPCs, five Coral Habitat Protection Areas were identified where high concentrations of sensitive corals occur. Fishing is restricted only in the Coral Habitat