

participant in Safety Board investigations. 49 U.S.C. 1132(c). The role of the FAA representatives is to support the Safety Board's investigation and determine if immediate regulatory action is necessary to prevent another accident. The NTSB directs FAA representatives to refrain from using their participation to develop information for punitive actions or issuing violations.

The parties involved in NTSB investigations could be small entities, and, depending on the scope and circumstances of the investigation, the NTSB could request these small entities to be available for the on-scene portion of an investigation, as well as follow-up meetings and/or tasks. The NTSB does not reimburse investigation participants for the amount of time expended for an NTSB investigation, nor does the NTSB pay for any travel costs that arise out of such participation. As a result, it is remotely possible that a combination of NTSB investigations could result in costs that exceed \$100 million.

#### **Biennial Review**

Although this interpretation of 49 CFR part 831 as containing "significant regulatory actions" is based on a broad reading of "significant," and the NTSB has not yet overseen any investigations that singly or in combination exceed the aforementioned threshold, the NTSB nevertheless is committed to reviewing its regulations within 49 CFR part 831, in the interest of ensuring none are "outmoded, ineffective, insufficient, or excessively burdensome" under Executive Orders 13563 and 13579. In this regard, the NTSB herein proposes to review 49 CFR part 831 within the next 6 months to determine if any sections within part 831 could be modified, streamlined, expanded, or repealed, pursuant to the direction of Executive Order 13579. The NTSB's findings will form the basis for the NTSB's decision concerning whether the NTSB should make any changes to part 831. The NTSB is committed to issuing a Notice of Proposed Rulemaking within 6 months of the published findings, should the findings counsel in favor of changing any sections of part 831.

After the conclusion of any rulemaking activity, the NTSB will undertake a biennial review of part 831 to ensure no regulations are outmoded, ineffective, insufficient, or excessively burdensome. If the NTSB determines no changes to part 831 are necessary, the NTSB will begin computing time for its biennial review following the date of its publication of findings. The NTSB believes review on a biennial basis is appropriate for the subject matter

contained in part 831, as the NTSB's party process is familiar to regular party participants, and party participants have not articulated concerns with the process that would warrant a change in regulations.

Following each biennial review, the NTSB will make its findings available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to the NTSB's recommendation, will inform the NTSB's decision as to which regulations will be the subject of a formal public review. This public review could be initiated by a notice seeking public comment on whether the regulations continue to meet their original objectives or by a proposal of specific changes to the regulations.

#### **Cultural Change**

As indicated by the number of recent rulemaking activities, the NTSB is committed to developing a strong culture of retrospective analysis of its existing regulations. The NTSB currently is undertaking a review of other regulations that would not be considered "significant," in which it is examining regulations to ensure they continue to be appropriate to meet the goal of the regulations without imposing an undue burden. In addition, the NTSB will seek to expand its effort to conduct regulatory reform and to make suggestions to modify, improve, or repeal regulations that may further the purpose of Executive Orders 13563, 13579, and 13610. The NTSB also encourages public comment on any of its regulations in title 49, Code of Federal Regulations, chapter VIII, in addition to 49 CFR part 831, consistent with the objectives of these Executive Orders. The NTSB will also consider the spirit of these Executive Orders when evaluating possible new regulations. With this change in the overall outlook concerning its regulations, the NTSB believes it will achieve the general objectives of these Executive Orders with regard to every part of its regulations, notwithstanding the fact that the vast majority of them are not "significant" under Executive Order 12866.

Dated: June 19, 2012.

**Deborah A.P. Hersman,**  
*Chairman.*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 226**

**[Docket No. 110207102-2084-02]**

#### **RIN 0648-BA81**

### **Endangered and Threatened Wildlife and Plants; Proposed Rulemaking To Revise Critical Habitat for Hawaiian Monk Seals**

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

**ACTION:** Proposed rule; notice of 6-month extension of the deadline for a final critical habitat determination.

**SUMMARY:** We, National Marine Fisheries Service (NMFS), published a proposed rule in the **Federal Register** on June 2, 2011, proposing to revise critical habitat for the Hawaiian monk seal under the Endangered Species Act (ESA) and requesting information related to the proposed action. This document announces a 6-month extension of the deadline for a final determination on the proposed rule. Based on comments received during the public comment period, we find that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses used to support the scope of the proposed critical habitat designation in the Main Hawaiian Islands. Accordingly, we are extending the deadline for the final revision to critical habitat for the Hawaiian monk seal an additional 6 months to further analyze data and consider concerns raised by State, Federal, and other entities, and better inform our determinations for the final revision of Hawaiian monk seal critical habitat under the ESA.

**DATES:** A final revision will be made no later than December 2, 2012.

**ADDRESSES:** The proposed rule, maps, and other materials relating to this proposal can be found on the NMFS Pacific Island Region's Web site at [http://www.fpir.noaa.gov/PRD/prd\\_critical\\_habitat.html](http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html).

**FOR FURTHER INFORMATION CONTACT:** Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 944-2157; Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944-2258; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 427-8403.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 2, 2011, we published a proposed rule to revise critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*) by extending the current designation in the Northwestern Hawaiian Islands (NWHI) out to the 500-meter (m) depth contour and including Sand Island at Midway Islands; and by designating six new areas in the main Hawaiian Islands (MHI), pursuant to section 4 of the Endangered Species Act (ESA) (76 FR 32044; June 2, 2011). We received public comments in response to the proposed rule from June 2, 2011 through January 6, 2012. Comments were received, through electronic submissions, letters and oral testimonies from public hearings held in Kaunakakai, Molokai; Kihei, Maui; Lihue, Kauai; Honolulu, Oahu; Hilo, Hawaii; and in Kailua Kona, Hawaii.

Several commenters, including the Hawaii Department of Land and Natural Resources; the Western Pacific Regional Fishery Management Council; the State of Hawaii's House Committee on Water, Land, and Ocean Resources; and the State of Hawaii's Senate Committee on Water, Land, and Housing, have strongly criticized the scope of the proposed critical habitat designation. In particular comments focused on the sufficiency of the analysis and the accuracy of the description of the six physical or biological features that are identified as essential for the conservation of the species, as well as whether the areas proposed are appropriate for designation. Additionally, comments suggested that our identification of essential features and the science upon which they are based, did not rely on the best available science to support the delineation of the proposed designation. We have considered these comments, and we find that substantial disagreement exists over the identification of the essential features that support the scope of the proposed designation of critical habitat in the Main Hawaiian Islands, and whether these features are essential for the conservation of the species.

## Extension of Critical Habitat Revision Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed revision to critical habitat: (1) Finalize the proposed revision; (2) withdraw the proposed revision; or (3) extend the final revision to critical habitat by not more than 6 months. Section 4(b)(6)(B)(i) allows a 6-month extension of the 1-year deadline for a final revision if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the revision for the purposes of soliciting additional data.

We have received multiple comments on the scope of the designation and the sufficiency or accuracy of the available data used to support this proposed rulemaking. In particular, commenters raised questions regarding the foraging ecology of Hawaiian monk seals in the main Hawaiian Islands and whether the areas proposed for designation address the foraging needs and preferences in this habitat. The State of Hawaii's Department of Land and Natural Resources submitted a comment disagreeing with the identified physical and biological features and describing an alternative approach for considering foraging areas for this designation. We are presently working with the State to obtain further information regarding the data and analysis they used to support their evaluation of foraging areas. Additionally, the Western Pacific Regional Fishery Management Council submitted a comment disagreeing with the delineation of areas used by monk seals for foraging in the main Hawaiian Islands. NMFS has released just over 20 GPS-equipped cellular transmitter tags on seals in the main Hawaiian Islands in the past two years; we believe that further analysis of this data will provide additional information bearing on this dispute and may be sufficient to resolve it.

As a result of these comments, NMFS is extending the final revision to critical habitat for 6 months pursuant to section 4(b)(6)(B)(i). An additional 6 months will allow us to further evaluate the data

used by the State, as well as analyze information received from GPS-equipped cellular transmitter tags in the main Hawaiian Islands. To ensure that the final rule is based solely on the best available scientific information, it is essential to resolve the substantial disagreement regarding the identification and analysis of the essential features which support the scope of the designation; therefore, we conclude that a 6-month extension of the final revision to critical habitat for the Hawaiian monk seal is warranted.

Although not a basis for the extension, we will also use this period to further evaluate all comments received regarding the potential economic impacts of the proposed designation.

In consideration of the disagreement surrounding the scope of this proposed designation, we extend the timeline for the final designation for an additional 6 months (until December 2, 2012) to resolve the disagreement.

## Classification

### Regulatory Planning and Review (E.O. 12866)

This notice has been determined to be not significant for purposes of E.O. 12866. A draft Economic Analysis report and draft ESA section 4(b)(2) report (NMFS, 2010b) were prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. The draft Economic Analysis report (ECONorthwest, 2010) and draft ESA section 4(b)(2) report (NMFS, 2010b) are available on the Pacific Islands Region Web site at [http://www.fpir.noaa.gov/PRD/prd\\_critical\\_habitat.html](http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html).

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

Dated: June 19, 2012.

**Samuel D. Rauch III,**

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

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