



MARINE MAMMAL COMMISSION

5 August 2011

Mr. Lance W. Smith
Regulatory Branch Chief
National Marine Fisheries Service
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814

Dear Mr. Smith:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's *Federal Register* notice (76 Fed. Reg. 32026) proposing rules to expand critical habitat boundaries for the endangered Hawaiian monk seal. The Commission offers the following recommendation and rationale.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service adopt a final rule to expand the existing critical habitat boundaries for endangered Hawaiian monk seals as proposed.

RATIONALE

With certain exceptions, section 4(b)(2) of the Endangered Species Act requires the designation of "critical habitat" for species listed as endangered or threatened. Such areas are to include physical or biological features essential to the conservation and recovery of the species and that may require special management considerations. In 1988 the Service designated critical habitat for Hawaiian monk seals including all beaches and near shore waters out to the 20-fathom isobath around all of the Northwestern Hawaiian Islands (NWHI) except the Midway Islands. Since that designation new information on the species' ecology and movement patterns has indicated that other areas in the NWHI also are essential to the species' survival. In addition, since 1988 monk seals have made substantial progress toward reoccupying habitat in the main Hawaiian Islands (MHI) that also is essential for their recovery. In light of these developments, several environmental groups petitioned the Service in July 2008 to expand existing critical habitat boundaries to include additional areas in both the NWHI and MHI.

The proposed rules would do so by including all beaches and waters in the NWHI within the 500 m isobath with the exception of the protected harbor on Sand Island in the Midway Islands. In the MHI, the proposed rule would include most shoreline areas and waters from a point 5 m above the high tide line (generally identified as reflecting the line of vegetation or debris) out to a depth of 500 m around all islands. In the MHI developed harbors, shorelines of certain military facilities, and existing shorelines that have been armored with bulkheads or rock rip-rap to prevent erosion are excluded from the proposed area. Together the designated areas in the NWHI and MHI would cover more than 11,000 mi² and most areas where monk seals are likely to occur.

Mr. Lance W. Smith
5 August 2011
Page 2

The notice identifies and describes six types of monk seal habitat within the proposed boundaries that contain essential physical and biological features necessary for the species' recovery. They include (1) beaches preferred for pupping and nursing, (2) shoreline areas for haul-out, resting, and molting, (3) coastal areas with low levels of human disturbance, (4) shallow sheltered areas adjacent to pupping and nursing areas, (5) marine areas with adequate prey quality and quantity, and (6) foraging areas from 0 to 500 m deep. The Commission believes this list of habitat types is complete and appropriate for consideration as essential and that the descriptions of their physical and biological features in the notice and associated reports are adequate.

The notice also states that activities that may require special management consideration in those areas include, but are not necessarily limited to: (1) water and coastal construction, (2) dredging and disposal of dredged material, (3) energy development, (4) activities that generate water pollution, (5) aquaculture, (6) fisheries, (7) oil spills and vessel groundings, and (8) military exercises. The list and associated descriptions of monk seal habitat requirements provide clear and appropriate guidance to federal agencies regarding activities that may require special management consideration.

Critical habitat is one of the least well understood recovery tools that federal agencies have to promote species recovery. Given the anxiety that the term often causes among the public, it is worth noting here that critical habitat regulations apply only to actions that federal agencies authorize, fund, or carry out. They do not apply directly to the public, nor are they aimed at restricting the activities of the public.

Finally, it is worth noting here that the Hawaiian monk seal is not only endangered, but its status has been declining steadily at about 4 percent per year over the past decade and the population size of just over 1000 animals makes them particularly vulnerable. Conserving this species for the long term will require anticipating and addressing impediments to recovery before they become significant. The proposed expansion of critical habitat is a proactive step in this direction and will help to save a species that has enriched the waters of the Hawaiian Archipelago for millions of years. For that purpose, the Marine Mammal Commission recommends that the National Marine Fisheries Service adopt a final rule expanding the existing critical habitat boundaries for endangered Hawaiian monk seals as proposed.

Please contact me if you or your staff has questions about the Commission's recommendation or rationale.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Cc: Ms. Lisa Van Atta
Charles Littnan, Ph.D.