

concludes that “[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve Virginia’s submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this proposed rule, pertaining to Virginia’s section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 27, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–BA81

Endangered and Threatened Wildlife and Plants; Public Hearings for Proposed Rulemaking to Revise Critical Habitat for Hawaiian Monk Seals

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

ACTION: Notice of public hearings.

SUMMARY: We, National Marine Fisheries Service (NMFS), are announcing six public hearings to be held for the proposed rule to revise critical habitat for the Hawaiian monk seal, which was published in the **Federal Register** on June 2, 2011. See **SUPPLEMENTARY INFORMATION** for meeting dates and locations. As noted in the proposed rule, we will consider written comments received on or before August 31, 2011.

ADDRESSES:

See **SUPPLEMENTARY INFORMATION** for meeting dates and locations. You may submit written comments on the proposed rule identified by 0648–BA81 by any one of the following methods:

- *Electronic Submissions:* Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Submit written comments to Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu,

HI, 96814, *Attn.*: Hawaiian monk seal proposed critical habitat.

Instructions: Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. 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. We will accept anonymous comments (enter "NA" 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. The petition, 90-day finding, 12-month finding, draft biological report, draft economic analysis report, draft ESA 4(b)(2) report, and other reference materials regarding this determination can be obtained via the NMFS Pacific Islands Regional Office Web site: http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, *Attn.*: Hawaiian monk seal proposed critical habitat. Background documents on the biology of the Hawaiian monk seal, the July 2, 2008, petition requesting revision of its critical habitat, and documents explaining the critical habitat designation process, can be downloaded from http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html, or requested by phone or e-mail from the NMFS staff in Honolulu (area code 808) listed under **FOR FURTHER INFORMATION CONTACT.**

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 Marta Nammack, NMFS, Office of Protected Resources (301) 427-8403.

SUPPLEMENTARY INFORMATION:

Background

In the notice of the proposed rulemaking, we propose to revise the current 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). Specific areas proposed for the MHI include terrestrial and marine habitat from 5 m inland from the shoreline extending seaward to the 500-m depth contour around: Kaula Island, Niihau, Kauai, Oahu, Maui Nui (including Kahoolawe, Lanai, Maui, and Molokai), and Hawaii (except those areas that have been identified as not included in the designation). We propose to exclude the following areas from designation because the national security benefits of exclusion outweigh the benefits of inclusion, and exclusion will not result in extinction of the species: Kingfisher Underwater Training area in marine areas off the northeast coast of Niihau; Pacific Missile Range Facility Main Base at Barking Sands, Kauai; Pacific Missile Range Facility Offshore Areas in marine areas off the western coast of Kauai; the Naval Defensive Sea Area and Puuloa Underwater Training Range in marine areas outside Pearl Harbor, Oahu; and the Shallow Water Minefield Sonar Training Range off the western coast of Kahoolawe in the Maui Nui area. In addition we are soliciting comments on all aspects of the proposal, including information on the economic, national security, and other relevant impacts. We will consider additional information received prior to making a final decision on critical habitat designation.

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary of Commerce shall promptly hold at least one public hearing if any person requests one with 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16 (c)(3)). To allow the public an opportunity to provide comment on the proposed rule, we will hold six public hearings. We will accept oral and written comments on the proposed rule to revise Hawaiian

monk seal critical habitat (76 FR 32026; June 2, 2011) during these hearings as described in this notice.

Dates and Locations of the Hearings

August 8, 2011—Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Molokai 96748—5:30–8 p.m.

August 9, 2011—Kihei Community Center, 303 E. Lipoa Street, Kihei, Maui 96753—5:30–8 p.m.

August 10, 2011—Kauai War Memorial Convention Hall, 4191 Hardy Street, Lihue, Kauai 96766—5:30–8 p.m.

August 11, 2011—McCoy Pavilion at Ala Moana Park, 1201 Ala Moana Blvd., Honolulu, Oahu 96814—5:30–8 p.m.

August 15, 2011—Mokupapapa Discovery Center, 308 Kamehameha Avenue, Suite 109, Hilo, Hawaii 96720—5:30–8 p.m.

August 16, 2011—Kahakai Elementary School, 76–147 Royal Poinciana Drive, Kailua Kona, Hawaii 96740—6:30–9 p.m.

Oral and written comments on the proposed rule to revise Hawaiian monk seal critical habitat (76 FR 32026; June 2, 2011) received during these hearings will be part of the administrative record. People wishing to make an oral statement for the record at a public hearing are encouraged to provide a written copy of the statement and present it to us at the hearing. In the event that attendance at the public hearings is large, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Special Accommodations

These meetings are physically accessible to people with disabilities. Persons requesting sign language interpretation or other reasonable accommodations to participate in the public meetings should contact Jean Higgins (808) 944-2157. To allow sufficient time to process requests, please call not later than 5 p.m. on July 28, 2011.

Authority: 16 U.S.C. 1533 *et seq.*

Dated: July 11, 2011.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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