

the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 77-4909 Filed 2-15-77; 8:45 am]

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Parts 17, 222]

### CARIBBEAN MONK SEAL

#### Proposed "Endangered" Species

The Director, National Marine Fisheries Service, and the Director, U.S. Fish and Wildlife Service, hereby issue a notice of proposed rulemaking that would list the Caribbean monk seal (*Monachus tropicalis*) 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 proposed rulemaking would add this seal to the List of Endangered and Threatened Wildlife found in 50 CFR 17.11 and would reference such listing in 50 CFR 222.23. This proposed listing is based on a preliminary determination by the Director, National Marine Fisheries Service (hereinafter the "Director" and the "NMFS," respectively) that the Caribbean monk seal is an endangered species. This species was formerly found in the Gulf of Mexico and Caribbean Sea.

#### BACKGROUND

Section 4(a) of the Act states:

**General.** The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence.

With the exception of enforcement responsibilities for certain plants, the Act defines "Secretary" to mean either the Secretary of the Interior or the Secretary of Commerce (as program responsibilities are vested pursuant to the provisions of Reorganization Plan Number 4 of 1970). Most marine species, including the Caribbean monk seal, are the sole responsibility of the Secretary of Commerce. The authority of the Secretary has been delegated to the Director, NMFS.

An extensive aerial survey of the Caribbean monk seal's former habitat in the Gulf of Mexico and Caribbean Sea was conducted by Karl W. Kenyon for the Department of the Interior during March 1973. While this survey unfortunately indicates that the species is probably extinct, such assumptions were made for the Guadalupe fur seal (*Arctocephalus townsendi*) and the Juan Fernandez fur seal (*Arctocephalus philippi*) which fortunately proved untrue. In case some remnant members of the Caribbean monk seal species do exist in remote parts of its range, NMFS believes it should be listed and thereby provided protection under the Act. A paper entitled "Caribbean Monk Seal, *Monachus tropicalis*" (ICUN Supplementary Paper No. 39, April 1973) by Dale W. Rice, NMFS: *Provided*, The basis for most of the statements and facts cited below.

#### SUMMARY OF FACTORS AFFECTING THE SPECIES

The findings in support of the Director's proposal are summarized herein and described under each of the five criteria of section 4(a) of the Act.

(1) The present or threatened destruction, modification, or curtailment of its habitat or range. The former distribution of this species encompassed shores and islands of the Caribbean Sea and Gulf of Mexico, from the Bahamas west (including the Florida Keys and Cuba) to the Yucatan Peninsula, south along the east coast of Central America and through the western Caribbean Sea, and eastward in the northern Caribbean as far as the northern Lesser Antilles. It was known to occur in Jamaican waters and Seranilla Bank, in the western Caribbean, as late as 1952. Seclusion from areas frequented by man would, in all probability, be characteristic of the location(s) of any surviving Caribbean monk seals. It is believed that the habitat requirements of this species are quite similar to those of the Hawaiian monk seal—shallow lagoons and reefs for feeding areas; sandy beaches for hauling-out grounds; and permanent islets or beaches above high tide, and adjacent to shallows, for pupping areas. Although Caribbean monk seals are seemingly tame and allow a close approach, the seal historically has abandoned habitat utilized by man for fishing or other purposes. Thus, reduction in suitable habi-

tat due to man's encroachment has contributed to the decline or extinction of this species.

(2) Overutilization for commercial, sporting, scientific, or educational purposes. A major factor responsible for the severe reduction or extinction of the Caribbean monk seal has been exploitation by man. These animals are sluggish, apparently unsuspecting, and not easily alarmed. Their hauling-out beaches are low and sandy, which accommodate small boat landings. Thus, the Caribbean monk seal is readily approached and easily killed. Reports indicate that this species has been exceedingly scarce and indiscriminately killed since early Spanish exploration of the western hemisphere. They have been killed commercially for their hides and oil.

(3) Disease or predation. The Caribbean monk seal has evolved on remote islands where they have not been subject to terrestrial predators. In the water, however, shark predation is a factor. Predation by sharks is not believed to have caused significant mortality in this species. Disease is not known to be a factor in reduction or extinction of this species.

(4) The inadequacy of existing regulatory mechanisms. No United States protection other than that of the Marine Mammal Protection Act of 1972, as amended, is known to exist for the Caribbean monk seal. As indicated above, these regulations would provide protection to any remnant members of the species that may exist.

(5) Other natural or man-made factors affecting its continued existence. There are no other known factors significantly affecting this species.

#### EFFECT OF THIS RULEMAKING

Section 9(a) of the Act sets forth a series of general prohibitions which apply to all endangered species of fish and wildlife.

With respect to any endangered species listed pursuant to section 4 of the Act, 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) or (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 regulations 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.

The Act further provides certain limited exceptions to those general prohibitions. These exceptions include: 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 1-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. In the event that the Caribbean monk seal is listed as an endangered species, these regulations would be applicable to the species.

**INTERAGENCY COOPERATION**

The listing herein proposed would make 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 assistance 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 been determined by NMFS for the Caribbean monk seal, the other provisions of section 7 would be applicable.

No critical habitat is presently proposed for the Caribbean monk seal. If the existence of the Caribbean monk seal can be proven, the Director may propose critical habitat in the future, as appropriate. NMFS will actively consider any and all written information, including maps, submitted on the matter of establishing the existence of the Caribbean monk seal in specific areas and delineating critical habitat for the Caribbean monk seal. The concept of critical habitat was discussed in the FEDERAL REGISTER on April 22, 1975 (40 FR 17764-17765).

**PUBLIC COMMENTS SOLICITED**

The Director intends that the rules finally adopted be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any written comments or suggestions from States, interested foreign countries, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rulemaking are solicited. Comments are particularly sought concerning:

1. The existence of any living members of this species;
2. Biological or other relevant data concerning any threat (or the lack thereof) to the Caribbean monk seal; and
3. Additional information concerning the habitat, range, and distribution of the Caribbean monk seal.

Written comments, views, and other documents should be submitted, preferably in duplicate, to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. All comments and other documents received no later than April 18, 1977, will be considered. The Director will consider requests for a public hearing, provided such requests are received by April 4, 1977. The holding of a public hearing is at the discretion of the Director.

The Director has determined that the proposed designation of the Caribbean monk seal as an endangered species is not a major Federal action which would

significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Accordingly, an environmental assessment has not been prepared and an environmental impact statement on the proposed action is not required. Comments and other documents received pertaining to the proposed listing are available for public review in the Marine Mammals and Endangered Species Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C., or may be obtained by writing the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Dated: February 7, 1977.

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

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

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

Accordingly, it is proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations by adding to § 17.11(d) under the class entitled "Mammals" and immediately before "Seal, Hawaiian monk" the following:

§ 17.11 Endangered and threatened wildlife.

Species		Range					
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
Seal, Caribbean monk.	<i>Monachus tropicalis</i> .	NA	Caribbean Sea and Gulf of Mexico.	Entire.....	E	18	NA

**PART 222—ENDANGERED FISH OR WILDLIFE**

§ 222.23 [Amended]

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

[FR Doc.77-4681 Filed 2-15-77; 8:45 am]

**DEPARTMENT OF THE INTERIOR**

Fish and Wildlife Service  
[ 50 CFR Parts 17, 222 ]  
CARIBBEAN MONK SEAL

Proposed "Endangered" Species

CROSS REFERENCE: For a document issued jointly by the Department of the Interior, U.S. Fish and Wildlife Service, and the Department of Commerce, Na-

tional Oceanic and Atmospheric Administration, National Marine Fisheries Service, on the subject of the Caribbean monk seal (*Monachus tropicalis*) as a proposed "Endangered" Species, see FR Doc. 77-4681, appearing in the proposed rules section of this issue under the Department of Commerce, National Oceanic and Atmospheric Administration.

**CIVIL AERONAUTICS BOARD**

[ 14 CFR Part 304 ]

[PDR-45, Docket 29880,  
Dated February 8, 1977]

**REIMBURSEMENT FOR PUBLIC INTEREST REPRESENTATION**

Advance Notice of Proposed Rulemaking  
Correction

In FR Doc. 77-4468 appearing at page 8663, in the issue for Friday, February 11, 1977, the date in the 7th line of the first paragraph of column two now reading "February 1, 1977" should have read "February 21, 1977".