

1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 10, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648-XT37

Endangered and Threatened Species; Reopening of Public Comment Period on Proposed Endangered Status for the Hawaiian Insular False Killer Whale Distinct Population Segment

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

ACTION: Reopening of comment period; notice of availability of new information.

SUMMARY: We, NMFS, announce the availability of new information that may identify a previously unrecognized population of false killer whales in the Northwestern Hawaiian Islands (NWHI). This new information may be relevant to the final determination of whether the Hawaiian insular false killer whale (*Pseudorca crassidens*) is a distinct population segment (DPS) that qualifies for listing under the Endangered Species Act of 1973, as amended (ESA). We intend to take this new information into consideration as we make our final listing determination on the Hawaiian insular false killer whale. We are reopening the public comment period on the November 17, 2010, proposed rule to list the Hawaiian insular false killer whale DPS as endangered throughout its range under the ESA. We are reopening the comment period for an additional 15 days for the limited purpose of allowing interested parties to comment on the new information listed below and whether it affects the determination that the insular false killer whale is a DPS that is eligible for ESA listing. Please note that comments previously submitted should not be resubmitted.

DATES: We will accept public comments on the new information until October 3, 2012.

ADDRESSES: You may submit comments identified by NOAA-NMFS-2009-0272 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the 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 insular false killer whale proposed listing.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. Comments will be posted for public viewing after the comment period has closed. 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. We 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. The petition, status review report, and other reference materials regarding the proposed listing determination can be obtained via the NMFS Pacific Islands Regional Office Web site: http://www.fpir.noaa.gov/PRD/prd_false_killer_whale.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 insular false killer whale proposed listing.

FOR FURTHER INFORMATION CONTACT: Krista Graham, NMFS, Pacific Islands Regional Office, 808-944-2238; Lance Smith, NMFS, Pacific Islands Regional Office, 808-944-2258; or Dwayne Meadows, NMFS, Office of Protected Resources, Silver Spring, MD, 301-427-8403.

SUPPLEMENTARY INFORMATION: On November 17, 2010 (75 FR 70169), we published a proposed rule to list the Hawaiian insular false killer whale DPS (*Pseudorca crassidens*) as endangered throughout its range under the ESA. The document announced a 90-day public comment period on the proposed rule, which closed on February 15, 2011. We also held a public hearing during the proposed rule's public comment period,

as announced in the November 17, 2011, **Federal Register** (75 FR 70169).

NMFS has received new information about a previously unrecognized NWHI population of false killer whales, as well as updated satellite tagging information of the insular population. In August 2012, the false killer whale biological review team was reconvened to consider this new information. All of this information may be relevant to the final determination of whether the Hawaiian insular false killer whale is a DPS that qualifies for listing as endangered under the ESA. These reports and journal articles are:

(1) Preliminary Results from Photo-identification and Satellite-tagging of False Killer Whales off the Island of Kauai, by Robin Baird (2012).

(2) Photo-identification and Satellite Tagging of False Killer Whales Provides Evidence of an Island-associated Population in the Northwestern Hawaiian Islands, by Robin Baird *et al.* (2012).

(3) Range and Primary Habitats of Hawaiian Insular False Killer Whales: Informing Determination of Critical Habitat, by Robin Baird *et al.* (2012).

(4) Line-transect Abundance Estimates of False Killer Whales in the Pelagic Region of the Hawaiian Exclusive Economic Zone and in the Insular Waters of the Northwestern Hawaiian Islands, by Amanda Bradford *et al.* (2012).

(5) Genetic Differentiation of Hawaii Insular False Killer Whales: Analyses Updated with New Samples from the Northwest Hawaiian Islands, by Susan Chivers *et al.* (2011).

(6) Population Structure and Mechanisms of Gene Flow within Island-associated False Killer Whales around the Hawaiian Archipelago, by Karen Martien *et al.* (2011).

We are notifying the public of the availability of these reports and our intent to consider them in making our final listing determination. We also are reopening the comment period for 15 days to provide the public the opportunity to provide comments or information on this new information. We are asking for public comments on this new information and a review of the extent to which they add to the knowledge base for making the final decision. This comment period is open only for comments on the documents listed above as they relate to the DPS and listing determination of the Hawaiian insular false killer whale. Comments submitted during the prior comment period have been incorporated into the public record and will be fully considered during preparation of our final determination. The issuance of a

final decision is currently the subject of litigation in *Natural Resources Defense Council v. Bryson et al.*, Case No. 12-00826 (D.D.C. 2012).

Obtaining Copies of the New Information

You may obtain copies of any of the documents:

- By mail from Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814, Attn: Hawaiian insular false killer whale proposed listing; or

- By visiting the NMFS Pacific Islands Regional Office Web site at http://www.fpir.noaa.gov/PRD/prd_false_killer_whale.html.

Copies of the documents are also available for public inspection, by appointment during normal business hours, at the NMFS Pacific Islands Regional Office (see **ADDRESSES**).

Public Comments Solicited

Comments and information submitted during the initial comment period on the November 17, 2010 (75 FR 70169), proposed rule should not be resubmitted, as this comment period is

open only for comments on the reports listed above. Our final determination of whether the Hawaiian insular false killer whale DPS qualifies as threatened or endangered under the ESA will take into consideration all comments and information we receive during both comment periods.

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

Dated: September 12, 2012.

Helen M. Golde,

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

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