

250.306 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.306.
[FR Doc. 05-22106 Filed 11-8-05; 8:45 am]
BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement to update the Internet address for obtaining a list of processes accepted under the DoD Single Process Initiative (SPI).

EFFECTIVE DATE: November 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 252.211-7005 is amended by revising the clause date and the second sentence of paragraph (b) to read as follows:

252.211-7005 Substitutions for Military or Federal Specifications and Standards.

* * * * *

SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (NOV 2005)

* * * * *

(b) * * * A listing of SPI processes accepted at specific facilities is available via the Internet at <http://>

guidebook.dema.mil/20/guidebook_process.htm (paragraph 4.2).

* * * * *
[FR Doc. 05-22112 Filed 11-8-05; 8:45 am]
BILLING CODE 5001-08-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT78

Endangered and Threatened Wildlife and Plants; Final Determination Concerning Critical Habitat for the San Miguel Island Fox, Santa Rosa Island Fox, Santa Cruz Island Fox, and Santa Catalina Island Fox

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The San Miguel Island fox (*Urocyon littoralis littoralis*), Santa Rosa Island fox (*U. l. santarosae*), Santa Cruz Island fox (*U. l. santacruzae*), and Santa Catalina Island fox (*U. l. catalinae*) were listed as endangered under the Endangered Species Act of 1973, as amended (Act), on March 5, 2004. We, the U.S. Fish and Wildlife Service, do not find any habitat on the four islands occupied by the foxes that meets the definition of critical habitat under the Act. Because there is no habitat that meets the definition of critical habitat for these island fox subspecies, there is none to designate; therefore, we are not designating any critical habitat.

DATES: This rule becomes effective on December 9, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: For the San Miguel Island fox, Santa Rosa Island fox, and Santa Cruz Island fox, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, at the above address, (telephone 805/644-1766; facsimile 805/644-3958). For the Santa Catalina Island fox, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA (telephone 760/431-9440; facsimile 760/431-9624).

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the four island fox subspecies, refer to the March 5, 2004, final listing rule (69 FR 10335) and the October 7, 2004, proposed critical habitat rule (69 FR 60134).

Previous Federal Actions

For information on previous Federal actions concerning the four island fox subspecies, refer to the proposed critical habitat rule (69 FR 60134; October 7, 2004).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for four island fox subspecies in the proposed rule (69 FR 60134; October 7, 2004). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

During the comment period that opened on October 7, 2004 and closed on December 6, 2004, we received three comments directly addressing the proposed critical habitat designation: two from peer reviewers and one from a member of the public. The State of California, where the islands on which these subspecies live are located, did not provide comments. The two peer reviewers who commented generally supported our proposal to not designate critical habitat for the island fox subspecies, although one thought additional research was needed. The other commenter opposed our proposal. Comments received are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from two of the peer reviewers. One of the peer reviewers agreed with our conclusion in the proposed rule that designating critical habitat would not confer additional benefits to the conservation of the four island fox subspecies. This peer reviewer's extensive experience with the three

northern island fox subspecies lead him to believe that there is little habitat preferences among island foxes, although the foxes may use some habitats more than others. The other peer reviewer generally agreed with our proposal but suggested that, with additional study, one habitat type might be established as critical habitat for island fox subspecies (refer to Peer Review Comments below for additional details).

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the four island fox subspecies, and we address them in the following summary.

Peer Reviewer Comments

(1) *Comment:* A peer reviewer familiar with the three northernmost island fox subspecies agreed with the Service's proposal to not designate critical habitat for those three island fox subspecies because: (1) Island foxes use many, if not all, of the habitats available to them on the northern Channel Islands; (2) habitat types on these three islands are in many cases less discrete than elsewhere, and designation of discrete critical habitat would be difficult; and (3) island fox habitat on the northern Channel Islands is already protected by the land management policies of the landowners, the National Park Service (NPS), and The Nature Conservancy (TNC). The experience of this peer reviewer with the three listed subspecies on the northern Channel Islands indicates that there is little habitat preference among island foxes and that habitat types on these islands are not discrete enough to facilitate designation and demarcation of habitat boundaries. The peer reviewer did not speak to the Santa Catalina Island subspecies because he does not have expertise with that island.

The second peer reviewer agreed that the four subspecies of island fox are habitat generalists that utilize a wide variety of habitats, including coastal dune, grassland, and oak and pine woodland. However, his research results indicate at least a few habitats are used somewhat more by island foxes while others are used somewhat less. This reviewer's research indicated that native, perennial grasslands are used by island foxes more than exotic, annual grasslands and that, with additional research, native, perennial grasslands could possibly be viewed as a primary constituent element (PCE) for the foxes. The reviewer is further concerned that exotic, annual grasslands have replaced native, perennial grasslands in several areas on the islands. The reviewer

suggested that the Service could resolve the question of the importance of perennial grasslands by: (1) Evaluating the significance of perennial grassland habitat to island fox foraging ecology and demography (the peer reviewer notes that an experimental approach to this evaluation would be the most beneficial); (2) quantifying the historic and current distribution of both native perennial grasslands and exotic, annual grasslands, and assessing the potential for habitat conversion from native, perennial grasslands to exotic, annual grasslands; and (3) if native, perennial grasslands were shown to be important to foxes, identifying alternative management actions that would provide for the conservation of this native habitat.

Our Response: As noted by both peer reviewers, island foxes are habitat generalists and use all the habitats available on the islands. One reviewer pointed out that, in some situations, island foxes use native, perennial grasslands more than exotic, annual grasslands. However, the fact that island foxes may use native, perennial grasslands more than exotic, annual grasslands does not by itself signify that perennial grasslands contain the features essential to the conservation of the species. Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection. The reviewer noted that, with additional research and experimentation, native, perennial grasslands may be determined to meet the definition of critical habitat. However, we must use the best available science available to us at this time to make our decision. If research results become available in the future and suggest that there are features essential to fox conservation that meet the definition of critical habitat, as appropriate, the Service will revisit this critical habitat determination.

Comments Related to Policy Issues

(2) *Comment:* A commenter challenged statements in the proposed rule that the designation of critical habitat is of little additional value for most listed species and stated that species with critical habitat are twice as likely to recover as species without designated critical habitat.

Our Response: We have not been able to independently verify commenter's claim that species with critical habitat

are twice as likely to recover as species without critical habitat. Of the 14 species delisted or proposed for delisting under the Act, only 3 had designated critical habitat. We believe that, in most cases, cooperative conservation through voluntary measures, our grant programs, and the recovery planning process along with regulatory measures such as section 7 consultations, the section 9 protective prohibitions of unauthorized take, and the section 10 incidental take permit process provide greater incentives and conservation benefits than does the designation of critical habitat.

(3) *Comment:* A commenter challenged statements in the proposed rule that critical habitat designations, and litigation to compel the Service to make them, consumes a significant amount of the agency's resources and is unduly burdensome for that reason.

Our Response: Through two administrations, the FWS has provided information and testimony regarding the relatively few benefits provided by critical habitat. Nevertheless, we have also proceeded with designation of such habitat. In the case of the island fox, we are not designating any critical habitat because there is no habitat that meets the definition. As a result, the relative worth of a designation is not an issue.

Comments Related to the Proposal To Not Designate Any Critical Habitat

(4) *Comment:* A commenter stated that, in the final listing rule for the island foxes (69 FR 10335; March 5, 2004), the Service found that designation of critical habitat is prudent for the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island fox subspecies. However, in the proposed critical habitat rule (69 FR 60134; October 7, 2004), the Service concluded that there is no habitat that meets the definition of critical habitat. The Service has not provided an adequate or rational justification for why it has reversed its position.

Our Response: Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. Although we determined in the March 5, 2004, final listing rule

that designation of critical habitat was prudent for the island foxes, in the proposed critical habitat rule, we found there is no habitat on the four islands occupied by the foxes that meets the definition of critical habitat under the Act. Critical habitat is defined under the Act as “specific areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.” We have found no areas on the four islands occupied by island foxes that contain the physical or biological features essential to the species’ conservation and that may require special management. Accordingly, we have determined to designate no critical habitat for the four island fox subspecies. Also, there are no specific areas outside the geographical area occupied by the species at the time they were listed that are essential for the conservation of the species. As noted by the two peer reviewers who commented on the proposed critical habitat rule, the four subspecies of island foxes are habitat generalists that use all habitats available on the islands. Accordingly, we cannot conclude that any specific areas are essential to the conservation of the foxes, and thus, there are no areas that meet the definition of critical habitat. For further discussion, see the Critical Habitat section of this document. Accordingly, we have not reversed our position. We in the past made a general finding that designation of critical habitat would be prudent, in accordance with the statutory and regulatory standards for making that finding. However, when we examined the issue more closely, preparing to making an actual proposal, we found no habitat that met the statutory and regulatory standards for designation as critical habitat. These are unrelated issues.

(5) *Comment:* A commenter stated that it cannot reasonably be disputed that the foxes need some habitat to survive and recover. If all of the islands can effectively be used by the foxes (assuming all populations recover to the point where they can exist in the wild), then all of the four islands, which constitute the entirety of the foxes’ extremely limited range, should be designated as critical habitat.

Our Response: The Act defines critical habitat in part as “specific areas on which are found those physical or biological features (i) essential to the

conservation of the species.” We agree with the commenter that the island foxes require habitat in order to be recovered and that the foxes are able to use the habitat in existence on each of the four islands. However, critical habitat does not require nor demand the designation of a species’ entire range; in fact, Congress has expressly cautioned us against that. Here, we have determined that the island foxes do not require specific types of habitats, but rather are habitat generalists. As such, we are unable to identify any physical or biological features essential to the four island fox subspecies’ conservation that may require special management, and thus have found no habitat that meets the Act’s definition of critical habitat.

(6) *Comment:* The commenter stated the Service’s contention that there are no current or anticipated threats to the island habitat (69 FR 60135) is disingenuous because in the final listing rule for the four subspecies of island fox, the Service stated that over the last 150 years, habitat on all the islands where the island fox occurs has been affected by livestock grazing, cultivation, and other disturbances.

Our Response: Although many, if not all, the habitats used by island foxes on the three northern Channel Islands (San Miguel, Santa Rosa, and Santa Cruz Island) have been altered, the island foxes thrived in these altered habitats prior to the dramatic declines that led to their endangered status. These declines were not the result of threats to any of the habitats used by the four subspecies, but rather were due to predation and disease. It wasn’t until golden eagles (*Aquila chrysaetos*) became established on the islands that island fox numbers declined dramatically. Even if all the habitats on these islands were restored to a pristine condition, the island foxes cannot recover to their previous abundance until predation by golden eagles is eliminated or reduced dramatically. Similarly, the population of Santa Catalina Island fox did not decline until a severe outbreak of canine distemper occurred. For all four subspecies, habitat does not appear to be a factor limiting the current population growth rate, nor is it likely to limit future population growth.

Summary of Changes From Proposed Rule

In developing the final designation of critical habitat for the four subspecies of island fox, we reviewed public comments received on the proposed designation of critical habitat (69 FR 60134; October 7, 2004) and

incorporated these comments as appropriate in this final rule. We also updated the numbers of island foxes in captivity and in the wild where appropriate. We are not aware of any new, significant, biological or management information for the four subspecies that would make us reconsider the provisions of our proposed rule. While we have made no major changes to the rule, we have made a minor administrative change: Instead of adding text pertaining to the four subspecies of island fox to 50 CFR 17.97 as proposed, we are adding text to 50 CFR 17.95.

Background

Since the proposed critical habitat was published (October 7, 2004; 69 FR 60134), there have been additional releases of island foxes on both Santa Rosa Island and San Miguel Island; several foxes have been killed by golden eagles on Santa Rosa Island. Currently, on Santa Rosa Island there are at least 14 foxes in the wild and 50 foxes in captivity. On San Miguel Island, there are at least 10 foxes in the wild and 48 in captivity. Wild foxes on both islands are successfully reproducing (Tim Coonan, NPS, pers. comm. 2005).

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which

listing under the Act is no longer necessary.

In the March 5, 2004, final listing rule, we determined that designation of critical habitat was prudent for the island foxes. As discussed more fully below, we now find that there are no “specific areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection.” Further, there are no “specific areas outside the geographical area occupied by [the] species at the time it [was] listed that are essential for the conservation of the species.”

In accordance with section 4(b)(2) of the Act, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available. The Act defines critical habitat as “the specific areas within the geographic area occupied by the species * * * on which are found those physical or biological features (i) essential to the conservation of the species * * *.” According to the regulations at 50 CFR 424.12, these features include, but are not limited to: Space for individual and population growth and for normal behavior; nutritional or physiological requirements, such as food, water, air, light, or minerals; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

The island fox, however, is a habitat generalist in all aspects of its life history. It does not require particular habitats for food, cover, breeding, and denning sites. The foxes are opportunistic omnivores, eating a wide variety of plants (e.g., grass, fruits, and berries) and animals (e.g., insects, birds, and mice) in whatever habitat they use (69 FR 10336). As such, the foxes use all habitat available on each of the islands, including riparian, oak woodland, pine woodland, chaparral, coastal sage scrub, maritime scrub, and grasslands. In general, some of these habitats contain cover from aerial predation, however, the nature of the cover is not habitat specific. Island fox reproduction is also not limited to a specific habitat, as they are known to locate their simple den sites in any habitat where they find natural shelter (e.g., brush pile, rock crevice, hollow stump, or log) (Laughrin 1977). The island foxes thrived in these islands prior to the dramatic declines that led to their endangered status. These declines were not the result of

threats to any of the habitats used by the four subspecies. It wasn't until golden eagles became established on the islands that island fox numbers declined dramatically on Santa Cruz, Santa Rosa, and San Miguel Islands. Similarly, the population of Santa Catalina Island fox did not decline until a severe outbreak of canine distemper occurred. We are not aware of any existing or anticipated threats to the island habitats that would likely affect island foxes. Accordingly, there is currently no information to support a conclusion that any specific habitat within these areas is essential. Therefore, we do not believe there are areas within the subspecies' habitat that contain specific features essential to the conservation of the island fox.

Adverse effects to the fox that have occurred on the Channel Islands have been a result of direct threats to individuals rather than to island fox habitat (e.g., disease (canine distemper) and predation from golden eagles). Although the habitat of island foxes on all islands has been subject to substantial human-induced changes over the past 150 years, these changes are unlikely to have directly caused the observed declines. These subspecies' precarious situations derive almost entirely from golden eagle predation and canine distemper rather than from any habitat degradation or loss. Furthermore, habitat does not appear to be a factor limiting the current population growth rate, nor is it likely to limit future population growth. We believe that island fox conservation depends on addressing threats not related to habitat.

As discussed above, declines have been caused largely by predation and disease. A critical habitat designation would provide no benefit/assistance in reducing the effects of predation and disease on individual foxes because the regulatory effects of critical habitat designations apply to adverse modification or destruction of habitat, rather than the particular effects that are causing mortality of individual foxes. Moreover, we note that the current threats, predation and disease, are being addressed by the conservation actions of the NPS, TNC, and Catalina Island Conservancy (CIC) on the islands.

At the time of listing (March 2004), there were no foxes in the wild on San Miguel Island (all San Miguel Island foxes were in captive breeding facilities located on San Miguel Island). However, since the time of listing, foxes have been released back into the wild on San Miguel Island. Additional foxes have also been released on Santa Rosa Island since the time of listing. We consider all of the islands to be occupied by island

foxes at the present time. Although we are not designating any critical habitat for any of the four subspecies, areas occupied by island foxes will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. The take prohibitions of section 9 (e.g., prohibitions against killing, harming, harassing, capturing foxes) also continue to apply.

In accordance with the Act, a critical habitat designation can include areas outside the species' range at the time of listing if we determine that these areas are essential to the conservation of the species. We have not found any areas unoccupied at the time of listing or outside of the current range of the four island subspecies to be essential for their conservation.

In summary, we do not find any habitat on the subject islands that meets the definition of critical habitat in section 3(5)(A) of the Act. Because there is no habitat that meets the definition of critical habitat for the four island fox subspecies, there is none to designate, and we are not designating any critical habitat for any of the four subspecies.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. This rule does not designate any areas as critical habitat, and therefore, we did not prepare an economic analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Because no critical habitat is being designated in this rule, there are no economic effects, and we did not prepare an economic analysis.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule does not designate critical habitat for the four island fox subspecies.

Therefore, no regulatory effects will derive from this action; it is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), the Service makes the following findings: (a) This rule will not produce a Federal mandate, and (b) we do not believe that this rule will significantly or uniquely affect small governments. Because we are not designating any areas of critical habitat, this rule will result in no regulatory impact on any entities.

Takings

This rule does not pose significant takings implications.

Federalism

We are not designating critical habitat in this final rule, and therefore this final rule does not have significant federalism effects. A federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting

requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are not proposing to designate any areas as critical habitat. It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We are not designating any areas as critical habitat. No tribal lands are essential for the conservation of the San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, or Santa Catalina Island fox.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for "Fox, San Miguel Island," "Fox, Santa Catalina Island," "Fox, Santa Cruz Island," and "Fox, Santa Rosa Island" under "MAMMALS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Fox, San Miguel Island.	<i>Urocyon littoralis littoralis</i> .	U.S.A. (CA)	Entire	E	742	17.95(a)	NA
Fox, Santa Catalina Island.	<i>Urocyon littoralis catalinae</i> .	U.S.A. (CA)	Entire	E	742	17.95(a)	NA
Fox, Santa Cruz Island.	<i>Urocyon littoralis santacruzae</i> .	U.S.A. (CA)	Entire	E	742	17.95(a)	NA
Fox, Santa Rosa Island.	<i>Urocyon littoralis santarosae</i> .	U.S.A. (CA)	Entire	E	742	17.95(a)	NA
*	*	*	*	*	*	*	*

■ 3. In § 17.95, amend paragraph (a) by adding entries for San Miguel Island Fox, Santa Catalina Island Fox, Santa Cruz Island Fox, and Santa Rosa Island

Fox, in the same alphabetical order as these species occur in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals*.
* * * * *

San Miguel Island Fox (*Urocyon littoralis littoralis*)
 We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for San Miguel Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

Santa Catalina Island Fox (*Urocyon littoralis catalinae*)
 We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for Santa Catalina Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

Santa Cruz Island Fox (*Urocyon littoralis santacruzae*)
 We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for Santa Cruz Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

Santa Rosa Island Fox (*Urocyon littoralis santarosae*)
 We have determined that no areas meet the definition of critical habitat under section 3(5)(A) of the Act for Santa Rosa Island fox. Therefore, no specific areas are designated as critical habitat for this subspecies.

* * * * *

Dated: November 1, 2005.
Craig Manson,
Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 05-22189 Filed 11-8-05; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 635
[I.D. 102505B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit on previously designated restricted fishing days (RFD) that was published on June 7, 2005, should be adjusted. Certain General category RFDs are being waived to allow for maximum utilization of the coastwide General category BFT quota. Therefore, NMFS waives the RFDs in November and increases the daily

retention limit from zero to two large medium or giant BFT on the previously designated RFDs during the month of November 2005.

DATES: Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the season and provide for a winter fishery in the southern Atlantic region.

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Area	BFT Size Class Limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially)	November 18-20, 2005, and November 24-27, 2005	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit was supposed to be effective through January 31, 2005, inclusive, provided quota remained available and the fishery remained open.

Based on a review of dealer reports, daily landing trends, available quota,

weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving RFDs and increasing the General category daily BFT retention limit on those RFDs previously established for the month of November, is warranted. Therefore, NMFS adjusts the General category daily BFT retention limits for November 18, 19, 20, 24, 25, 26, and 27, 2005, to two large medium or giant BFT per vessel. NMFS has selected these days in order to give adequate advance notice to fishery participants. While catch rates have continued to be low so far this season, NMFS recognizes that they may increase. In order to ensure equitable fishing opportunities in all areas and provide opportunities for a late winter General category BFT fishery, NMFS has not waived the RFDs scheduled in December and January at this time. If catch rates continue to be low, some or

all of the remaining previously scheduled RFDs may be waived as well.

The intent of this adjustment is to allow for maximum utilization of the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Monitoring and Reporting

NMFS selected the RFDs being waived after examining current fishing year catch and effort rates, previous fishing years catch and effort rates, and analyzing the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports. Depending on the level of fishing effort