

PART 509—CONTRACTOR QUALIFICATIONS

2. Section 509.406-3 is amended by redesignating paragraphs (b)(6) through (9) as (b)(7) through (10) and republishing them as set forth below and adding a new paragraph (b)(6) to read as follows:

§ 509.406-3 Procedures.

(b) * * *

(6) Upon request, the affected party will be furnished a copy of the administrative record which formed the basis for the decision to propose debarment. If there is a reason to withhold from the party any portion of the record, the party will be notified that a portion of the record is being withheld and will be informed of the reasons for the withholding.

(7) In actions not based on a conviction or judgment, the party may request a fact-finding hearing to resolve a genuine dispute of material fact. The party shall identify the material facts in dispute and the basis for disputing the facts. If the debarring official determines that there is a genuine dispute of material fact, the debarring official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the debarring official's request. Extensions may be granted for good cause upon the request of the party or the agency.

(8) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute material facts relating to the proposed debarment through the submission of oral and written evidence;

(ii) Resolve facts in dispute and provide the debarring official with written findings of fact based on a preponderance of evidence; and

(iii) Provide the debarring official with a determination as to whether a cause for debarment exists, based on facts as found.

(9) Hearings will be conducted by the fact-finding official in accordance with rules consistent with FAR 9.406-3(b)(2) promulgated by that official.

(10) The fact-finding official will notify the affected parties of the schedule for the hearing. The fact-finding official shall deliver written findings of fact to the debarring official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes.

3. Section 509.407-3 is amended by redesignating paragraph (b) (5) and (6) as (b) (6) and (7) and revising them as

set forth below and adding a new paragraph (b)(5) to read as follows:

§ 509.407-3 Procedures.

(b) * * *

(5) Upon request, a copy of the administrative record will be furnished to the affected party under the guidelines set forth at 509.406-3(b)(6).

(6) Fact-finding hearings will not be conducted in actions based on indictments, or in cases in which the suspending official determines pursuant to FAR 9.407-3(b)(2) not to refer a matter to the fact-finding official. A party may request a fact-finding hearing to resolve genuine disputes of material fact in other cases. The party shall identify the material facts in dispute and the basis for disputing the facts. If the suspending official determines that there is a genuine dispute of material fact, the suspending official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the suspending official's request. Extensions may be requested by the party or the agency.

(7) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute facts relating to the suspension action through the submission of oral and written evidence;

(ii) Determine whether, in light of the evidence presented, there is adequate evidence to suspect that the material allegations in the notice are true; and

(iii) Provide the suspending official with a determination as to whether the evidence is adequate to support a cause of suspension. Hearings will be conducted as outlined in 509.406-3(b)(9).

Dated: March 19, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93-10689 Filed 5-5-93; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 222**

[Docket No. 921077-3081]

Endangered and Threatened Species; Saimaa Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is listing the Saimaa seal (*Phoca hispida saimensis*) as endangered under the endangered Species Act of 1973 (ESA). NMFS used the best available scientific and commercial information to make this determination. The Saimaa seal is a subspecies of the ringed seal (*Phoca hispida*) that has adapted to a freshwater environment. Scientists estimate the population at about 160-180. The seals are limited in range to Lake Saimaa in eastern Finland.

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, 301-713-2322.

SUPPLEMENTARY INFORMATION:**Background**

The ESA is administered jointly by the U.S. fish and Wildlife Service (USFWS), the Department of the Interior, and NMFS. NMFS has jurisdiction over pinniped species (except walrus) and makes determinations under section 4(a) of the ESA as to whether such species should be listed as endangered or threatened. The USFWS maintains and publishes the List of Endangered and Threatened Wildlife in 50 CFR part 17 for all species determined by NMFS or USFWS to be endangered or threatened. A list of threatened and endangered species under the jurisdiction of NMFS is also contained in 50 CFR 227.4 and 223.23(a), respectively.

The ESA defines "species" to include any subspecies of fish, wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

Section 4(a)(1) of the ESA and NMFS listing regulations set forth procedures for listing species. Based on the best available scientific and commercial information, the Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) Inadequacy of existing regulatory mechanisms;

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

NMFS conducted a status review of the Saimaa seal and concluded that the

species is endangered based on listing factors (1), (4), and (5). NMFS then published a proposed rule (57 FR 60162, December 18, 1992) with a 60-day comment period. The proposed rule contained a background discussion of specific information leading to this rule. Background information previously presented will not be repeated here.

Comments and Responses

Four written comments were received in response to the proposed rule from: The American Society of Mammalogists; the American Association of Zoological Parks and Aquariums; the Marine Mammal Center in Sausalito, California; and a scientist who has conducted research on the species. All supported the proposed listing.

Two of the commenters noted that the Seal Specialists Group of the International Union for the Conservation of Nature and Natural Resources has determined that the Saimaa seal should be listed as endangered. The commenters stated that an endangered listing would be appropriate because it would be consistent with the international classification.

One commenter pointed out that the Ministry of the Environment in Finland has developed a plan to protect two other areas as natural parks in Lake Saimaa during the next 10 years. When these parks are in place, the core parts of the four breeding areas will be protected. The commenter pointed out, however, that only terrestrial areas are included in the parks, but that the Government of Finland is considering a law making it possible to incorporate aquatic areas into the parks. In order to do this, it will be necessary to purchase the aquatic areas from private holders.

This comment reinforces two of the points contained in the proposed rule. First, habitat alterations have contributed to the decline of the population, and not all of the breeding areas are currently protected. In addition, although the Government of Finland has taken protective measures, additional regulatory action would help preserve the species. The contemplated actions would be likely to reduce mortality in juvenile seals and could make a significant contribution to the recovery of the species.

Determination

Based on the best available scientific and commercial data, NMFS has determined that the Saimaa seal should be classified as endangered. NMFS has determined that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

Recommended Critical Habitat

Regulations regarding listing of species and designation of critical habitat (50 CFR 424.12(h)), specify that critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction. Because the range of the Saimaa seal is solely outside of U.S. jurisdiction, no critical habitat will be designated.

Classification

The 1982 amendments of the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291 and the Regulatory Flexibility Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 12612.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 222

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

Dated: April 28, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for Part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a) is amended by adding the phrase "Saimaa seal (*Phoca hispida saimensis*);" immediately after the phrase

"Mediterranean monk seal (*Monachus monachus*);" in the second sentence.

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50 CFR Part 285

[Docket No. 920407–2519]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Closure of the southern longline component of the Incidental Catch category.

SUMMARY: NMFS issues this notice to close the fishery for Atlantic bluefin tuna conducted by longline vessels permitted in the Incidental Catch category and operating in the Regulatory Area south of 36°00' N latitude. Closure of this fishery is necessary because the total annual quota of 54 mt of Atlantic bluefin tuna allocated for this subcategory has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATES: The closure is effective 0001 hours local time May 4, 1993 through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Aaron E. King, 301–713–2347 or Kevin B. Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(e)(2) of the regulations provides for an 1993 annual quota of 85 mt of Atlantic bluefin tuna to be harvested from the Regulatory Area by longline vessels permitted in the Incidental Catch category. Of the 85 mt quota for longline vessels, no more than 67 mt can be harvested in the area south of 36°00' N latitude.

If a quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.22(h) to subtract the overharvest from, or add the underharvest to, that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt.

The longline component of the Incidental Catch category fishery for Atlantic bluefin tuna operating south of