

also describe the carriage requirements pursuant to section 338(a)(4) of title 47, United States Code, and paragraph (b)(2) of this section.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 383

[Docket No. FMCSA-2005-20043]

RIN 2126-AA01

#### Minimum Uniform Standards for a Biometric Identification System To Ensure Identification of Operators of Commercial Motor Vehicles; Withdrawal

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); withdrawal.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) (formerly the Federal Highway Administration's (FHWA) Office of Motor Carriers) withdraws two advance notices of proposed rulemaking (ANPRM) on using biometric identifiers to provide positive identification of drivers in the Commercial Driver's License Information System (CDLIS) and to prevent drivers from obtaining more than one commercial driver's license (CDL). The ANPRM requesting comments was published on May 15, 1989 at 54 FR 20875; an ANPRM providing additional information was published on March 8, 1991 at 56 FR 9925. The Transportation Security Administration (TSA) currently is developing a Transportation Worker Identification Credential (TWIC) that will incorporate biometric identifiers. FMCSA does not want to cause a conflict in standards adopted by each agency or place an undue burden on States by imposing two different standards and/or technologies for CDLs and the TWIC. In the future, FMCSA may assess the impact of the TWIC upon the Federal Motor Carrier Safety Regulations.

**DATES:** The ANPRM with request for comments published on May 15, 1989, and the ANPRM with additional information published on March 8, 1991, are withdrawn as of May 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol Gore, Leader, Commercial Driver's

License Team, (202) 366-4013, Federal Motor Carrier Safety Administration, (MC-ESS), 400 Seventh Street SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 9105(a) of the Truck and Bus Safety and Regulatory Reform Act of 1988 [Pub. L. 100-690, November 18, 1988, 102 Stat. 4530] required the agency to issue minimum biometric identification standards for operators of commercial motor vehicles (CMVs) by December 31, 1990. The purpose of this system would be to provide positive identification of drivers in the Commercial Driver's License Information System (CDLIS) and to prevent drivers from obtaining more than one driver's license.

In 1988, FHWA<sup>1</sup> and a committee including four State licensing agencies and the American Association of Motor Vehicle Administrators (AAMVA) assessed the feasibility of using certain biometric identifier technologies to fulfill the statutory requirements of sec. 9105(a) of the Truck and Bus Safety and Regulatory Reform Act of 1988. The committee found both retinal scanning and automated fingerprint identification systems (AFIS) feasible<sup>2</sup> for use in the planned pilot study and identified an initial set of functional requirements<sup>3</sup> for a biometric identification system for CMV operators.

On May 15, 1989,<sup>4</sup> the agency requested comments on the establishment of biometric identifiers for operators of CMVs and announced the pilot study on the use of fingerprints and retinal scan technology to positively and uniquely identify operators of CMVs. The pilot study was conducted in 1990.

On March 8, 1991,<sup>5</sup> the agency published an ANPRM with the results of

the pilot study and with a summary and response to comments to the 1989 ANPRM. (The 1991 ANPRM provided supplemental information on the biometric identifier issue but did not request additional comments.) FHWA concluded that neither retinal scanning nor AFIS was sufficiently accurate or cost effective to be practical at that time. Therefore, the agency did not issue a notice of proposed rulemaking. Instead, further rulemaking action on the matter was deferred until the technology developed to meet FHWA functional requirements. The agency continued to require States to make available in CDLIS a driver's personal identification information.

In 1998, section 4011(c) of the Transportation Equity Act for the 21st Century [49 U.S.C. 31308(2)] (TEA-21) required the agency to issue a rule mandating that all commercial driver's licenses (CDLs) issued by States after January 1, 2001, include a unique identifier that may be biometric. Although the 1998 legislation did not explicitly repeal the 1988 mandatory biometric identifier language, the agency concluded the contradictory language of the 1998 statute, when viewed against the lack of a statement of congressional intent in the legislative conference reports for TEA-21, supersedes and repeals by implication the 1988 mandate. Therefore, FMCSA found that TEA-21 changed the standard from mandating use of a biometric identifier to mandating use of a unique identifier, which may or may not be biometric.

In 1999, FMCSA again conducted a study to determine if a national biometric program was feasible and whether fingerprinting or facial imaging should be used. The results showed that a national biometric implementation program is feasible and that thumbprints are better than facial images as a biometric standard.

#### Withdrawal of Proposal

FMCSA believes the agency has satisfied the unique identifier standard in TEA-21 through its adoption of a specialized search procedure as part of the CDLIS. This procedure contains the following seven personal identifiers: Name, date of birth, sex, height, weight, eye color, and Social Security number, in an algorithm designed to produce a highly probable personal identification.

The Transportation Security Administration (TSA) currently is developing a Transportation Worker Identification Credential (TWIC) that

<sup>1</sup> The Federal Highway Administration (FHWA), Office of Motor Carriers became the Federal Motor Carrier Safety Administration (FMCSA) on January 1, 2000 (64 FR 72959, December 29, 1999).

<sup>2</sup> "Personal Identifier Project Feasibility Study Report," State of California Department of Motor Vehicles, Project No. 2300-75, Log No. 215-88; Revised December 7, 1988.

<sup>3</sup> "Functional Description for a Unique Identification System for the Commercial Driver's License Information System (CDLIS)," Office of Motor Carriers; Report No. FHWA-MC-88-048; February 1988.

<sup>4</sup> "Minimum Uniform Standards for a Biometric Identification System to Ensure Identification of Operators of Commercial Motor Vehicles;" published at 54 FR 20875, May 15, 1989; ANPRM.

<sup>5</sup> "Minimum Uniform Standards for Biometric Identification System to Ensure Identification of Operators of Commercial Motor Vehicles;"

published at 56 FR 9925 on March 8, 1991; ANPRM; additional information.

will incorporate biometric identifiers. Because FMCSA is no longer required to promulgate a regulation on biometric identifiers, the agency believes TSA is the agency in a better position to lead further development of biometric identifiers, thereby avoiding a potential conflict in standards adopted by each agency. The adoption of different standards and/or technologies for CDLs and a TWIC could place an unnecessary burden on States. Therefore, FMCSA is withdrawing its ANPRMs dated May 15, 1989, and March 8, 1991, on biometric identifiers.

FMCSA has shared its research on biometric identifiers with TSA. FMCSA will continue to work in a collaborative effort with TSA on the development of TSA's biometric identifier standard and the development of a TWIC. In the future, FMCSA may assess the impact of the TWIC upon the Federal Motor Carrier Safety Regulations.

Issued on: April 27, 2005.

Annette M. Sandberg,  
Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 050304058-5113-02; I.D. 060204C]

RIN 0648-XB29

#### Endangered and Threatened Species; Proposed Threatened Status for Elkhorn Coral and Staghorn Coral

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** We, the NMFS, have completed a comprehensive status review of elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals and determined that a petitioned action to list both species is warranted. We have determined that fused-staghorn coral (*A. prolifera*) is a hybrid and therefore does not warrant listing. We have made our determination based on the best scientific and commercial data available and efforts being made to protect the species, and we propose to place both elkhorn and staghorn corals on the list of threatened species under the Endangered Species Act of 1973, as

amended (ESA). We are announcing that hearings will be held at four locations in June to provide additional opportunities and formats to receive public input.

**DATES:** Comments on this proposal must be received by August 8, 2005. See **SUPPLEMENTARY INFORMATION** for the specific public hearing dates.

**ADDRESSES:** You may submit comments, identified by the RIN 0648-XB29, by any of the following methods:

- E-mail: [Acropora.Info@noaa.gov](mailto:Acropora.Info@noaa.gov).

Include Docket Number or RIN 0648-XB29 in the subject line of the message.

- Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, Protected Resources Division, 263 13th Ave. South, St. Petersburg, FL 33701.

- Facsimile (fax) to: 727-824-5309.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

- See **SUPPLEMENTARY INFORMATION** for public hearing locations.

The proposed rule and status review are also available electronically at the NMFS website at <http://sero.nmfs.noaa.gov/pr/protres.htm>

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Moore or Stephanía Bolden, NMFS, at the address above or at 727-824-5312, or Marta Nammack, NMFS, at 301-713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 4, 2004, the Center for Biological Diversity (CBD) petitioned us to list elkhorn, staghorn, and fused-staghorn corals as either threatened or endangered under the ESA and to designate critical habitat. On June 23, 2004, we made a positive 90-day finding (69 FR 34995) that CBD presented substantial information indicating that the petitioned actions may be warranted and announced the initiation of a formal status review as required by section 4(b)(3)(A) of the ESA. Concurrently, we solicited additional information from the public on these acroporid corals regarding historic and current distribution and abundance, population status and trends, areas that may qualify as critical habitat, any current or planned activities that may adversely affect them, and known conservation efforts. Additional information was requested during two public meetings held in

December 2004 on: (1) distribution and abundance; (2) areas that may qualify as critical habitat; and (3) approaches/criteria that could be used to assess listing potential of the acroporids (e.g., viability assessment, extinction risk, etc.).

In order to conduct a comprehensive status review, we convened an Atlantic Acropora Biological Review Team (BRT). The members of the BRT were a diverse group of experts in their fields, including coral biologists and ecologists; specialists in coral disease, coral monitoring and restoration, climate change, water quality, coral taxonomy; regional experts in coral abundance/distribution throughout the Caribbean Sea; and state and Federal resource managers. The comprehensive, peer-reviewed status review report developed by the BRT incorporates and summarizes the best available scientific and commercial information as of March 2005. It addresses the status of the species, the five factors identified in ESA section 4(a)(1), and current regulatory, conservation and research efforts that may yield protection to the corals. The BRT also reviewed and considered the petition and materials we received as a result of the **Federal Register** document (69 FR 34995) and the public meetings; substantive materials were incorporated into the status review report.

#### Distribution and Abundance

*Acropora* spp. are widely distributed throughout the wider Caribbean (U.S. Florida, Puerto Rico, U.S. Virgin Islands (U.S.V.I.), Navassa; and Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Honduras, Jamaica, Martinique, Mexico, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Venezuela). Both elkhorn and staghorn corals used to be the most abundant and most important species on Caribbean coral reefs in terms of accretion of reef structure. In general, elkhorn and staghorn corals have the same distribution, with few exceptions. Staghorn coral's northern extent (Broward County, Florida) is farther north than that of elkhorn coral (Miami-Dade County, Florida). Relative to other corals, both have high growth rates that have allowed reef growth to keep pace with past changes in sea level. Additionally, both exhibit branching morphologies that provide important habitat for other reef organisms; no other Caribbean reef-building coral