

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107, 171, 172, 173, 177, 178 and 180

[Docket No. RSPA-98-3684(HM-220)]

RIN 2137-AA92

Hazardous Materials: Requirements for DOT Specification Cylinders; Second Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: RSPA is extending the closing date for filing comments to a notice of proposed rulemaking (NPRM) published under Docket HM-220 from May 28 to September 30, 1999. RSPA is taking this action in response to petitions filed by the National Propane Gas Association (NPGA), the Air-Conditioning and Refrigeration Institute (ARI), the Compressed Gas Association, Inc. (CGA) and Airgas, Inc. The petitioners requested that RSPA provide additional time to allow shippers, the gas and cylinder industries, and other interested parties sufficient time to review and address the proposed changes.

DATES: Comments must be received on or before September 30, 1999.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh St., SW, Washington, DC 20590-0001. Comments should identify the docket number, RSPA 98-3684(HM-220), and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number "3684".

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed at the address above between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. In addition, the NPRM and all comments can be reviewed on the internet by accessing the Hazmat Safety Homepage at "<http://hazmat.dot.gov>".

FOR FURTHER INFORMATION CONTACT:

Cheryl Freeman, telephone number (202) 366-4545, Office of Hazardous Materials Technology, or Hattie Mitchell, telephone number (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On October 30, 1998, RSPA published an NPRM in the **Federal Register** under Docket HM-220 (63 FR 58460). RSPA proposes in the NPRM to amend certain requirements in the Hazardous Materials Regulations to establish four new DOT cylinder specifications and to revise the requirements for maintenance, requalification, repair and use of DOT specification cylinders. In addition, RSPA held three public meetings to discuss the proposals on December 8, 1998 (63 FR 58460; October 30, 1998), January 28, 1999 (63 FR 72224; December 31, 1998) and April 13-15, 1999 (64 FR 9114; February 24, 1999). Also the December 31 notice provided for a 120-day extension of the comment period from January 28 to May 28.

The NPGA, the ARI, and the CGA petitioned RSPA for another extension of at least 120 days from the May 28 deadline. Airgas Inc. petitioned for a 90-day extension. The petitioners stated that this second extension would allow affected persons more time to provide substantive comments to the proposed changes. Many commenters attending the April public meeting also stated that they would need more time to submit their comments. RSPA agrees that additional time should be provided and is hereby extending the closing date from May 28 to September 30, 1999.

Issued in Washington, DC, on May 24, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99-13643 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 990520140-9140-01; I.D. 041699A]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Eleven New Species Including One New Genus of Bryozoans From Capron Shoal, Florida, as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notification of 90-day petition finding.

SUMMARY: NMFS received on February 11, 1999, a petition to list eleven new species (including one new genus, *Cymulopora*) of bryozoans as threatened or endangered under the ESA. The following are the new species: *Alcyonidium capronae*, *Membranipora triangularis*, *Disporella plumosa*, *Cymulopora uniserialis*, *Cribilaria parva*, *Reginella repangulata*, *Hippothoa balanophila*, *Phylactella ais*, *Trematoecia psammophila*, *Cleidochasma angustum*, and *Drepanophora torquata*, hereafter referred to as "Capron shoal bryozoans." NMFS finds that the petition does not present substantial scientific or commercial information to warrant the petitioned action, per 50 CFR 424.14.

DATES: This petition finding was made on May 18, 1999.

ADDRESSES: Copies of the petition may be obtained from NMFS, Protected Resources Division, 9721 Executive Center Drive N., St. Petersburg, FL 33702; or from NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910. The petition finding and supporting data are available for public inspection by appointment during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Eric Hawk, NMFS, Protected Resources Division, (727)570-5312, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the

Secretary of Commerce (Secretary) to list species under the ESA. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Section 424.14(b)(1) of NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (see 50 CFR 424.14). Section 424.14(b)(2) of these regulations contains factors the Secretary considers in evaluating a petitioned action.

On February 11, 1999, the Secretary received a petition dated that day from Eric R. Glitzenstein and Cara Romanzo, counsels for the St. Lucie County Conservation Alliance, St. Lucie Waterfront Council Inc., St. Lucie County Audubon Society Inc., Dr. Judith E. Winston, and K. Brian Killday, hereafter referred to collectively as "the petitioners," to list the Capron Shoal bryozoans as threatened or endangered. The U.S. Army Corps of Engineers (Corps) intends to dredge the sandy shoal where these bryozoans reside, as a plentiful source of sand for eroded beach restoration. The petitioners cite "significant risk to the well-being" and threat of extinction of these new species (discovered between 1983 and 1985) "not known to exist anywhere other than *** Capron Shoal" from "an ill-conceived, imminent project to dredge and thereby destroy their only known habitat." The petitioners also cite the "potential anti-carcinogenic and other medicinal properties" of the species and genus at issue as additional reasons why the bryozoans should be immediately listed under the ESA. However, the petitioners do not present substantial information with regard to these claims.

The petitioners sought a Temporary Restraining Order (TRO) against the Corps dredging project, alleging that the Corps did not conduct a thorough National Environmental Policy Act (NEPA) analysis, and alleging that immediate and irreparable harm would result if dredging went forward. The Court ruled in favor of the petitioners and issued a TRO on March 5, 1999. Subsequently, the Corps and the petitioners reached a Settlement Agreement, which committed the Corps to fund bryozoan studies of Capron Shoal and nearby shoals (\$200,000), dredge only in the southern portion of the currently authorized borrow area during the first phase of the beach renourishment project, conduct a survey

of the effect of beach nourishment on the near-shore hardbottom, and do additional NEPA analysis before beginning the next phases.

NMFS has reviewed the petition and information available in NMFS files and consulted with one of the petitioners and bryozoan researcher, Dr. Judith E. Winston, as well as with its own experts. There is a fundamental uncertainty about the taxonomy of many marine groups (Knowlton, 1993; Wallace and Willis, 1994; Miller, personal communication, 1999). "The petitioners' scientific paper describing these new species (Winston and Hakansson, 1986) discusses the great morphological plasticity of many of the bryozoan species they found at Capron Shoal. Indeed, these authors describe several of the interstitial bryozoans that they found at Capron Shoal as the same species that grow as encrusting colonies in other habitats. In the absence of any population genetic data, which appears to be absent in this case, the discernment of species within this context of morphological plasticity is extremely problematic." (Miller, personal communication, 1999) Thus, although the data presented by the petitioners appear to support the conclusion that the species are new and to date have been found only on Capron Shoal, without corroborating genetics information, even that conclusion is perhaps premature. Furthermore, the data presented by the petitioners do not support the conclusion that the species are not likely to be found anywhere other than in Capron Shoal or even in deeper portions of Capron Shoal. The petitioners state that "the only assertion which rises to the level of a scientific certainty is that these bryozoans are not currently known to exist anywhere other than the shallower portions of Capron Shoal where [Drs. Winston and Hakansson's] research was actually conducted." In her February 10, 1999 affidavit, Dr. Winston states that "there is no scientific basis for concluding that the newly discovered bryozoans exist throughout the entire shoal" or at other nearby shoals. However, she acknowledges that her sampling of subtidal habitats off Fort Pierce was "preliminary."

Dr. Winston's statement in her affidavit that whether or not bryozoans exist elsewhere on Capron Shoal and at other nearby shoals "is an important question that must be answered" indicates that these bryozoans may exist elsewhere or that they may exist throughout Capron Shoal. Further, when contacted by NMFS on February 12, 1999, Dr. Winston stated that she happened to discover these species

while sampling the biodiverse Capron Shoal (Nammack, personal communication, 1999); no bryozoan-specific surveys have ever been conducted in the area. At the time, Dr. Winston also denied stating that these bryozoans did not occur anywhere else (Nammack, personal communication, 1999).

NMFS does not dispute the petitioners' assertion that, currently, the "shallow areas of Capron Shoal are the *only* known habitat for the bryozoans at issue." However, NMFS is convinced that this is due to sampling limitations and incompleteness of the sampling regime. NMFS feels that the limited and preliminary nature of the surveys which led Drs. Winston and Hakansson to the discovery of these new species of bryozoans does not preclude their existence on other portions of Capron Shoal or at nearby shoals with similar sand characteristics. NMFS feels that, due to the limited and preliminary nature of the sampling, this should not be used as a basis to assert that these bryozoans may not exist elsewhere and are threatened with extinction.

Bryozoans are found in many aquatic and marine environments. It is likely that many species of bryozoans have never been described because they are not very well studied as a group. NMFS believes that the petitioners' argument that the Capron Shoal bryozoans are "unique" is weak and undocumented. NMFS believes that discovery of a new species (especially of a poorly studied group of organisms) does not automatically mean the species is rare, threatened, or endangered.

The petitioners raise concerns that the bryozoans, even if they exist throughout the entirety of Capron Shoal, might not survive a dredging project which involves the removal of sand from even a portion of Capron Shoal. The petitioners cite concerns over direct destruction of habitat and "secondary impacts from dredging, in the form of increased turbidity and the constant resuspension of fine sediments over the medium coarse sand the bryozoans select for." The petitioners are concerned that dredging would interrupt and possibly stifle bryozoan reproduction. The petitioners assert that, because bryozoan larvae are non-feeding organisms, they must settle on an appropriate grain of sand quickly and metamorphose to form a new colony before they die. According to the published literature, bryozoan larvae must disperse and settle within hours. "They spend a very short period of time (less than 24 hours) in the plankton." (Winston and Hakansson, 1986) Thus, the larvae do not generally disperse far

from the parent organism. Dr. Winston asserts that "Bryozoan larvae, therefore, do not cover great distances before settling and it is erroneous to suggest that their reproductive mechanisms make it extremely likely that they occur elsewhere in the region." (Winston, 1999)

In asserting the limited distribution of the bryozoans, the petitioners did not adequately consider the natural dispersal action of winter wave patterns that cause breaking waves and strong currents over and on Capron Shoal nor the strong tidal and wind-generated currents typical of the area. Significant wave action and 3 to 6-knot currents are not uncommon, according to professional mariners familiar with the area (Hawk, personal communication, 1999). During spring tides (full moon events) at Fort Pierce Inlet, predicted maximum flood and ebb tide currents may reach 4 to 5 knots (NOAA, 1993). The nearshore effects of the northward flowing Gulf Stream cannot be discounted. The proximity of other nearby shoals also can reasonably be expected to provide suitable substrate for settling planktonic bryozoan larvae from Capron Shoal and serve as a source of planktonic larvae for Capron Shoal. Pierce Shoal, St. Lucie Shoal, Indian River Shoal and various unnamed shoals are all within 10 nautical miles of Capron Shoal, and several are much closer. NMFS believes that the petitioners' argument that the larvae may exist nowhere else but in Capron Shoal is inaccurate, particularly since adequate larval dispersal mechanisms and nearby shoals with similar sand characteristics to Capron Shoal are present (Corps, 1998). These shoals would, in all likelihood, provide fertile substrate for settling larvae.

NMFS acknowledges that dredging Capron Shoal will temporarily remove a portion of the bryozoan population and some features that make this area suitable habitat for bryozoans. However, NMFS biologists are confident that new surfaces exposed by dredging, when reshaped by natural events such as prevailing currents and wave action, will support the recolonization of the site by bryozoan larvae. The source for these bryozoan larvae will be undredged portions of Capron Shoal, nearby shoals, and the Indian River Lagoon system.

Further, NMFS does not believe the bryozoan population of Capron Shoal is a precariously small population. The average abundance of living encrusting (nonlunulitiform) bryozoan species found in Capron Shoal samples taken by Winston and Hakansson was 0.75 per cm². Thus, one square meter of sediment 1 cm in depth would contain

7,500 living colonies. Winston and Hakansson calculated that for the inner continental shelf of Florida alone this would yield a population of about 1.2×10^{12} colonies, and "this estimate is conservative, as living colonies are known to occur much deeper than 1 cm into the sediment." (Winston and Hakansson, 1986) The researchers state that "In fact, the interstitial refuge may be an important factor in maintaining distributions of encrusting species, acting almost like the seed bank for populations of plants, by buffering the effects of physical and biological perturbations and lowering the chances of local extinction." (Winston and Hakansson, 1986)

This documented abundance and intrinsic though unquantifiable degree of protection from local extinction offered by the interstitial habitat characteristic of these species, coupled with their current-mediated reproductive dispersal mechanism, supports the strong likelihood that the subject bryozoans exist as yet undiscovered on other parts of Capron Shoal as well as on other nearby shoals and that their existence is not as precarious as the petitioners present. Further, NMFS believes that these species are much more abundant than the petitioners suspect, and it is very unlikely that the dredging of significant portions or even all of Capron Shoal by the Corps would jeopardize the existence of these species which are likely to occur on other nearby shoals.

In summary, the strong currents, seasonal high energy environment that prevails in and near Fort Pierce Inlet and Capron Shoal, current-mediated reproductive dispersal mechanism characteristic of these species, and proximity of other nearby shoals which provide similar depth and sand characteristics to those found on Capron Shoal all combine to make it highly probable that healthy populations of the bryozoans listed by the petitioners exist elsewhere.

The Conservation Alliance of St. Lucie County, Inc. (CASLCI) (one of the petitioners) affirms that "*Bugula neritina* ... a common inhabitant of the Indian River lagoon just a few miles from Capron Shoal ... has been found to contain a potent anti-cancer agent, Bryostatin 1." (CASLCI, 1998) Another of the petitioners, organic chemist/marine natural products chemistry researcher K. Brian Killday, asserts that "Bryostatin 1 is currently in Phase II human clinical trials for the treatment of lymphoma and leukemia." (Killday, 1998) Dr. Winston asserts that the Capron Shoal bryozoans for which ESA listing and protection are sought

"belong to the same order taxonomically as the bryozoan species which is the source of a potent anti-cancer agent, Bryostatin 1." She also asserts that "Bryostatin 1 derives from the bryozoan *Bugula* species of bryozoan which is also present in ... Capron Shoal." (Winston, 1999)

NMFS does not accept the implication or characterization of *Bugula neritina* as closely related to the species in question. NMFS feels that the implication of close biological relatedness between *Bugula neritina* and the Capron Shoal bryozoans (i.e., between bryozoans of the same Order but different Genus)—with implied potential commonality of highly beneficial (but as yet unproven) pharmaceutical properties—is questionable. Regardless, the petitioners' appeal to the potential pharmaceutical applications of one or all of these bryozoans is irrelevant because it does not provide any information indicating that the species may be threatened or endangered.

Therefore, NMFS finds that the petition does not present substantial scientific information indicating that listing the Capron Shoal bryozoans as threatened or endangered under the ESA may be warranted.

References Cited:

- CASLCI. 1998. Letter from Grace Stock, President of Conservation Alliance of St. Lucie County, Inc. to U.S. Army Corps of Engineers, Jacksonville District, May 29.
- Corps. 1998. U.S. Army Corps of Engineers. General re-evaluation report with environmental assessment. Appendix B: Geotechnical Investigations. Fort Pierce Shore Protection Project, St. Lucie County, FL. September.
- Corps. 1993. U.S. Army Corps of Engineers. (Revised April 1994, May 1995). Re-evaluation report: section 934 study with environmental assessment. Fort Pierce Shore Protection Project, St. Lucie County, FL. August.
- Killday, K.B. 1998. Letter to Florida Inland Navigation District Commissioners. June 20.
- Knowlton, N. 1993. Sibling species in the sea. *Ann. Rev. Ecol. Syst.* 24:189-216.
- Miller, M. 1999. Personal communication. NMFS Biologist Dr. Margaret Miller email to Eric Hawk. March 31.
- Nammack, M. 1999. Personal communication. NMFS Biologist Marta Nammack telephone conversation with Dr. Judith Winston. February 12.
- NOAA. 1993. National Oceanic and Atmospheric Administration. Tidal

Current Tables: Atlantic Coast of North America. Government Printing Office.

Hawk, E.G. 1999. Personal communication. NMFS Biologist Eric Hawk with Captain Robert McCabe. February 17.

Wallace, C.C. and B. L. Willis. 1994. "Systematics of the coral genus *Acropora*: implications of new biological findings for the species concepts", *Ann. Rev. Ecol. Syst.* 25:237–62.

Winston, J.E. 1999. Affidavit. February 10.

Winston, J.E. and E. Hakansson. 1986. "The interstitial bryozoan fauna from Capron Shoal", *FL. Am. Mus. Novitates* 2865:1-50.

Author:

The primary author of this document is Mr. Eric Hawk, NMFS, St. Petersburg, FL (see **ADDRESSES**).

Authority

The authority for this action is the ESA (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 1998.

Andrew A. Rosenberg,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 99–13556 Filed 5–25–99; 3:10 pm]

BILLING CODE 3510–22–F