contractor employees requiring personal identity verification. Clause 1852.204–77 will be used in conjunction with the clause at FAR 52.204–9 Personal Identity Verification of Contractor Personnel.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.204–77 is added to read as follows:

1852.204–77 NASA Procedures for Personal Identity Verification of Contractor Personnel.

As prescribed in 1804.1303–70, insert the following clause:

NASA PROCEDURES FOR PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (XX/XX)

(a) Performance of this contract requires physical access to Federally-controlled facilities and/or access to Federally-controlled information systems, as determined by NASA. In accordance with FAR 52.204–9, Personal Identity Verification of Contractor Personnel, the Contractor shall comply with NASA Policy Regulation 1600.1, NASA Security Program Procedural Requirements, including all associated changes and interim directives (referred to hereafter as ''the NPR''). Electronic copies are available at *http://nodis.hq.nasa.gov* or from the Contracting Officer. NPR 1600.1 implements Homeland Security Presidential Directive 12 (HSPD–12), Office of Management and Budget (OMB) guidance M–05–24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended.

(b) The Contractor must apply for NASA badges for all employees and subcontractor employees at any tier requiring physical access to NASA facilities and/or access to Federally-controlled information systems, following the procedures set forth in the NPR. The Contractor is responsible for collecting and submitting all requests for subcontractor badges, regardless of subcontract tier. If approved by the Center Chief of Security, badges will be issued for no longer than the contract period of performance inclusive of options, but not to exceed 5 years. Badge renewal will be required for additional periods. All personnel issued badges must conspicuously display the badge above the waistline on the outermost garment, and must comply with all requirements applicable to badges in effect at the Center.

(c) NASA will make suitability/access determinations and the Center Chief of Security or the PIV Authorizer, in accordance with NPR 1600.1, Section 6.2, will approve the issuance of badges based upon a background investigation. Criteria for access will be per 5 CFR part 731. At a minimum, a National Agency Check with Written Inquiries (NACI) will be required. The NPR also specifies higher level reinvestigation requirements which may be applicable, for example due to position risk level changes or time since last investigation.

(d) Other employees who may require access on a non-routine or infrequent basis are to be identified by the Contractor for approval and registered on an access list under the control of the Center security office, as set forth in Center procedures.

(e) Prior to the initiation of contract performance, the Contractor must designate a person responsible for determining that an employee (or an employee of a subcontractor at any tier) requires physical access to NASA-controlled facilities and/or access to federally-controlled information systems in order to perform work under the contract. This designated person acts as the Contractor's ''Requestor.'' The Contractor's Requestor will also be responsible for providing updated information as changes occur during the period of contract performance (*e.g.*, additions, deletions, and position risk changes), and for managing all subcontractor requests. The Contractor's Requestor shall provide a list of names, along with their position titles and position description summaries to the following Center point of contact to initiate the personal identity verification credential process. This information shall be submitted in sufficient time to allow badge issuance before the employee requires access to the NASA-controlled facility or access to the federally-controlled information system. Additional information will be required subsequent to the initial list, as directed by the Center Chief of Security.

(Insert Center point of contact)

(f) The Contractor shall include the terms of this clause (except for paragraph (e)), suitably modified to identify the parties, in all subcontracts when the subcontractor is required to have routine physical access to Federally-controlled facilities and/or access to federally-controlled information systems. The clause shall not be used when contractors require only intermittent access to federally-controlled facilities.

(End of clause)

[FR Doc. E8–17951 Filed 8–5–08; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2007–0024; 92220–1113–0000–C6]

RIN 1018–AU96

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Reclassification of the Hawaiian Hawk or Io (Buteo solitarius) From Endangered to Threatened; Proposed Rule To Remove the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule; proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), withdraw our 1993 proposed reclassification of the Hawaiian hawk or io (*Buteo solitarius*) from endangered to threatened, and propose to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife (List). These actions are based on a thorough review of the best available scientific data, which indicates that range-wide population estimates have been stable for at least 20 years, and the species has recovered and is not likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. The proposed rule, if made final, would remove the Hawaiian hawk from the List, thereby removing all protections provided by the Act.

DATES: Comments on the proposed delisting rule must be received by October 6, 2008. Public hearing requests must be received by September 22, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AU96; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, P.O. Box 50088, Honolulu, HI 96850; (telephone 808/792–9400). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species classification decisions. Comments or suggestions from the public, other concerned

governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to delist the Hawaiian hawk are hereby solicited. Comments particularly are sought concerning:

(1) Data on any threats (or lack thereof) to the Hawaiian hawk;

(2) Additional information concerning the range, distribution, and population size of the Hawaiian hawk, including the locations of any additional populations;

(3) Current or planned activities in the areas occupied by the Hawaiian hawk and possible impacts of these activities on this species; and

(4) Data on Hawaiian hawk population trends.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96813 (808/792–9400).

Background

The Hawaiian hawk or io (*Buteo solitarius*) is a small, broad-winged hawk endemic to the Hawaiian Islands, and is the only extant member of the family Accipitridae native to the Hawaiian Islands (Berger 1981, p. 83; Olson and James 1982, p. 35). The Hawaiian hawk's breeding distribution is restricted to the island of Hawaii, but there have been at least eight observations of vagrant individuals on the islands of Kauai, Oahu, and Maui since 1778 (Banko 1980, pp. 1–9), and fossil remains have been found on the islands of Molokai (Olson and James 1982, p. 35) and Kauai (Olson and James 1996, pp. 65–69; Burney *et al.* 2001, pp. 628–629). The Hawaiian hawk occurs in light and dark color morphs, with intermediate plumages and much individual variation (Griffin 1985, p. 46). The light morph is dark brown above and white below, with brown flecks on the upper breast. The dark morph is dark brown above and below. The legs, feet, and cere (fleshy area between the eye and bill) are yellow in adults and bluish-green in juveniles (Griffin 1985, pp. 58–63).

The Hawaiian hawk occurs over much of the island of Hawaii, from approximately 1,000 to 8,530 feet (ft) (300 to 2,600 meters (m)) above sea-level, and occupies a variety of habitat types, including native forest, secondary forest consisting primarily of non-native plant species, agricultural areas, and pastures (Banko 1980, pp. 2–9, 15–16; Scott *et al.* 1986, pp. 78–79; Hall *et al.* 1997, p. 14; Griffin *et al.* 1998, p. 661; Klavitter 2000, pp. 2, 38, 42–45; Klavitter *et al.* 2003, pp. 169–170, 172, 173). It is adaptable and versatile in its feeding habits and preys on a variety of rodents, birds, and large insects (Munro 1944, p. 48; Griffin 1985, pp. 142–145, Appendix 5; Griffin *et al.* 1998, p. 659). Hawaiian hawks are monogamous and defend their territories year-round (Griffin 1985, pp. 119–121; Griffin *et al.* 1998, p. 660; Clarkson and Laniawe 2000, pp. 6–7; Klavitter 2006), although more aggressively during the breeding season (Klavitter 2006). Egg-laying generally occurs from March to June, hatching from May to July, and fledging from July to September (Griffin 1985, p. 110; Griffin *et al.* 1998, p. 656). Clutch size is usually one egg (Griffin 1985, p. 76; Griffin *et al.* 1998, p. 657; Klavitter *et al.* 2003, p. 170), but there are records of two or three young per nest (Griffin 1985, pp. 75, 80, Appendix 1).

The Hawaiian hawk was listed as endangered on March 11, 1967 (32 FR 4001). At that time, the best available data indicated that the number of Hawaiian hawks was in the low hundreds (Berger 1981, p. 83) and that extensive destruction of native forests had reduced the quality of available habitat (USFWS 1984, pp. 10–11).

The first detailed study of the ecology and life history of the Hawaiian hawk was conducted from 1980 to 1982, the results of which were described in a PhD dissertation (Griffin 1985) and in a 1998 manuscript published in *The Condor,* an international peer-reviewed scientific journal (Griffin *et al.* 1998). During this study, researchers found no significant difference in nest success between habitats dominated by native versus non-native vegetation, with 10 of 13 nests successful in native habitats (77 percent) versus 11 of 17 (65 percent) in non-native habitats (Griffin 1985, pp. 102–103; Griffin *et al.* 1998, p. 658). They also found no evidence that the Hawaiian hawk's population was adversely affected by avian diseases, such as avian malaria or avian pox, nor was there evidence that it was affected by introduced mammalian predators, such as cats (*Felis catus*), rats (*Rattus* spp.), or mongoose (*Herpestes auropunctatus*), or environmental contaminants such as DDT (Griffin 1985, pp. 104–107, 194; Griffin *et al.* 1998, pp. 658, 661).

A preliminary population estimate of 1,400 to 2,500 birds was noted in Griffin's (1985, p. 25) dissertation, based on home range size from radio telemetry data and distribution data from island-wide bird surveys. The dissertation cited ''Griffin *et al.* in prep'' for this estimate, but no details were provided on how it was derived, and Griffin *et al.* (in prep.) was never published. Scott *et al.* (1986, p. 79) later stated that use of the island-wide forest bird surveys to estimate the population size of Hawaiian hawks was not appropriate because ''the Hawaiian hawk, like many other raptors, failed to meet many of the assumptions that underlie our density estimates.''

A final recovery plan for the Hawaiian hawk was produced in 1984, which established a primary recovery objective to ''ensure a self-sustaining 'io population in the range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat'' (USFWS 1984, p. 25). The plan also stated that ''for the purposes of tracking the progress of recovery, 2,000 will be used as a target to reclassify to threatened status,'' and that ''criteria for complete delisting will be further developed'' (USFWS 1984, p. 25). No explanation for the recovery goal of 1,500 to 2,500 birds was provided, but these numbers were presumably based on Griffin's (1985, p. 25) preliminary population estimate of 1,400 to 2,500 birds. The recovery plan also stated that ''considering the current size and distribution of the 'io population, the species' high breeding success, the relatively low levels of predation and human disturbance, and the absence of environmental contaminants affecting the 'io, the population appears to be in a more secure condition than previously thought. This information, based on completed research, indicates that reclassification to threatened status may be warranted. Continued monitoring and the other items of this plan need to be pursued before complete delisting should be considered'' (USFWS 1984, p. 38). Thus, the species was considered for downlisting at the time the recovery

plan was produced, but no criteria for delisting were developed at that time.

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that the threats have been minimized sufficiently, and the species is robust enough to reclassify from endangered to threatened, or to delist. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The Service published a proposed rule to reclassify the Hawaiian hawk from endangered to threatened on August 5, 1993 (58 FR 41684), based on Griffin's (1985, p. 25) preliminary population estimate of 1,400 to 2,500 adult birds and because it was discovered that the species occupied, and nested in, non-native forests and exploited non-native prey species as a food resource. However, the proposal was not finalized; during the public comment period, several commenters expressed concerns that the population data used in the proposal were not current and there was not enough known about the hawk's breeding success to warrant downlisting. Based on these comments, we funded an island-wide survey to provide a contemporary range-wide assessment of the distribution and population status of the hawk. The surveys were conducted from December 1993 to February 1994. The researchers found the Hawaiian hawk widely distributed in both native and non-native habitats and provided a population estimate of 1,600 birds, made up of 1,120 adults, or 560 pairs (Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14). The researchers also questioned the recovery objective published in the Hawaiian Hawk Recovery Plan (USFWS 1984, p. 25), stating: ''the Recovery Plan set a target that was unlikely to ever be met, given that Griffin's estimate assumed total saturation of hawks on forested land on the island. Reevaluation of the Recovery target is thus indicated, and should be based on more reasonable estimates of the distribution and abundance of 'io on the island'' (Morrison *et al.* 1994, p. 21).

In 1997, the Service formed the Io Recovery Working Group (IRWG), the mission of which was to provide oversight and advice on aspects of the recovery of the Hawaiian hawk. Specifically, the IRWG was asked to: (1) Evaluate existing recovery goals for the Hawaiian hawk in light of current knowledge, and formulate new goals if warranted; (2) recommend strategies for minimizing negative interactions between the Hawaiian hawk and the endangered Hawaiian crow or alala (*Corvus hawaiiensis*); (3) identify research and management priorities; and, (4) write and revise a report summarizing their findings and recommendations. Following its first meeting in December 1997, the IRWG forwarded a report to the Service, in which it recommended that, rather than focusing primarily on population numbers to assess the Hawaiian hawk's overall status, field studies should look at population numbers in combination with trends to be consistent with the guidelines published by the International Union for Conservation of Nature (IUCN) Species Survival Commission for identification of species at three levels of risk: critically endangered, endangered, and vulnerable (IUCN 1996, p. 21, Annex 8–10; IRWG 1998, p. 4).

In keeping with the IRWG's recommendations, we funded a detailed ecological and demographic study of the Hawaiian hawk from 1998 to 1999 to obtain more comprehensive information about population size, amount of suitable habitat, survival of adult and juvenile birds in native and non-native-dominated habitats, fecundity (average number of female offspring produced per individual breeding-aged female per year) in different habitats, and the rate of population change in different habitats (Klavitter 2000; Klavitter *et al.* 2003). During this study, researchers found that Hawaiian hawks were broadly distributed throughout the island of Hawaii, and that 58.7 percent of the island (2,372 square miles (sq mi) (6,143 square kilometers (sq km)) contained habitat for the hawk. State and Federal forests, parks, and refuges, totaled 754 sq mi (1,954 sq km), supported 469 hawks, and made up 32 percent of its habitat (Klavitter *et al.* 2003, p. 170).

The total Hawaiian hawk population was estimated to be 1,457 (± 176.3 birds), with an average density of 0.24 (± 0.08) birds per square kilometer (Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170). Population density varied among habitats, from 0.01 to 0.57 birds per square kilometer. The highest densities were within native forest with grass, fallow sugarcane fields, and orchards; the lowest were within native mamane-naio (*Sophora chrysophylla-Myoporum sandwicense*) forest, urban, and lava areas (Klavitter 2000, p. 38; Klavitter *et al.* 2003, p. 169). In all successful nests monitored, only one young fledged per nest. Annual survival of juveniles and adults was high (0.50 (± 0.10) and 0.94 (± 0.04), respectively), and fecundity was 0.23 (± 0.04) female young/breeding female in all habitats combined. Nest success in native habitat tended to be slightly higher than in exotic habitats, but juvenile survival was higher in exotic habitats than in native forest (Klavitter *et al.* 2003, p. 170). There was no significant difference in fecundity or population growth rate between native and mixed, native and exotic, or mixed and exotic habitats (Klavitter 2000, pp. 39, 56; Klavitter *et al.* 2003, pp. 170–171). The overall rate of population growth based on data from all habitat areas was 1.03 (± 0.04), which is not significantly different than 1.0, indicating that there was no detectable change in population size across habitat types from 1998 to 1999 (Klavitter 2000, pp. 40, 56; Klavitter *et al.* 2003, pp. 170–171).

Most recently, we funded an island-wide survey that was completed in the summer of 2007. The researchers used updated vegetation maps and methods to calculate population and density estimates for the 1998–1999 survey data and the 2007 survey data. Using consistent maps and methods they were then able to compare population size and density over time to see if there had been significant changes. They found that, according to Klavitter's data, the Hawaiian hawk population numbered 3,239 (95% CI = 2,610 to 3,868) in 1998, more than double Klavitter's original estimate of 1,457 (± 176.3 birds) (Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170). In 2007, they estimated the population to number 3,085 hawks (95% CI = 2,496 to 3,680). There was no significant difference in densities found in 1998 and 2007 and no evidence that the hawk's spatial distribution had changed (Gorresen *et al.* 2008, p. 6).

The primary objective stated in the 1984 recovery plan was to ''ensure a self-sustaining 'io population in the

range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat.'' Although the plan did not include specific delisting criteria, the population and distribution targets have been met (see Factor A below, for a discussion of habitat).

Because of the short duration of their study (2 years), the relatively low population size (compared to mainland species), the possibility of environmental fluctuations (e.g., volcanic eruptions), and uncertainties regarding future anthropogenic changes to the island, Klavitter *et al.* (2003, p. 173) recommended either downlisting the hawk to threatened status or consideration of a ''near threatened'' status rather than delisting.

Upon review of the Klavitter (2000) study results, the IRWG recommended that the Hawaiian hawk be delisted due to: (1) The lack of evidence of current declines in population numbers, survival rates, or productivity and, (2) the lack of evidence of current substantial loss or degradation of preferred nesting or foraging habitats (IRWG 2001, p. 3). The IRWG also recommended that regular monitoring take place to assess factors that may produce future population declines (IRWG 2001, pp. 3–4).

In light of these differing viewpoints, we consider existing or perceived threats to the Hawaiian hawk in more detail below (see Summary of Factors Affecting the Species).

Previous Federal Actions

The Hawaiian hawk was added to the U.S. Department of the Interior's list of endangered species on March 11, 1967 (32 FR 4001) in accordance with section 1(c) of the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)), and its status as an endangered species was retained under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). A recovery plan for the Hawaiian hawk was published on May 9, 1984 (USFWS 1984).

On August 5, 1993, we published a proposed rule to reclassify the Hawaiian hawk from endangered to threatened (58 FR 41684). In response to concerns regarding the proposed downlisting, as expressed in public comments, the proposed downlisting was not finalized. Instead, a population status assessment and further ecological studies were conducted to ascertain the population size and trends of the Hawaiian hawk.

On February 3, 1997, we received a petition from the National Wilderness Institute to delist the Hawaiian hawk. We responded to that petition in a letter dated June 19, 1998, indicating that we could not immediately work on the petition due to higher priority listing and delisting actions. This proposed rule constitutes our 90-day finding and 12-month finding on the February 3, 1997, petition.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' is used here to refer to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated.

In this proposed rule, we consider the foreseeable future for the Hawaiian hawk to be the next 20 years. Hawaiian hawks take about 3 years to obtain adult plumage (Clarkson and Laniawe 2000, p. 13); however, there are few data available on the age at which Hawaiian hawks first breed. Although one researcher documented a 3-year-old female pairing with a male of unknown age and building a nest, no eggs were laid. Another researcher documented the formation of a pair bond between a 3-year-old male and a female with immature plumage. In this case, no nesting attempts were documented (Clarkson and Laniawe 2000, p. 10). Based on this information, we believe that the Hawaiian hawk likely first breeds at age 3 or 4. We used 5 Hawaiian hawk generations, about 20 years, as a reasonable biological timeframe to determine if threats could depress the population size and therefore would be significant. Also, the best available data indicate that the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 20 years. Based on these data, our knowledge of Hawaiian hawk biology, and our understanding of the threats of the greatest potential consequence to the Hawaiian hawk (habitat modification and the possible introduction of novel avian diseases, such as West Nile virus), we conclude that 20 years is a reasonable timeframe over which we can extrapolate the likely extent of the threats and their impacts on the species. We note that we have no information suggesting these threats will increase in intensity more than 20 years in the future.

Following this threats analysis we evaluate whether the Hawaiian hawk is threatened or endangered in any significant portion(s) of its range.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian hawk reproduces and forages in native and non-native habitats on the island of Hawaii (Griffin 1985, pp. 102–103; Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14; Griffin *et al.* 1998, p. 658; Klavitter 2000, pp. 38–39, 56; Klavitter *et al.* 2003, pp. 169–171) and appears to be adaptable in its ability to exploit non-native species as prey (Munro 1944, p. 48; Griffin 1985, pp. 142–145; Griffin *et al.* 1998, p. 659).

The 1993 proposed rule to reclassify the Hawaiian hawk (58 FR 41684), the 2001 IRWG report (IRWG 2001, p. 3), Klavitter *et al.* (2003, p. 173), and

Gorresen *et al.* (2008, pp. 9–11) all identified loss of preferred nesting and foraging habitats as a potential threat to the Hawaiian hawk. Although their specific concerns were variously stated, they all fit into one of the following categories: (1) Urbanization/lack of secure habitat; (2) conversion of sugarcane fields to unsuitable habitat; (3) increase in fire frequency; (4) invasion of plant species in the understory that degrade foraging habitat by concealing prey; and (5) environmental fluctuations. Below, we address the first four of these specific threats to Hawaiian hawk habitat. We discuss environmental fluctuations under Factor E.

Urbanization/Lack of Secure Habitat

The Hawaiian hawk is broadly distributed on the island of Hawaii, and 58.7 percent of the island (2,372 sq mi (6,144 sq km)) contains habitat for the hawk. Of this habitat, 55 percent is zoned for agriculture and 44.7 percent is zoned for conservation. Approximately 754 sq mi (1,953 sq km), or 32 percent, of the hawk's habitat is located on protected lands in the form of State and Federal forests, parks, and refuges and less than 1 percent is rural or urban-zoned land that has the potential to be impacted by or subjected to future development (Klavitter 2000, p. 38; Klavitter *et al.* 2003, p. 170; State of Hawaii 2007).

The amount of urban land or land subject to potential future urbanization is generally localized in areas surrounding existing cities (County of Hawaii 2005, pp. 14–2, 14–9, Land Use Pattern Allocation Guide Map (LUPAG) 1–25), and represents less than 1 percent of Hawaiian hawk habitat on the island. Changes in zoning from one category to another (e.g. agricultural to urban) are made through petitions to the State Land Use Commission. There are currently no pending petitions that would change current agriculture, conservation, or rural zones to urban on the island of Hawaii (State of Hawaii Land Use Commission 2007). Similarly, there are no amendments currently proposed to the County of Hawaii General Plan (2005) that would reflect projected future urban growth beyond that which was projected in the 2005 plan. The latest amendments were in 2006 and did not project changes in urban growth on the island of Hawaii (County of Hawaii 2006). Because the hawk is broadly distributed on the island and can use a variety of habitats, the potential future conversion of a relatively small amount of its habitat (less than 1 percent) surrounding existing urban uses is not a threat to the viability of the species.

Since the time of listing, protection of native forests on the Island of Hawaii has also resulted in increased protection for the Hawaiian hawk. One example of a significant recovery action that was completed with regard to conservation of habitat for multiple native species, including the Hawaiian hawk, was the establishment of the 32,733 acre Hakalau Forest National Wildlife Refuge in 1985. The Refuge was established with the primary purpose of promoting the recovery of endangered forest birds and their habitat. There have also been several other projects undertaken at Hawaii Volcanoes National Park and on private lands on the Island of Hawaii aimed at native forest conservation that have likely benefited the hawk. While the exact benefit of these actions specifically for hawk populations can not be reasonably calculated because the actions benefit multiple species, these actions highlight just a few examples of efforts that have been undertaken that have likely had a significant contribution to conservation of the Hawaiian hawk.

Conversion of Sugarcane Fields to Unsuitable Habitat

Sugarcane was historically an important crop on the island of Hawaii, and Hawaiian hawks had adapted to use these croplands for foraging where nest trees and perching structures were available. With the demise of the sugarcane industry on the island in the 1990s, sugarcane plantations were converted to a diversity of agricultural uses (County of Hawaii 2005, pp. 1–8, 1–11), some of which (e.g., large, patchily distributed monocultures of eucalyptus or macadamia nut trees with little edge) are not compatible with Hawaiian hawk nesting or foraging (Klavitter *et al.* 2003, p. 172). We anticipate that in these localized, patchily distributed areas where eucalyptus plantations are established, Hawaiian hawks will not be able to effectively forage or nest. It remains unclear if hawks will use these areas immediately following a harvest or at the time of initial planting. However, given the short-rotation times planned for these plantations (5–8 years) and the rapid growth-rate of eucalyptus on Hawaii (Whitesell *et al.* 1992, pp. ii, 2) these areas might only briefly be suitable for hawk foraging.

Conversion of agricultural lands to eucalyptus forests is an ongoing threat to the Hawaiian hawk, but the scope of this threat is limited primarily to the Hamakua coastline—the best potential forest lands in the County (County of Hawaii 2005, p. 14–20)—and these monocultures are patchily distributed, with mixed agricultural and residential uses in the surrounding areas. Approximately 24,000 acres (9,712 hectares (ha)) (6.5 percent of the Hamakua District, or less than 2 percent of Hawaiian hawk habitat) of former sugarcane fields were being cultivated for eucalyptus production and ''thousands of additional acres'' were being planned as of 2005, but the exact timing of these future plantings is not currently available (County of Hawaii 2005, pp. 2–4, 2–20). Therefore, it appears possible that at least 'thousands of additional acres' will be converted in the future. However, even if all 80,000 acres (32,375 ha) of the best potential lands for cultivating forests on the island were converted to eucalyptus trees (County of Hawaii 2005, p. 14–20) in the future, that would represent only 22 percent of the Hamakua District and less than 5 percent of Hawaiian hawk habitat. For comparison, the Hamakua District contains 235,212 acres (95,187 ha) (59 percent) of lands designated for conservation thus far and into the foreseeable future (County of Hawaii 2005, p. 14–11).

At a regional scale we do not anticipate significant changes in hawk densities in response to this threat because many of the plantations are patchily distributed among areas with suitable habitat for foraging, perching, and nesting (e.g., small agricultural operations, fallow sugarcane fields, riparian areas, and native and non-native forest). Furthermore, the total amount of habitat converted (24,000 acres (9,712 ha)) represents less than 2 percent of all available habitat (Klavitter *et al.* 2003, p. 167). Therefore, while conversion of sugarcane fields has reduced the total amount of suitable habitat along the Hamakua coast, we believe that the scope and extent of this conversion is not likely to significantly impact the distribution or density of the Hawaiian hawk in such a way that would affect its viability.

Another potential threat is the conversion of current agricultural lands to crops for biodiesel fuel production (Gorresen *et al.* 2008, p. 10). A report prepared in 2006 for the State of Hawaii Department of Agriculture identifies up to 185,000 ac (74,000 ha) of agricultural lands on the island of Hawaii that would be suitable for such crop production (Poteet 2006, pp. 27–28), which represents up to 13 percent of the Hawaiian hawk's breeding range (Gorresen *et al.* 2008, p. 10). Because the proposed crops vary in terms of their feasibility and potential impacts to the Hawaiian hawk—some are likely to

continue to provide suitable foraging areas while others may not—it is not possible to provide an accurate estimate of the amount of habitat likely to be converted. However, all of the areas identified as potential sites for biofuel production are either fallow sugarcane fields or are currently being used for crop production, grazing, or forestry production (e.g., eucalyptus) (Poteet 2006, pp. 27–28). Thus, the extent of conversion from suitable hawk habitat to unsuitable hawk habitat is likely to be limited and well below 13 percent of the hawk's range.

Invasive Plant Species and Increase in Fire Frequency

Historically, fires on the island of Hawaii were likely infrequent occurrences (Smith and Tunison 1992, pp. 395–397). In some areas, primarily mesic and dry habitats, the fire regime has changed dramatically with an accumulation of fine fuels, primarily alien grasses, which spread in the 1960s and 1970s (Smith and Tunison 1992, pp. 397–398). Increased fire frequency facilitates the spread of alien grass, which increases fine fuel loads, further increasing the likelihood of more frequent and larger fires (Smith and Tunison 1992, pp. 398–399). This positive feedback loop can inhibit the establishment of tree species if fires are too frequent (Smith and Tunison 1992, p. 399).

Because Hawaiian hawks rely on forests for nesting and perching, loss of these structural components could result in the loss of habitat. Approximately 26 percent (370,658 ac (150,000 ha)) of the Hawaiian hawk's breeding range is within mesic to dry forest habitat areas that are particularly susceptible to fire (Gorresen *et al.* 2008, p. 11). Smith and Tunison (1992, p. 398) reported that the average size of the 58 fires that burned in Volcanoes National Park from 1968 to 1991 was 507 acres (205 ha). This is roughly the size of the average home range of the Hawaiian hawk (mean = 456 acres (185 ha); n = 10) reported by Griffin (1985, p. 173). Therefore, large fires could remove habitat in one or a few hawk territories at one time, but we expect that hawks would maintain their territory if sufficient prey and forest structure remained such that they could still nest and perch. At a regional scale we do not anticipate significant changes in hawk densities in response to this threat because most fires are expected to have a patchy distribution on the landscape such that some forest structure will continue to be present around or within these burned areas. Only if large-scale changes to dry forests occurred, eliminating nesting and perching areas across vast swaths of the leeward portion of the island, would the viability of the species potentially be at risk. The available information on hawk distribution and habitat does not suggest that this is currently occurring or is likely to occur in the foreseeable future. Therefore, while an increase in fire frequency due to alien plants is a threat and may reduce the amount of available habitat for nesting and perching, we believe that the maximum scope and extent of this conversion that we can reasonably anticipate is not likely to have a significant impact on the distribution or density of the Hawaiian hawk in such a way that would affect its viability.

Invasive Species (Concealing Prey)

Vegetative cover can be more important than prey abundance in the selection of hunting sites by raptors (Bechard 1982, p. 158). Klavitter *et al.* (2003, p. 169) found that exotic tree, shrub, and grass habitats had similar hawk densities to some native habitats (*e.g.*, mature native forest), but were lower than densities recorded in native forests with an understory of grass. The relationship between cover and demographic variables is likely to be complex given that a hawk's home-range may span several habitat types and that the effect of various invasive species on total vegetation cover has not been well studied. However, the best available data indicate that, despite the introduction of a variety of invasive plant species on the island of Hawaii, the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 20 years, and no reliable extrapolation from current information suggests that this circumstance will change in the future.

Summary of Factor A: Based on the best available scientific and commercial data, we believe that destruction, modification, or curtailment of the Hawaiian hawk's habitat or range is not currently putting the Hawaiian hawk in danger of extinction and is not likely to result in the endangerment or extinction of the Hawaiian hawk in the foreseeable future. Comparison of island-wide survey data in 2007 with similar data from 1998–1999 suggests that the population numbers, densities, and spatial distribution of Hawaiian hawks on the island of Hawaii have not significantly changed in the past decade. Also, the best available data indicate that the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 20 years (Service 1984; Griffin 1985, p. 25; Scott *et al.* 1986, p. 79; Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14; Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170; Gorresen *et al.* 2008, p. 6). Although some habitat loss is expected in the future, this loss is likely to be a small percentage of the hawk's habitat and is likely to be patchily distributed such that hawks are expected to continue to be widely distributed on Hawaii.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, some Hawaiian hawks were taken for scientific collection (e.g., Henshaw 1902, pp. 197–198; Banko 1980, p. 2) and may also have been taken by the early Hawaiians for either food or feathers (Clarkson and Laniawe 2000, p. 12). Neither of these factors is known to currently threaten the Hawaiian hawk.

Berger (1981, p. 79) stated that shooting was among the primary factors contributing to a suspected population decline of the Hawaiian hawk, but provided no data supporting his statement regarding shooting as a threat or his statement regarding a suspected population decline. He speculates that people shot Hawaiian hawks because they mistakenly believed that the hawks were ''chicken hawks'' (note: Banko (1980, p. 6) reported a dead Hawaiian hawk (cause of death unknown) being used as a ''scarecrow'' to discourage predation on domestic poultry flocks sometime in the late 1960's or early 1970's). Griffin (1985, p. 108) also speculated that illegal shooting of Hawaiian hawks was a significant threat factor, but provided no data to support this assertion.

While there is at least one anecdotal account of a Hawaiian hawk being treated for suspected gunshot wounds in the recent past (Lucas 2006), there is little other evidence that shooting is a current threat to the Hawaiian hawk at a regional scale. With increased community outreach regarding the hawk's status on the island of Hawaii, there no longer appears to be a substantive threat to the species from shooting (Mello 2007) and there is no reason to suspect that this threat is likely to increase in the future. Therefore, overutilization for commercial, recreational, scientific, or educational purposes is not likely to result in the endangerment or extinction of the Hawaiian hawk in the foreseeable future.

C. Disease or Predation

Neither disease nor predation is currently known to substantively affect the Hawaiian hawk population (Griffin

1985, pp. 104–107, 194; Griffin *et al.* 1998, pp. 658, 661; Klavitter 2000, p. 45). Introduced mammalian predators (i.e., rats, cats, and mongooses) could potentially prey on Hawaiian hawks or their eggs and are known to have serious impacts on other species of native Hawaiian birds (Atkinson 1977, pp. 120–122, 127–130; Scott *et al.* 1986, pp. 363–364; VanderWerf and Smith 2002, pp. 77–80). However, there is no evidence of predation by these species on Hawaiian hawks or their eggs. There is evidence, on the other hand, that introduced mammalian species are a food resource for the hawk (Munro 1944, p. 48; Griffin 1985, pp. 142–145, Appendix 1; Griffin *et al.* 1998, p. 659).

Although the Hawaiian hawk population is not currently known to be substantively affected by any diseases, Griffin (1985, p. 104–105) observed ''pox-like'' lesions on 2 of 44 captured hawks. No bacteriological or virological samples were collected; therefore, these lesions were not confirmed as avian pox.

The IRWG (2001, p. 3) identified disease as a potential factor that might lead to a decline in the size of the Hawaiian hawk population by reducing future reproduction and survival. In their report (IRWG 2001, p. 3) they state: ''[d]isease could have a serious negative impact on 'io as the population does not appear to be separated into disjunct subpopulations that could more easily evade an outbreak. The panmictic nature of the population [i.e., a population where all individuals are potential partners] may also limit genetic variability that could contribute to pockets of disease resistance, although genetic attributes have not been directly studied.''

The hawk does not appear to be susceptible to diseases currently established on the island of Hawaii, such as avian pox or malaria that have devastated many other Hawaiian endemic forest birds (Griffin 1985, pp. 104–106; Griffin *et al.* 1998, pp. 658, 661). The fact that the Hawaiian hawk population has remained stable for at least 20 years (Klavitter 2000, p. 42; Klavitter *et al.* 2003, p. 172) indicates that predators and disease are not having a measurable deleterious impact on Hawaiian hawk viability.

Emergent diseases, such as West Nile virus, have the potential to influence Hawaiian hawk viability in the future. West Nile virus, which is primarily transmitted by infected mosquitoes, has been reported in all of the 48 conterminous United States and is potentially fatal to many species of birds, including members of the genus *Buteo* (Centers for Disease Control and Prevention (CDC) 2005, 2007). Hawaii and Alaska are the only two States that have reported no occurrences of West Nile virus to date (State of Hawaii 2006; CDC 2007). To help prevent West Nile Virus from spreading to Hawaii, the State's Department of Agriculture has established a pre-arrival isolation requirement and a Poultry and Bird Import Permit issued through the Livestock Disease Control Branch for all birds entering the State. Furthermore, the Hawaii State Department of Health has an ongoing, multi-agency West Nile virus surveillance program in place on all of the main Hawaiian Islands, which involves surveillance for infected mosquitoes and dead birds, as well as live-bird surveillance at major ports of entry, equine surveillance, and human surveillance (State of Hawaii 2006). To date, no cases of West Nile virus have been reported in Hawaii; however, there is currently no certainty that we can prevent the disease from arriving and spreading. Should this disease arrive on the island of Hawaii, native birds may be particularly susceptible as they are likely to be immunologically naive to arboviruses such as West Nile virus, because they evolved in the absence of biting insects (van Riper *et al.* 1986, p. 340). Furthermore, there are a number of introduced birds (e.g., house sparrows and house finches) and mosquitoes (e.g., *Culex quinquefasciatus*) that could support West Nile virus amplification in Hawaii and transport it from low to middle to high elevations (Marra *et al.* 2004, p. 398) throughout the range of the Hawaiian hawk. Nevertheless, the short- and long-term impacts of West Nile virus on wildlife are uncertain (Marra *et al.* 2004, p. 394) and it is uncertain whether it will ever arrive on the island of Hawaii.

Summary of Factor C: Neither predation nor avian diseases currently established on Hawaii are known to threaten the Hawaiian hawk. West Nile virus and other emergent avian diseases have the potential to affect the species if they become established on Hawaii. However, it is uncertain whether such diseases will ever arrive. The State is currently implementing a prevention program to reduce the risk of its arrival. They are also implementing a surveillance program so that they can detect if it does arrive and take appropriate and timely action. Furthermore, maintaining the hawk on the List of Endangered and Threatened Wildlife because of speculative future threats would do nothing to prevent their occurrence. We do not believe that disease and predation currently endanger the Hawaiian hawk; nor are they likely to cause the endangerment or extinction of the Hawaiian hawk in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

A variety of regulatory mechanisms, managed by State and Federal resource agencies, are in place to protect the Hawaiian hawk and the habitats upon which it depends.

If this proposed rule is finalized, the Hawaiian hawk would still be protected by the Migratory Bird Treaty Act (16 U.S.C. 703) (MBTA). Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species. The MBTA and its implementing regulations (50 CFR parts 20 and 21) prohibit take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11).

Although we are not aware of any intent to use Hawaiian hawks for falconry, regulations at 50 CFR 21.28 and 21.30 specifically authorize the issuance of permits to take, possess, transport and engage in commerce with raptors for falconry purposes and for propagation purposes. Certain criteria must be met prior to issuance of these permits, including a requirement that the issuance will not threaten a wildlife population (50 CFR 13.21(b)(4)). In addition to considering the effect on wild populations, issuance of raptor propagation permits requires that the Service consider whether suitable captive stock is available and whether wild stock is needed to enhance the genetic variability of captive stock (50 CFR 21.30(c)(4)).

Another regulatory mechanism that will continue to provide protection to the Hawaiian hawk if this proposed rule is finalized is the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), the Environmental Protection Agency requires environmental testing of all new pesticides. Testing the effects of pesticides on representative wildlife species prior to pesticide registration is specifically required. Only pesticides

that have been determined not to pose unreasonable adverse effects on the environment may be used in the United States. This protection from effects of pesticides would not be altered by delisting the Hawaiian hawk.

On June 28, 1979, the Hawaiian hawk was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This treaty was established to prevent international trade that may be detrimental to the survival of plants and animals. International trade is regulated through a system of CITES permits and certificates. CITES permits and certificates may not be issued if trade will be detrimental to the survival of the species or if the specimens being imported or exported were not legally acquired. This protection would not be altered by removing the Hawaiian hawk from the List of Endangered and Threatened Wildlife.

Federal delisting of the Hawaiian hawk will automatically remove this species from the State of Hawaii threatened and endangered species lists under Hawaii Revised Statute (HRS) § 195D–4. However, as a native species, the hawk will continue to be afforded the protection of the State in accordance with HRS § 195–1, which states that ''[a]ll indigenous species of aquatic life, wildlife, and land plants are integral parts of Hawaii's native ecosystems and comprise the living heritage of Hawaii, for they represent a natural resource of scientific, cultural, educational, environmental, and economic value to future generations of Hawaii's people'' and that ''it is necessary that the State take positive actions to enhance their prospects for survival.'' Under State of Hawaii Administrative Rules (HAR), it is prohibited to ''catch, possess, injure, kill, destroy, sell, offer for sale, or transport'' any indigenous wildlife, as well as to export any such species (HAR § 13–124–3), unless authorized by permit (HAR § 13–124–4).

Summary of Factor D: Several regulatory mechanisms will protect the Hawaiian hawk should we finalize this delisting proposal and there is no evidence to suggest that those regulatory mechanisms will be modified in the future. Therefore, the inadequacy of existing regulatory mechanisms does not presently endanger the Hawaiian hawk, nor is it likely to do so in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Species that are endemic to a single island, such as the Hawaiian hawk, are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a single population by random demographic fluctuations and localized catastrophes such as fires, hurricanes, and disease outbreaks (IRWG 2001, p. 3). However, the Hawaiian hawk is adaptable to a variety of habitats and is relatively abundant and widespread in suitable habitat on much of the island, making it resilient to random demographic fluctuations or localized catastrophes (e.g., volcanic eruption). Even a large-scale catastrophe such as a major hurricane or fire is unlikely to cause the extinction or endangerment of a hawk that can effectively utilize regenerating forests as foraging areas and can nest in relatively small patches of older forests that are likely to remain intact following such an event. Therefore, due in large measure to their demonstrated ability to effectively use altered habitats on Hawaii, the endemic nature of the Hawaiian hawk population does not currently endanger the species nor is there evidence that it is likely to do so in the future.

Summary of Factor E: The Hawaiian hawk, although an island endemic, appears to be resilient to habitat changes and catastrophes. Therefore, we do not believe that other natural or manmade factors currently endanger the Hawaiian hawk; nor are they likely to cause the endangerment or extinction of the Hawaiian hawk in the foreseeable future.

Finding

For the reasons stated above, we find that the Hawaiian hawk is not currently in danger of extinction, nor is there evidence that it is likely to become endangered in the foreseeable future.

Withdrawal of Proposed Rule To Reclassify the Hawaiian Hawk as Threatened

We have carefully assessed the best scientific and commercial data available regarding the status of the Hawaiian hawk and have analyzed the five threat factors described in section 4(a)(1) of the Act. We find, based on the best available scientific data, that there is not sufficient information to justify the earlier proposed rule to reclassify the Hawaiian hawk as threatened. Due to implementation of recovery actions and other conservation efforts, we now believe that the Hawaiian hawk is broadly distributed throughout the island of Hawaii, has been stable in number for at least 20 years, nests and forages successfully in both native and altered habitats, and has large areas of habitat in protected status. The Hawaiian hawk is not currently threatened by overutilization, disease, predation, contaminants, lack of adequate regulatory mechanisms, or other factors, and therefore no longer meets the definition of a threatened or endangered species throughout its range.

At the time we proposed to reclassify the Hawaiian hawk in 1993, we determined that enough secure habitat was available for reclassification, but there was not enough for delisting. We have reassessed this statement in light of the best available data, including the current land-use plan for the island, and additional studies regarding Hawaiian hawk population status, habitat use, productivity, and survival, and find that sufficient habitat is available for a viable, broadly distributed population of hawks into the foreseeable future. While certain areas of the island are subject to additional development or conversion into habitats that may be unsuitable for hawk nesting or foraging (e.g., eucalyptus plantations) these areas are expected to be small and localized in comparison to protected areas and agricultural areas that do provide suitable habitat. Both implementation of recovery actions and accumulation of additional information on the Hawaiian hawk over the past 30 years contribute to the above assessment. Therefore, we withdraw our proposal to reclassify the Hawaiian hawk.

Proposal To Delist

For the reasons discussed above, we do not believe the species is in danger of extinction throughout all or a significant portion of its range, or that it is likely to become endangered throughout all or a significant portion of its range in the foreseeable future. Therefore, we propose to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. Based on our analysis of the five threat factors and the best scientific data available on the status of the species, we believe that the Hawaiian hawk should be delisted due to the implementation of recovery actions that have facilitated a better understanding of the hawk's ecology and threats.

Additional recovery actions that have benefited the Hawaiian hawk and which likely played a role in maintaining stable hawk populations include numerous native forest habitat conservation projects, protection from human harassment, public education, and evaluation of potential impacts of new pesticides. One example of a significant recovery action that was completed with regard to conservation of habitat for multiple native species, including the Hawaiian hawk, was the

establishment of Hakalau Forest National Wildlife Refuge in 1985. There have also been several other projects undertaken at Hawaii Volcanoes National Park and on private lands on the Island of Hawaii aimed at native forest conservation that have likely benefited the hawk. While the exact benefit of these actions specifically for hawk populations can not be reasonably calculated because these actions benefit multiple species, these actions highlight just a few examples of efforts that have been undertaken that have likely had a significant contribution to conservation of the Hawaiian hawk.

Due to implementation of recovery actions and other conservation efforts, we now believe that the Hawaiian hawk is broadly distributed throughout the island of Hawaii, has been stable in number for at least 20 years, nests and forages successfully in both native and altered habitats, and has large areas of habitat in protected status. The Hawaiian hawk is not currently threatened by overutilization, disease, predation, contaminants, lack of adequate regulatory mechanisms, or other factors, and therefore no longer meets the definition of a threatened or endangered species throughout its range.

Significant Portion of the Range Analysis

Having determined that the Hawaiian hawk is not currently in danger of extinction, nor likely to become endangered throughout its range in the foreseeable future, we next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. We consider factors such as whether there is a biological basis (e.g., population groupings, genetic differences, or differences in ecological setting) or regulatory basis (e.g., International or State boundaries where the threats from lack of regulatory mechanisms might be different on either side of the boundary) for parsing the range into finer portions and whether extinction risk is spread evenly across the range of the species.

In the case of the Hawaiian hawk, (1) there is only one panmictic population, having no apparent barriers to dispersal or gene flow, (2) there are no regulatory differences since the species occurs only in one County in Hawaii, (3) although it occurs in a variety of ecological settings on Hawaii, habitat threats are small in overall magnitude and are not concentrated in any one ecological setting (see Factor A, above), and (4) there are no other geographically concentrated threats. Because extinction risk, both currently and in the foreseeable future, is not measurably higher in any one location on the island, we do not propose to retain listing status for any portion of the species' range.

Effects of the Rule

If made final, this rule would revise 50 CFR 17.11(h) to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Hawaiian hawk. There is no critical habitat designated for this species.

The Hawaiian hawk would continue to be protected under the Migratory Bird Treaty Act (16 U.S.C. 703), CITES (Article IV), and State of Hawaii law (HRS § 195–1).

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Service to implement a system, in cooperation with the States, to monitor for not less than 5-years the status of all species that have recovered and been removed from the lists of threatened and endangered wildlife and plants (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that the Hawaiian hawk remains secure from risk of extinction after it has been removed from the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting.

The Service is developing a draft PDM plan in cooperation with the Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), the National Park Service (NPS), and the U.S. Geological Survey (USGS). We intend to publish a notice of availability of the draft plan in the **Federal Register**, and solicit public comments on that plan, prior to finalizing this proposed rule. All public comments on the draft PDM will be considered and incorporated into the final PDM plan as appropriate. The final PDM plan and any future revisions will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*) and on the Pacific Islands Fish and Wildlife Office Web page (*http://pacificislands.fws.gov*).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register** and will invite them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposal to delist the Hawaiian hawk. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5)(D) of the Act requires that we hold one public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register** (see **DATES**). Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the emergency rule? What else could we

do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail the comments to this address: *Exsec@ios.goi.gov.*

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

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget (OMB) control number 1018–0094. 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 have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this document are Ms. Karen Marlowe, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) and Jesse D'Elia, Pacific Regional Office, Portland, Oregon.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to 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.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for ''Hawk, Hawaiian'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: July 14, 2008.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–16858 Filed 8–5–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2008–0090; 91200–1231–9BPP–L2]

RIN 1018–AW19

Migratory Bird Hunting; Hunting Methods for Resident Canada Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or ''we'') proposes to amend the regulations on resident Canada goose management. This proposed rule clarifies the requirements for use of expanded hunting methods during special September hunting seasons. One requirement in the regulations has been misinterpreted, and we are taking this action to make sure that our regulations are clear for the States and the public.

DATES: Comments on this proposed rule must be received by September 5, 2008.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–XXXX; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

You may obtain copies of the Final Environmental Impact Statement (FEIS) on resident Canada goose management from the above address or from the Division of Migratory Bird Management Web site at *http://fws.gov/migratorybirds/issues/cangeese/finaleis.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of ''The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States'' provides specific limitations on