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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-ES-2016-0126; FXES11130900000 167 FF09E42000]

RIN 1018-BB80

Endangered and Threatened Wildlife and Plants; Identification of 14 Distinct Population Segments of the Humpback Whale and Revision of Species-wide Listing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in accordance with the Endangered Species Act of 1973, as amended (Act), are amending the List of Endangered and Threatened Wildlife (List) by removing the current species-level listing of the humpback whale (*Megaptera novaeangliae*), and in its place listing the Cape Verde Islands/Northwest Africa, Western North Pacific, Central America, and Arabian Sea distinct population segments (DPSs) as endangered and the Mexico DPS as threatened. Humpback whales in the remaining DPSs will no longer be protected under the Act. This amendment is based on a previously published determination by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for this species.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Applicability date:* The revised listings were applicable as of October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Don Morgan, Chief, Branch of Recovery and State Grants, U.S. Fish and Wildlife Service, MS–ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2171.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 et seq.) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine taxa identified in this rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as an endangered or threatened species. NMFS makes these determinations via its rulemaking process. We, the Service, are then responsible for publishing final rules to amend the Lists of Endangered and Threatened Wildlife and Plants (Lists) in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) and 17.12(h), respectively.

Under section 4(a)(2)(A) of the Act, if NMFS determines that a species should be listed as endangered or threatened, or that a species' status should be changed from threatened to endangered, then NMFS is required to inform the Service of the status change. The Service is then responsible for implementing the status change by publishing a final rule to amend the appropriate List at 50 CFR 17.11(h) or 17.12(h). Under section 4(a)(2)(B) of the Act, if NMFS determines that a species should be removed from the List (delisted), or that a species' status should be changed from an endangered to a threatened species, then NMFS is required to recommend the status change to the Service. If the Service concurs with the recommended status change, then the Service will implement the status change by publishing a final rule to amend the appropriate List.

On April 21, 2015, NMFS published a proposed rule (80 FR 22304) to remove the species-level listing of the humpback whale (*Megaptera novaeangliae*) from 50 CFR part 224 and in its place list the Cape Verde Islands/Northwest Africa and Arabian Sea DPSs as endangered (at 50 CFR part 224) and the Western North Pacific and Central America DPSs as threatened (at 50 CFR part 223). NMFS solicited public comments on the proposed rule for 90 days, ending July 20, 2015. On September 8, 2016, NMFS published a final rule (81 FR 62260) to list the Cape Verde Islands/Northwest Africa, Western North Pacific, Central America, and Arabian Sea DPSs as endangered and the Mexico DPS as threatened. As of the effective date of NMFS' rule (October 11, 2016), the humpback whales that make up the remaining nine DPSs identified in the rule are no longer listed under the Act.

The removal of the species-level listing and the listing of the five humpback whale DPSs were applicable as of October 11, 2016. In the September 8, 2016, final rule (81 FR 62260), NMFS addressed all public comments received in response to the proposed rule. NMFS reconsidered its proposals with regard to the Western North Pacific, Mexico, and Central America DPSs, listing the Western North Pacific and Central America DPSs as endangered instead of threatened as proposed and listing the Mexico DPS as threatened instead of not listing it.

For the Western North Pacific DPS, NMFS considered the relatively low, slightly revised abundance estimate (1,059 instead of 1,100); the moderate reduction of its population size or growth rate likely from energy development, competition with fisheries, whaling, and vessel collisions; the serious reduction of its population size or growth rate likely from fishing gear entanglements; and the considerable uncertainty reflected in the distribution of Biological Review Team (BRT) votes in assigning extinction risk categories.

For the Mexico DPS, NMFS considered the revised abundance estimate that is significantly lower than previously thought (3,264 instead of 6,000–7,000) and the presence of the known fishing gear entanglement threat of moderate intensity.

For the Central America DPS, NMFS considered the original low abundance estimate of 500–600 (which was at the dividing line between BRT risk categories) and the more recently updated estimate of 411 (which is below the BRT’s threshold of 500 between “high risk of extinction” and “moderate risk of extinction”), the fact that the moderate threats of vessel collisions and fishing gear entanglement continue to act upon a population that is so small, and the considerable uncertainty reflected in the distribution of BRT votes for different extinction risk categories.

As discussed under the *Status Review* section of NMFS’ final rule (see 81 FR 62261–62262; September 8, 2016), the BRT considered abundance and trend information carefully in evaluating extinction risk, but abundance was not the sole criterion for evaluating extinction risk. The thresholds described by the BRT were only general guidelines, and NMFS was required to consider them in light of the considerations just outlined. Under these circumstances, for these particular DPSs, the extinction risk is compounded by the lack of information on the population abundance trends. NMFS concluded that the Western North Pacific and Central America DPSs are in danger of extinction throughout their ranges and the Mexico DPS is likely to become endangered throughout its range within the foreseeable future.

Because humpback whales that make up some of the identified DPSs of humpback whale will no longer be protected under the Act and whales in one DPS are considered threatened rather than endangered, both section 4(a)(2)(A) and section 4(a)(2)(B) of the Act

apply to our responsibility to implement the status changes by publishing a final rule to amend the List at 50 CFR 17.11(h).

In a September 6, 2016, memorandum (Memorandum from Gary Frazer to Donna Wieting, September 6, 2016), per section 4(a)(2)(B), we concur with NMFS's recommendation that humpback whales in nine DPSs are no longer endangered or threatened species and that whales in the Mexico DPS are now a threatened species rather than an endangered species. By publishing this final rule, we are taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

Administrative Procedure Act

Because NMFS provided a public comment period on the proposed rule for the humpback whale, and we concur with NMFS' actions, we find good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. We also find good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately. The NMFS rule (81 FR 62260; September 8, 2016) revised the listing status of the humpback whale, extending protection under the Act to five DPSs and listing them at 50 CFR parts 223 and 224; this rule is an administrative action to add those DPSs to the List at 50 CFR 17.11(h). The public would not be served by delaying the effective date of this rulemaking action.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We

outlined our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, under MAMMALS, by:

- a. Removing the entry for “Whale, humpback”; and
- b. Adding entries, in alphabetical order, for “Whale, humpback [Arabian Sea DPS]”; “Whale, humpback [Cape Verde Islands/Northwest Africa DPS]”; “Whale, humpback [Central America DPS]”; “Whale, humpback [Mexico DPS]”; and “Whale, humpback [Western North Pacific DPS]”, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Whale, humpback [Arabian Sea DPS]	<i>Megaptera novaeangliae</i>	Arabian Sea DPS— see 50 CFR 224.101	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016 ^N , 81 FR [<u>Insert Federal Register page where the document begins</u>], [<u>Insert date of publication in the Federal Register</u>]
Whale, humpback [Cape Verde Islands/Northwest Africa DPS]	<i>Megaptera novaeangliae</i>	Cape Verde Islands/Northwest Africa DPS—see 50 CFR 224.101	E	35 FR 8491; 6/0/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016 ^N , 81 FR [<u>Insert Federal Register page where the document begins</u>], [<u>Insert date of publication in the Federal Register</u>]
Whale, humpback [Central America DPS]	<i>Megaptera novaeangliae</i>	Central America DPS—see 50 CFR 224.101	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016 ^N , 81 FR [<u>Insert Federal Register page where the document begins</u>], [<u>Insert date of publication in the Federal Register</u>]
Whale, humpback [Mexico DPS]	<i>Megaptera novaeangliae</i>	Mexico DPS—see 50 CFR 223.102	T	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016 ^N , 81 FR [<u>Insert Federal Register page where the document begins</u>], [<u>Insert date of publication in the Federal Register</u>], 50 CFR 223.213 50 CFR 223.214
Whale, humpback [Western North Pacific DPS]	<i>Megaptera novaeangliae</i>	Western North Pacific DPS—see 50 CFR 224.101	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016 ^N , 81 FR [<u>Insert Federal Register page where the document begins</u>], [<u>Insert</u>

				<u>date of publication in the Federal Register], 50 CFR 224.103</u>
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Dated: December 5, 2016

Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016-30483 Filed: 12/20/2016 8:45 am; Publication Date: 12/21/2016]