DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17
52576
RIN 1018–BA55
Endangered and Threatened Wildlife and Plants; Adding 10 Species to the List of Endangered and Threatened Wildlife

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 adding: five species of foreign sturgeon (Adriatic sturgeon (Acipenser naccarii), Chinese sturgeon (A. sinensis), European sturgeon (A. sturio), Kaluga sturgeon (Hucho dauricus), and Sakhalin sturgeon (A. mikadoi)); four distinct population segments (DPSs) of scollop hammerhead shark (Sphyrna lewini) (Central and Southwest (Central & SW Atlantic) DPS, Eastern Atlantic DPS, Indo-West Pacific DPS, and Eastern Pacific DPS); and a nonessential experimental population of Upper Columbia River spring-run Chinook salmon (Oncorhynchus tshawytscha). These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

DATES: This rule is effective September 4, 2014. Applicability dates: The five sturgeon listings are effective as of July 2, 2014; the scollop hammerhead shark DPS listings are effective as of September 2, 2014; and the designation of a nonessential experimental population of Upper Columbia River spring-run Chinook salmon is effective as of August 11, 2014.


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 and anadromous 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 List in the Code of Federal Regulations (CFR) at 50 CFR 17.11(h).

On October 31, 2013, NMFS published a proposed rule (78 FR 65249) to list the Adriatic sturgeon, Chinese sturgeon, European sturgeon, Kaluga sturgeon, and Sakhalin sturgeon as endangered species. NMFS solicited public comments on the proposed rule through December 30, 2013. On June 2, 2014, NMFS published a final rule (79 FR 31222) to list the five species of sturgeon as endangered species. The listing is effective as of July 2, 2014. In that final rule, NMFS addressed all public comments received in response to the proposed rule. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List in the CFR.

On April 5, 2013, NMFS published a proposed rule (78 FR 20718) to list four DPSs of scollop hammerhead shark under the Act. NMFS proposed to list the Central & SW Atlantic DPS and Indo-West Pacific DPS as threatened species, and the Eastern Atlantic DPS and Eastern Pacific DPS as endangered species. NMFS solicited public comments on the proposed rule through June 4, 2013. On July 3, 2014, NMFS published a final rule (79 FR 38214) to list the Central & SW Atlantic DPS and Indo-West Pacific DPS of scollop hammerhead shark as threatened species, and the Eastern Atlantic DPS and Eastern Pacific DPS of scollop hammerhead shark as endangered species. The listing is effective as of September 2, 2014. In that final rule, NMFS addressed all public comments received in response to the proposed rule. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List in the CFR.

On October 24, 2013, NMFS published a proposed rule (78 FR 63439) to designate and authorize the release of a nonessential experimental population (NEP) of Upper Columbia River spring-run Chinook salmon under section 10(j) of the Act in the Okanogan River subbasin, and to establish a limited set of take prohibitions for that population. NMFS solicited public comments on the proposed rule through December 9, 2013. On July 11, 2014, NMFS published a final rule (79 FR 40004) to designate and authorize the release of this NEP of Upper Columbia River spring-run Chinook salmon in the Okanogan River subbasin, and established a limited set of take prohibitions for this NEP. The listing is effective as of August 11, 2014. In that final rule, NMFS addressed all public comments received in response to the proposed rule. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List in the CFR.

Administrative Procedure Act

Because NMFS provided a public comment period on the proposed rules for these taxa, and because this action of the Service to amend the List in accordance with the determination by NMFS is nondiscretionary, the Service finds 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 rules extended protection under the Act to these species and listed them in 50 CFR parts 223 and 224; this rule is an administrative action to add the species to the List of Endangered and Threatened Wildlife 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, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We do not find good cause 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—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.
2. Amend § 17.11(h) by adding entries to the List of Endangered and Threatened Wildlife under FISHES as follows:

a. Immediately following the entry for “Salmon, Chinook (Upper Columbia River spring-run ESU)”, add an entry for “Salmon, Chinook (Upper Columbia River spring-run ESU–XN)”;

b. In alphabetical order, add entries for “Shark, scalloped hammerhead (Central & SW Atlantic DPS)”; “Shark, scalloped hammerhead (Eastern Atlantic DPS)”; “Shark, scalloped hammerhead (Indo-West Pacific DPS)”; “Sturgeon, Adriatic”; “Sturgeon, Chinese”; “Sturgeon, European”; “Sturgeon, Kaluga”; and “Sturgeon, Sakhalin”.

The additions read as follows:

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Historic range</th>
<th>Vertebrate population where endangered or threatened</th>
<th>Status</th>
<th>When listed</th>
<th>Critical habitat</th>
<th>Special rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>FISHES</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
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<td>*</td>
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<td>*</td>
</tr>
<tr>
<td>Salmon, Chinook (Upper Columbia River spring-run ESU–XN)</td>
<td>Oncorhynchus tschawytscha</td>
<td>North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.</td>
<td>Upper Columbia River spring-run ESU–XN—see 50 CFR 223.102.</td>
<td>XN</td>
<td>845</td>
<td>NA</td>
<td>223.301</td>
<td></td>
</tr>
<tr>
<td>Shark, scalloped hammerhead (Central &amp; SW Atlantic DPS)</td>
<td>Sphyrna lewini</td>
<td>Central and Southwestern Atlantic Ocean, including Caribbean Sea.</td>
<td>Central &amp; SW Atlantic DPS—see 50 CFR 223.102.</td>
<td>T</td>
<td>845</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Shark, scalloped hammerhead (Indo-West Pacific DPS)</td>
<td>Sphyrna lewini</td>
<td>Indian Ocean and Western Pacific Ocean.</td>
<td>Indo-West Pacific DPS—see 50 CFR 223.102.</td>
<td>T</td>
<td>845</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Sturgeon, Adriatic</td>
<td>Acipenser naccarii</td>
<td>Adriatic Sea</td>
<td>Entire</td>
<td>E</td>
<td>845</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Sturgeon, Chinese</td>
<td>Acipenser sinensis</td>
<td>Northwest Pacific Ocean in China, Japan, South Korea, and North Korea.</td>
<td>Entire</td>
<td>E</td>
<td>845</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Sturgeon, European</td>
<td>Acipenser sturio</td>
<td>North Sea, the English Channel, and most European coasts of the Atlantic Ocean, the Mediterranean Sea, and the Black Sea.</td>
<td>Entire</td>
<td>E</td>
<td>845</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Sturgeon, Kaluga</td>
<td>Huso dauricus</td>
<td>Amur River basin, Sea of Okhotsk and the Sea of Japan.</td>
<td>Entire</td>
<td>E</td>
<td>845</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>
**SUPPLEMENTARY INFORMATION:**

**Background**

The current trawl gear stowage regulations, at 50 CFR 648.23(b), require that trawl gear being stowed on the net reel be covered with a "canvas or similar opaque material" when transiting closed areas and areas with mesh size restrictions. The industry typically uses a commonly available opaque plastic tarp to meet this requirement, which is intended to help facilitate enforcement. However, industry has raised two safety concerns with this requirement. First, the tarps most frequently used have very few places where a rope or similar material can be attached to assist in pulling the tarp over the net reel. As a result, crew members at sea often have to climb or stand on the net reel or surrounding parts of the vessel to successfully cover the reel. This creates a safety concern for crew members who may slip or fall and injure themselves or others. In addition, because the tarps are non-porous, they catch wind, similar to a sail, adding to the difficulty of covering the net reel and increasing the safety risks.

As a result of these safety concerns, the New England Fishery Management Council’s Enforcement Committee has been working with the fishing industry and the United States Coast Guard (USCG) to develop an alternative to the tarp requirement for stowing trawl nets on the reel. Through public workshops and at-sea trials, the industry, USCG, and NMFS developed an orange mesh material as a safer alternative to the current tarp requirement. At its September 2013 meeting, the Council approved a motion requesting that the Regional Administrator implement two new trawl gear stowage methods and modify one provision of the existing methods. This action adds a provision to allow the use of a highly visible orange or yellow mesh material, as an alternative to the current requirement to use a tarp or similar canvas material.

In addition, when considering this revision to the gear stowage regulations, the Committee examined whether the current requirement that the “towing wires are detached from the doors” was also a safety concern. When trawl gear is being stowed, detaching the wires leaves the doors unsecured and swinging freely, which can result in damage to the vessel. This is particularly problematic for smaller fiberglass vessels. If the wires were allowed to remain attached to the doors, the doors could be held securely in place, preventing them from moving and causing damage to the vessel or injuring crew. The Committee, with support from the USCG and NMFS Office of Law Enforcement (OLE), concluded that this measure is no longer needed to conduct enforcement and, as such, recommends this measure be removed from the regulations pertaining to all on-reel gear stowage requirements. As a result, the new stowage methods do not include the requirement to remove the towing wires from the doors, and for all on-reel trawl gear stowage methods where it currently applies, this requirement is removed. In addition, the requirement that vessels remove the towing wire from the net is removed in this action. During the public comment period, as described below, the Council indicated that this requirement is outdated, as it was designed for use on Eastern rigged vessels, which have become obsolete, and is not necessary for the proper enforcement of the gear stowage provisions.

NMFS is also taking this opportunity under its authority at section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act to reorganize the current gear stowage regulations. Currently, all Greater Atlantic Region gear stowage regulations reside under the Atlantic mackerel, squid, and butterfish regulations at subpart B of 50 CFR part 648. The gear stowage regulations were originally implemented in Amendment 1 to the Northeast Multispecies Fishery Management Plan as part of the exempted fishing programs. These regulations were subsequently expanded and modified a number of...