

Dated: August 15, 2011.

Edward L. Connor,

Deputy Administrator, Insurance, Federal Insurance and Mitigation Administration.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket ID FWS-R2-ES-2011-0069; 92220-1113-0000; ABC Code: C6]

RIN 1018-AX08

Endangered and Threatened Wildlife and Plants; Bald Eagles Nesting in Sonoran Desert Area of Central Arizona Removed From 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), are issuing a final rule to comply with a court order that removed regulatory protections under the Endangered Species Act of 1973, as amended (Act), for the bald eagles nesting in the Sonoran Desert area of central Arizona. On July 9, 2007, we published a final rule to remove bald eagles in the lower 48 States from the List of Endangered and Threatened Wildlife (List) due to recovery. However, the United States District Court for the District of Arizona, by order dated March 6, 2008, enjoined the Service from removing the bald eagles nesting in the Sonoran Desert area of central Arizona from the threatened species list under the Act pending the Service's status review and 12-month finding on a petition to classify the bald eagles nesting in the Sonoran Desert area of central Arizona as a distinct population segment (DPS), list this DPS as endangered, and designate critical habitat. On May 1, 2008, to conform to the court's order, we published a final rule listing the potential Sonoran Desert bald eagle DPS as threatened under the Act. On February 25, 2010, the Service published its 12-month finding determining that the bald eagles nesting in the Sonoran Desert area of central Arizona did not qualify as a DPS and were, therefore, not a listable entity under the Act. On September 30, 2010, as a result of the Service's completed status review and publication of the 12-month finding, the United States District Court for the District of Arizona lifted the injunction. We are issuing this

final rule to amend the regulations for the Federal Lists of Endangered and Threatened Wildlife by removing the bald eagles nesting in the Sonoran Desert area of central Arizona from the list. This action amends the CFR to reflect the September 30, 2010, court order.

DATES: This rule amending the CFR to reflect the September 30, 2010, court order is effective September 2, 2011. However, the court order reinstating the provisions of the delisting rule for the bald eagles nesting in the Sonoran Desert area of central Arizona had legal effect immediately upon being filed on September 30, 2010.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2011-0069.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone, 602-242-0210; facsimile, 602-242-2513. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877-8337 for TTY.

SUPPLEMENTARY INFORMATION:

Background

Bald eagles (*Haliaeetus leucocephalus*) gained protection under the Bald Eagle Protection Act (16 U.S.C. 668-668d) in 1940 and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712) in 1972. A 1962 amendment to the Bald Eagle Protection Act added protection for the golden eagle (*Aquila chrysaetos*), and the amended statute became known as the Bald and Golden Eagle Protection Act (BGEPA). On February 14, 1978, the Service listed the bald eagle as an endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) in 43 of the contiguous States, and as a threatened species in the States of Michigan, Minnesota, Wisconsin, Oregon, and Washington (43 FR 6230). On July 12, 1995, we published a final rule to reclassify the bald eagle from endangered to threatened in the 43 States where it had been listed as endangered and retain the threatened status for the other five States (60 FR 36000).

On July 6, 1999, we published a proposed rule to delist the bald eagle throughout the lower 48 States due to recovery (64 FR 36454). On February 16, 2006, we reopened the public comment period to consider new information received on our July 6, 1999 (71 FR 8238), proposed rule to delist the bald

eagle in the lower 48 States. On October 6, 2004, we received a petition from the Center for Biological Diversity (CBD), the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the "Southwestern desert nesting bald eagle population" be classified as a distinct population segment (DPS) under the Act, that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS under the Act. We announced in our 90-day finding on August 30, 2006 (71 FR 51549), that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On January 5, 2007, the CBD and the Maricopa Audubon Society (Plaintiffs) filed a lawsuit challenging the Service's 90-day finding that the bald eagles nesting in the Sonoran Desert area of central Arizona did not qualify as a DPS, and further challenging the Service's 90-day finding that the population should not be uplisted to endangered status.

On July 9, 2007 (72 FR 37346), we published the final delisting rule for bald eagles in the lower 48 States due to recovery. This final delisting rule also included the bald eagles located in the Sonoran Desert. On August 17, 2007, the CBD and the Maricopa Audubon Society filed a Motion for Summary Judgment, requesting the court to make a decision on their January 5, 2007, lawsuit. In early 2008, several Native American Tribes submitted *amicus curiae* ("friend of the court") briefs in support of the August 17, 2007, Motion for Summary Judgment. The San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe submitted *amicus curiae* briefs to the court on January 29, 2008; the Salt River Pima-Maricopa Indian Community submitted an *amicus curiae* brief to the court on February 4, 2008; and the Fort McDowell Yavapai Nation submitted an *amicus curiae* brief to the court on February 7, 2008.

On March 5, 2008, the U.S. District Court for the District of Arizona made a final decision in the case and ruled in favor of the CBD and the Maricopa Audubon Society. The court order (*Center for Biological Diversity v. Kempthorne*, CV 07-0038-PHX-MHM (D. Ariz.)), dated March 6, 2008, required the Service to conduct a status review of the Desert bald eagle population pursuant to the Act to determine whether that population may qualify as a DPS, and if so, whether listing that DPS as threatened or endangered pursuant to the Act is warranted. The court enjoined the Service's application

of the July 9, 2007 (72 FR 37346), final delisting rule to the bald eagles nesting in the Sonoran Desert area of central Arizona pending a status review and 12-month finding on the Plaintiffs' petition.

On May 1, 2008, to conform with the court's March 6, 2008, order, we published a final rule listing the potential Sonoran Desert bald eagle DPS as threatened under the Act (73 FR 23966). On May 20, 2008, we published a **Federal Register** notice (73 FR 29096) initiating a status review for the bald eagles nesting in the Sonoran Desert area of central Arizona.

On February 25, 2010, the Service published its 12-month finding on the petition to designate the bald eagles nesting in the Sonoran Desert area of central Arizona as a DPS, list it as endangered, and designate critical habitat under the Act (75 FR 8601). The Service found that the bald eagles nesting in the Sonoran Desert area of central Arizona did not qualify as a DPS and, therefore, were not a listable entity under the Act. Concurrent with publication of our 12-month finding, the Service filed a motion for dissolution of the court's injunction. By order dated September 30, 2010, the United States District Court for the District of Arizona dissolved the injunction. This had the effect of reinstating the provisions of the delisting rule for the bald eagles nesting in the Sonoran Desert area of central Arizona, thereby removing the bald eagles nesting in the Sonoran Desert area of central Arizona from the List of Endangered and Threatened Wildlife. (*Center for Biological Diversity, et al. v. Salazar, et al.*, 07-cv-00038-PHX-MHM, 2010 U.S. Dist. LEXIS 72664 (D. Ariz. Sept. 30, 2010)). This final rule amends the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect the court's order, dated September 30, 2010, that the Service's May 1, 2008, final rule was rendered ineffective by the court's ruling.

We notified all affected Tribes and State and Federal partners of the ruling and its impact shortly after the order was released. We published a statement on our Web site to notify the public of the ruling and its impact shortly after the order was released and provided additional information in a questions-and-answers document. We continued to meet with Tribes after the finding was published to further discuss their concerns.

Administrative Procedure

This rulemaking is necessary to comply with the September 30, 2010, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C.

553(b)(3)(B), that prior notice and opportunity for public comment are unnecessary. Because the court order had legal effect immediately upon being filed on September 30, 2010, the Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective immediately upon publication.

Effects of the Rule

We are issuing this rule to amend the regulations for the Federal Lists of Endangered and Threatened Wildlife at 50 CFR 17.11 by removing the bald eagles nesting in the Sonoran Desert area of central Arizona from the list. However, as previously mentioned, the court order reinstating the provisions of the delisting rule for the bald eagles nesting in the Sonoran Desert area of central Arizona had legal effect immediately upon its filing on September 30, 2010.

All bald eagles will continue to be protected under the BGEPA and MBTA. The Bald Eagle Protection Act (16 U.S.C. 668–668d) was passed in 1940, specifically protecting bald eagles in the United States. A 1962 amendment to this Act included the golden eagle in this protection, and the amended statute became known as the Bald and Golden Eagle Protection Act (BGEPA). The golden eagle was given protected status because of population declines, value to agriculture in the control of rodents, and to afford greater protections to bald eagles because of the similarity of appearance to juvenile bald eagles. This law prohibits the take, possession, sale, purchase, barter, or offering to sell, purchase or barter, transport, export or import of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a)). "Take" includes "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb" (16 U.S.C. 668c; 50 CFR 22.3).

The MBTA makes it unlawful to at any time, by any means or in any manner, pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C. 703(a)).

We recommend that persons use our *Bald Eagle National Management Guidelines* (Guidelines) announced in the **Federal Register** on June 5, 2007 (72 FR 31156), as guidance for minimizing the risk of disturbing bald eagles under the BGEPA and its implementing regulations. The Guidelines include suggestions for protecting bald eagles and their habitat while they are nesting, feeding, and roosting.

In addition to the protective provisions provided by the BGEPA and MBTA, the *Conservation Assessment and Strategy for Bald Eagles in Arizona* (CAS) (Driscoll *et al.* 2006), contains guidance on measures to eliminate, reduce, or minimize effects to eagles in Arizona. On January 22, 2007, the Service signed a Memorandum of Understanding with the Arizona Game and Fish Department (AGFD) supporting the implementation of the AGFD's CAS. The Memorandum of Understanding was also signed by the following: Bureau of Reclamation, Bureau of Land Management, National Park Service, Forest Service, Department of Defense, including the U.S. Army Corps of Engineers, Arizona Public Service, Maricopa County, 56th Fighter Wing at Luke Air Force Base (Department of Defense), Salt River Project, and various other agencies for conservation of the bald eagle in Arizona. The CAS provides additional valuable guidance for protecting bald eagles in Arizona, and we support using it in conjunction with our Guidelines to protect bald eagles in Arizona.

This rule will not affect the status of the bald eagles nesting in the Sonoran Desert area of central Arizona under State laws or suspend any other legal protections provided by State law. This rule will not affect the bald eagle's Appendix II status under the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).

References Cited

Driscoll, J.T., K.V. Jacobson, G.L. Beatty, J.S. Canaca, and J.G. Koloszar, 2006. *Conservation Assessment and Strategy for the Bald Eagle in Arizona*. Nongame and Endangered Wildlife Technical Report 173. Arizona Game and Fish Department, Phoenix, Arizona.

Lists of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, in order to comply with the court orders discussed above, 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; 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 by removing from the table at paragraph (h) the entry for “Eagle, bald (*Haliaeetus leucocephalus*)”.

§ 17.41 [Amended]

- 3. Amend § 17.41 by removing and reserving paragraph (a).

Dated: August 26, 2011.

Gregory E. Siekaniec,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–22600 Filed 9–1–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1496–05]

RIN 0648–BA01

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulations that were published on May 11, 2011. That final rule established the 2011–2012 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. This action provides nine corrections to the regulations, all of which are either mis-designated paragraphs, transposed numbers, removal of text that was mistakenly left in, or addition of text that was mistakenly left out.

DATES: Effective September 2, 2011.

FOR FURTHER INFORMATION CONTACT:

Gretchen Hanshew (Northwest Region, NMFS), phone: 206–526–6147; fax: 206–526–6736 and; e-mail: gretchen.hanshew@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2011, NMFS published a final rule (76 FR 27508) to establish the 2011–2012 harvest specifications and management measures for groundfish taken in the EEZ off the coasts of Washington, Oregon, and California. NMFS accepted public comment on the proposed rule and responded to these comments in the preamble to the final rule. Those final regulations revised portions of 50 CFR 660, Subparts C through G, and are the subject of this correcting amendment. These regulations affect persons operating fisheries for groundfish species off the U.S. West Coast. As published, the final regulations contain errors that may mislead the public and need to be corrected. Additionally, there are differences between the text of the final rule and current codified regulations that resulted from incorrect amendatory instructions in the final rule. This action implements a total of nine corrections to the regulations, all of which are either mis-numbered paragraphs, transposed numbers, removal of text that was mistakenly left in, or addition of text that was mistakenly left out.

This action makes four corrections to coordinates in § 660.72, § 660.73, and § 660.74. The coordinates are expressed in degrees latitude and longitude, and define large-scale boundaries utilized in management of the groundfish fishery. These sections contain lists of coordinates, expressed in degrees latitude and longitude, which define large-scale boundaries for Rockfish Conservation Areas off the Pacific coast. The first correction is to reinstate paragraphs § 660.72(f)(143)–(145), which were mistakenly removed in the final rule as a result of incorrect amendatory language. Because of this mistake, these paragraphs in the Code of Federal Regulations (CFR) were “reserved” instead of being redesignated. This correction will establish the appropriate coordinates in those paragraphs that are currently “reserved.” Additionally, corrections are needed to § 660.72(j) and § 660.73(d), where incorrect and transposed coordinate numbers were listed in the final rule and need to be corrected to define the intended boundary lines. Finally, a correction is needed to § 660.74(g) to publish the coordinates in the correct order. The

coordinates that published in the final rule were the correct numbers, but were listed in the wrong order. All the corrections made by this rule do not change the intent or application of the geographic area described in the proposed and final rule.

This action also makes five corrections to § 660.360, which provides the regulations for the recreational fisheries in Washington and California. This rule makes no corrections to the regulations for the recreational fisheries in Oregon. Four of these five changes reinstate regulatory language that was published in the final rule (76 FR 27508). The amendatory instructions as published in the proposed rule (75 FR 67810) were correct and would have amended the codified regulations as intended. However, due to an administrative error, the final rule contained the incorrect amendatory instructions resulting in the final rule either making changes that were incorrect or omitting changes to the codified regulations. This final rule corrects these errors. One correction revises § 660.360(c)(1)(iv), which was correctly redesignated in the final rule but was not appropriately revised due to missing amendatory instructions; the correct text published in the final rule on page 27560. Another correction is to § 660.360(c)(3)(ii)(B), this paragraph was not revised in the codified regulations. The correct text was published in the final rule on page 27562. Finally, text at § 660.360(c)(3)(iii)(A)(1)–(5) was not revised and paragraph (c)(3)(iii)(A)(6) was not removed. The correct regulatory text was listed on page 27562 of the final rule; however a mistake in the amendatory language resulted in the CFR not being updated with the regulations as published in the final rule.

Another correction is to § 660.360(c)(3)(i)(A)(5); this paragraph was revised between the proposed and final rule, as described in the preamble of the final rule in the “Changes from the Proposed Rule” section; however the last line of the paragraph was mistakenly left the same as the proposed rule. As published, the regulations in this paragraph directly contradict the changes described in the preamble of the proposed rule, as well as the regulations at § 660.360(c)(3)(i)(B), and would be confusing to the public if it is not corrected.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment for this