

629(1) of the Appropriations Act amends section 202(c) of the Telecommunications Act of 1996 ("Telecommunications Act") to direct the Commission to modify the national television ownership limit, contained in section 73.3555 of the Commission's rules,<sup>2</sup> to specify 39 percent as the maximum aggregate national audience reach of any single television station owner.<sup>3</sup> The Appropriations Act also adds to the Telecommunications Act a new section 202(c)(3), which states:

(3) **DIVESTITURE**—A person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B) through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.<sup>4</sup> With this Order, the Commission conforms its rules to these provisions. Section 73.3555(d) will be redesignated as section 73.3555(e), section 73.3555(e)(1) is revised to reflect the changes directed by section 202(c)(1) of the Telecommunications Act, as amended by the Appropriations Act, and a new section 73.3555(e)(3) is added to reflect section 202(c)(3).<sup>5</sup> These changes are set forth in the rule changes section of this summary.<sup>6</sup>

<sup>2</sup> 47 CFR 73.3555.

<sup>3</sup> 47 U.S.C. 202(c)(1). Prior to passage of the Appropriations Act, Section 202(c)(1) of the Telecommunications Act established a national television ownership reach limit of 35 percent, which was incorporated in Section 73.3555(e) of the Commission's rules. In the 2002 biennial ownership proceeding, the Commission raised the national television ownership limit from 35 percent to 45 percent. *2002 Biennial Regulatory Review*, 68 FR 46286, August 5, 2003 ("2002 Biennial Report and Order"), *aff'd in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004) ("Prometheus Order"), *cert. denied*, 13 U.S.L.W. 3466 (June 13, 2005). The rule changes adopted in the biennial ownership proceeding were stayed, however, by the U.S. Court of Appeals for the Third Circuit and, except for a partial lifting of the stay with respect to the local radio ownership rules, remain stayed pending further judicial action. *Prometheus Radio Project, et al. v. FCC*, No. 03–3388 (Sept. 3, 2003) (order granting stay); *Prometheus Radio Project v. FCC*, No. 03–3388 (3rd Cir. Sept. 3, 2004) (order partially lifting stay).

<sup>4</sup> 47 U.S.C. 202(c)(3).

<sup>5</sup> In 2003, the Commission's 2002 Biennial Report and Order eliminated the radio-television cross-ownership rule, formerly found at 47 CFR 73.3555(c). As a result, the national television ownership rule was renumbered from 47 CFR 73.3555(e)(1) to 47 CFR 73.3555(d)(1). However, the rules adopted in the 2002 Biennial Report and Order, and published in the CFR, were stayed by a court and did not go into effect. However, after the stay was applied, the new 39 percent cap was promulgated pursuant to the Appropriations Act.

<sup>6</sup> The current broadcast attribution rules set forth in the notes to Section 73.3555 would continue to apply to the national television ownership rule as

2. The Commission is revising its rules without providing prior public notice and an opportunity for comment because the rule modifications are mandated by the applicable provisions of the Appropriations Act and Telecommunications Act. The Commission finds that notice and comment procedures are unnecessary, and that this action therefore falls within the "good cause" exception of the Administrative Procedure Act.<sup>7</sup> The rule changes adopted in this Order do not involve discretionary action on the part of the Commission. Rather, they simply implement provisions of the Appropriations Act, as it amends the Telecommunications Act, which directs the Commission to revise its rules according to specific terms set forth in those laws.

#### Ordering Clauses

3. Accordingly, *it is ordered* that pursuant to section 629 of the Consolidated Appropriations Act, 2004, and section 202(c)(1) of the Telecommunications Act of 1996, as amended, and sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), Part 73 of the Commission's Rules, 47 CFR part 73, *is amended*. The rule change will become effective May 4, 2007.<sup>8</sup>

4. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Rule Changes

■ Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Congress did not indicate any intent that the Commission alter them in this proceeding. The statute directs the Commission to change the audience reach limit to 39 percent and add the new divestiture provision. Neither the statute nor the legislative history indicate that Congress intended that we make any other changes to the national television ownership rule in this proceeding.

<sup>7</sup> *See* 5 U.S.C. 553(b)(B) (notice requirements inapplicable "when the agency for good cause finds \* \* \* that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest"); *Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency orders that were nondiscretionary ministerial actions issued in conformity with statute were properly issued without notice and comment).

<sup>8</sup> *See* 5 U.S.C. 553(d).

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.3555 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), add and reserve paragraph (d) and revise paragraph (e)(1) and add paragraph (e)(3) to read as follows:

\* \* \* \* \*

#### § 73.3555 Multiple ownership.

\* \* \* \* \*

(e) \* \* \*

#### *National television multiple*

*ownership rule.* (1) No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.

\* \* \* \* \*

(3) *Divestiture.* A person or entity that exceeds the thirty-nine (39) percent national audience reach limitation for television stations in paragraph (e)(1) of this section through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.

\* \* \* \* \*

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#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018–AV16**

#### Endangered and Threatened Wildlife and Plants; Adding Four Marine Taxa 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), are adding four marine taxa to the List of Endangered and Threatened Wildlife (List) in accordance with the Endangered Species Act of 1973, as amended. These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species. These four taxa are the Southern Distinct Population Segment (DPS) of green sturgeon (*Acipenser medirostris*), staghorn (*Acropora cervicornis*) and elkhorn (*Acropora palmata*) corals, and the Southern Resident killer whale DPS (*Orcinus orca*).

**DATES:** This rule is effective April 4, 2007.

**Applicability dates:** The Southern DPS of the North American green sturgeon (*Acipenser medirostris*) listing is applicable as of June 6, 2006. The elkhorn coral (*Acropora palmata*) and staghorn coral (*Acropora cervicornis*) listing is applicable as of June 8, 2006. The Southern Resident killer whale DPS (*Orcinus orca*) listing is applicable as of February 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 420, Arlington, Virginia 22203 (703-358-2105).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In accordance with the Act and the Reorganization Plan No. 4 of 1970, NMFS has jurisdiction over these taxa. Under section 4(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Service is responsible for the actual amendment of the List in 50 CFR 17.11(h).

On April 6, 2005, NMFS published a proposed rule (70 FR 17386) to list the Southern DPS of the North American green sturgeon (*Acipenser medirostris*) as threatened. During the public comment period for that proposed rule, NMFS received 32 comments. On April

7, 2006, NMFS published a final rule to list the Southern DPS of the North American green sturgeon as threatened (71 FR 17757). The listing was effective as of June 6, 2006. In that final rule, NMFS addressed all public comments received in response to the proposed rule.

On May 9, 2005, NMFS published a proposed rule (70 FR 24359) to list the elkhorn coral (*Acropora palmata*) and staghorn coral (*Acropora cervicornis*) as threatened. During the public comment period for that proposed rule, NMFS received 1,393 comments. On May 9, 2006, NMFS published a final rule to list the elkhorn and staghorn corals as threatened (71 FR 26852). The listing was effective as of June 8, 2006. In that final rule, NMFS addressed all public comments received in response to the proposed rule.

On December 22, 2004, NMFS published a proposed rule (69 FR 76673) to list the Southern Resident killer whale DPS (*Orcinus orca*) as threatened. During the public comment period for that proposed rule, NMFS received 1,326 comments. On November 18, 2005, NMFS published a final rule to list the Southern Resident killer whale DPS as threatened (70 FR 69903). The listing was effective as of February 16, 2006. In that final rule, NMFS addressed all public comments received in response to the proposed rule.

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 part 224; this rule is an administrative action to add the species to the List of Endangered and Threatened Species in 50 CFR 17.11(h). The public would not be served by delaying the effective date of this rulemaking action.

For more information concerning these two listing determinations, please consult the respective rules published in the **Federal Register**.

#### **Required Determinations**

##### *National Environmental Policy Act*

The Service has 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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

##### *Paperwork Reduction Act*

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

##### **List of Subjects in 50 CFR Part 17**

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

#### **Regulation Promulgation**

■ Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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.

■ 2. Amend § 17.11(h) by:

■ a. Adding the subheading “CORALS” at the end of the table; and

■ b. Adding the following entries, in alphabetical order under MAMMALS, FISHES, and CORALS, respectively, to the List of Endangered and Threatened Wildlife:

##### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Whale, killer .....	<i>Orcinus orca</i> .....	Pacific Ocean .....	Southern Resident DPS, which consists of whales from the J, K, and L pods, wherever they are found in the wild.	E	756	NA	NA
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Sturgeon, North America green.	<i>Acipenser medirostris</i> .	U.S.A. (CA) .....	U.S.A. (CA) Southern Distinct Population Segment, which includes all spawning populations south of the Eel River (exclusive), principally including the Sacramento River spawning population.	T	756	NA	NA
*	*	*	*	*	*		*
CORALS							
Coral, elkhorn .....	<i>Acropora palmata</i> ...	U.S.A. (FL, PR, VI, Navassa); and wider Caribbean-Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela, and all the islands of the West Indies.	N/A .....	T	756	NA	NA
Coral, staghorn .....	<i>Acropora cervicornis</i>	U.S.A. (FL, PR, VI, Navassa); and wider Caribbean-Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela, and all the islands of the West Indies.	N/A .....	T	756	NA	NA

Dated: March 23, 2007.

**Kenneth Stansell,**

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

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