

which would be defined as private, for-profit childcare or child-education organizations that serve one or more vulnerable populations with a high percentage of those populations represented in the children and families serviced. Sometimes there are no nonprofit childcare organizations in or near communities where there are children in need of Foster Grandparent services, but there are for-profit childcare organizations in the communities. Allowing childcare organizations to serve as volunteer stations, when there are not enough non-profit organizations, would help AmeriCorps Seniors volunteers, and particularly Foster Grandparent volunteers, provide services to more children and provide ways for those communities to receive the services they need. AmeriCorps therefore seeks public comment on whether to add for-profit child-care organizations to the list of organization types eligible to be a volunteer station, whether for-profit child-care organizations should be eligible to be a volunteer station only when there are no non-profit child-care organizations in or near the communities, and whether there is any basis for continuing to exclude them.

4. Requirements for Insurance

Current regulations require grantees (sponsors) to provide appropriate coverage for AmeriCorps Seniors volunteers, including accident insurance, personal liability insurance, and excess automobile liability insurance. See 45 CFR 2551.25, 2552.25, and 2553.25. The regulations explain each of these types of insurance and allow for reimbursement of costs associated with the insurance if grantees maintain the insurance at minimum levels set by AmeriCorps. See 45 CFR 2551.46(b), 2552.46(b), and 2553.46(b). These insurance requirements are intended to help protect both volunteers and grantees in the event of accidents or injuries that might occur during an AmeriCorps Seniors volunteer's service. However, insurance is not required by statute and some grantees find it challenging to secure it. AmeriCorps therefore seeks public comment on whether to remove the requirement for grantees to obtain insurance but retain insurance premiums as allowable costs for cost reimbursement should grantees choose to obtain the listed insurance types.

Regulatory Analyses

This ANPRM was developed in accordance with the principles of Executive Order (E.O.) 12866, "Regulatory Planning and Review," E.O.

13563, "Improving Regulation and Regulatory Review," and E.O. 14094, "Modernizing Regulatory Review." Since this action is an ANPRM, it does not create, or propose to create, any new requirements. Therefore, this regulatory action is not significant under section 3(f) of E.O. 12866.

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action because at this stage, it is an ANPRM and not a "rule" as defined in 5 U.S.C. 601. Following review of the comments received in response to this ANPRM, if AmeriCorps proceeds with a notice of proposed rulemaking regarding this matter, AmeriCorps will conduct all relevant analyses as required by statute or Executive Order.

Andrea Grill,

Acting General Counsel.

[FR Doc. 2024-28765 Filed 12-11-24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No.: 241206-0316; RTID 0648-XR136]

Endangered and Threatened Fish and Wildlife; Description of the Western North Pacific Gray Whale Distinct Population Segment

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a revision to the Code of Federal Regulations (CFR) to update the description of the western North Pacific gray whale distinct population segment (DPS) under the Endangered Species Act (ESA) of 1973 in light of the best available science. The proposed revision is informed by our recently completed 5-year review and a DPS analysis prepared by a Status Review Team. We do not propose to change the ESA-listing status of western North Pacific gray whales, which are classified as an endangered species.

DATES: Comments and information regarding the proposed rule must be received by January 13, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0095>. You may

submit comments, information, or data on this document, identified by docket number NOAA-NMFS-2024-0095, by any of the following methods:

- **Electronic Submissions:** Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov>. In the Search box, enter the above docket number for this document. Then, click on the Search icon. On the resulting web page, click the "Comment" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written information to Megan Wallen, NMFS West Coast Region, 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The western North Pacific gray whale DPS analysis (Weller *et al.* 2023) and the 5-year review of the DPS (NMFS 2023) are both available to access on our website at <https://www.fisheries.noaa.gov/resource/document/dps-analysis-western-north-pacific-gray-whales-under-esa> and <https://www.fisheries.noaa.gov/resource/document/western-north-pacific-dps-gray-whale-5-year-review>, respectively.

FOR FURTHER INFORMATION CONTACT: Megan Wallen, Protected Resources Division, West Coast Region, 206-473-0812, megan.wallen@noaa.gov, Adrienne Lohe, Endangered Species Division, Office of Protected Resources, 301-427-8442, adrienne.lohe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS and the U.S. Fish and Wildlife Service (FWS) jointly administer the ESA, with NMFS having jurisdiction over most marine species, and FWS having jurisdiction over terrestrial

species. NMFS and FWS make determinations as to the endangered or threatened status of species under ESA section 4 (16 U.S.C. 1533). The ESA defines “species” as including subspecies, and, for vertebrates only, “distinct population segments” (DPSs). 16 U.S.C. 1532(16). NMFS and FWS’s joint *Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act* (61 FR 4722, February 7, 1996) (DPS Policy) clarifies the agencies’ interpretation of the phrase “distinct population segment” for purposes of listing, delisting, and classifying species under the ESA.

Regulations identifying the species under NMFS’s jurisdiction that are listed as threatened or endangered are published at 50 CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species). The FWS maintains master lists of all threatened and endangered species, *i.e.*, species under both NMFS’s jurisdiction and species under FWS’ jurisdiction, at 50 CFR 17.11 (threatened and endangered animals) and 50 CFR 17.12 (threatened and endangered plants). The ESA requires NMFS and FWS to review the status of each listed species at least once every 5 years to determine whether the listing remains accurate (16 U.S.C. 1533(c)(2)). Recently, we completed a 5-year review of the status of the western North Pacific (WNP) DPS of gray whales (NMFS 2023). Because WNP gray whales were listed as a DPS prior to NMFS and FWS’s issuance of the DPS Policy, and because new information pertinent to gray whale stock structure had become available, NMFS also convened a Status Review Team (SRT) composed of NMFS scientists with relevant expertise to evaluate WNP gray whale classification in light of the 1996 DPS Policy. The SRT’s full analysis and conclusions are provided in Weller *et al.* (2023, see **ADDRESSES**) and summarized in this proposed rule.

WNP gray whales were originally listed in 1970, when NMFS listed the entire Pacific Ocean population of gray whales as an endangered species (35 FR 18309, December 2, 1970). In 1993, NMFS determined that the eastern North Pacific (ENP) gray whale population had recovered to pre-exploitation levels and should be delisted (58 FR 3121, January 7, 1993). ENP gray whales are those that migrate between wintering areas in Baja California, Mexico, and summer feeding areas in the Bering and Chukchi Seas, except for a small subset of whales that summer and feed along the Pacific coast between Kodiak Island, Alaska and northern California (Carretta *et al.*

2023). NMFS also determined that there was a geographically separate WNP gray whale population, which had not recovered and should remain classified as “endangered.” The WNP gray whale DPS is currently listed as “endangered,” and is described in the CFR as “western North Pacific (Korean) gray whales” (50 CFR 224.101(h)). There is no designated critical habitat for WNP gray whales.

Since WNP gray whales were first listed as a DPS in 1993, new information has been developed about the species’ migratory patterns and range, including information demonstrating that some WNP gray whales transit the Pacific Ocean and overlap with part of the ENP gray whale migration. However, genetic, ecological, ranging, and behavioral differences exist supporting designation of the ENP and WNP as separate species under the ESA (Weller *et al.* 2023). The SRT was asked to assess whether the description of the WNP gray whale DPS as currently listed remains accurate in light of the best currently available science. The SRT was also tasked with evaluating whether WNP gray whales meet the criteria for designation as a DPS under our DPS Policy. The SRT found that within the WNP, three gray whale units met the DPS policy criteria of discreteness and significance: (1) a unit comprising gray whales that spend their entire lives in the WNP, (2) a unit comprising gray whales that feed in the WNP in the summer and fall and migrate to the ENP in the winter, and (3) a unit including both (1) and (2) combined as a single unit.

Under the DPS Policy, two criteria are considered when determining whether a vertebrate population segment qualifies as a DPS: (1) the discreteness of the of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs (61 FR 4722, February 7, 1996). Both criteria must be met in order for a population segment to be considered a DPS. A population segment may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or if it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. Genetic differences between the population segments being considered may be used to evaluate discreteness.

The SRT concluded that each of the three units of gray whales within the WNP being evaluated were markedly

separate from (a) one another (for the WNP-only and WNP–ENP units) and (b) ENP gray whales (for all three units) as a result of behavioral and ecological factors. These include different migratory routes, strong matrilineal site fidelity to WNP feeding grounds, and use of different biogeographical realms for all or part of their life cycle. The WNP-only unit shows seasonal movements restricted to the WNP, where they migrate through and overwinter in areas where the bottom topography is characterized by a broad continental shelf. In contrast, the WNP–ENP unit and the ENP whales are observed in ENP waters, where the continental shelf is generally narrow with deeper water found close to shore, during the winter or early spring months (*e.g.*, wintering lagoons in Mexico or along the U.S. and Canadian west coast). Both the WNP-only and the WNP–ENP units (and thus the combined WNP-only + WNP–ENP unit) show matrilineal site fidelity to the Sakhalin feeding ground in the WNP, which results in patterns of differential habitat (or biogeographical realm) use when any of these units are compared to the ENP whales that use feeding grounds in the Arctic and/or the temperate North Pacific. In total, these factors provide strong evidence for behavioral separation between the three WNP units, supporting the discreteness of the three units. In addition, there is some evidence for whales primarily breeding within their unit based on genetic differentiation and/or the known timing of reproduction and migration (Weller *et al.* 2023). Nuclear genetic differentiation supports separation of the combined WNP-only + WNP–ENP unit, as well as the WNP–ENP unit alone, from the broader ENP gray whale population, suggesting a lack of substantial interbreeding between either of these two WNP units and the ENP gray whale population. Additionally, while mating behavior has been observed on the wintering grounds, migration route, and feeding grounds, the primary mating period is estimated to occur between late November and mid-December, when gray whales would typically be at the start of their migration from feeding to wintering areas. Given that the WNP-only and WNP–ENP whales use different migratory routes and wintering grounds, and the WNP–ENP whales would likely still be west of the main ENP migratory corridor, spatial overlap between the WNP-only and WNP–ENP units or between either of those units (and thus the combined unit) and the ENP whales would likely be minimal during this

time period. Therefore, the evidence is consistent with a lack of substantial interbreeding with another unit, supporting the discreteness of the three WNP units. NMFS finds that the evidence presented by the SRT described here supports the discreteness of the three WNP units under the DPS policy.

If a population segment is considered discrete, its biological and ecological significance is then evaluated in terms of the importance of the population segment to the taxon to which it belongs. Some of the considerations that can be used to determine a discrete population segment's significance to the taxon as a whole include: (1) persistence of the population segment in an unusual or unique ecological setting; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; and (3) evidence that the population segment differs markedly from other populations of the species in its genetic characteristics. After considering the best available information, the SRT concluded that each of the three WNP units is significant to the taxon largely as a result of two factors: (1) that loss of the unit would result in a significant gap in the range of the species and (2) marked differences in biological and ecological factors, which include differences in behavioral or cultural diversity of each unit (Weller *et al.* 2023). Given the differences between the three WNP units in their geographic range and migration patterns, the SRT concluded that the loss of any of the three units would result in a significant gap in the range of the taxon. In particular, if the WNP-only unit were extirpated, the western migratory routes and wintering ground would presumably no longer be occupied by the taxon, leading to the loss of a substantial portion of the range of North Pacific gray whales. While these areas are currently used by a relatively small fraction of the gray whales in the North Pacific, evidence suggests these regions historically supported much larger numbers of gray whales. While the range of the WNP-ENP unit overlaps in part with that of ENP whales, they represent a large proportion of the whales that feed in the WNP and thus their loss would result in a substantial decline in the number of whales using western Pacific feeding areas and an increased risk of loss of gray whales in this part of the range. With the loss of the combined unit, gray whales would be limited to ENP waters and the Arctic feeding grounds with no presence in the entire WNP region. Of the three WNP

units, the combined unit had the strongest support for significance, because the full range of all WNP gray whales would be lost with the loss of the combined unit.

The SRT also found strong evidence of significance of each of the three units based on evidence of behavioral differences relating to their differential migration patterns. These differences result in variation in bioenergetic costs, predation pressure, and exposure to anthropogenic risks among units and may have led to the development of unique adaptations among the WNP-only and WNP-ENP units when compared to each other and to ENP gray whales. Energy requirements are estimated to be greater for whales in the WNP-only and WNP-ENP units than for ENP gray whales (migrating between Mexico and the Arctic feeding grounds) due to the longer migration distance of WNP-ENP whales and higher metabolic costs for overwintering in the WNP. Additionally, while all units are known targets for killer whale attacks, gray whales identified off Sakhalin Island have the highest reported prevalence of killer whale-associated scars in a baleen whale population, with gray whales in the ENP showing a lower prevalence of killer whale scars, suggesting strong differences in predation pressure. Gray whales do not occupy any other ocean basin, so gray whales in the WNP are likely important to the resiliency, redundancy, and representation of the species as a whole, particularly as this is an area predicted to change dramatically due to climate change. Significance of the ecological setting and genetic differentiation received less support due to uncertainty and a lack of applicable data. After reviewing the best available information and conclusions of the SRT, we agree that each of the three population segments meets the significance criterion of the DPS policy.

Given the outcome of their analysis, the SRT agreed that there are two mutually exclusive options for recommending a DPS listing that include: (1) a Separate Option where the WNP-only unit and the WNP-ENP unit are separate DPSs, or (2) a Combined Option where the WNP-only unit and WNP-ENP unit are combined into a single unit (*i.e.*, WNP-only + WNP-ENP unit) and considered one DPS (Weller *et al.* 2023). The SRT recommended the second option of designating a single unit, given the challenges with identifying and evaluating the status of and managing the otherwise separate units of gray whales under the ESA, such as estimating abundance and trends, survival, and evaluating recovery (Weller *et al.* 2023). The DPS

composition as recommended by the SRT includes WNP whales that spend their entire life in the WNP and those that feed in the WNP in the summer and fall and migrate to the ENP in the winter. The SRT concluded that “the most practicable means of obtaining positive management outcomes is to combine the units into a single DPS,” given the challenges mentioned above (Weller *et al.* 2023). Based on the recommendations of the SRT, and the lines of evidence leading to the combined unit meeting the DPS criteria, NMFS has determined that WNP gray whales should be defined as “gray whales that reside or feed in the western North Pacific in the waters of Vietnam, China, Japan, Korea (Republic of Korea and/or Democratic People’s Republic of Korea), or the Russian Far East, including southern and southeastern Kamchatka.” Under that definition, whales that have different wintering ground affiliations would be considered part of the same DPS, with members of the DPS spending summers in the WNP (off Sakhalin Island and southeastern Kamchatka Peninsula).

Our 5-year review of the western North Pacific gray whale assessed the status of the DPS (using the DPS definition recommended by the SRT) and concluded in a recommendation that the DPS remain classified as endangered (see NMFS 2023 for detailed assessment). Therefore, we are not proposing to reclassify the DPS.

As a result of the 5-year review and recommendations from the SRT regarding the DPS description, we conclude that the description of the listed entity should be updated in NMFS’ list and FWS’s master list. This proposed revision reflects an effort to more accurately represent the WNP gray whale DPS based on the best available science. We summarize the proposed revision below and provide the full text of the proposed updates to the listed species description at 50 CFR part 224 in the regulatory text at the end of this **Federal Register** document. All public comments on this proposed revision will be considered prior to issuing any final rule.

Endangered Species at 50 CFR 224.101 *Revision to Endangered Species Description*

Below we summarize the proposed revision to the description of our endangered species listed in 50 CFR 224.101. Based on our recently completed DPS analysis and 5-year review of the status of the western North Pacific DPS of gray whales, the description of the endangered species

should be revised to account for more information on the population since its listing in 1994 (59 FR 31094, June 16, 1994). These changes do not constitute a listing or delisting of the DPS, but simply a revision to reflect a more accurate description of the listed entity.

We propose to revise the description of the listed entity to read: “Gray whales that reside or feed in the western North Pacific in the waters of Vietnam, China, Japan, Korea (Republic of Korea and/or Democratic People’s Republic of Korea), or the Russian Far East, including southern and southeastern Kamchatka”. The change proposed for this DPS is to remove the word “Korean” from the description which doesn’t fully capture the geographic area occupied by the DPS.

References

Copies of previous **Federal Register** documents and related reference materials are available on the internet at <https://www.fisheries.noaa.gov/species/gray-whale/conservation-management>, or upon request (see **FOR FURTHER INFORMATION CONTACT** section).

Classification

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order (E.O.) 12866. This proposed rule does not contain a collection of information requirement

for the purposes of the Paperwork Reduction Act.

Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be shared with the relevant State agencies.

National Environmental Policy Act of 1969 (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions.

Government-to-Government Relationship With Tribes

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian Tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the Tribal governments. This proposed rule does not impose substantial direct compliance costs on Indian Tribal governments or communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking. Nonetheless, given

the recent decision to waive the MMPA moratorium on taking ENP gray whales to allow the Makah Indian Tribe to conduct a limited ceremonial and subsistence hunt (89 FR 51600, June 18, 2024), we notified the Makah Tribe about the proposed changes and provided the opportunity for comments or concerns. We will continue to inform potentially affected Tribal governments, solicit their input, and coordinate on future management actions pertaining to western North Pacific gray whales.

List of Subjects in 50 CFR Part 224

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

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 9, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, amend the table in paragraph (h) by revising the entry for “Whale, gray (Western North Pacific DPS)” to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species ¹		Description of listed entity	Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name				
*	*	*	*	*	*
Marine Mammals					
*	*	*	*	*	*
Whale, gray (Western North Pacific DPS).	<i>Eschrichtius robustus</i>	Gray whales that reside or feed in the western North Pacific in the waters of Vietnam, China, Japan, Korea (Republic of Korea and/or Democratic People's Republic of Korea), or the Russian Far East, including southern and southeastern Kamchatka.	35 FR 8491, June 2, 1970; 59 FR 31094, June 16, 1994; <i>[Insert Federal Register page where the document begins], [date of publication when published as a final rule].</i>	NA	NA
*	*	*	*	*	*

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2024-29235 Filed 12-11-24; 8:45 am]

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