TABLE 11 TO PARAGRAPH (c)—Continued

Anchorage	General location	Purpose	Specific regulations
G	.....do	.....do	Notes c, d.
N	Los Angeles Harbor	Small Craft	Note e.
P	Long Beach Harbor	.....do	Note f.
Q	.....do	.....do	Notes c, g.

Notes:

a. Bunkering and lightering are permitted.

b. West of 118°09′48″ W priority for use of the anchorage will be given to commercial vessels over 244 meters (approximately 800 feet). East of 118°09′48″ W priority for use of the anchorage will be given to Naval and Public vessels, vessels under Department of Defense charter, and vessels requiring use of the explosives anchorage.

c. Bunkering and lightering are prohibited.

d. This anchorage is within a Regulated Navigation Area and additional requirements apply as set forth in 33 CFR 165.1152.

e. This anchorage is controlled by the Los Angeles Port Police. Anchoring, mooring and recreational boating activities conforming to applicable City of Los Angeles ordinances and regulations are allowed in this anchorage.

f. This anchorage is controlled by the Long Beach Harbor Master. Anchoring, mooring and recreational boating activities conforming to applicable City of Long Beach ordinances and regulations are allowed in this anchorage.

g. When the explosives anchorage is activated portions of this anchorage lie within the explosives anchorage and the requirements of paragraph (d) of this section apply.

* * * * *

Dated: September 4, 2025.

Jeffrey W. Novak,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2025–17318 Filed 9–8–25; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0134; FXES1111090FEDR–256–FF09E21000]

RIN 1018–BG93

Endangered and Threatened Wildlife and Plants; Similarity of Appearance Explanation for the Northern Distinct Population Segment of the Southern Subspecies of Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of final explanation.

SUMMARY: In response to an order by the United States District Court for the District of Columbia, we, the U.S. Fish and Wildlife Service (Service), are providing our final explanation related to a specific issue regarding our listing determination under the Endangered Species Act (ESA or Act) for the northern distinct population segment (DPS) of the southern subspecies of the scarlet macaw (*Ara macao macao*). We explain why we did not conduct an analysis under section 4(e) of the Act pertaining to the DPS.

DATES: This document is effective September 9, 2025.

ADDRESSES: Supporting materials for this action, including comments we received on our March 11, 2025, **Federal Register** document (90 FR 11674) are available for public inspection in Docket No. FWS–HQ–ES–2022–0134 on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service; *rachel_london@fws.gov;* telephone 703–358–2171. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2019, we published in the **Federal Register** a final rule under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) (84 FR 6278; hereafter, referred to as ''the 2019 rule''). The 2019 rule was the outcome of a rulemaking proceeding that began with a proposed rule (77 FR 40222, July 6, 2012) and a revised proposed rule (81 FR 20302, April 7, 2016).

The 2019 rule revised the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (at 50 CFR 17.11(h)) to:

- Add the northern subspecies of scarlet macaw (*A. m. cyanoptera*) as an endangered species;
- Add the northern distinct population segment (DPS) of the southern subspecies (*A. m. macao*) as a threatened species; and
- Add the southern DPS of the southern subspecies (*A. m. macao*) and subspecies crosses (*A. m. cyanoptera* and *A. m. macao*) as threatened species due to similarity of appearance to the northern subspecies (*A. m. cyanoptera*) and to the northern DPS of the southern subspecies (*A. m. macao*).

The 2019 rule also added protective regulations to 50 CFR 17.41 pursuant to section 4(d) of the Act for the northern and southern DPSs of the southern subspecies and for subspecies crosses (hereafter, ''the 4(d) rule''). For a more thorough discussion of the taxonomy, life history, distribution, and the determination of listing status for scarlet macaws under the Act, please refer to the 2019 rule.

In the 2019 rule, we determined that the northern DPS of the southern subspecies of scarlet macaw met the definition of a threatened species because it was likely to become in danger of extinction within the foreseeable future throughout all of its range. In response to litigation, on April 3, 2023 (88 FR 19549), we published additional analyses and a final threatened species determination for the northern DPS of the southern subspecies of scarlet macaw.

As part of a lawsuit in the United States District Court for the District of Columbia that challenged the macaw listing (*Friends of Animals* v. *Williams* (No. 1:21–cv–02081–RC) (*Friends of Animals*)), on July 10, 2024, the court found that the 2019 rule was flawed in part because it did not include an explanation as to why we decided not to consider listing the northern DPS of the southern subspecies as an endangered species based on similarity of appearance to the northern subspecies. The court remanded the 2019 rule back to us for further explanation on this issue. However, the court did not vacate the 2019 rule, instead finding ''the deficiency

identified in the 2019 Final Rule—the Service's lack of explanation for why it decided not to consider listing the Northern DPS as endangered based on similarity of appearance—is relatively minor and also has 'a real possibility of being cured by further explanation on remand.' '' The court further explained, ''On remand, the Service may, for instance, be able to explain why it exercised its significant discretion not to consider a similarity-of-appearance listing for the Northern DPS, or it may decide to reconsider uplisting the Northern DPS based on such a rationale.''

Subsequently, on October 8, 2024, the court ordered the Service to submit to the Office of the Federal Register (OFR) no later than March 7, 2025, a ''notice opening a 30-day public comment period on either (1) a draft ESA Section 4(e) analysis for the Northern DPS, or (2) an explanation regarding why the Service exercised its significant discretion not to consider a similarity-of-appearance listing for the Northern DPS.'' On March 11, 2025 (90 FR 11674), we published a notice seeking comments on our explanation regarding why we did not conduct an analysis under section 4(e) of the Act pertaining to the DPS.

The court further ordered the Service to submit to the OFR the final section 4(e) analysis or explanation no later than 150 days after the end of the public comment period on our March 11, 2025, explanation. Accordingly, this document provides the court-ordered explanation as to why we did not consider a similarity-of-appearance listing as endangered under section 4(e) for the northern DPS of the southern subspecies, in addition to the determination of threatened status under section 4(a). We are providing this explanation in compliance with the court's order. The government filed a notice of appeal of the court's order on December 5, 2024, and its opening appellate brief on the court's order regarding similarity of appearance on July 2, 2025.

By providing this explanation, we are not indicating our agreement with the court's holding. As addressed further below, it is our position that section 4(e) of the Act does not provide us with authority to treat a threatened species listed pursuant to section 4(a) of the Act as an endangered species based on similarity of appearance to an endangered species. Therefore, we do not intend in future rulemakings to provide explanations as to why we did not consider treating other species as endangered under section 4(e) of the Act if those species separately warrant listing as threatened species under section 4(a) of the Act. If we receive a favorable decision on our appeal, we intend to publish a notice rescinding this analysis.

For a description of previous Federal actions concerning the scarlet macaw, please refer to:

- The 2022 notification of additional analysis (87 FR 66093, November 2, 2022);
- The 2023 significant portion of the range (SPR) analysis (88 FR 19549, April 3, 2023);
- The 2024 opening of a comment period on the 2023 SPR analysis (89 FR 104950, December 26, 2024); and
- The 2025 final SPR analysis (90 FR 23446, June 3, 2025).

Summary of Public Comments

In the March 11, 2025, **Federal Register** document (90 FR 11674), we requested any interested party to submit written comments and information on our analysis and explanation. We reviewed all comments received for substantive issues; we received two non-substantive comments, and one comment letter from Friends of Animals that raised multiple substantive issues. We address the substantive comments below.

Comment (1): Friends of Animals does not believe that the notice complies with the court's order, and they expressed concern that our rationale that the Act prohibits the Service from listing the northern DPS as an endangered species will limit public comment. They also suggested that for this reason, we should ''reissue the notice, disavow its flawed interpretation, and reinvite public comments.''

Response: With our March 11, 2025, notice, we complied with the court's order to submit to the OFR a ''notice opening a 30-day public comment period on either (1) a draft ESA Section 4(e) analysis for the Northern DPS, or (2) an explanation regarding why the Service exercised its significant discretion not to consider a similarity-of-appearance listing for the Northern DPS.'' We decline to reopen the public comment period.

Comment (2): Friends of Animals suggested that our March 11, 2025, notice was a flawed interpretation of the ESA and inappropriate.

Response: For the reasons set forth in our appeal to the United States District Court for the District of Columbia (U.S. Court of Appeals Case #24–5278; July 2, 2025, opening brief Document #2123523), and as discussed below, we disagree that section 4(e) of the Act authorizes the Service to treat a listed threatened species as an endangered species based on similarity of appearance. We are issuing this final notice because we are complying with the court's October 8, 2024, order.

Explanation

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6), (20)). The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following five factors in section 4(a):

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

Section 2 of the Act states that the purposes of the Act include providing a means to conserve the ecosystems upon which endangered and threatened species depend, developing a program for the conservation of listed species, and achieving the purposes of certain treaties and conventions (16 U.S.C. 1531(b)). The ultimate goal of conservation efforts is the recovery of listed species so that they no longer need the protective measures of the Act. The Act provides multiple tools to conserve species that warrant protection under section 4(a) and have been added to the List of Endangered and Threatened Wildlife (50 CFR 17.11) or

List of Endangered and Threatened Plants (50 CFR 17.12). These include, among other protections, the designation of critical habitat, recovery planning under section 4(f), protective regulations for threatened species under section 4(d), and Federal agency requirements to ensure their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat under section 7(a)(2).

One of these tools, section 4(e), provides us with the discretion to treat species as endangered species or threatened species when they are not listed under section 4(a). This authority to treat species as endangered or threatened when they are similar in appearance to (*i.e.,* resemble) a species that is listed under section 4(a) is limited to situations when treating the species as endangered or threatened under section 4(e) could help protect the listed species that it resembles. In other words, under section 4(e), we may treat an unlisted species as an endangered or threatened species if doing so will facilitate enforcement of the Act for the benefit of, and reduce threats to, the species listed under section 4(a). The Act's tools and protections for endangered and threatened species are directed at the species that meet the definitions of endangered species or threatened species under section 4(a), not the species that are treated as endangered or threatened under section 4(e) solely because of a similarity in appearance.

Section 4(e) of the Act provides that the Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of the Act if the Secretary finds three criteria are met that: (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to the Act that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act (16 U.S.C. 1533(e)). The Act provides the Service discretion in determining both when and how to apply section 4(e). However, as discussed below, there are several ways in which the statutory language demonstrates that Congress did not intend for the 4(e) authority to apply to species that warrant listing under section 4(a). Moreover, the legislative history further underscores this limitation on 4(e) authority.

First, the plain language of the Act provides for no circumstances in which a species that meets the definition of a threatened species under section 4(a) would also meet the criteria at section 4(e)(A)–(C) for being ''treated'' as an endangered species. Treating a species as endangered under section 4(e), when that species separately warrants protection in its own right as a threatened species under section 4(a), would circumvent the protections intended for species that qualify for listing under section 4(a) and would never satisfy the requirements under 4(e)(C) to further the policy of the Act (*i.e.,* section 2(b)–(c) of the Act). Sections 4(a)–(c) establish the primary mechanism for determining whether species meet the definition of an endangered species or a threatened species. For species that meet the definition of an endangered species or a threatened species based on the factors and standards set out in sections 4(a)–(b), section 4(c)(l) provides the mandatory requirement that the Secretary list those species according to the definition they meet. Nowhere does section 4(a)–(c) include a requirement to consider a species' similarity of appearance to an already listed species when making a listing determination, nor does 4(e) either address, alter, or amend any of the provisions in sections 4(a)–(c) or characterize the similarity-of-appearance authority it provides as mandatory.

Moreover, for species that meet the definition of a threatened species under section 4(a), treating the species instead as endangered under section 4(e) would not provide any greater protections than the species would otherwise receive as a threatened species listed under section 4(a). In most cases, doing so would actually provide species with fewer protections than listing them as threatened species under section 4(a). This is because species treated as endangered or threatened under section 4(e) do not receive the protections of the Act provided to species listed under section 4(a), such as the designation of critical habitat, consultation requirements for Federal agencies under section 7, and the recovery planning provisions under section 4(f).

Section 4(e) specifies that the authority to ''treat'' any similarity-of-appearance species as an endangered or threatened species is to be exercised ''by regulation of commerce or taking, and to the extent [the Secretary] deems advisable.'' Therefore, all applicable prohibitions and exceptions for species treated under section 4(e) of the Act as endangered or threatened based on their similarity of appearance to a species listed under section 4(a) are set forth by regulation, such as in a species-specific rule, and are determined with the goal of furthering the conservation of the species listed under section 4(a) that the 4(e) species resembles. The Act does not differentiate how the Service should regulate commerce or taking of species treated as endangered based on similarity of appearance as compared to those treated as threatened based on similarity of appearance. In either situation, the Service issues regulations that it deems are advisable relating to commerce or taking of the species. Moreover, there is no requirement that those regulations for a species being treated as endangered under section 4(e) provide greater protections than the regulations for treating a species as threatened under section 4(e). For all these reasons, treating a species as endangered under section 4(e), when that species separately warrants protection as a threatened species under section 4(a), will not facilitate the enforcement or further the policy of the Act.

Second, the court's interpretation in *Friends of Animals* that the section 4(e) ''similarity of appearance'' provision requires the Service to consider treating a species as endangered when it is listed as threatened under section 4(a) is in direct conflict with the plain language of section 4 of the Act. Section 4(e) explicitly limits its applicability to unlisted species, authorizing the Secretary to treat any species as an endangered species or threatened species ''*even though it is not listed* pursuant to section 4 of this Act.'' Similarly, the third criterion for treating a species as endangered or threatened pursuant to section 4(e) requires that ''such treatment of *an unlisted species* will substantially facilitate the enforcement and further the policy of this Act'' (sections 4(e) and 4(e)(C) (emphases added)). Thus, our authority to treat species as endangered species or threatened species due to similarity of appearance is limited to species that are otherwise ''unlisted'' or ''not listed'' and does not extend to species that are listed under section 4(a).

If Congress had intended for section 4(e) to apply to any species that warrant listing as endangered species or threatened species under section 4(a), Congress would have no need to include the terms ''unlisted'' and ''not listed'' in section 4(e). Congress also used the latter of those terms—''not listed''—in section 9 of the Act. In both section 4(e)

and section 9, those terms are used as a necessary precondition for any species to qualify for the statutory provision at issue. Under section 4(e), only a species that is ''not listed'' may be considered for treatment as an endangered or threatened species based on similarity of appearance to a listed species. Under section 9, the term ''not listed'' is a precondition for the limited exceptions to import or export prohibitions (*i.e.,* ''It is unlawful [to import or export] . . . fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and . . .)'' (section 9(d)(1)(A), with similar language in sections 9(e) and (f)).

This conclusion is also supported by the Act's legislative history. Multiple congressional reports—from both houses of Congress—made this clear. For example, when the Act was enacted in 1973, the Senate Report described how the statute deals with the problem presented by two species that are so similar in appearance that people without specialized training cannot distinguish between them: ''If one species *is listed* under section 4, but *the other is not,* the Secretary may treat *the unlisted species* as an endangered or threatened species if such treatment will substantially facilitate the enforcement and further the policy of this Act'' (S. Rept. 93–307, at 9 (1973) (emphasis added)); see also H. Rept. 93–412, at 12 (1973), and H. Rept. 100–928, at 20 (1988)). In light of the clear statutory language and legislative history, while the Service has discretion in when to treat an ''unlisted'' or ''not listed'' species as an endangered species or threatened species under section 4(e), this discretion does not extend to species that warrant listing under section 4(a), like the northern DPS (16 U.S.C. 1533(a); 1532 (6), (20)).

In accordance with the statutory language and legislative history, our regulations, guidance, and longstanding practice all provide for treatment of a species as endangered or threatened under section 4(e) only when the species is not listed under section 4(a). Our regulations provide that ''whenever a species *which is not Endangered or Threatened* closely resembles an Endangered or Threatened species, such species may be treated as either Endangered or Threatened'' (50 CFR 17.50, emphasis added). These regulations have remained substantively unchanged since their promulgation in 1975 (although they were amended for other reasons at various times). Moreover, since the inception of section 4(e), we have only ever considered invoking its authority for species that do not warrant listing under section 4(a), and we have never evaluated a section 4(a)-listed species under section 4(e). For example, in invoking section 4(e) to treat the American alligator as listed in 1975, we first delisted three populations of alligators that had previously been listed as endangered species under section 4(a) and then decided to treat those unlisted populations as listed under section 4(e) (40 FR 44412, Sept. 26, 1975).

In light of the above points, the Service does not evaluate whether to treat a species as endangered under section 4(e) of the Act if that species separately meets the definition of a threatened species under section 4(a). Therefore, because we found that the northern DPS of the southern subspecies of scarlet macaw meets the definition of a threatened species under section 4(a), we did not evaluate whether it should be treated as an endangered species under section 4(e).

However, even if the Act did give us the authority to evaluate whether the northern DPS of the southern subspecies of macaw should be treated as an endangered species under section 4(e), we would not find that the northern DPS met the criteria for such treatment identified in section 4(e)(A)–(C). As explained above, and further discussed below, treating the northern DPS as endangered under section 4(e) of the Act rather than actually listing it as a threatened species under section 4(a) would not provide any additional protections for either the northern DPS or the northern subspecies, meaning such treatment would not facilitate the enforcement or further the policy of the Act.

This conclusion is further supported by the court's ruling in *Friends of Animals* upholding our treatment of the southern DPS as a threatened (rather than endangered) species pursuant to section 4(e) of the Act. We found it was appropriate to treat the southern DPS of the southern subspecies as threatened, not endangered, under section 4(e) ''because the 4(d) rule . . . provide[d] adequate protections for'' the section 4(a)-listed scarlet macaws that the southern DPS resembled, and the treatment of the southern DPS as threatened would substantially facilitate law enforcement actions to protect and conserve those 4(a)-listed macaws, including the endangered northern subspecies (84 FR 6278, February 26, 2019). The court in *Friends of Animals* upheld that determination finding, ''[h]aving reviewed the whole record—and cognizant of the significant discretion that Congress vested in the Service to make similarity-of-appearance listing decisions, *see* 16 U.S.C. 1533(e)—the Court finds that the Service satisfactorily discharged its duty to articulate a 'rational connection between the facts found and the choice made' to list the Southern DPS as threatened'' and not endangered as plaintiff argued. The same reasoning would apply when evaluating whether to treat the northern DPS as endangered under section 4(e), rather than listing it as a threatened species under section 4(a). Specifically, the 4(d) rule for the northern DPS also provides adequate protections for the northern subspecies. Additionally, treating the southern DPS as threatened under section 4(e) and listing the northern DPS as a threatened species under section 4(a) will facilitate law enforcement actions to protect and conserve both the northern DPS and the northern subspecies.

Further, in addition to the Act, three other laws provide critical safeguards for all scarlet macaws: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Wild Bird Conservation Act (WBCA; 16 U.S.C. 4901 *et seq.*), and the Lacey Act Amendments of 1981 (Lacey Act; 16 U.S.C. 3371–3378). Pursuant to these laws, import, use after import, export, and re-export of scarlet macaw is strictly regulated. For example, under CITES, such activities are prohibited for primarily commercial purposes for any scarlet macaw removed from the wild or bred in captivity on or after the inclusion of the scarlet macaw in the CITES Appendices on October 28, 1976, as there are currently no CITES-registered commercial breeding facilities for the Appendix-I species (CITES Art. III, VII(2), VII(4); 16 U.S.C. 1538(c)(1); 50 CFR 23.5, 23.13, 23.20, 23.23, 23.24, 23.26, 23.27, 23.45, 23.46, 23.55). Additionally, under the WBCA, imports may only be for scientific research, zoological breeding or display, cooperative breeding, or personal pet purposes (16 U.S.C. 4910, 4911; 50 CFR 15.11, 15.22–15.26). Under the Lacey Act, imports and exports are prohibited for any scarlet macaw and its offspring that were taken, possessed, transported, or sold in violation of foreign law (16 U.S.C. 3371–3378). As such, the Service would have no basis for extending additional protections to the northern DPS if it were treated as endangered based on similarity of appearance to the northern subspecies. Therefore, we would not treat the northern DPS as endangered under section 4(e) rather than list it as a threatened species under section 4(a) because doing so would not facilitate enforcement or further the

policy of the Act for the conservation of either the northern DPS of the southern subspecies of scarlet macaw, or the northern subspecies of scarlet macaw.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Brian R. Nesvik,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2025–17320 Filed 9–8–25; 8:45 am]

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