

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R5-ES-2011-0035]

[92220-1113-0000; ABC Code: C6]

RIN 1018-AX80

**Endangered and Threatened Wildlife and Plants; Reinstatement of Listing
Protections for the Virginia Northern Flying Squirrel in Compliance With a Court
Order**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that has the effect of reinstating the regulatory protections under the Endangered Species Act of 1973 (ESA), as amended, for the Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*). Pursuant to the District of Columbia District Court order dated March 25, 2011, this rule reinstates the Virginia northern flying squirrel listing as endangered.

DATES: This action is effective [insert date of publication in the **FEDERAL REGISTER**]. However, the court order had legal effect immediately upon its filing on March 25, 2011.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. Call (304) 636-6586 to make arrangements.

FOR FURTHER INFORMATION CONTACT: For information contact Deborah Carter, Project Leader, at our West Virginia field office (see **ADDRESSES**) or telephone (304) 636-6586, extension 12. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2008, we published a final rule to remove ESA protections for the Virginia northern flying squirrel, more commonly known as the West Virginia northern flying squirrel (WVNFS) (73 FR 50226). Additional background information on the WVNFS, including previous Federal actions, can be found in our August 26, 2008, final rule, <http://www.regulations.gov>, or at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?scode=A09R>.

A lawsuit challenging our final rule was filed in U.S. District Court for the District of Columbia. On March 25, 2011, the U.S. District Court for the District of Columbia vacated and set aside our 2008 delisting rule (*Friends of Blackwater et al. v. Salazar et al.*, 1:09-cv-02122-EGS).

The decision reinstates Federal protections that were in place prior to our 2008 delisting. Accordingly, WVNFS is listed as endangered throughout its range (50 FR 26999 27002, July 1, 1985; 50 CFR 17.11(h)). Therefore, take of WVNFS may be authorized only by a permit obtained under section 10 of the ESA, or if exempted by an incidental take statement within a biological opinion issued by the Service pursuant to section 7 of the ESA. We notified all State and Federal partners of the decision and its impact shortly after the order was released. There are no federally recognized Tribes to notify in Virginia or West Virginia. We also took steps to ensure the public was aware of the decision.

This action is independent of any decision by the United States or any interveners in the case to appeal the March 25, 2011, District of Columbia District Court ruling.

Administrative Procedure

This rulemaking is necessary to comply with the March 25, 2011, 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 impractical and unnecessary. 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 upon publication.

Effects of the Rule

As of the filing of the court order, delisted WVNFS were again listed as endangered (50 CFR 17.11(h)).

This rule will not affect the status of WVNFS under State laws or suspend any other legal protections provided by State law.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

In order to comply with the court order discussed above, we amend part 17, subchapter B of chapter I, title 50 of the CFR, 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 by adding an entry in the table at paragraph (h) for “Squirrel, Virginia northern flying” under “MAMMALS” as follows:

§ 17.11 [Amended]

* * * * *

(h) * * *

SPECIES		Historic Range	Vertebrate Population Where Endangered Or Threatened	Status	When Listed	Critical Habitat	Special Rules
Common Name	Scientific Name						
MAMMALS							

Squirrel, Virginia northern flying	<i>Glaucomys sabrinus fuscus</i>	U.S.A. (VA, WV)	Entire	E	189	N/A	N/A

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Dated: May 27, 2011

Signed: Rowan W. Gould

Acting Director, Fish and Wildlife Service

Billing Code: 4310-55-P

[FR Doc. 2011-15111 Filed 06/16/2011 at 8:45 am; Publication Date: 06/17/2011]