

FOR FURTHER INFORMATION CONTACT:

Theresa Linkowich, (410) 786-9249 (General inquiries concerning prosthetics and custom-fabricated orthotics), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or Lynn Sylvester, 202-606-9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or Ira Lobel, 518-431-0130, Federal Mediation and Conciliation Services, Clinton Square, Room 952, Albany, NY 12207

SUPPLEMENTARY INFORMATION: We published a document in the **Federal Register** on July 26, 2002 (FR pages 48839-48840) announcing the establishment of the negotiated rulemaking committee to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The notice also announced dates for the Committee's first two meetings on October 1-3, 2002 and October 29-31, 2002. On November 22, 2002 (FR page 70358), a notice of meetings was published in the **Federal Register** announcing the third meeting held January 6 and 7, 2003, and the fourth meeting which will be held February 10 and 11, 2003.

Through face-to-face negotiations, these meetings will help the Committee to reach consensus on the substance of the proposed rule. If consensus is reached, the Committee will transmit to us a report containing required information for developing a proposed rule and we will use the report as the basis for the proposed rule. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation. Detailed information is available on the CMS Internet Home Page: <http://cms.hhs.gov/faca/prosthetics/> or by calling the Federal Advisory Committee Hotline at (410) 786-9379.

The Agendas for the March 10 and 11 meeting and April 7 and 8 meeting will cover the following:

1. Review of the February 10 and 11 minutes. (March 10 and 11) and review of the March 10 and 11 minutes (April 7 and 8).
2. Discussion of statutory terms to be further defined by regulation.
3. Discussion on L codes.
4. Discussion on supplier and practitioner qualifications as set forth in the statute.

5. Presentation of Computer Assisted Design (CAD)

6. Presentation by National Orthotic Manufacturers Association (NOMA)

7. Oral comments from members of the public.

Public Participation

All interested parties are invited to attend these public meetings, but attendance is limited to the space available. No advance registration is required. Seating will be available on a first-come first-served basis. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact

Theresa Linkowich, mlinkowich@cms.hhs.gov or call (410) 786-9249 at least 10 days before the meeting. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the Committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

Interested parties can file statements with the Committee. Mail written statements to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606-9140.

Additional Meetings

Meetings will be held as necessary. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2) (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 17, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 030114011-3011-01, I.D. 122702A]

Petition To Designate Alaska Transient Killer Whales as Depleted; Finding

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

ACTION: Notice of finding; request for information.

SUMMARY: NMFS received a petition to designate a group of transient killer whales as depleted under the Marine Mammal Protection Act (MMPA). This group of killer whales, identified as the AT1 group, inhabits Prince William Sound/Kenai Fjords, AK. NMFS finds that the petition presents substantial information indicating that the petitioned action may be warranted and will initiate a status review promptly. NMFS solicits information and comments from the public that may contribute to the status review.

DATES: Information and comments on the action must be received by March 10, 2003.

ADDRESSES: A copy of the petition may be requested from, and information and comments on this action should be submitted to, Assistant Administrator for Protected Resources, NMFS, 709 W. 9th St, Juneau, AK 99802-1668. Comments will not be accepted if submitted via email or the Internet; however, comments may be sent via fax to (907) 586-7012.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS, Alaska Region (907) 586-7235 or Tom Eagle, NMFS, Office of Protected Resources, (301) 713-2322 ext. 105.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Reference materials regarding this rule, including the petition, its attachments, and marine mammal stock assessment reports, may be obtained from the Internet at <http://www.fakr.noaa.gov>.

Background

A stock is depleted under the MMPA when its abundance is below optimum sustainable population (OSP) levels. OSP is the population size that falls within a range from the population level of a given species or stock which is the

largest supportable within the ecosystem (carrying capacity or K) to the population level that results in the maximum net productivity level (MNPL). MNPL is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction less losses due to natural mortality. Historically, MNPL has been expressed as a range of values (between 50 and 70 percent of the carrying capacity (K)) determined theoretically by estimating what stock size, in relation to the original stock size, will produce the maximum net increase in population (42 FR 12010, March 1, 1977). NMFS has used the mid-point of this range (i.e. 60 percent of K) to determine whether a stock is depleted (42 FR 64548, December 27, 1977; 45 FR 72178, October 31, 1980).

On November 13, 2002, NMFS received a petition from the Alaska Center for the Environment, Alaska Community Action on Toxics, Center for Biological Diversity, Coastal Coalition, Defenders of Wildlife, the Eyak Preservation Council, and the National Wildlife Federation, to designate the AT1 group of transient killer whales (*Orcinus orca*) as a depleted stock under the MMPA. The petitioners note that the AT1 group of killer whales is currently considered part of the eastern North Pacific transient killer whale stock. However, they present information to support their assertion that the AT1 group is a separate stock. The petitioners also present information to support their assertion that this group of killer whales is depleted. Copies of the petition are available from NMFS (see **ADDRESSES** and **Electronic Access**).

Pursuant to Section 115(a)(3)(A) of the MMPA, NMFS published a notice in the **Federal Register** that the petition had been received and was available for public review (67 FR 70407, November 22, 2002). In response to its announcement that the petition had been received, NMFS received numerous comments from the public. These comments urge NMFS to designate AT1 killer whales as a depleted stock. None of the comments, however, contained substantive information in addition to the information contained in the petition. Therefore, responses to the comments are not necessary.

Section 115(a)(3)(B) of the MMPA requires NMFS to publish a notice in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted. After reviewing information presented

in the petition, which is summarized in the next section of this notice, NMFS finds that the petitioners present substantial information indicating that the petitioned action may be warranted.

As required by the MMPA, NMFS will promptly begin a status review of AT1 killer whales. NMFS must publish a proposed rule as to the status of the stock no later than 210 days after receipt of the petition. The status review will address whether the AT1 group is a separate stock under the MMPA and whether this potential stock is depleted.

The Petition

The petition presents information on the classification of killer whales in general and of the AT1 killer whales in particular. The petition also presents information on the changes in the size of the group over the last 20 years and identifies potential causes of decline in numbers of these animals.

Killer whales of the North Pacific are generally classified by type: resident, transient, or offshore. Little information is available on the offshore animals due to the difficulty of studying these whales. Resident killer whales are well studied, as are some groups of transients.

The main distinguishing feature between the residents and transients is their mutually exclusive prey base, with residents eating fish and transients consuming marine mammals. These two types of killer whales may be found in overlapping geographic ranges; however, they do not interact. The primary social structure of both groups is the matriline, dominated by a matriarchal female, her offspring, and direct descendants.

Permanently associating matriline are generally termed pods. Animals remain within the pod for life, and breeding apparently takes place between whales from different pods. Pods of whales can be distinguished genetically, by within-group associations and based on acoustic patterns. Although transient whales tend to form looser associations than residents (and as such the "pod" terminology is not applied to transients), they can nevertheless be distinguished based on similar genetic and demographic factors.

AT1 killer whales are transients. In NMFS' marine mammal stock assessment reports, AT1 killer whales are currently included with two other groups of transient killer whales in the eastern North Pacific stock (Angliss et al. 2001). The eastern North Pacific stock of transient killer whales is comprised of the west coast transients found from northern Southeast Alaska

to central California; the Gulf of Alaska transients; and the AT1 transients.

Although the range of these transient groups overlap, they do not associate. The Gulf of Alaska and AT1 whales inhabit the waters of Alaska exclusively. The Gulf of Alaska transients are occasionally found in Prince William Sound, whereas the AT1 group inhabits the waters of Prince William Sound and the Kenai Fjords and has not been observed elsewhere.

AT1 Killer Whales as a Separate Stock

The petitioners suggested that the AT1 group of killer whales was a separate stock based upon genetic and behavioral information and argued that the AT1 group should be managed separately. Petitioners provided detailed discussion of information supporting the identification of AT1 killer whales as a separate stock in a letter to NMFS dated July 18, 2002, which was a comment on NMFS' draft 2002 marine mammal stock assessment reports. That letter was incorporated by reference into the petition.

The petitioners suggested that evidence from analyses of mitochondrial DNA indicated that females do not emigrate from or immigrate to the AT1 group. The petitioners also suggested that nuclear DNA from analyses of microsatellites indicated a lack of male or female mediated gene flow between the AT1 group and other groups of killer whales.

The petitioners stated that AT1 transients have never been seen with other transient killer whales. The AT1 group has been sighted only in the waters of Prince William Sound and the Kenai Fjords, and other transient killer whales occupy these areas only occasionally. The petitioners also noted that AT1 transients are most frequently seen foraging near shore, and other transient killer whales are less frequently seen near shore.

Further, petitioners noted that the AT1 group is readily distinguishable from other transient killer whales in the Gulf of Alaska in hunting and communication patterns. Whereas other transient killer whales prey extensively upon Steller sea lions, AT1 transients prey primarily on harbor seals and Dall's porpoise. The petitioners concluded that these genetic and behavioral differences are sufficient evidence upon which to identify the AT1 group as a separate population stock. The petitioners also noted that the Alaska Scientific Review Group, an independent advisory group established according to section 117 of the MMPA, has recommended that NMFS recognize the AT1 group as a separate stock.

AT1 Group as Depleted

Information on AT1 population size included in the petition shows that this group of whales numbered 22 animals in 1984, with the last calf being born in that year. The group now numbers 9 animals; less than half the size of the population prior to the Exxon Valdez oil spill in 1989. Two adult males in the group have been confirmed dead in the last 2 years. The current composition includes only 4 females, 2 of which are reproductively senescent.

Using the definition of depleted described above (see Background) and assuming a conservative estimate of K at the historical abundance level of 22 animals, the petitioners suggested that the current abundance of 9 animals is below OSP (i.e., less than 60 percent of the historical abundance, which is 13 animals) and, therefore, that the AT1 group of killer whales is depleted.

The petitioners present several factors that they consider may be causes of the decline of the AT1 group: the Exxon Valdez oil spill; chemical contaminants; increased vessel traffic; and reduction in available prey species. Crude oil exposure could be a factor in the decline of AT1 whales as they were seen immediately after the 1989 Exxon Valdez spill swimming in the crude oil around the tanker. Chemical contamination may also play a role in their decline. Analysis of blubber samples from the male AT1 group member that died in 2000 showed very high levels of contaminants. The AT1 group may also be exposed to increasing underwater vessel noise as the number of vessels with access to Prince William Sound increases due to the recent road access to Whittier. Finally, the harbor seal population in Prince William Sound, one of the main prey items of the AT1 group, has declined substantially in the past, and recently harbor seal numbers have continued declining at about eight percent per year.

Status Review

As the initial task under the upcoming status review, NMFS must evaluate the information in the petition and other information related to whether or not AT1 killer whales are a separate population stock. If NMFS determines that the AT1 group is a separate stock, NMFS would then evaluate whether it is depleted under the MMPA. NMFS is aware of the information related to abundances in 1984 and the present and is not aware of additional information related to historical or current abundance. NMFS notes that the Marine Mammal

Commission has advised that the AT1 group should be recognized as a separate population stock and that it is below its MNPL.

Information Sought

NMFS solicits comments and information related to this petition and the status of AT1 killer whales. NMFS is specifically interested in comments and additional information related to (1) the identification of AT1 killer whales as a population stock, (2) the historical or current abundance of this group, (3) factors that may be affecting the group, and (4) conservation measures that may promote their recovery.

Authority: Authority: 16 U.S.C. 1361 *et seq.*

Dated: January 17, 2003.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 021213310-2310-01; I.D. 101702B]

RIN 0648-AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64). This action would revise certain recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries and the Western Alaska Community Development Quota (CDQ) Program for the Pacific halibut fishery. This action is necessary to improve IFQ fishing operations, while complying with IFQ

Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) with respect to sablefish and to further the goals and objectives of the groundfish Fishery Management Plans (FMPs).

DATES: Comments must be received at the following address no later than February 24, 2003.

ADDRESSES: Comments should be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall) or delivered to the Federal Building, 709 West 9th Street, Room 401, Juneau, AK. Comments may be sent via facsimile to 907-586-7465.

Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 72/64 of the FMPs and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may also be obtained from the same address, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background and Need for Action**

NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska according to fishery management plans prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600.

Regulations codified at 50 CFR part 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off Alaska.