

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 111402C]

Alaska Transient Killer Whales; Notice of Petition Availability

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

ACTION: Notice of availability; request for information.

SUMMARY: NMFS has received a petition to designate a group (called the AT1 group) of killer whales (*Orcinus orca*) as a depleted stock under the Marine Mammal Protection Act (MMPA). In accordance with the MMPA, NMFS is announcing receipt of the petition and its availability for public review and is soliciting comments on the petition.

DATES: Comments must be received by December 23, 2002.

ADDRESSES: A copy of the petition may be requested from and comments should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to (301) 713-0376, but will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713-2322, ext. 105, or Mr. Michael Payne, Alaska Regional Office, Juneau, AK (907)586-7235.

SUPPLEMENTARY INFORMATION:**Electronic Access**

A copy of the petition and its attachments are available on the Internet at the following address: <http://www.fakr.noaa.gov/protectedresources/>.

The 2000 stock assessment report for Eastern North Pacific Transient Killer Whales is available on the Internet at the following address: http://www.nmfs.noaa.gov/prot_res/overview/mm.html.

Background

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defines the term, "depletion" or "depleted", to include any case in which "...the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals ..., determines that a species or population stock is below its optimum sustainable population." Section 3(9) of

the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)]...with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

The MMPA provides for interested parties to submit a petition to designate a population stock of marine mammals as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

If NMFS makes a positive 60-day finding, NMFS must promptly initiate a review of the status of the affected population stock of marine mammals. No later than 210 days after receipt of the petition, NMFS must publish a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Following a 60-day comment period on the proposed rule, NMFS must publish a final rule within 90 days of the close of the comment period on the proposed rule.

In its 2000 stock assessment report on the affected killer whales, NMFS recognized the AT1 group as a part of a population stock called Eastern North Pacific Transient Killer Whales, which includes transient killer whales in British Columbia, Southeastern Alaska, and the Gulf of Alaska in addition to the AT1 group (see Electronic Access to obtain a copy of this stock assessment report). The report states that the minimum number of whales in this stock is 346.

Petition on AT1 Killer Whales

On November 13, 2002, the National Wildlife Federation submitted a petition on behalf of itself and six other

organizations to NMFS to designate the AT1 group of killer whales as a depleted population stock under the MMPA. The petition describes the AT1 group as one of three populations of transient killer whales in the Eastern North Pacific Ocean, which lives exclusively in Prince William Sound and the Kenai Fjords, and provides information related to this group of killer whales as a separate stock under the MMPA.

The petition includes an abundance of 22 AT1 killer whales when observations began in 1984 and a current abundance of nine whales and suggests that the decline in numbers demonstrates that the stock is depleted. The petition states that the causes of the decline include the following:

- (1) The *Exxon Valdez* oil spill,
- (2) Chemical contaminants,
- (3) Increased vessel traffic, and
- (4) Reduction in available prey species.

In a comment dated July 18, 2002, on draft 2002 marine mammal stock assessment reports the petitioners stated that the AT1 group should be a separate stock. However, the Eastern North Pacific Transient Killer Whale report was not scheduled for revision in 2002 and had not been modified when the draft 2002 reports were made available for public review and comment.

In accordance with the MMPA, NMFS announces receipt of this petition, and its availability for public review (See **ADDRESSES** and Electronic Access). The petition includes two attachments. Attachment A is the comment that the petitioners submitted to NMFS on draft 2002 marine mammal stock assessment reports. Attachment B is an extract from a petition submitted by other organizations related to Southern Resident killer whales in Puget Sound, WA. NMFS also solicits comments and information related to the statements in the petition and additional background on the status of the AT1 group of killer whales.

Dated: November 18, 2002.

Donald R. Knowles

Director, Office of Protected Resources
National Marine Fisheries Service.
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