

recommendations to: (1) prepare research plans for killer whales in the North Pacific, particularly to collect specific information needed to re-evaluate the status of Southern Resident killer whales within four years; (2) to proceed with the depletion determination; and (3) to identify and implement needed actions to protect important habitat as a conservation plan is developed for the Southern Resident killer whale stock. In a subsequent letter, dated March 31, 2003, the Commission: (1) reiterated its recommendation to designate the stock as depleted; (2) recommended that NMFS should thoroughly review information related to historical abundance and other information to establish recovery goals during conservation planning; and (3) recommended that NMFS prepare a conservation plan as soon as possible and, in the interim, initiate any conservation measures identified to date.

Pursuant to section 115 of the MMPA (16 U.S.C. 1383b), NMFS published an advance notice of proposed rulemaking (ANPR) (67 FR 44132, July 1, 2002) which included a request for scientific information. Specifically, the ANPR requested information, comments, and supporting documents on stock status, areas of significance to the stock, and any factors that may be causing the decline or impeding the recovery of the stock. After considering comments received in response to the ANPR and the recommendations of the Commission, NMFS published a proposed rule to designate the Southern Resident stock as depleted (68 FR 4747, January 30, 2003) and solicited comments on the proposal and on potential conservation measures that may benefit these whales. The 60-day comment period on the proposed rule closed on March 31, 2003. A summary of the public comments received and the agency's responses is presented below.

Comments and Responses

NMFS received 38 comments in response to the proposed rule. Eleven of these comments voiced opinion on the status of Southern Resident killer whales relative to the Endangered Species Act. Summaries and responses are provided below for those substantive comments that address the proposed depleted designation or the potential conservation measures for the benefit of Southern Resident killer whales under the MMPA.

Comment 1: Twenty-four commenters either supported NMFS' proposal to designate the Southern Resident stock of

killer whales as depleted or agreed that the stock meets the statutory definition of depleted.

Response: The agency agrees with the comments.

Comment 2: One commenter questioned how NMFS could establish an OSP level for Southern Resident killer whales when both "resident" and "non-resident" types use the same areas.

Response: By definition, the upper and lower bounds of OSP are estimated for discrete stocks of marine mammals. NMFS recognizes Southern Resident killer whales as a separate stock of killer whales under the MMPA based upon genetic, behavioral, and ecological information. Therefore, NMFS must evaluate the status of Southern Resident killer whales relative to its OSP even though other stocks of killer whales are sometimes found in Puget Sound. Because researchers can distinguish between Southern Residents and other types of killer whales and there are ecological differences between residents and non-residents, the periodic overlap of Southern Resident and other killer whales within Puget Sound does not confound the estimation of the OSP levels for Southern Resident killer whales.

Comment 3: Twenty-one commenters included thoughts on factors that may be contributing to population decline. Pollution and related effects dominated the majority of comments on factors for decline and suggested subjects for the development of conservation measures, but a number of other potential stresses to the population were also identified. The summary of issues related to pollution includes: bio-accumulation of persistent chemical contaminants and heavy metals; non-point source contamination from commercial and residential development affecting salmon runs and bait fish survival; over use of pesticides, fertilizer, creosoted pilings and railroad ties, chemical cleaners and auto care products; agricultural run-off and pet waste; depleted uranium dumping; and oil spills and petroleum/fossil fuel discharges or exhaust. Among the remaining issues identified as possibly contributing to the decline of killer whales are: infectious diseases; over fishing on orca prey species or smaller forage fishes; shoreline modifications that reduce fish habitat; dams that block salmon passage or contribute to salmon mortality; noise and stress associated with shipping and vessel activities including commercial traffic, military operations and whale watching; indiscriminate release of real time killer whale sighting information for use by

boaters; and the expansion of commercial fall/winter whale watching into central and southern Puget Sound. A number of ideas for addressing these concerns, including regulatory and non-regulatory approaches, were also received.

Response: With this notice, NMFS is announcing its intent to prepare a Conservation Plan to assist in restoring the Southern Resident stock. The comments received in response to the proposal will help NMFS to define the scope of the planning effort to build a comprehensive recovery strategy. NMFS will seek continued stakeholder support and co-manager participation as it develops the content for the conservation plan.

Comment 4: Six commenters supported research efforts to close gaps in the available information about the Southern Resident population and their habitat. Areas for research include questions regarding: killer whale taxonomy; the effects of disease; the effects of anthropogenic underwater noise associated with vessel traffic or naval sonar activities; historic versus current contaminant load in killer whale tissues; killer whale feeding ecology and prey abundance/distribution; year round orca range determination; and shoreline resources and nearshore habitats that are vulnerable to oil spills and may be degraded thereby contributing to reduced productivity for forage species.

Response: In spite of the volume of scientific information available on the Southern Resident stock, NMFS acknowledges that significant data gaps still exist in a number of areas. Little is known of the diseases affecting this population. Research into the effects of sound in the marine environment, including sonar, on whales and other marine mammals is ongoing but incomplete. Research is necessary to fill the gaps and improve our understanding of this population and the factors that may affect its recovery. Accordingly, NMFS has developed an initial list of research priorities and has begun several studies to answer some of the outstanding questions. It is anticipated that additional research needs will be identified during the development of conservation measures associated with the preparation of the Conservation Plan.

Determination of "Population Stock" or "Stock"

Section 3(11) of the MMPA defines a population stock or stock as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when