

**§ 260.4 Confidential information and statements of account.**

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(d)(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

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(e) The designated agent or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.

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**§ 260.5 [Amended]**

7. Section 260.5(b) is amended by removing “nonexempt subscription digital transmission service” and adding “nonexempt preexisting subscription service” in its place.

**§ 260.6 [Amended]**

8. Section 260.6(g) is amended by removing “copyright owners”.

**§ 260.7 [Amended]**

9. Section 260.7 is amended by removing “the cost of the administration of the collection and distribution of the royalty fees” and adding “any costs deductible under 17 U.S.C. 114(g)(3)” in its place.

Dated: January 24, 2003.

**David O. Carson,**

*General Counsel.*

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

[Docket No. 020603140–3010–02, I.D. 050102G]

**RIN 0648–AQ00**

**Regulations Governing the Taking and Importing of Marine Mammals; Eastern North Pacific Southern Resident Killer Whales**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** Following a review of the status of the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*), NMFS has determined that the stock is below its Optimal Sustainable Population (OSP) and, therefore, proposes to designate the Southern Resident stock of killer whales as depleted under the Marine Mammal Protection Act (MMPA). NMFS requests that interested parties submit comments on this proposal and on potential conservation measures that may benefit these whales.

**DATES:** Information and comments must be received by March 31, 2003.

**ADDRESSES:** Information and comments should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Alternatively, comments may also be submitted via the Internet (*see* Electronic Access) or by facsimile (fax) to (503) 230–5435.

**FOR FURTHER INFORMATION CONTACT:** Mr. Garth Griffin, Northwest Regional Office, NMFS, Portland, OR (503) 231–2005, or Dr. Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD (301) 713–2322, ext. 105.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

A list of the references used in this notice and other information related to the status of this stock of killer whales is available on the Internet at <http://www.nwr.noaa.gov/mmammals/whales/srkw.htm>. Comments may be submitted at the Internet address above or at the following: <http://www.nmfs.noaa.gov/ibrm>.

**Background**

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term,

“depletion” or “depleted”, as 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 [(OSP)].” Section 3(9) of the MMPA defines 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 which falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (carrying capacity [K]) to the population level that results in the maximum net productivity level (MNPL). MNPL is the greatest net annual increment (increase) in population numbers resulting from additions due to reproduction less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, would be considered depleted under the MMPA. Historically, the estimated MNPL has been expressed as a range of values, generally 50 to 70 percent of K (42 FR 12010, March 1, 1977). In 1977, the midpoint of this range (60 percent of K) was used to determine whether dolphin stocks in the eastern tropical Pacific Ocean were depleted under the MMPA (42 FR 64548, December 27, 1977). The 60-percent-of-K value was used in the final rule governing the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (45 FR 72178, October 31, 1980) and has been used since that time for other status reviews under the MMPA. For stocks of marine mammals, including killer whales, K is generally unknown. NMFS, therefore, has used the best estimate available of maximum historical abundance as a proxy for K.

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. The notice 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. The 60-day comment period on the ANPR closed on August 30, 2002. A summary of the public comments received and