

the agency's responses is presented below.

Comments and Responses

NMFS received 51 comments in response to the ANPR. The majority of the comments were form letters that did not provide substantive information, but voiced general support for the listing of Southern Resident killer whales under the Endangered Species Act. Summaries and responses are provided below only for those comments that address the ANPR or the status of Southern Resident killer whales under the MMPA.

Comment 1: Fourteen commenters disagreed with NMFS' intent to make a depleted designation for Southern Resident killer whales, indicating that there is no advantage to designating the population as depleted since it would only make extinction more likely.

Response: NMFS is concerned about the recent trends of the Southern Resident killer whale stock. The stock has exhibited considerable fluctuations in the 28 years it has been surveyed. More significantly, stock size has declined approximately 20 percent over the past six years (1996–2002). The best available scientific information indicates that the stock is below its OSP, and, accordingly, NMFS proposes to designate Southern Resident killer whales as depleted. Advantages of a depleted designation and protections under the MMPA are included in the response to comment 2.

Comment 2: Nineteen commenters were neutral toward NMFS' intent to designate the Southern Resident stock as depleted and stated that the MMPA provides only weak or ineffective protection for killer whales.

Response: NMFS disagrees with the assertion that the MMPA provides weak or ineffective conservation benefits to killer whales. The MMPA generally prohibits the taking of these marine mammals and generally requires the preparation of a conservation plan for depleted stocks as soon as possible. NMFS may generally prescribe such regulations as are necessary and appropriate to carry out the purposes of the MMPA. In addition, NMFS may develop conservation or management measures to alleviate impacts on marine mammal habitat that NMFS determines may be causing the decline or impeding the recovery of strategic stocks, the definition of which includes depleted stocks. Moreover, depleted stock designation under the MMPA is a useful tool to elevate public awareness of Southern Resident killer whale status and threats and to highlight conservation opportunities for Federal, state, tribal and local agencies.

Comment 3: Three commenters supported NMFS' intent to designate the Southern Resident stock of killer whales as depleted and agreed that the available information indicates that the stock is below OSP.

Response: The agency agrees with the comment.

Comment 4: One commenter supported a depleted designation, but provided information suggesting that the MNPL for killer whales is higher than the 60-percent-of-K stated in the ANPR. The commenter suggested that the MNPL for Southern Resident killer whales is near 80 percent of K.

Response: The agency has insufficient information to determine reliably if the MNPL for Southern Resident killer whales is as high as 80 percent of K. The current stock abundance is below the MNPL that can be estimated from the best available information and indicates that the stock is depleted.

Comment 5: One commenter stated that the lower bound of the estimated historical abundance for this stock (140) is conservative and that the actual historical population size was likely to have been much higher.

Response: The maximum historical abundance of Southern Resident killer whales likely exceeded 140 whales; however, there is insufficient information to estimate historical abundance directly. Based on the best available scientific evidence, from available census and whale-capture data, the estimate of 140 whales should be considered conservative, and, thus, it was used only to establish a lower bound of estimates for maximum historical abundance.

Comment 6: One commenter stated that an accurate determination of the historical population size is needed before the population could be considered recovered.

Response: Under the MMPA, NMFS must base its determinations on the best scientific information available. Consequently, the agency will use the best information available in establishing goals in planning for the recovery of Southern Resident killer whales. NMFS lacks sufficient information to support a direct estimate of historical abundance. However, NMFS has used the best indirect scientific information available to estimate historical abundance and will continue to update that information in making future determinations regarding this stock.

Comment 7: One commenter encouraged NMFS to develop a conservation plan for the Southern Resident stock as soon as possible.

Response: If the Southern Resident stock is designated as depleted the agency will immediately begin such planning. Section 115(b)(1) of the MMPA (16 U.S.C. 1383b(b)(1)) provides that a conservation plan shall be prepared as soon as possible unless NMFS determines that such a plan would not promote the recovery of the stock.

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 mature. Although this definition is in part a legal concept, stocks, species, and populations are biological concepts that must be defined on the basis of the best scientific data available.

The killer whale is the largest member of the dolphin family (Delphinidae), and the species is distributed throughout the world's oceans. Along the west coast of North America, killer whales occur along the entire Alaskan coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. North Pacific killer whales have been classified into three forms, termed Residents, Transients, and Offshore whales. All three of these forms are currently classified as the same biological species, *O. orca*. The three forms vary in morphology, ecology, behavior, group size, social organization, acoustic repertoire, and genetic characteristics. Behavioral evidence suggests that Offshore and Transient groups rarely interact with the Resident pods (pods are close-knit family groups ranging from 10 to 70 whales). Although the Transient form overlaps extensively in range with the Resident form, genetic evidence suggests that the two forms do not interbreed. Furthermore, distinct feeding habits exist, with Transient killer whales primarily preying on other marine mammals and Residents primarily feeding on fishes. Little is known about the feeding habits of the Offshore form.

Specific stock definitions for west coast killer whales are provided in the U.S. Pacific Marine Mammal Stock Assessments (Carretta et al. 2001) and include consideration of data on association patterns, acoustics, movements, genetic differences and potential fishery interactions. Five killer whale stocks are recognized within the Pacific U.S. exclusive economic zone: 1) the eastern North Pacific Northern Resident stock; 2) the eastern North