

Pacific Southern Resident stock; 3) the eastern North Pacific Transient stock; 4) the eastern North Pacific Offshore stock; and 5) the Hawaiian stock. Eastern North Pacific Southern Residents occur in the inland waterways of southern British Columbia and Washington, including the Georgia Strait, the Strait of Juan de Fuca, and Puget Sound.

Southern Resident killer whales include members of 3 pods of killer whales (J, K, and L pods). These whales have been intensively studied, particularly by the Center for Whale Research, and all members of each pod have been identified. Ongoing research efforts include descriptions and photographs of new calves, and these animals are observed regularly as long as they remain in the population.

Determination as Depleted Under the MMPA

There are no empirical estimates of the historical stock size for Southern Resident killer whales; however, NMFS examined indirect evidence to derive an estimate of historical abundance for the population. A minimum historical abundance of 140 whales was derived by combining the total abundance based upon the original 1974 census population (71) with the estimated number of animals that were removed or died (68) during live capture operations for display conducted in the 1960's and early 1970's (67 FR 44132, 44133, July 1, 2002). The number of animals that may have been killed by shooting or other human interactions is unknown but, based on anecdotal evidence, may have been greater than zero. Additionally, a comparison of genetic diversity with the larger Northern Resident killer whale stock (214 whales) indicates that the Southern Resident stock may have been of similar size in the recent past (Barrett-Lennard, L.G. and Ellis, G.M. 2001 and NMFS 2002). Therefore, the best available scientific information suggests a historical abundance of approximately 140 to 200 whales.

The abundance of the Southern Resident stock has declined by approximately 20 percent over the past 6 years (1996–2002)(NMFS 2002). The true K and MNPL are unknown for Southern Resident killer whales. Using an estimated range of historical stock size of 140–200 whales as a proxy for K, the estimated MNPL for the Southern Resident stock would be 84–120 whales (i.e., 60 percent of 140–200). A more complete discussion of the estimated historical stock size can be found in the ANPR referenced above. The 2002 abundance of 80 Southern Resident killer whales (Center for Whale

Research, 2002 Orca Survey) is below the lower bound of the estimated MNPL range (84) for the stock. The current population size meets the statutory definition of a depleted stock. NMFS recognizes that the current population size is very near the estimated lower bound of MNPL for this stock but is proposing this risk averse approach in light of the recent declining trend. Accordingly, NMFS has initiated consultation with the Marine Mammal Commission and has received initial support for the proposed action. Therefore, based on the best scientific information available, NMFS proposes to designate this stock as depleted under the MMPA.

Information Solicited

NMFS is soliciting comments on the proposed designation of this stock as depleted under the MMPA and is particularly interested in the historical abundance of the eastern North Pacific Southern Resident stock. The agency is also interested in: areas of ecological significance (mating, rearing, resting, feeding) to the eastern North Pacific Southern Resident stock; impacts that may be causing the decline or impeding the recovery of the stock; potential conservation measures that may be useful in alleviating those impacts and rebuilding the stock; and the potential economic impacts and the potential biological benefits of alternative conservation measures. It is requested that data, information, and comments be accompanied by: (1) supporting documentation such as maps, logbooks, bibliographic references, personal notes, or reprints of pertinent publications; and (2) the name of the person submitting the data, their address, and any association, institution, or business that the person represents.

Public Meetings

If Southern Resident killer whales are designated as depleted, NMFS will hold public meetings to define the scope and develop the content for a conservation plan. Dates, addresses, and times of the meetings would be announced in the preamble of the final rule.

References

A complete list of all cited references is available via the Internet (*see* Electronic Access) or upon request (*see* ADDRESSES).

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. Depletion designations under the MMPA are similar to ESA listing

decisions, which are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. *See* NOAA Administrative Order 216–6.03(e)(1). Thus, NMFS has determined that the proposed depletion designation of this stock under the MMPA is exempt from the requirements of the National Environmental Policy Act of 1969, and an Environmental Assessment or Environmental Impact Statement is not required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: “The MMPA imposes a general moratorium on the taking of marine mammals. This proposed rule would designate the Eastern North Pacific Southern Resident stock of killer whales as depleted; however, this designation would not, by itself, place any additional restrictions on the public. Any subsequent restrictions placed on the public to protect these whales would be included in separate regulations, and appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures.” Hence, implementation of this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this rule has been prepared.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: January 22, 2003.

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For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows: