

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

[Docket No. 031003245–3245–01;I.D. 122702A]

RIN 0648–AR14

Designating the AT1 Group of Transient Killer Whales as a Depleted Stock Under the Marine Mammal Protection Act (MMPA)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to designate the AT1 group of transient killer whales as a depleted stock of marine mammals pursuant to the MMPA. This action is being taken pursuant to a status review conducted by NMFS in response to a petition to designate a group of transient killer whales in Alaska (known as the AT1 group). The biological evidence indicates that the group is a population stock as defined by the MMPA, and the stock is depleted as defined by the MMPA.

DATES: Comments and information must be received by January 22, 2004.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kaja Brix NOAA/NMFS, Alaska Region, (907) 586–7235.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Information related to the petition and the status of the AT1 group of killer whales is available on the Internet at the following address: <http://www.fakr.noaa.gov/protectedresources/whales/default.htm>.

NMFS guidelines for preparing stock assessment reports, which contain guidance for identifying population stocks of marine mammals, may be found on the Internet at the following address: <http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm>.

Background

NMFS received a petition on November 13, 2002, from the National Wildlife Federation, on behalf of itself, Alaska Center for the Environment, Alaska Community Action on Toxics, Center for Biological Diversity, Coastal Coalition, Defenders of Wildlife, and

Eyak Preservation Council, to designate the AT1 group of transient killer whales as a depleted population stock under the MMPA. NMFS published a notice that the petition was available (67 FR 70407, November 22, 2002). After evaluating the petition, NMFS determined that the petition contained substantial information indicating that the petitioned action may be warranted (68 FR 3483, January 24, 2003). Following its determination that the petitioned action may be warranted, NMFS conducted a status review to evaluate whether the AT1 group is a population stock and, if so, whether that stock is depleted. This proposed rule is based upon that status review.

Killer whales in the Pacific Northwest and Alaska are classified into three distinct forms: “Residents,”

“transients,” and “offshores.” All three forms occur in Prince William Sound and the Kenai Fjords region of Alaska.

The core of the resident killer whale social structure is the matrilineal group, or matriline. A matrilineal group, which may be as small as two animals, consists of a female and all her offspring of both sexes. Permanent associations of matrilineal groups are termed “pods”. Resident pods of killer whales usually contain 3–52 individuals; emigration or immigration occurs only by birth or death (Saulitis, 2000; Matkin and Saulitis, 1994; Matkin *et al.*, 1999). Breeding by resident killer whales typically does not occur within pods but between whales from distantly related pods (Barrett-Lennard, 2001). A number of associating and potentially interbreeding resident pods may form a “population,” the largest social division. A resident population may number in the hundreds and may be distinguished from other populations on the basis of genetic or acoustic analysis and association patterns.

The social structure of transient killer whales is not as well understood as that of resident killer whales. Some movement of individuals occurs between groups within a population and thus there is a lack of clearly defined pods. However, at the population level the same separations based on genetic and acoustic analysis and association patterns can be made for transients as for residents.

A definitive characteristic of transient killer whales is that they prey on other marine mammals, unlike resident killer whales which subsist on fish. Other documented differences between transient and resident killer whales include differences in morphology, group size (transient groups tend to have fewer whales), social organization, and acoustic calls. Transients and

residents avoid one another and do not interbreed, although rare interactions between transients and residents have been observed. Thus, a very small transient group may exist among a much larger resident population and remain demographically isolated.

Recent genetics analysis by Barrett-Lennard (2000) indicate that there are three distinct transient killer whale groups present in the eastern North Pacific: The West Coast (WC) transients, the Gulf of Alaska (GOA) transients and the AT1 transients. These three groups are genetically separate but their geographic ranges overlap (Barrett-Lennard, 2000). The GOA transient group and the AT1 transient group exclusively inhabit Alaskan waters. GOA transients are found in the waters west of Glacier Bay (as far as Kodiak Island), and occasionally enter Prince William Sound. The AT1 transients appear to have a more limited range and have only been seen year-round in Prince William Sound and the Kenai Fjords region of Alaska (Saulitis *et al.*, 2000). Consequently, most members of the AT1 group are resighted every year or two. Interactions between members of the different transient killer whale groups have not been observed. Genetic evidence indicates they have been separate for thousands of years (Barrett-Lennard, 2000) although, given the small size of the AT1 group, observed genetic differences could have arisen within a few killer whale generations.

The AT1 Group of Transient Killer Whales

AT1 killer whales have been recognized in Prince William Sound since at least 1978 (Leatherwood *et al.*, 1984a, Saulitis 1993). Three AT1 whales (AT7, AT15, AT16) were first photographed in 1978; other animals were likely not photographed due to the low level of research effort in Prince William Sound at that time. In the 1980s, the AT1 transient group was one of the most frequently encountered killer whale groups in Prince William Sound (Matkin *et al.*, 1999). Once a major research effort began in Prince William Sound, 20 individuals were identified in 1984 (though 2 others were known to be present), 17 in 1985, and 21 in 1986. All individuals identified prior to 1984 (from 1978–1983) were seen alive in 1984.

The AT1 transient group has been sighted year-round in Prince William Sound, as well as in Resurrection and Aialik Bays of adjacent Kenai Fjords (Saulitis, 2000). While the group is known to have once had as many as 22 members, the number of AT1 transient killer whales has been reduced by more