

September 1, 2005, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, a discussion of the items specified in paragraphs (a)(4)(i) through (v) of this section in the owner's manual, or, if there is no owner's manual, in a document:

\* \* \* \* \*

(5) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after September 1, 2005, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following verbatim statement, as applicable, in the owner's manual, or, if there is no owner's manual, in a document:

(i) For vehicles except trailers: "Steps for Determining Correct Load Limit—

(1) Locate the statement "The combined weight of occupants and cargo should never exceed XXX kg or XXX lbs." on your vehicle's placard.

(2) Determine the combined weight of the driver and passengers that will be riding in your vehicle.

(3) Subtract the combined weight of the driver and passengers from XXX kg or XXX lbs.

(4) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the "XXX" amount equals 1400 lbs. and there will be five 150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1400–750 (5 × 150) = 650 lbs.)

(5) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(6) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this reduces the available cargo and luggage load capacity of your vehicle."

(ii) For trailers: "Steps for Determining Correct Load Limit—

(1) Locate the statement "The weight of cargo should never exceed XXX kg or XXX lbs." on your vehicle's placard.

(2) This figure equals the available amount of cargo and luggage load capacity."

(3) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity.

#### **PART 597—TIRES FOR MOTOR VEHICLES WITH A GVWR OF 10,000 POUNDS OR LESS PHASE-IN REPORTING REQUIREMENTS**

■ 10. The authority citation for part 597 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at CFR 1.50.

■ 11. Section 597.6 is amended by revising the first sentence of paragraph (a) to read as follows:

##### **§ 597.6 Reporting requirements.**

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2006 and August 31, 2007, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 (49 CFR 571.139) for its tires produced in that year for motor vehicles with a GVWR of 10,000 pounds or less. \* \* \*

Issued: May 20, 2004.

**Jeffrey W. Runge,**  
*Administrator.*

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 216**

[Docket No. 031003245–4160–02; I.D. 122702A]

**RIN 0648–AR14**

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to designate the AT1 group of transient killer whales as a depleted stock of marine mammals pursuant to the MMPA. This action is based upon a status review conducted by NMFS in response to a petition to designate as depleted a group of transient killer whales in Alaska (known as the AT1 group). The biological evidence indicates that the group is a population stock and that the stock is depleted as

these terms are defined in the MMPA. This action is intended to promote the goals and objectives of MMPA.

**DATES:** Effective July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix NOAA/NMFS, Alaska Region, (907) 586–7235; or email at [kaja.brix@noaa.gov](mailto:kaja.brix@noaa.gov).

##### **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. (The report of the status review is available in electronic form; see "Electronic Access".) The status review concluded, based on the best scientific information available, that the AT1 group is a separate stock of killer whales. The status review also concluded, based on the best scientific information available, that the AT1 stock is depleted, as defined under the MMPA. Based on the status review, a proposed rule to designate the AT1 group of transient killer whales as a depleted stock under the MMPA was published in the **Federal Register** on October 24, 2003 (68 FR 60899), with a 60-day public comment period ending January 22, 2004.

This final rule designates the AT1 group of transient killer whales as a depleted stock under the Marine Mammal Protection Act. No additional regulations are associated with this designation.

### Comments and Responses

NMFS received 74 letters on the proposed rule containing 12 distinct categories of comments. A summary of these comments and NMFS' responses are included below.

*Comment 1:* The full range of scientifically plausible explanations for the AT1 pod's identity, stock status, and relationship to the ever-changing environment of Prince William Sound has not been considered in this determination.

*Response:* NMFS described a wide range of alternatives for the AT1 group's origin in the report of the status review; these alternatives were summarized in the preamble of the proposed rule along with a request for additional information related to AT1 killer whales. No new alternatives were identified in comments on the proposed rule.

The full range of options for the status of the stock pursuant to the petition is satisfied by considering whether the stock is depleted. NMFS described sufficient evidence in the report of the status review and in the preambles to the proposed rule and this final rule (see discussion under the heading "The Depleted Determination") that the status of the stock is "depleted".

The relationship between AT1 killer whales and their environment is not entirely known. NMFS made its determination based upon the standard required by the MMPA, which is best scientific information available.

*Comment 2:* There is no evidence that the group has ever reproduced and no documented trends of abundance. The proposed determination had very little discussion on environmental variation and possible effects on AT1.

*Response:* The report of the status review noted that when the AT1 group was first identified in 1984, there were juvenile animals in the group. These juveniles are the best available evidence that the killer whales in this population stock have reproduced.

The group contained 22 whales in 1984, 11 whales after 1989, and now has 9 or fewer whales. These numbers demonstrate a decline in the abundance from 1984 to present (also see response to comment 3).

The status review and the proposed rule to designate the AT1 group as a depleted stock state that no information is available on historical abundance of

the Eastern North Pacific transient stock of killer whales or Alaska transients to provide abundance trends, but that there has been documented a decline in the AT1 group of killer whales since 1984. Environmental variability and its effects on AT1 killer whales are not documented; therefore, they were not discussed in the proposed rule.

*Comment 3:* There has been an apparent decline in the population since the Exxon Valdez oil spill. Was this documented by a census or an estimate?

*Response:* The decline was documented by a series of censuses.

*Comment 4:* Seasonal observations on interactions between killer whale groups are relatively subjective when examining interactions between killer whale groups. Using genetic information to calculate "migrant/generation" would be more useful and scientifically defensible.

*Response:* Although most observations of AT1 killer whales have been made in summer months, association patterns in other killer whale populations seen more frequently year-round have not shown any changes in association patterns through the year. Therefore, no evidence exists that suggests that summer association patterns cannot be used as evidence for population structure. Mitochondrial DNA analysis and two forms of microsatellite DNA analysis were conducted, and all 3 analyses supported the hypothesis that the AT1 group represents a separate population. Although calculating the number of migrants per generation may be useful for some purposes (such as an analysis of whether a putative population could sustain a certain level of bycatch because immigration from another population was sufficient to replace the animals removed), such an analysis was not necessary for this final rule.

*Comment 5:* The stated "K" values were set in 1984. There has been no re-evaluation that takes into account the profoundly changing habitat in Prince William Sound over the last 20 years. The "K" value could be highly variable in a rapidly changing environment.

*Response:* NMFS has not established a numerical value for carrying capacity (K) for AT1 killer whales. The 1984 abundance is used to demonstrate that the population is currently less than 60 percent of its abundance in the recent past and that the population stock is, therefore, depleted. The actual values for K and Maximum Net Productivity Level (MNPL) are currently unknown and will be addressed in the conservation plan prepared for this stock.

*Comment 6:* Based on the evidence presented in the petition to list this group as a stock and designate it as depleted and on further information in the proposed rule, the AT1 whales qualify under the MMPA and NMFS' implementing regulations as a depleted stock.

*Response:* NMFS concurs and is designating the group as a depleted stock of marine mammals.

*Comment 7:* The depleted designation should lead to the development of more detailed information on the threats facing this population and appropriate actions to respond to these threats.

*Response:* These issues will be considered in the development of the conservation plan for this stock.

*Comment 8:* Because the AT1 population is in danger of extinction throughout a significant part - possibly all - of its range and is likely to become extinct within the foreseeable future, the proper application of the scientific data shows that NMFS must list the stock as endangered under the Endangered Species Act (ESA).

*Response:* This final rule is the result of a process initiated by the receipt of a petition submitted to NMFS requesting that the AT1 group be designated as a depleted stock under the MMPA. An evaluation of the status of AT1 killer whales under the ESA would include an analysis to determine whether the stock is a distinct population segment and, if so, whether the group is in danger of going extinct throughout all or a significant portion of its range. Such an evaluation was beyond the scope of the petition NMFS received.

*Comment 9:* NMFS should develop a long-term research plan for North Pacific killer whales.

*Response:* Comprehensive research needed to assist in the recovery of the AT1 killer whales will be identified in a conservation plan. In a broader perspective, NMFS currently conducts research on killer whale demographics in the North Pacific through research at the National Marine Mammal Laboratory and through grants provided to independent researchers. NMFS will consider approaches to incorporate current efforts and planning into a coordinated long-term research plan for North Pacific killer whales.

*Comment 10:* NMFS has stated that a catastrophic oil spill is the single greatest threat to the stock. The AT1 group has already undergone this event. Given the data available, it is clear fifteen years after the oil spill that no designation or conservation plan could achieve recovery.

*Response:* The designation of this group of killer whales as a depleted stock is separate from the development of conservation measures to promote the population's recovery, and the designation is based upon the stock's abundance compared to its OSP. The potential effectiveness of the conservation plan is not a criterion for consideration in designating a stock as depleted. Regulatory measures identified in a conservation plan to conserve and restore the stock would require separate regulatory action, and appropriate economic analyses would be conducted during such rulemaking. Public comments on those proposed actions would be part of the rulemaking process.

*Comment 11:* A conservation plan may offer no prospects for recovery yet may potentially jeopardize the lives and livelihoods of those who depend on the resources of Prince William Sound, including a fishery that has no documented history of interactions with the AT1 group.

*Response:* Conservation measures not likely to promote recovery of the stock would not be included in a conservation plan. In addition, see response to Comment 10.

*Comment 12:* The relationship between vessel noise and highly mobile and opportunistic predators, such as the AT1 group of killer whales, is speculative at this time. Reduction of vessel noise as a conservation tool should be supported by peer-reviewed science prior to being implemented.

*Response:* In the conservation plan, NMFS will analyze available scientific information in determining whether conservation measures regarding vessel noise are necessary to conserve and restore the stock. Any necessary regulatory measures to conserve and restore the stock would require separate regulatory action with information to support it. (see also response to comment 10).

### Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

### The Depleted Determination

Because the AT1 group was part of the Eastern North Pacific transient stock of killer whales prior to this action, the determination required two steps. First, available evidence was evaluated to determine whether the group is a population stock under the MMPA. If so, the second step was to determine whether the abundance of the newly identified population stock is below its optimum sustainable population (OSP) and, therefore, depleted.

### The AT1 Group as a Stock

NMFS' guidelines for assessing marine mammal stocks (See Electronic Access) include guidelines for identifying population stocks of marine mammals which state that many different types of information can be used to identify stocks, reproductive isolation is proof of demographic isolation, and demographically isolated groups of marine mammals should be identified as separate stocks. These guidelines were based upon the MMPA's definition of population stock and the purposes and policies of the MMPA. The biological information discussed in the report of the status review and in the preamble of the proposed rule, particularly molecular genetics and associations (distribution and movements), supports a determination that AT1 killer whales are demographically isolated from other groups of killer whales. Therefore, based upon the best scientific information available, NMFS has determined that the AT1 group of transient killer whales is a population stock.

### Status of the Stock

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." 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 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 (K) to MNPL. MNPL is population size expected to produce 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, 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 purse seine fishing for yellowfin tuna 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 available estimate of a stock's maximum historical abundance as a proxy for K.

As required by the MMPA, NMFS initiated consultation with the Marine Mammal Commission related to the petition to designate the AT1 group of killer whales as a depleted population stock. In a letter dated December 23, 2002, the Commission noted that there were uncertainties regarding the relationships of the AT1 group to other killer whales in the North Pacific. The Commission recommended as a precautionary approach that, until these uncertainties are resolved, NMFS should designate the AT1 group of transient killer whales as a depleted stock.

There is no information on population trends or historical abundance of the Eastern North Pacific transient stock of killer whales, of which the AT1 group was a part prior to this final rule. Similarly there is insufficient historical data on Alaska transients to provide information on trends in abundance in Alaska. The AT1 group is the only stock of transient whales whose recent history is known.

The available information, which was described in detail in the report of the status review and summarized in the preamble to the proposed rule, supports the conclusion that the AT1 group is a population stock of marine mammals. The genetics data suggest that the stock size was larger than 22 animals prior to 1984. However, its abundance prior to 1984 is unknown. Consequently, there is no estimate for the maximum historical abundance. In 1984, the stock had 22 members, and its current abundance has been reduced to nine or fewer whales. The current abundance is less than 60 percent of the known abundance in 1984; therefore, the stock is below its MNPL (the lower limit of its OSP). Consequently, the stock meets the statutory definition of depleted. Based on the best scientific information available, NMFS is designating the AT1 group of transient killer whales in Alaska as a depleted population stock under the MMPA.

**References**

References are available upon request (See **FOR FURTHER INFORMATION CONTACT**).

**Classification**

This final rule is exempt from listing 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 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.

At the proposed rule stage, the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule

will not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification or the economic impact of the rule. As a result, no regulatory flexibility analysis is required, and none has been prepared.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This final 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: May 28, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 216 is 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:

**Authority:** 16 U.S.C. 1361 *et seq.* unless otherwise noted.

■ 2. In § 216.15, a new paragraph (i) is added to read as follows:

**§ 216.15 Depleted species.**

\* \* \* \* \*

(i) AT1 stock of killer whales (*Orcinus orca*). The stock includes all killer whales belonging to the AT1 group of transient killer whales occurring primarily in waters of Prince William Sound, Resurrection Bay, and the Kenai Fjords region of Alaska.

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