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This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: February 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022004D]

Endangered and Threatened Wildlife and Plants: Updated Status Review of Eastern North Pacific Southern Resident Killer Whales

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

ACTION: Status review; request for information.

SUMMARY: Following receipt of a petition to list of the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act (ESA), NMFS conducted a status review and determined that the petitioned action was not warranted at the time because Southern Resident killer whales did not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. However, a court set aside NMFS' finding and remanded the matter back to NMFS for re-evaluation of whether the Southern Resident killer whales

should be listed under the ESA. NMFS has reconvened a Biological Review Team (BRT) to consider the most recent scientific and commercial information available on Southern Resident killer whales in this re-evaluation. NMFS is requesting that interested parties submit pertinent information to assist NMFS with updating its status review.

DATES: Information must be received by May 3, 2004.

ADDRESSES: Information on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Information may also be submitted electronically by sending an e-mail message to SRKWstatus.nwr@noaa.gov.

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 this stock of killer whales is available on the Internet at: <http://www.nwr.noaa.gov/mmammals/whales/index.html>

Background

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity and 11 co-petitioners (CBD, 2001a) to list Southern Resident killer whales as threatened or endangered under the ESA. On August 13, 2001, NMFS provided notice of its determination that the petition presented substantial information that a listing may be warranted and requested information to assist with a status review to determine if Southern Resident killer whales warranted listing under the ESA (66 FR 42499). To assist in the status review, NMFS formed a BRT comprised of scientists from the agency's Alaska, Northwest, and Southwest Fisheries Science Centers. NMFS convened a meeting on September 26, 2001, to gather technical information from co-managers, scientists, and individuals having research or management expertise pertaining to killer whale stocks in the north Pacific Ocean. Additionally, the BRT discussed its preliminary scientific finding with Tribal, State and Canadian co-managers on March 25, 2002. The BRT considered information from the petition, the September and March meetings, and comments submitted in response to NMFS' information request

to prepare a final scientific document on Southern Resident killer whales (NMFS, 2002).

After conducting the status review, NMFS determined that listing Southern Resident killer whales as a threatened or endangered species was not warranted because Southern Resident killer whales did not constitute a species as defined by the ESA. The finding was announced on July 1, 2002 (67 FR 44133), and the notice contained additional information on the finding, including DPS status of Southern Residents under existing killer whale taxonomy and the conclusions of the BRT. The status review and other documents supporting the finding are available on the Internet (see Electronic Access) or from NMFS (see **ADDRESSES**). Along with the finding, NMFS announced that it would reconsider the taxonomy of killer whales within 4 years.

The scientific information evaluated during the ESA status review indicated that Southern Resident killer whales may be depleted under the Marine Mammal Protection Act (MMPA). NMFS initiated consultation with the Marine Mammal Commission (Commission) in a letter dated June 25, 2002 and published an advance notice of proposed rulemaking (ANPR) on July 1, 2002 (67 FR 44132) to request pertinent information regarding the status of the stock and potential conservation measures that may benefit these whales. After considering comments received in response to the ANPR and from the Commission, NMFS published a proposed rule to designate the Southern Resident stock of killer whales as depleted (68 FR 4747, January 30, 2003) and solicited comments on the proposal. Based on the best scientific information available and consultation with the Commission, NMFS determined that the Southern Resident stock of killer whales was depleted under the MMPA (68 FR 31980, May 29, 2003) and announced its intentions to prepare a Conservation Plan.

On December 18, 2002, the Center for Biological Diversity (and other plaintiffs) initiated a lawsuit in U.S. District Court challenging NMFS' not warranted finding. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside NMFS's not warranted finding and remanded the matter back to NMFS for redetermination of whether the Southern Resident killer whales should be listed under the ESA. Pursuant to the court's order, NMFS will make this determination by December 17, 2004.

Information Solicited

For the original status review, NMFS solicited information concerning the status of killer whale populations world wide with emphasis in the Eastern North Pacific Ocean from California to Alaska (66 FR 42499, August 13, 2001). Specifically, the agency requested available information on: (1) historical and current known ranges of resident (fish eating) and transient (mammal-eating) killer whales; (2) spatial and seasonal distribution with particular focus on current and historical habitat utilization; (3) genetic variability in resident, transient, and offshore killer whale populations; (4) demographic movements among resident or transient killer whales; (5) trends in killer whale foraging habits and seasonal prey abundance; (6) trends in environmental contamination by persistent organic pollutants (e.g., polychlorinated-biphenyls (PCBs) including congener specific data) as well as other contaminants (e.g. toxic metals); (7) contaminant burdens in prey species, especially salmonids; (8) impacts caused by human recreational activities (e.g., whale watching, boating); (9) historic removals of killer whales including human caused mortality associated with live capture operations, military activities, or fisheries interactions; (10) current or planned activities and their possible impacts on this species (e.g., removals or habitat modifications); (11) efforts being made to protect resident killer whales or improve their habitat; and (12) non-human related factors that may have contributed to the recent decline of the Southern Resident killer whale (i.e., climatic or oceanographic regime shifts, diseases, biotoxins).

NMFS also requested information describing the quality and extent of marine habitats for Southern Resident killer whales, as well as information on areas that may qualify as critical habitat. Information on areas that include the physical and biological features essential to the recovery of the species was requested. Essential features include, but are not limited to the following: (1) habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS also requested information and maps describing natural and manmade

changes within the species' current and historical range in the Eastern North Pacific Ocean from California to Alaska. For areas potentially qualifying as critical habitat, NMFS requested information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. Comments on Southern Resident killer whales and critical habitat were received through October 12, 2001.

To ensure that the current status review update is comprehensive and based on the best available data, NMFS is soliciting information obtained since October 2001 on the above topics, as well as information available on resident, transient and offshore killer whale (1) behavior; (2) communication; (3) reproductive biology and dispersal patterns; (4) genetics; (5) skeletal and color pattern morphology; (6) potential impacts of additional human related activities (e.g., marine noise, oil spills); and (7) cetacean taxonomy, as they relate to the status of killer whales in the North Pacific and in a global context.

References

A complete list of all references used in this notice and other information related to the status of this stock of killer whales is available via the Internet (see Electronic Access) or upon request (see ADDRESSES).

Dated: February 25, 2004.

P. Michael Payne,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021904A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1-year letter of

authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force to harass seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California. The LOA was issued on February 25, 2004.

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713-2322, or Monica DeAngelis, NMFS, (562) 980-4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on February 06, 2004 (69 FR 5720), and remain in effect until February 06, 2009.

Issuance of this letter of authorization is based on a finding, made in the final rulemaking, that the total takings will have no more than a negligible impact on the seal and sea lion populations off