

**MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814**

31 March 2003

Mr. Garth Griffin
Chief, Protected Resources Division
National Marine Fisheries Service
525 NE Oregon Street, Suite 500
Portland, OR 97232

Dear Mr. Griffin:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, has reviewed the National Marine Fisheries Service's proposed rule (68 Fed. Reg. 4747) regarding designation of the eastern North Pacific southern resident stock of killer whales as depleted under the Marine Mammal Protection Act. In 2002 the Marine Mammal Commission wrote to the Service twice (22 March 2002; 18 November 2002) regarding this stock of marine mammals. The Commission recommended, among other things, that the Service designate the stock as depleted and move forward with recovery actions without waiting for completion of a conservation plan. In response to the proposed rule, the Commission reiterates those recommendations.

A marine mammal stock is considered to be depleted if it is below its optimum sustainable population, which the National Marine Fisheries Service defines as a population size that falls within a range between the maximum net productivity level and carrying capacity. The Service has established 60 percent of carrying capacity as the estimated point for a marine mammal stock's maximum net productivity level. Because the 2001 estimate of abundance (78) is less than 60 percent of the most conservative estimate of carrying capacity (140), the Marine Mammal Commission recommends that the Service designate the stock as depleted. Support for such a designation is provided by a recent population viability analysis that predicts a 12-30 percent probability of extinction for the stock within 100 years if current mortality and reproductive rates persist.

In its 18 November 2002 letter to the Service, the Commission expressed concern about the use of 140 as a minimum estimate of carrying capacity and the use of this estimate to establish recovery goals. The estimate of carrying capacity should be based on the best scientific information available and should take into account any new information that can be obtained by needed research, such as genetic studies of existing populations. The Commission agrees with the Service's assessment that "the estimate of 140 whales should be considered conservative, and thus, it was used only to establish a lower bound of estimate for maximum historical abundance." Therefore, the Commission reiterates the point made in its 18 November letter that it would be inappropriate to use the maximum net productivity level derived from the minimum estimate of carrying capacity to

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establish the level at which the stock should be considered recovered. Rather, the Service should complete a thorough review of all available information regarding historical abundance and conduct suitable research, such as biopsy sampling of all animals in the population, to provide estimates of historical numbers. Further in this regard, the Marine Mammal Commission recommends that such information be addressed thoroughly in the conservation plan when considering the establishment of recovery criteria.

Section 115(e) of the Marine Mammal Protection Act requires the Service to develop a conservation plan for each depleted stock unless the Service determines that such a plan will not promote the conservation of the stock. However, the development of a conservation plan that incorporates the best scientific information available and provides a full suite of recommendations for management may take several months or longer. The Marine Mammal Commission therefore recommends that the Service begin its development of a conservation plan as soon as possible and, in the interim, initiate any conservation measures that have been identified to date.

Please contact me if you have questions about these comments and recommendations.

Sincerely,



David Cottingham
Executive Director