

takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 3, 2001.

Ira W. Leighton,

Acting Regional Administrator, EPA-New England.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96-98; DA 01-1658]

Update and Refresh Record on Rules Adopted in 1996 Local Competition Docket

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document invites parties to update and refresh the record on issues pertaining to the rules the Commission adopted in the First Report and Order in CC Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*.

DATES: Comments are due September 12, 2001 and reply comments are due September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, Attorney Advisor, Network Services Division, Common Carrier Bureau, (202) 418-2320.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document regarding CC Docket No. 96-98, released on July 12, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, SW., Washington, DC. It is also

available on the Commission's website at: http://www.fcc.gov/Daily_Releases/Daily_Business/2001/db0712/da011658.doc.

Synopsis

1. On August 8, 1996, the Commission released the *Local Competition Second Report and Order*, FCC 96-333, 61 FR 47284 (September 6, 1996), as required by the Telecommunications Act of 1996. Many of the parties filed petitions for reconsideration of that order. The Commission subsequently resolved a majority of these petitions but due to the significant litigation arising from the rules adopted in the *Local Competition Second Report and Order*, several petitions remain unresolved. Specifically, the remaining petitions seek reconsideration of the rules governing intraLATA toll dialing parity pursuant to section 251(b)(3) of the Telecommunications Act of 1996 (Act), and network change disclosure rules pursuant to section 251(c)(5) of the Act. Since many of these petitions were filed several years ago, the passage of time and intervening developments may have rendered the record developed by those petitions stale. Moreover, some issues raised in petition for reconsideration may have become moot or irrelevant in light of intervening events.

2. For these reasons, the Commission requests that parties that filed petitions for reconsideration following release of the *Local Competition Second Report and Order* identify issues from that order that remain unresolved now and supplement those petitions, in writing, to indicate which findings and rules they still wish to be reconsidered. To the extent that intervening events have materially altered the circumstances surrounding filed petitions or the relief sought by filing parties, those entities may refresh the record with new information or arguments related to their original filings that they believe to be relevant to the issues. The previously filed petitions will be deemed withdrawn and will be dismissed if parties do not indicate in writing an intent to pursue their respective petitions for reconsideration. The refreshed record will enable the Commission to undertake appropriate and expedited reconsideration of its local competition rules.

List of Subjects in 47 CFR Part 51

Communications common carriers, Interconnection.

Federal Communications Commission.

Diane Griffin Harmon,

Acting Chief, Network Services Division
Common Carrier Bureau.

[FR Doc. 01-20227 Filed 8-10-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224 and 226

[Docket No. 010731194-1194-01; I.D. 070601B]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Southern Resident Killer Whales

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

ACTION: Notice of finding; request for information.

SUMMARY: NMFS received a petition to list the Eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as endangered or threatened species under the Endangered Species Act (ESA) and to designate critical habitat for this stock under that Act. NMFS determined that the petition presents substantial scientific information indicating that a listing may be warranted and will initiate an ESA status review. NMFS solicits information and comments pertaining to these killer whale populations and their habitats and seeks suggestions for peer reviewers for any proposed listing determination that may result from the agency's status review of the species.

DATES: Information and comments on the action must be received by October 12, 2001.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street—Suite 500, Portland, OR 97232. Comments will not be accepted if submitted via email or the internet. However, comments may be sent via fax to (503) 230-5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231-2005 or Tom Eagle, NMFS, Office of Protected Resources, (301) 713-2322 ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this rule can also be obtained from the internet at <http://www.nwr.noaa.gov>.

Background

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity, Center for Whale Research, The Whale Museum, Ocean Advocates, Washington Toxics Coalition, Orca Conservancy, American Cetacean Society, Friends of the San Juans, People for Puget Sound, Cascade Chapter of the Sierra Club and Ralph Munro, to list the Eastern North Pacific Southern Resident stock of killer whales as an endangered or threatened species under the ESA. The petitioners further requested concurrent designation of critical habitat for this species in accordance with the ESA. On July 16, 2001, NMFS received a letter from the petitioners asking NMFS to add Project SeaWolf as an additional co-petitioner. Copies of this petition are available from NMFS (See ADDRESSES).

The petition presents detailed narrative information, based on the available data from the annual killer whale censuses, that show that the stock (as defined) has gone through periods of growth and decline from a low of fewer than 70 animals in 1973 to a high of 97 individuals in 1996 followed by period of decline to 82 individuals at the beginning of 2000. The petition further describes the killer whale's distribution worldwide and provides arguments for further delineating Southern Resident killer whales as a distinct population segment. The arguments include morphological, dietary, behavioral and genetic differences between groups of killer whales in the Pacific Northwest, and exclusive utilization of summertime home range. Additional arguments are presented based on regional cultural significance and management status under the Marine Mammal Protection Act (MMPA). Variability in recruitment and survival, reduced food resources, residual effects from live captures in the 1960s and 70s on the current age and sex structure of the population, behavioral changes associated with increased whale watching disturbance, and increased levels of toxic contaminants are highlighted as possible threats faced by the species. The petition includes a population viability analysis, distributional maps, and a bibliography of supporting documentation.

Prior to receiving the petition, and in response to concerns raised over a recent decline in the number of Southern Resident killer whales, NMFS

convened a workshop in April 2000 to review the status of ongoing killer whale research, help coordinate future research efforts and discuss many of the same issues raised in the petition.

Workshop participants presented and discussed information on killer whale population dynamics, status of adjacent killer whale communities, genetic evidence of stock structure, bioaccumulation of contaminants, increased whale watching pressure, and prey availability. Census counts, begun in 1974 using photo-identification methodology, revealed fluctuations in the number of whales from year to year and allowed the documentation of individual births and deaths within the Southern Resident stock. Analysis of the available genetic data showed that the Southern Resident killer whales are genetically distinguishable from the northern resident stock, the nearest (geographically) resident killer whale group, but that they share common genetic traits with other resident groups farther to the north, in Alaska. Genetic information also showed that Southern Resident whales are different from the sympatric Eastern North Pacific Transient stock of killer whales. Contaminant analysis showed that, for males, Southern Residents have higher levels of some contaminants than northern residents or resident whales in Alaska but significantly lower than transient killer whales. Data on the growth of recreational and commercial whale watching, during the past 20 years, showed that summer vessel traffic increased in the seasonal core range of the Southern Residents, but studies on the influence of vessels on the behavior, feeding and energy expenditures of these whales have been inconclusive. Little is known about the winter foraging habitat or prey of the Southern Residents. However, the summer diet is dominated by salmonids and chinook salmon have been observed to be a preferred prey in Puget Sound and the Northwest Straits. Data on seasonal abundance of chinook and other salmonids in Washington indicate periodic declines but detailed information on prey density, trends in wild versus hatchery fish, and foraging success between Southern Resident pods and between adjacent killer whale populations were unavailable at the workshop. Workshop participants noted that resident killer whale stocks in British Columbia (including Southern Residents) were listed as threatened by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) but that listing under Canadian law does not carry the same

legal definitions or mandates as the ESA.

Analysis of Petition

Section 4 (b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list certain species under the ESA (16 U.S.C. 1533 (b)(3)(A)). Section 4 (b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary must make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. This includes determining whether there is evidence that the subject populations may qualify as a "species" under the ESA, in accordance with NMFS/U.S. Fish and Wildlife Service policy regarding the identification of distinct vertebrate population segments (61 FR 4722, February 7, 1996).

Regulations implementing the ESA (50 CFR 424.14 (b)) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, NMFS considers several factors, including whether the petition contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR 424.14 (b)(2)(ii)). In addition, NMFS considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14 (b)(2)(iii)).

NMFS evaluated whether the petition met the standard for "substantial information" and concluded it was appropriate to accept the petition to list the species. The petition highlights key issues for consideration by NMFS, including: (1) genetic, behavioral, and ecological evidence bearing on the issue of whether to define Southern Resident killer whales as a distinct population segment; (2) population data documenting a recent decline in Southern Resident killer whales and analyses indicating that these whales may be at some risk of extinction; and (3) an array of threats that may account for the decline in Southern Resident killer whales.

Petition Finding

After reviewing the information contained in the petition, as well as other available information, NMFS determines that the petition presents

substantial scientific information indicating the petitioned action may be warranted. In accordance with section 4 (b)(3)(B) of the ESA, NMFS will complete a status review and report its findings by May 2, 2002.

Listing Factors and Basis for Determination

Under section 4 (a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of killer whale populations world wide with emphasis in the Eastern North Pacific Ocean from California to Alaska (see **DATES** and **ADDRESSES**). Specifically, the agency is seeking 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 requests 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. Areas that include the physical and biological features essential to the recovery of the species should be identified. 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 is also seeking 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 also requests 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. The economic cost to be considered in a critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4 (d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field who could take part in the peer review process for the agency's status review of Southern Resident killer whales. Peer reviewers may be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 6, 2001.

William T. Hogarth,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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