

US EPA ARCHIVE DOCUMENT

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 271**

[FRL-7505-1]

**Utah: Final Authorization of State
Hazardous Waste Management
Program Revision****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Withdrawal of immediate final
rule.

SUMMARY: We are withdrawing the immediate final rule for Utah: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, which approved the tenth revision to Utah's Hazardous Waste Rules. We stated in the immediate final rule that if we received comments that oppose this authorization, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that oppose this action. We will address these comments in a subsequent final action based on the proposed rule also published on April 10, 2003, at 68 FR 17577.

DATES: As of May 29, 2003, we withdraw the immediate final rule published on April 10, 2003, at 68 FR 17556.

FOR FURTHER INFORMATION CONTACT: Kris Shurr (8P-HW), phone number: (303) 312-6312, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, email: shurr.kris@epa.gov.

SUPPLEMENTARY INFORMATION: Because we received comments that oppose this authorization, we are withdrawing the immediate final rule for Utah: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, at 68 FR 17556, which intended to grant authorization for the tenth revision to Utah's Hazardous Waste Rules. We stated in the immediate final rule that if we received comments that opposed this action, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that opposed this action. We will address all comments in a subsequent final action based on the proposed rule previously published on April 10, 2003, at 68 FR 17577. We will not provide for additional public comment during the final action.

Dated: May 19, 2003.

Wanda C. Taunton,

Acting Regional Administrator, Region VIII.
[FR Doc. 03-13427 Filed 5-28-03; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****50 CFR Part 216**[Docket No. 020603140-3129-03, I.D.
050102G]**RIN 0648-AQ00****Regulations Governing the Taking and
Importing of Marine Mammals; Eastern
North Pacific Southern Resident Killer
Whales**

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

ACTION: Final rule.

SUMMARY: Following a review of the status of the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*), NMFS has determined that the stock is below its Optimal Sustainable Population (OSP) and, therefore, is depleted as defined in the Marine Mammal Protection Act (MMPA). This action is a step in the process to address the decline in the number of Southern Resident killer whales. NMFS also announces the preparation of a Conservation Plan to reverse the decline and to promote recovery of the stock to OSP.

DATES: Effective June 30, 2003.

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

Background

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 [(OSP)]." 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 [(K)] 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 (carrying capacity [K]) to the population level that results in the maximum net productivity level (MNPL). MNPL is 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 would be considered 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 tuna purse seine fishing 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 estimate available of maximum historical abundance as a proxy for K.

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity and 11 co-petitioners to list Southern Resident killer whales under the Endangered Species Act (ESA). After conducting a status review to consider the information in the petition and other information related to the status of Southern Resident killer whales, NMFS determined that listing these killer whales as a threatened or endangered species was not warranted at this time because Southern Resident killer whales did not constitute a species as defined by the ESA. Scientific information evaluated during the status review, however, indicated that the population stock may be depleted under the MMPA.

As required by the MMPA, NMFS initiated consultation with the Marine Mammal Commission (Commission) in a letter dated June 25, 2002, and began the process for determining if the stock was depleted. The Commission responded to NMFS in a letter dated November 18, 2002, with