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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 121025586-3654-01]

RIN 0648-XC326

Listing Endangered or Threatened Species: 12-Month Finding on a Petition to Delist the Southern Resident Killer Whale

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

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are issuing a 12-month finding on a petition to delist the Southern Resident killer whale (Orcinus orca) Distinct Population Segment (DPS) under the Endangered Species Act (ESA). We listed the Southern Resident killer whale DPS as endangered under the ESA in 2005. We accepted the petition to delist the Southern Resident killer whale DPS on November 27, 2012, initiating a public comment period and a status review. Based on our review of the petition, public comments, and the best available scientific information, we find that delisting the Southern Resident killer whale DPS is not warranted.

DATES: The finding announced in this document was made on [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: This finding and supporting information are available on our web page at:

http://www.nwr.noaa.gov/protected_species/marine_mammals/killer_whale/delist_petition.html.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NMFS Northwest Region, (206) 526-4745; Marta Nammack, NMFS Office of Protected Resources, (301) 427-8469.

SUPPLEMENTARY INFORMATION:

ESA Statutory Provisions and Policy Considerations

On August 2, 2012, we received a petition submitted by the Pacific Legal Foundation on behalf of the Center for Environmental Science Accuracy and Reliability, Empresas Del Bosque, and Coburn Ranch to delist the endangered Southern Resident killer whale DPS under the ESA. Copies of the petition are available upon request (see ADDRESSES, above).

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable within 90 days of receipt of a petition to list or delist a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the Federal Register (16 U.S.C. 1533(b)(3)(A)) and commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. On November 27, 2012 (77 FR 70733), we made a finding that there was sufficient information indicating that the petitioned action may be warranted and requested comments to inform a status review.

After accepting a petition and initiating a status review, within 12 months of receipt of the petition we conclude the review with a determination that the petitioned action is not warranted, or a proposed determination that the action is warranted. Under specific facts, we may also issue a determination that the action is warranted but precluded. In this notice, we make a finding that the petitioned action to delist the Southern Resident killer whale DPS is not warranted.

Under the ESA, the term "species" means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint NMFS-USFWS policy clarifies the Services' interpretation of the phrase "Distinct Population Segment," or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) Discreteness of the population segment in relation to the remainder of the species/taxon, and, if discrete; (2) the significance of the population segment to the species/taxon.

A species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Thus, we interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either

presently (endangered) or in the foreseeable future (threatened). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

Background

Three distinct forms or ecotypes of killer whales, termed residents, transients, and offshores, are recognized in the northeastern Pacific Ocean. Resident killer whales in U.S. waters are distributed from Alaska to California, with distinct populations: Southern, Northern, Southern Alaska, and Western Alaska (Krahn et al., 2002; 2004). Resident killer whales are fish eaters and live in stable matrilineal pods. The West Coast transient killer whales have a different social structure, are found in smaller groups, and eat marine mammals. Offshore killer whales are found in large groups and their diet is presumed to consist primarily of fish, including sharks. While the ranges of the different ecotypes of whales overlap in the northeastern Pacific Ocean, available genetic data indicate that there is a high degree of reproductive isolation among residents, transients, and offshores (Krahn et al., 2004; NMFS, 2013).

The Southern Resident killer whale population consists of three pods, identified as J, K, and L pods, that reside for part of the year in the inland waterways of Washington State and British Columbia (Strait of Georgia, Strait of Juan de Fuca, and Puget Sound), principally during the late spring, summer, and fall (NMFS, 2008). Pods visit coastal sites off Washington and Vancouver Island, and travel as far south as central California and as far north as Southeast Alaska (Ford et al., 2000; NMFS, 2008; Department of Fisheries and Oceans, unpublished data).

In 2001 we received a petition to list the Southern Resident killer whale population as threatened or endangered under the ESA (CBD, 2001) and we formed a Biological Review Team (BRT) to assist with a status review (NMFS, 2002). After conducting the status review, we determined that listing the Southern Resident killer whale population as a threatened or endangered species was not warranted because the science at that time did not support identifying the Southern Resident killer whale population as a distinct population segment as defined by the ESA (67 FR 44133; July 1, 2002). Because of the uncertainties regarding killer whale taxonomy (i.e., whether killer whales globally should be considered as one species or as multiple species and/or subspecies), we announced we would reconsider the taxonomy of killer whales within 4 years. Following the determination, the Center for Biological Diversity, and other plaintiffs, challenged our "not warranted" finding under the ESA in U.S. District Court. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside our "not warranted" finding and remanded the matter to us for redetermination of whether the Southern Resident killer whale population should be listed under the ESA (Center for Biological Diversity v. Lohn, 296 F. Supp. 2d. 1223 (W.D. Wash. 2003)). The court found that where there is "compelling evidence that the global Orcinus orca taxon is inaccurate," the agency may not rely on "a lack of consensus in the field of taxonomy regarding the precise, formal taxonomic redefinition of killer whales." As a result of the court's order, we co-sponsored a Cetacean Taxonomy workshop in 2004, which included a special session on killer whales, and reconvened a BRT to prepare an updated status review document for Southern Resident killer whales (NMFS, 2004).

The BRT agreed that the Southern Resident killer whale population likely belongs to an unnamed subspecies of resident killer whales in the North Pacific, which includes the Southern and Northern Residents, as well as the resident killer whales of Southeast Alaska, Prince William Sound, Kodiak Island, the Bering Sea and Russia (but not transients or offshores). The BRT concluded that the Southern Resident killer whale population is discrete and significant with respect to the North Pacific Resident taxon and therefore should be considered a DPS. In addition, the BRT conducted a population viability analysis which modeled the probability of species extinction under a range of assumptions. Based on the findings of the status review and an evaluation of the factors affecting the DPS, we published a proposed rule to list the Southern Resident killer whale DPS as threatened on December 22, 2004 (69 FR 76673). After considering public comments on the proposed rule and other available information, we reconsidered the status of the Southern Resident killer whale DPS and issued a final rule to list the Southern Resident killer whale DPS as endangered on November 18, 2005 (70 FR 69903).

Following the listing, we designated critical habitat, completed a recovery plan, and conducted a 5-year review for the Southern Resident killer whale DPS. We issued a final rule designating critical habitat for the Southern Resident killer whale DPS November 29, 2006 (71 FR 69055). The designation includes three specific areas: (1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which comprise approximately 2,560 square miles (6,630 square km) of Puget Sound. The designation excludes areas with water less than 20 feet (6.1 m) deep relative to extreme high water. After engaging stakeholders

and providing multiple drafts for public comment, we announced the Final Recovery Plan for the Southern Resident killer whale DPS on January 24, 2008 (73 FR 4176). We have continued working with partners to implement actions in the recovery plan. In March 2011, we completed a 5-year review of the ESA status of the Southern Resident killer whale DPS, concluding that no change was needed in its listing status and that the Southern Resident killer whale DPS would remain listed as endangered (NMFS, 2011). The 5-year review also noted that there was no relevant new information for this species regarding the application of the DPS policy.

Petition Finding

On August 2, 2012, we received a petition submitted by the Pacific Legal Foundation on behalf of the Center for Environmental Science Accuracy and Reliability, Empresas Del Bosque, and Coburn Ranch to delist the endangered Southern Resident killer whale DPS under the ESA. The petitioners contend that there is no scientific basis for the designation of the unnamed North Pacific Resident subspecies of which the Southern Resident killer whale population is a purported DPS. The petitioners also contend that the killer whale DPS does not constitute a listable unit under the ESA because NMFS is without authority to list a DPS of a subspecies. They conclude that the listing of the Southern Resident killer whale DPS was in error and is illegal and therefore NMFS should delist the DPS.

The petition focused entirely on the basis for identifying the North Pacific Resident killer whales as a subspecies and the reference unit for the Southern Resident DPS and did not include any information regarding the five section 4(a)(1) factors or status of the population. The petitioners provided both a scientific argument regarding

the biological basis for the subspecies and DPS determination and also a legal argument regarding the subspecies and DPS determination under the ESA. There was no information presented regarding past or present numbers and distribution of the species, the threats faced by the species, or the status of the species over all or a significant portion of its range.

The petition presented new information regarding genetic samples and data analysis pertinent to the status of the North Pacific Resident population as a subspecies and the subsequent Southern Resident killer whale DPS determination. The source of the new information was primarily a scientific peer reviewed journal article published subsequent to the listing (Pilot et al., 2010), which includes information regarding breeding between different ecotypes of killer whales (i.e., offshores and transients). The petitioners also cited new articles regarding killer whale vocalizations, and reviewed different types of information considered by the BRT and presented in the status review report (NMFS, 2004).

On November 27, 2012, we found that the information contained in the petition, viewed in the context of information readily available in our files, presented substantial scientific information indicating the petitioned action may be warranted. We noted that information and results, similar to those presented in Pilot et al. (2010), were available at the time of the Status Review (NMFS, 2004), Cetacean Taxonomy Workshop (Reeves et al., 2004), DPS determination, and listing decision. In addition to the information presented in the petition, we also acknowledged data from additional new genetic samples and peer reviewed scientific journal articles (e.g., Morin et al., 2010; Ford et al.,

2011) regarding taxonomy and breeding behavior of killer whales that address the discreteness question and the DPS determination.

Our 90-day finding accepting the petition solicited information from the public and initiated a status review of the Southern Resident killer whale DPS to gather any additional information to inform our review of the petitioned action and our application of the DPS policy. During the public comment period for receiving information, which closed on January 28, 2013, we received over 2,750 comments. Despite our request for specific scientific and commercial information, the vast majority of commenters simply noted their opposition to the petition to delist the Southern Resident killer whale DPS, while a handful of comments supported the petition. Several commenters disagreed with the 90-day finding and suggested that the petition should be rejected and not considered any further. We did receive several substantive comments regarding both the biological and legal aspects of the DPS determination as raised in the petition.

We provided a summary of the substantive comments to the NMFS Northwest Fishery Science Center (Center) with a request to evaluate whether any of the new information would suggest alternative conclusions than those of the BRT regarding the DPS determination in the 2004 status review (Krahn et al., 2004). Specifically, we requested that the Center consider if there is new best available information that would lead to different conclusions from those in Krahn et al. (2004) regarding the North Pacific Resident killer whale subspecies or the discreteness or significance of the Southern Resident killer whale population. The Center provided a status review update (NMFS, 2013) that included a review of (1) taxonomic issues addressed by the 2004 BRT (Krahn et al., 2004); (2) biological points raised in the petition; (3) information provided by the

public; (4) new information on morphology, feeding ecology, diet, and genetics; (5) conclusions about the determinations of the reference taxonomic group, or taxon, for evaluating discreteness and significance; and (6) conclusions about the DPS determination made in 2004. The status review update and determinations about the taxon and DPS (NMFS, 2013) informs our 12-month finding about the petitioned action to delist the Southern Resident killer whale DPS.

Determination of Taxon and DPS

Based on the best information available, we previously concluded, with advice from the 2004 BRT, that the Southern Resident killer whale population (J, K, and L pods) met the two criteria of the DPS policy and constituted a DPS of the North Pacific Resident subspecies. The following discussion describes our evaluation of the North Pacific Resident subspecies and DPS status of the Southern Resident population during the 2005 rulemaking, and our evaluation of its DPS status based on the new information available since that rulemaking and best available science review and advice from the Center (NMFS, 2013). The evaluation considers: (1) the reference taxon for consideration under the DPS policy; (2) the discreteness of the Southern Resident population from other populations within that taxon; and (3) the significance of the Southern Resident population to that taxon.

Reference Taxon

During the 2005 rulemaking we concluded that the proper reference taxon for consideration under the DPS policy was an unnamed subspecies of North Pacific Resident killer whales, distinct from North Pacific transient killer whales, North Pacific offshore killer whales, and other resident killer whales world-wide. We reached this

conclusion based on several lines of evidence, including differences in morphology, behavior, diet and feeding ecology, acoustical dialects and practices, and both mtDNA and nuclear DNA variation (Krahn et al., 2004). The lines of evidence supporting differentiation between the ecotypes of North Pacific whales are relevant to and inform the basis for identifying the North Pacific Resident killer whales taxonomically, as a subspecies (NMFS, 2013).

After reviewing information in the petition, the public comments, and the scientific literature published in the 9 years since the 2004 status review, we find no new information that leads to a different conclusion from that reached in the 2005 rulemaking, and the weight of evidence continues to support our conclusion that the North Pacific Resident killer whales represent a taxonomic subspecies. To the contrary, new information is consistent with and further supports the 2005 finding. All of the new genetic data and analyses published since 2004, including the Pilot et al. (2010) paper discussed extensively in the petition, show a high degree of contemporary reproductive isolation among the North Pacific killer whale ecotypes (resident, transients, and offshores). No genetic analysis published since the 2004 status review has indicated a higher level of interbreeding among these ecotypes than was indicated by the analysis considered by the 2004 BRT.

In addition to new genetic data and analyses, the studies on feeding ecology and diet published since 2004 are generally consistent with or strengthen the 2004 BRT's conclusions that the ecotypes differ in diet and feeding ecology. The one new study that addresses morphological differences between the ecotypes (Zerbini et al., 2007) supports the 2004 BRT's conclusion that the ecotypes can be morphologically differentiated.

No new information on acoustics or behavior contradicts the conclusions of the 2004 BRT. Recent observations (Center unpublished data, 2013) indicate that North Pacific offshore killer whales consume at least some Chinook salmon (indicating a similarity with North Pacific Residents), but observations, stable isotopes, and tooth wear data indicate substantial dietary differences (Dahlheim et al., 2008; Ford et al., 2011).

Finally, in 2012 the Society of Marine Mammalogy formally recognized North Pacific Residents as an unnamed subspecies (Committee on Taxonomy, 2012). Recognition by this organization alone does not amount to a "precise, formal taxonomic redefinition of killer whales," but it is an important addition to the weight of evidence regarding the existence of the North Pacific resident killer whale subspecies.

Based on the above evaluation, we conclude that the best available scientific information indicates that the North Pacific Resident subspecies is the appropriate reference taxon for considering whether the Southern Resident killer whale population is discrete and significant, despite the fact that the taxonomic community has not yet formally named the subspecies. As noted in the 2004 BRT report, "formal taxonomic changes are often slow to occur and lag behind current knowledge."

Discreteness of the Southern Resident Population from other Populations Within the Taxon

In our 2005 rulemaking we concluded that there was strong evidence that the Southern Resident killer whale population is discrete from other North Pacific Resident killer whale populations as defined by the 1996 DPS policy, citing significant genetic differentiation, separate demographic trajectories, differences in core and summer range, and behavioral differences from other resident populations (Krahn et al., 2004).

The new information subsequent to 2004 is consistent with and generally strengthens the conclusion that the Southern Resident killer whale population is a discrete population within the North Pacific Resident taxon. In particular, recent genetic studies all indicate that the Southern Resident population is significantly differentiated from other resident populations. A recent analytical comparison of demographic rates found significant differences in both survival and fecundity rates between the Southern Resident population and the Northern Resident population, providing further evidence of demographic discreteness (Ward et al., in press). New information on the winter range of the Southern Resident population provides a considerably more complete picture than was available in 2004, and continues to indicate that K and L pods, in particular, have a winter and summer range distinct from other resident populations, although the Southern Resident population does overlap substantially with some of the Northern Resident population. In short, as in 2004, all the available information clearly indicates that the Southern Resident population is discrete from other populations in the North Pacific resident subspecies.

The Significance of the Southern Resident Population to the Taxon

Below we discuss each of the factors listed by the 2004 BRT in support of its finding that the Southern Resident population is significant to the North Pacific Resident killer whale subspecies.

Ecological setting and range – The 2004 BRT noted that the Southern Resident population appeared to occupy a distinct ecological setting, being the only North Pacific resident population to spend substantial time in the California Current ecosystem and having a diet somewhat different from other resident populations, particularly those in

Alaska. The BRT also cited the possibility that the Southern Resident population historically utilized the large runs of salmon to the Sacramento and Columbia River basins as a major source of prey. With regard to range, the BRT noted that the Southern Resident population was the only resident population observed spending time in Puget Sound and off the coasts of Washington, Oregon, and California and that if it were to become extirpated, this would result in a significant reduction in the North Pacific Residents' range.

New information since 2004 generally continues to support most of these conclusions, but also challenges some of them. In particular, new information on the coastal distribution of the Southern and Northern Resident populations confirms that the Southern Residents spend substantial time in coastal areas of Washington, Oregon and California and utilize salmon returns to these areas (Center, unpublished data). However, there is also new information indicating that the Northern Resident population may spend more time off the Washington coast than was previously believed (Riera et al., 2011; Center, unpublished data). In addition, diet information on the Alaskan resident populations indicates that some of these populations also consume salmon, although not the Chinook salmon that dominate the Southern and Northern Resident diets (Saulitis et al., 2000). Updated diet data from the Southern and Northern Resident populations confirm that these two populations have very similar diets and consume many of the same salmon stocks (Ford et al., 2010; Hanson et al., 2010). Overall, the Southern resident population remains unique in occupying the southernmost part of the North Pacific Resident's range, and is clearly occupying a different ecological setting from populations in Alaska and farther west around the Pacific Rim. The southern portion of

the Southern Resident population's range is quite distinct from that of the Northern Resident population, even though the Southern and Northern residents clearly share a similar ecological setting throughout much of their ranges.

Genetic differentiation – Genetic data available since 2004 confirm or strengthen the conclusion that the Southern Resident population is genetically unique from other resident populations. In particular, there are no new data to change the 2004 BRT's conclusions that the Southern Resident population differs markedly from other North Pacific resident populations at both nuclear and mitochondrial genes.

Behavioral and cultural diversity – The 2004 BRT noted several instances of known and apparent cultural differentiation among resident killer whale populations, and hypothesized, based on studies in other long-lived mammals, that such diversity could be important for the survival of the North Pacific Resident taxon as a whole. Since 2004, several studies have contributed further information to this topic. For example, Ward et al. (2011, unpublished report) found significant differences in survival among the three Southern Resident pods and between the Southern and Northern Resident populations. These differences are likely related to differences in diet and habitat use, both of which appear to be culturally determined. Riesch et al. (2012) and Foote (2012) reviewed cultural differences, particularly acoustic behavior and prey preferences, among killer whale populations and ecotypes, and concluded that such cultural differences may be leading to reproductive isolation and subsequent ecological speciation. On the whole, therefore, the available data appear consistent with the BRT's conclusion that such cultural differences may be important factors in the overall viability of the North Pacific Resident killer whale taxon.

In conclusion, the new information on genetics and behavioral and cultural diversity available since 2004 is consistent with or strengthens the 2004 BRT's conclusion that the Southern Resident killer whale population meets the significance criterion of the DPS policy. New information on ecological setting and range tends to weaken the 2004 BRT's conclusion somewhat, as it indicates greater overlap in range and diet with other resident and offshore populations than was previously believed. However, in total, the new information available since 2004 regarding significance appears consistent with the 2004 BRT's conclusion.

12-Month Finding

As summarized above, the petitioners focused on biological and legal aspects of identification of the North Pacific Resident killer whale as a subspecies and the DPS determination for the Southern Resident killer whale population and assert that the listing was in error. The petitioners contend that the Southern Resident killer whale DPS does not constitute a listable unit under the ESA because there is no scientific basis for the identification of the unnamed North Pacific Resident subspecies of which the Southern Resident killer whale population is a DPS and because NMFS is without authority to list a DPS of a subspecies. As described above, we reviewed the available scientific information available since 2004, and we find that the majority of new information supports or strengthens the DPS determination. Further, in accordance with the DPS policy and after reviewing the petition, information from the public, and the best available information, we determine that the Southern Resident population is discrete and significant with respect to the North Pacific Resident subspecies, and therefore, constitutes a valid DPS. This determination is consistent with the previous DPS

determination (Krahn et al., 2004) and, therefore, we conclude that the original data for classification were not in error and delisting is not warranted. In the absence of such error, we continue to recognize the Southern Resident killer whale DPS as a listable unit.

Petitioners' legal argument regarding the authority to list the DPS of a subspecies was raised in the context of the 1996 DPS policy and in that policy we stated, "[t]he Services maintain that the authority to address DPS's extends to species in which subspecies are recognized, since anything included in the taxon of lower rank is also included in the higher ranking taxon." (61 FR 4722; February 7, 1996). The position taken in the DPS policy is grounded in the statutory language of the ESA. The ESA authorizes listing of species and defines "species" to include "any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature," 16 U.S.C. Section 1532 (16). Because the definition of species includes "subspecies" it is reasonable to interpret the phrase "DPS of any species" to include "DPS of any subspecies." In addition, several courts have upheld the1996 DPS policy as a reasonable interpretation of the ESA entitled to deference (NW Ecosystem Alliance v. USFWS, 475 F3d 1136 (2007); Center for Biological Diversity v. Lohn, 296 F. Supp. 2d 1223 (W.D. Wash. 2003)); and one court expressly addressed the issue raised here and upheld the Services' interpretation that a DPS of a subspecies is a listable unit (Center for Biological Diversity v. USFWS, 274 Fed. Appx. 542, n.5 (9th Cir. 2008)) (unpublished). For this reason also, we continue to recognize the Southern Resident killer whale DPS as a listable unit.

In addition to delisting because of an error in the original classification, we may also delist species based on extinction or recovery. The petition did not include any

information on the number of whales in the population, threats, or risk of extinction. As part of the ESA listing of the Southern Resident killer whale DPS (70 FR 69903; November 18, 2005) we conducted an analysis of the five ESA section 4(a)(1) factors and concluded that the DPS was in danger of extinction and listed it as endangered. While progress toward recovery has been achieved since the listing, as described in the 5-year review, the status of the DPS remains as endangered. Since the 5-year review was completed, additional actions have been taken to address threats, such as regulations to protect killer whales from vessel impacts (76 FR 20870; April 14, 2011), completion of a scientific review of the effects of salmon fisheries on Southern Resident killer whales (Hilborn, 2012), and ongoing technical working groups with the Environmental Protection Agency to assess contaminant exposure. However, the population growth outlined in the biological recovery criteria and some of the threats criteria have not been met. We have no new information that would change the recommendation in our 5-year review that the Southern Resident killer whale DPS remain classified as endangered (NMFS, 2011). Our determination that the Southern Resident killer whale population constitutes a DPS under the ESA and previous conclusion that the DPS is in danger of

extinction and should retain endangered status all support our finding that the petitioned action to delist the Southern Resident killer whale DPS is not warranted.

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS or on our web page (See ADDRESSES and FOR FURTHER INFORMATION CONTACT).

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

Dated: July 30, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service.

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