4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7799.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BAAQMD Rule 8–34 and SCAQMD Rule 1150.1. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 6, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 02–16362 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 268–0360; FRL–7239–9]

Approval and Promulgation of Implementation Plans and Determination of Attainment of the 1-Hour Ozone Standard for the Santa Barbara County Area, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Santa Barbara County area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. EPA is also proposing to approve 1-hour ozone contingency measures as revisions to the Santa Barbara portion of the California State Implementation Plan (SIP).

DATES: Comments on this proposal must be received by July 31, 2002.

ADDRESSES: Please address your comments to: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are available for public inspection during normal business hours at EPA's Region 9 office and at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117

The SIP materials are also electronically available at: *http://www.sbcapcd.org/capes.htm*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, US EPA Region 9, at(415) 972–3957, or Jesson.David@epa.gov

SUPPLEMENTARY INFORMATION:

I. Attainment Finding

A. Santa Barbara's Current Ozone Classification

The Santa Barbara County nonattainment area (''Santa Barbara area'') is currently classified as serious for the 1-hour ozone national ambient air quality standard (NAAQS).[1]

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the country that was designated nonattainment for the 1-hour ozone standard, including the Santa Barbara area, was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). The Santa Barbara area was initially classified as moderate. *See* 40 CFR 81.305 and 56 FR 56694 (November 6, 1991).

Upon the Santa Barbara area's classification as moderate, the CAA required submittal of a state implementation plan (SIP) demonstrating attainment of the 1-hour ozone standard as expeditiously as practicable but no later than November 15, 1996. CAA sections 181(a)(1) and 182(b)(1)(A)(i). The SIP had to meet several other CAA requirements for moderate areas. See generally CAA section 182(b). The Santa Barbara County Air Pollution Control District (SBCAPCD) prepared a moderate area plan, which was timely submitted by the California Air Resources Board (CARB). CARB later withdrew the attainment demonstration, since the area continued to violate the 1-hour standard in 1996. We approved the remaining portions of the SIP on January 8, 1997 (62 FR 1187).

On December 10, 1997 (62 FR 65025), we determined that the area had not attained the 1-hour ozone standard by the November 15, 1996 attainment date. As a result of that finding, the Santa Barbara area was reclassified to serious, by operation of law under CAA section 181(b)(1)(A).

Upon the area's reclassification to serious, the CAA required California to submit a revised SIP demonstrating attainment of the 1-hour ozone standard in the Santa Barbara area as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a)(1)and 182(c)(2)(A). In response, SBCAPCD adopted and CARB submitted a plan addressing the serious area requirements. EPA fully approved this plan on August 14, 2000 (65 FR 49499).

B. Clean Air Act Provisions for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[2] Under CAA section

[1] The 1-hour ozone nonattainment area is the ''Santa Barbara-Santa Maria-Lompoc Area,'' which comprises the entire County of Santa Barbara. *See* 40 CFR 81.305.

[2] If a states does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and has fully implemented its applicable SIP, it may apply to EPA, under CAA

181(b)(2)(A), we must base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the Santa Barbara area was November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year over any 3-year period. 40 CFR 50.9 and appendix H. Under our policies, we determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding 3-year period.[3] For this proposal, we have based our determination of attainment on both the design value and the average number of exceedance days per year as of November 15, 1999.

The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's design value is the highest of the design values from the area's monitors.[4]

We make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.[5] Consequently, we used all of the 1997, 1998, and 1999 quality-assured data available to determine whether the Santa Barbara area attained the 1-hour ozone standard by November 15, 1999. From the available air quality data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the Santa Barbara nonattainment area.

C. Attainment Finding for the Santa Barbara Area

1. Adequacy of the Santa Barbara Area Ozone Monitoring Network

Determining whether or not an area has attained under CAA section 181(b)(1)(A) is based on monitored air quality data. Thus, the validity of a determination of attainment depends on whether the monitoring network adequately measures ambient ozone levels in the area.

We evaluate 4 basic elements in determining the adequacy of an area's ozone monitoring network. The network needs to meet the design requirements of 40 CFR part 58, appendix D; the network needs to utilize monitoring equipment designated as reference or equivalent methods under 40 CFR part 53; and the agency or agencies operating the equipment need to have a quality assurance plan in place that meets the requirements of 40 CFR part 58, appendix A. The ozone network in the Santa Barbara area meets or exceeds these requirements and is therefore adequate for use in determining the ozone attainment status of the area.

2. The Santa Barbara Area's Ozone Design Value for the 1997–1999 Period

We have listed in Table 1 the design values and the average number of exceedance days per year for the 1997 to 1999 period for each monitoring site in the Santa Barbara area. We calculated the design values following the procedures in the Laxton memo.[6]

TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN THE SANTA BARBARA AREA, 1997–1999

Site	Average number of exceedance days per year	Site design value (ppm)
El Capitan St (SLAMS)	0	0.08
Goleta (SLAMS)	0	0.09
Lompoc H Street (SLAMS)	0	0.08
Santa Barbara (SLAMS)	0	0.09
Santa Maria (SLAMS)	0	0.07
Santa Ynez (SLAMS)	0	0.09
Santa Rosa Island (Nat. Park)	0	0.08
Carpinteria (SPM)	0	0.11
GTC B (SPM)	0	0.09
Lompoc HS&P (SPM)	0	0.09
Paradise Road (SPM)	0.3	0.11
Las Flores Canyon (Site 1) (SPM)	1.0	0.11
Vandenburg AFB STS (SPM)	0	0.09

Note: State or Local Air Monitoring Stations (SLAMS) are operated by SBCAPCD or CARB, while special purpose monitors (SPMs) are operated independently by certain permitted stationary sources in the county under the oversight of the SBCAPCD. All data produced by these SPMs are submitted to EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

[3] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[4] The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3-year period and still show attainment, since 3 exceedances over 3 years would average 1 day per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it can demonstrate attainment.

[5] All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See Memorandum John Seitz, Director, OAQPS, to Regional Air Directors; ''Agency Policy on the Use of Ozone Special Purpose Monitoring Data,'' August 22, 1997.

[6] See memorandum, William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards to Regional Air Directors, ''Ozone and Carbon Monoxide Design Value Calculations,'' June 18, 1990.

From Table 1, the highest design value at any monitor, and thus the design value for the Santa Barbara area is 0.11 ppm at the Carpinteria, Paradise Road, and Las Flores Canyon sites. No monitor in the Santa Barbara area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1997 to 1999 period.

Because the area's design value is below the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the 1997 to 1999 period, we propose to find that the Santa Barbara area has attained the 1-hour ozone standard by its Clean Air Act mandated attainment date of November 15, 1999.

Although the attainment determination is based on the 1997 to 1999 period, we have also looked at data for 2000 and 2001. During that period, we found that the area's 1-hour ozone design values were below 0.12 ppm and that the area continued to record less than 1 exceedance per year on average at each monitoring location.

D. Attainment Findings and Redesignations to Attainment

A finding that an area has attained the 1-hour ozone standard under CAA section 181(b)(1)(A) does not redesignate the area to attainment for the 1-hour standard nor does it guarantee a future redesignation to attainment.

The redesignation of an area to attainment under CAA section 107(d)(3)(E) is a separate process from a finding of attainment under CAA section 181(b)(1)(A). Unlike an attainment finding where we need only determine that the area has had the pre-requisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E), these determinations are:

1. We must determine, at the time of the redesignation, that the area has attained the relevant NAAQS.

2. The State must have a fully approved SIP for the area.

3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We must have fully approved a maintenance plan for the area under CAA section 175(A).

5. The State must have met all the nonattainment area requirements applicable to the area.

To address the provisions of CAA section 175(A), Santa Barbara adopted its 2001 Clean Air Plan (including a maintenance plan) on November 15, 2001. Although the SBCAPCD is already implementing the plan, the State does not expect to submit the plan as a SIP revision until early 2003. CARB has submitted for federal approval at this time, however, the contingency measures in the maintenance plan. The State and the SBCAPCD do not intend the delay in submitting the full maintenance plan to impact the contingency rule adoption schedule identified in the maintenance plan. See discussion below in Section II.

It is possible, although not expected, that the Santa Barbara area violate the 1-hour ozone NAAQS before the maintenance plan is approved and the area is redesignated to attainment. If such a violation were to occur after EPA's finding of attainment under CAA section 181(b)(2)(A), and if expedited implementation of contingency measures were to prove insufficient to eliminate future violations, EPA believes that issuance of a SIP call under CAA section 110(k)(5) would be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements of Subpart 2 applicable to the area at the time of this finding.

II. Contingency Measures

On May 29, 2002, California formally requested that we make a finding of attainment for the Santa Barbara area and begin evaluating redesignation of the Santa Barbara area to attainment and the adequacy of the area's maintenance plan (letter from Michael P. Kenny, CARB Executive Officer, to Wayne Nastri, Regional Administrator, EPA Region 9). The State's letter attached the 2001 Clean Air Plan, which SBCAPCD adopted on November 15, 2001, to address the CAA provisions relating to maintenance plans for the 1-hour ozone NAAQS.[7] CARB indicated that the State will submit a request that we act on the maintenance plan and redesignate the area to attainment in early 2003, at the time the State requests our approval of an updated vehicle emission factor model for use statewide in SIPs and transportation conformity analyses.

The State did request that we act expeditiously to approve the specific enforceable contingency measures in the maintenance plan, in order to strengthen the SIP and ensure that a remedy will be in place if future violations occur. Should the area record a violation of the 1-hour ozone NAAQS before the area is redesignated to attainment, these measures would be expected to provide the remedy.

The maintenance plan includes a commitment to adopt a group of control measures by specific dates from 2001 through 2009, and a commitment to evaluate and expedite the adoption process in coordination with EPA if Santa Barbara violates the 1-hour ozone NAAQS prior to 2015. While the control measures are intended to be contingency measures for purposes of the federal 1-hour ozone standard, the measures are also proposed to be adopted for the purpose of attaining the California State 1-hour ozone standard.

The measures, their adoption schedule, and associated emission reductions are summarized in Table 2, Contingency Measures. The measures are described at length in the 2001 Clean Air Plan, Appendix B.3, Proposed Emission Control Measures.

TABLE 2.—CONTINGENCY MEASURES SOURCE: 2001 CLEAN AIR PLAN, TABLE 4–3

Rule No.	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VPC	NO_X
323	R–SC–1	Architectural Coatings (Revision)	2001–2003	0.0998	0
333	N–IC–1, N–IC–3	Stationary IC Engines	2002–2003	0.0008	0.0128
360	N–XC–2	Large Water Heaters & Small Boilers, Steam Generators, Process Heaters (75,000 Btu/hr to <2 MMBtu/hr).	2001–2003	0	[1] 0.0133

[7] On June 13, 2002, we found that this submittal met the completeness criteria in 40 CFR 51 appendix V, including the requirement for proper public notice and adoption.

TABLE 2.—CONTINGENCY MEASURES SOURCE: 2001 CLEAN AIR PLAN, TABLE 4–3—Continued

Rule No.	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VPC	NO_X
321	R–SL–1	Solvent Degreasers (Revision)	2004–2006	0.0562	0
362	R–SL–2	Solvent Cleaning Operations	2004–2006	1.0103	0
363	N–IC–2	Gas Turbines	2004–2006	0	0
358	R–SL–4	Electronic Industry—Semiconductor Manufacturing	2007–2009	[2] 0.0026	0
361	N–XC–4	Small Industrial and Commercial Boilers, Steam Generators, and Process Heaters (2 MMBtu/hr to <5 MMBtu/hr).	2007–2009	0	[3] 0.0028

[1] This is with 15% implementation, the highest implementation figure available from the District's analysis.
[2] The data shown are for source classification code (SCC) number 3–13–065–06 only. The emission data for the SCC numbers and the category of emission source (CES) numbers subject to Rule 358 are included in the Rule 321 or Rule 361 emission reduction summaries.
[3] The emission reductions shown are based on Rule 361 being a point-of-sale type rule.

The State requested that we approve these measures at this time under CAA section 110(k), and did not request that we approve them under the CAA section 175A provisions relating to maintenance plans. We have therefore reviewed the control measures to determine whether they meet basic SIP approval requirements and whether the measures would strengthen the existing SIP. We conclude that the measures are adequately defined, the implementation of the measures is sufficiently specific, the associated emission reductions are properly quantified, and the SBCAPCD has authority to adopt and enforce the measures. Therefore, we propose to approve the control measures under CAA section 110(k)(3) as strengthening the SIP.

When the State resubmits the 2001 Clean Air Plan and requests that we approve it as meeting the CAA section 175A requirements for maintenance plans, we will review the contingency elements in the Santa Barbara plan and will determine whether or not these elements fully satisfy the specific CAA section 175A(d) requirement for contingency provisions in maintenance plans.

If we finalize approval of the contingency measures under CAA section 110(k)(3), we expect to work closely with CARB and the SBCAPCD to evaluate and expedite the rule adoption schedule in the event that violations are recorded.

III. Summary of EPA Actions

We are proposing to find that the Santa Barbara area attained the 1-hour ozone NAAQS by the CAA deadline. We are proposing to approve contingency measures in the 2001 Clean Air Plan, as shown in Table 2 above, under CAA section 110(k)(3).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and proposes to find that the Santa Barbara area has attained a previously-established national ambient air quality standard based on an objective review of measures air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard and proposes to find that an area has attained applicable air quality standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or the attainment status of an area, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed 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 52

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–16463 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 020603140–2140–01,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: Advance notice of proposed rulemaking; request for information.

SUMMARY: NMFS anticipates proposing regulations to designate the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as a depleted stock under the Marine Mammal Protection Act (MMPA). NMFS recently reviewed the status of these whales under the Endangered Species Act (ESA) and determined that the eastern North Pacific Southern Resident stock does not qualify as a ''species'' as defined in the ESA. However, this stock of whales has declined by 20 percent in the past 5 years, and evidence suggests that designation as a depleted stock may be warranted. NMFS is requesting that interested parties submit pertinent information and comments regarding the status of this killer whale stock and potential conservation measures that may benefit these whales.

DATES: Information must be received by August 30, 2002.

ADDRESSES: Information should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Comments may also be sent via facsimile (fax) to (503) 230–5435, but will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713–2322, ext. 105, or Mr. Garth Griffin, Northwest Regional Office, Portland, OR (503) 231–2005.

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*.

Background

Depleted Stocks Under the MMPA

Section 3(1)(A) of the Marine Mammal Protection Act (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.'' Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines ''optimum sustainable population [(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 that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., K) to its maximum net productivity level (MNPL). MNPL is the abundance or population level that results in the greatest net annual increment in population numbers or biomass resulting from additions to the population from reproduction, less losses due to natural mortality.

Section 2 of the MMPA (16 U.S.C. 1361) states that marine mammal species, populations and/or stocks should not be permitted to fall below their OSP level. Historically, MNPL has been expressed as a range of values determined theoretically by estimating the stock size, in relation to K, that will produce the maximum net increase in population abundance. 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, however, K is generally unknown. NMFS, therefore, has used the best estimate of maximum historical abundance as a proxy for K.

Section 115(a)(2) of the MMPA (16 U.S.C. 1383b(a)(2)) requires NMFS to publish a notice in the **Federal Register** prior to proposing regulations to designate a population stock of marine mammals as depleted. The purpose of the notice is to assist NMFS in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in industry which might be affected by the determination, and from academic institutions. In addition, NMFS is required to use, to the extent it determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

The MMPA provides protection against the take, the definition of which includes harassment, of marine mammals (MMPA section 102, 16 U.S.C 1372). The MMPA provides that a conservation plan shall be prepared as soon as possible for a stock that is designated as depleted, unless such a plan will not promote the conservation of the stock (MMPA section 115(b)(1), 16 U.S.C 1383b(b)(1)). Furthermore, for a stock designated as depleted under the MMPA, NMFS may develop and implement conservation or management measures to alleviate any impacts that are on areas of ecological significance to the depleted stock and that may be causing the decline or impeding the recovery of the stock (MMPA section 112(e); 16 U.S.C 1382(e)). Such measures shall be developed and implemented after consultation with the Marine Mammal Commission and the appropriate Federal agencies and after notice and opportunity for public comment.

Eastern North Pacific Southern Resident Killer Whales

The killer whale is the largest member of the dolphin family (Delphinidae), and the species is the most wide-ranging of all marine mammals. Along the west coast of North America, killer whales occur along the entire Alaskan coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. North Pacific killer whales have been classified into three forms