(B) A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

(C) A change in range country laws or regulations that compromises beluga sturgeon recovery or survival in the wild;

(D) Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

(E) A decline in wild *Huso huso* populations, as documented in national reports outlined above or the scientific literature, that goes unaddressed by regional or national management programs;

(F) Failure to address poaching or smuggling in beluga sturgeon, their parts, or products in the range countries or re-exporting countries, as documented in national reports described above or other law enforcement sources;

(G) Failure of the range countries to address the loss of beluga sturgeon habitat quality or quantity;

(H) Failure of the range countries or re-exporting countries to follow the caviar labeling recommendations of the CITES Parties (currently embodied in Resolution Conf. 12.7);

(I) Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries; or

(J) Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

(ii) We will publish an information notice in the **Federal Register** if the Service's Division of Scientific Authority administratively suspends or restricts imports of beluga sturgeon products from the range countries or re-exports of beluga sturgeon products from the United States after determining that wild beluga sturgeon stock status worsens or threats to the species increase.

Dated: June 22, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–14795 Filed 6–25–04; 11:50 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 040323099–4099–01; I.D. 072699A]

RIN 0648–AR99

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend its regulations governing the taking of marine mammals incidental to operations of the U.S. Navy's Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar to implement provisions of the National Defense Authorization Act of 2004.

DATES: Comments and information must be received no later than July 29, 2004.

ADDRESSES: Comments should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments also may be submitted by e-mail. The e-mail mailbox address is *0648–AR99@noaa.gov*. Include in the subject line of the e-mail the following document identifier: 0648–AR99.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

SURTASS LFA Sonar Rulemaking History

On August 12, 1999, NMFS received an application from the U.S. Navy requesting authorization under section 101(a)(5)(A) of the MMPA for the taking, by harassment, of marine mammals incidental to deploying the SURTASS LFA sonar system for training, testing, and routine military operations within the world's oceans except Arctic and Antarctic waters (see 64 FR 57026, October 22, 1999). NMFS issued a proposed rule on March 19, 2001 (66 FR 15375), and a final rule on July 16, 2002, (67 FR 46712), governing the taking of marine mammals incidental to Navy SURTASS LFA sonar operations. That final rule became effective on August 15, 2002, and remains in effect until August 15, 2007. Pursuant to the final rule, on August 16, 2002, NMFS issued a 1–year Letter of Authorization (LOA) to the Navy authorizing the taking of specified marine mammals within the specified areas of operation (67 FR 55818; August 30, 2002). Subsequently, the Navy applied for and received two additional LOAs covering two SURTASS LFA sonar systems from August 16, 2003, to August 15, 2004 (68 FR 50123; August 20, 2003). Additional information regarding NMFS' decision to authorize the taking of marine mammals incidental to Navy SURTASS LFA sonar operations is contained in the proposed and final rules and the LOAs and is not repeated here.

National Defense Authorization Act

On November 24, 2003, the President signed into law the National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136). Included in this law were amendments to the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) that apply where a ''military readiness activity'' is concerned. Of specific importance for the SURTASS LFA sonar take authorization, the NDAA amended section 101(a)(5) of the MMPA, which governs the taking of marine mammals incidental to otherwise lawful activities.

Prior to the NDAA amendments, section 101(a)(5)(A) of the MMPA directed the Secretary of Commerce to allow, upon request, the incidental but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if the Secretary finds that the total of such taking will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock of marine mammal for subsistence uses and regulations are issued. The NDAA amended section 101(a)(5) of the MMPA to exempt military readiness activities from the ''specified geographical region'' and ''small numbers'' requirements. The term ''military readiness activity'' is defined in Public Law 107–314 (16 U.S.C. 703 note) to include all training and operations of the Armed Forces that relate to combat; and the adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use. The term

expressly does not include the routine operation of installation operating support functions, such as military offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare and recreation activities, shops, and mess halls; the operation of industrial activities; or the construction or demolition of facilities used for a military readiness activity.

Proposed Action

NMFS and the Navy have determined that the Navy's SURTASS LFA sonar testing and training operations that are the subject of NMFS' July 16, 2002, final rule constitute a military readiness activity because those activities constitute ''training and operations of the Armed Forces that relate to combat'' and constitute ''adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use.'' Refer also to 67 FR 46712 (''Summary of Request'') and 67 FR 46716–46717 (Comment and Response AC1). Accordingly, NMFS proposes to amend its rule and regulations governing the taking of marine mammals incidental to SURTASS LFA sonar testing and training operations to remove reference, in 50 CFR part 216, subpart Q, to ''small numbers'' and ''specified geographical region,'' as those MMPA 101(a)(5)(A) terms no longer apply to the SURTASS LFA sonar testing and training operations covered by the final rule. It is necessary to amend the final rule for SURTASS LFA sonar because that rule no longer reflects the current requirements of the MMPA. Specifically, NMFS proposes to amend 50 CFR 216.180(a); 216.184(e)(2) (technical correction only); 216.187(c)(2) and (c)(4); 216.188(b)(2) and (c); and 216.189(a).

Although the MMPA no longer requires the identification of a ''specified geographical region'' in which military readiness activities will occur, information regarding where the Navy will operate SURTASS LFA sonar remains necessary for NMFS to make its required negligible impact determination and to prescribe appropriate mitigation and monitoring. In that regard, this proposed amendment would only make it clear that identification of a ''specified geographical region'' is no longer a statutory requirement for SURTASS LFA sonar operations covered under the final rule.

Similarly, although the ''small numbers'' requirement no longer applies to military readiness activities, information regarding estimates of anticipated take will remain necessary for NMFS' negligible impact determinations.

Information Solicited

NMFS requests that interested persons submit comments, information, and suggestions concerning this proposed action. Commenters are requested to restrict comments and recommendations to the scope of this action. Comments on issues beyond the scope of this proposed rule will not be considered in developing a final determination on this action.

Determinations

This proposed rule amendment would not alter the determination that SURTASS LFA sonar operations would have a negligible impact on the affected species or stocks of marine mammals made by NMFS in its SURTASS LFA sonar final rule (67 FR 46712, July 16, 2002). Nor would it change NMFS' determination that the activity covered under the final rule will not have an unmitigable adverse impact on subsistence uses. These determinations would remain the same because the Navy's activity covered under the final rule has not changed. Under the proposed rule amendment the Navy must still apply for LOAs, and NMFS must still find that the total taking by the Navy's proposed activity as a whole will have no more than a negligible impact and will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence uses.

National Environmental Policy Act (NEPA)

This proposed amendment does not change the activity that was analyzed in the Navy's Final Environmental Impact Statement on SURTASS LFA sonar, approved by the Deputy Assistant Secretary of the Navy (Environment) in the SURTASS LFA sonar Record of Decision (67 FR 48145; July 23, 2002) and adopted by NMFS (67 FR 46712, July 16, 2002).

Endangered Species Act (ESA)

This proposed amendment does not change the activity whose effects were analyzed in NMFS' biological opinions on SURTASS LFA sonar.

Classification

This action has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action, if adopted, would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This proposed rule removes some of the regulatory requirements applicable to the Navy. This proposed rule would affect only the U.S. Navy which is not a small entity. There may be a few small entities that provide services related to the Navy's SURTASS LFA sonar activities and the requirements under NMFS' original rule, but this proposed rule would not affect those activities as they would all continue to operate in the same manner. As a result no regulatory flexibility analysis was prepared.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 24, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.180, the section heading and paragraph (a) are revised to read as follows:

§ 216.180 Specified activity.

* * * * *

(a) Subject to the limitations in § 216.184(e), the incidental taking by harassment may be authorized in the following areas as specified in a Letter of Authorization (see also Figure 1):

(1) North Atlantic Ocean:

(i) Western North Atlantic, from 35 deg. N. lat. north to a line between Cape Chidley, Labrador northeast to Nuuk, Greenland, and from the North American continent east to 41 deg. W. long. (Area A); and

(ii) Eastern North Atlantic, from 35 deg. N. lat. north to 72 deg. N. lat. and 41 deg. W. long. east to the European continent (Area B);

(2) Mediterranean Sea (Area C);

(3) North Pacific Ocean:

(i) Western North Pacific, from 20 deg. N. lat. north to the Aleutian Island chain

and the Sea of Okhotsk, and from the Asian continent east to 175 deg. W. long. (Area D); and

(ii) Eastern North Pacific, from 42 deg. N. lat. north to Alaska and the south side of the Aleutian Islands and from the North American continent west to 175 deg. W. long. (Area E);

(4) Central Atlantic Ocean:

(i) Eastern Central Atlantic, from 7 deg. S. lat. north to 35 deg. N. lat. and from the African continent west to 40 deg. W. long. between 5 deg. N. lat. and 35 deg. N. lat., to 30 deg. W. long. between 0 deg. lat. and 5 deg. N. lat., and to 20 deg. W. long. between 7 deg. S. lat. and 0 deg. lat. (Area F); and

(ii) Western Central Atlantic, from 5 deg. N. lat. north to 35 deg. N. lat., and from the American continent, east to 40 deg. W. long. (Area G);

(5) Indian Ocean:

(i) Eastern Indian Ocean, from 60 deg. S. lat. north to the Bay of Bengal, and Asian continent, and from 80 deg. E. long. east to the Asian continent, the Sunda Islands and Australia and to 150 deg. E. long. (Area H1); and

(ii) Western Indian Ocean, from 60 deg. S. lat. north to the Arabian Sea, and from 30 deg. E. long. east to 80 deg. E. long. (Area H2);

(6) Central Pacific Ocean:

(i) Western Central Pacific, from 175 deg. W. long., east to the Asian continent and Indonesia, and from 10 deg. S. lat., north to 20 deg. N. lat. (Area I);

(ii) Central Pacific, from 10 deg. S. lat., north to 42 deg. N. lat. between 175 deg. W. long. and 130 deg. W. long. (Area J1); and

(iii) Eastern Central Pacific, from 5 deg. S. lat. north along the American coastline to 42 deg. N. lat., from 130 deg. W. long. along 10 deg. S. lat. to 105 deg. W. long., from 10 deg. S. lat. along 105 deg. W. long. to 5 deg. S. lat., from 105 deg. W. long. along 5 deg. S. lat. to the South American coastline, from 130 deg. W. long. along 42 deg. N. lat. to the North American coastline and from 42 deg. N. lat. to 10 deg. S. lat. along the 130 deg. W. long. line (Area J2);

(7) South Pacific Ocean:

(i) Western South Pacific from 60 deg. S. lat. north to 10 deg. S. lat. and from the east coast of Australia in the north and 150 deg. E. long. south of Australia east to 105 deg. W. long. (Area K); and

(ii) Eastern South Pacific from 60 deg. S. lat. north to 5 deg. S. lat. and from the 105 deg. W. long. east to the South American coastline in the north and 70 deg. W. long. in the south (Area L);

(8) South Atlantic Ocean:

(i) Western South Atlantic, from 60 deg. S. lat. north to 5 deg. N. lat. in the area west of 30 deg. W. long., and from 60 deg. S. lat. north to 0 deg. lat. in the area east of 30 deg. W. long. and from the South American continent east to 30 deg. W. long. between 0 deg. And 5 deg. N. lat. and east to 20 deg. W. long. between 0 deg. and 60 deg. S. lat. (Area M); and

(ii) East South Atlantic from 60 deg. S. lat. north to 7 deg. S. lat. and from 20 deg. W. long. east to the African coastline in the north and 30 deg. E. long. south of the continent (Area N).

* * * * *

3. In 216.184, paragraph (e)(2) is revised to read as follows:

§ 216.184 Mitigation.

* * * * *

(e) * * *

(2) Within any offshore area that has been designated asbiologically important for marine mammals under § 216.184(f), during the biologically important season for that particular area;

* * * * *

4. In § 216.187, paragraphs (c)(1), (c)(2) and (c)(4) are revised to read as follows:

§ 216.187 Applications for Letters of Authorization.

* * * * *

(c) * * *

(1) The date(s), duration, and the area(s) where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

* * * * *

(4) The estimated percentage of marine mammal species/stocks potentially affected in each area for the 12–month period of effectiveness of the Letter of Authorization; and

* * * * *

5. In § 216.188, paragraphs (b)(2) and (c) are revised to read as follows:

§ 216.188 Letters of Authorization.

* * * * *

(b) * * *

(2) The area(s) where the vessel's activities will occur;

* * * * *

(c) Issuance of each Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity specified in § 216.180 as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

* * * * *

6. In § 216.189, paragraph (a)(5) is revised and a new graphic is added to the end of the section to read as follows:

§ 216.189 Renewal of Letters of Authorization.

* * * * *

(a) * * *

(5) A determination by NMFS that the total number of marine mammals taken by the activity specified in § 216.180 as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

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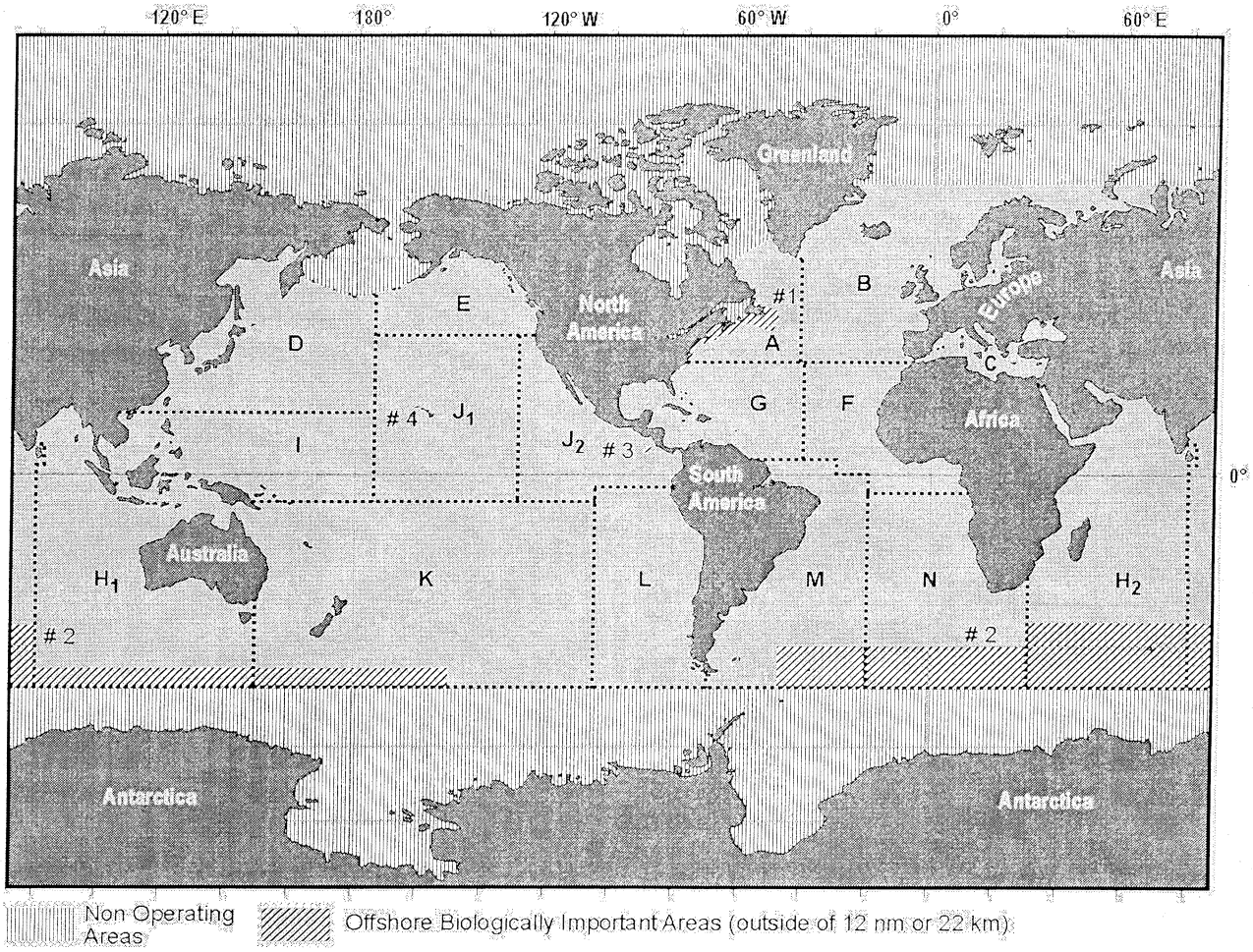

[FR Doc. 04–14718 Filed 6–28–04; 8:45 am]

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