

and 69 FR 3292, 3297 respectively. Today's proposal simply extends dates for reporting information under the EWR rule and does not impose any new burdens on small businesses. Based on the analyses performed in the final rule (67 FR 45870–71) and the response to petitions for rulemaking (69 FR 3292, 3297), I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

**Executive Order 13132 (Federalism).** Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that 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." The agency has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This change proposed in this document only affect a rule that regulates the manufacturers of motor vehicles and motor vehicle equipment, which does not have substantial direct effect 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.

**Civil Justice Reform.** This proposed rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

**Paperwork Reduction Act.** Today's proposal simply extends the reporting period for the submission of EWR data. The proposal does not create new information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. To the extent that this proposed rule implicates the Paperwork Reduction Act, we will rely upon our previous clearance from OMB. To obtain a three-year clearance for information collection for the EWR rule, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843)

pursuant to the requirements of that Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments proposed by this document do not change the overall paperwork burden. They simply extend the dates for reporting certain information pursuant to the EWR rule.

**Data Quality Act** Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes proposed by today's document simply extends the reporting period for submission of data pursuant to the EWR rule and do not have any effects on data quality.

**Unfunded Mandates Reform Act.** The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). The final rule did not have unfunded mandates implications. 67 FR 49263 (July 30, 2002). Today's proposal simply extends the reporting period for submission of data pursuant to the EWR rule and does not create any unfunded mandates within the meaning of this Act.

#### List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter V is amended as follows:

#### **PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS**

1. The authority citation for part 579 continues to read as follows: Sec. 3,

Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

#### **Subpart C—Reporting of Early Warning Information**

2. In § 579.28, revise paragraphs (b) and (n) to read as follows:

#### **§ 579.28 Due date of reports and other miscellaneous provisions.**

\* \* \* \* \*

(b) *Due date of reports.* Except as provided in paragraph (n) of this section, each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 60 days after the last day of the reporting period.

\* \* \* \* \*

(n) *Submission of copies of field reports.* Copies of field reports required under this subpart shall be submitted not later than 15 days after reports are due pursuant to paragraph (b) of this section.

Issued on: June 24, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04–14699 Filed 6–24–04; 3:58 pm]

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

#### **RIN 1018–AT54**

#### **Endangered and Threatened Wildlife and Plants; Special Rule To Control the Trade of Threatened Beluga Sturgeon (*Huso huso*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are proposing to establish a special rule under Section 4(d) of the Endangered Species Act of 1973, as amended (Act), to exempt the international, foreign, and interstate commerce in certain beluga sturgeon (*Huso huso*) products from threatened species permits normally required under 50 CFR 17.32. Beluga sturgeon occur in the Caspian and Black Seas, and are found in the territorial waters of 11 countries (*i.e.*, the range countries). Over-harvest, severe habitat degradation, and other factors have led to the listing of beluga sturgeon as threatened throughout its range under the Act and in Appendix II of the

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In our final listing rule, we delayed the effective date of the threatened listing for 6 months in order to promulgate a 4(d) rule. After the listing becomes effective, the Act will prohibit all trade (foreign, international, and interstate) in beluga sturgeon and beluga sturgeon products, except as provided in the special rule or with permits under the provision of Section 10 of the Act. This proposed special rule initially allows range countries 6 months from the rule's effective date to submit a suite of reports and management measures to us for review. During this initial waiting period, imports, re-exports, and interstate and foreign commerce of certain beluga sturgeon products will continue without a requirement for threatened species permits. This is intended to provide the range countries time to submit the required documents. CITES documentation will still be required.

Under this proposed rule, beluga caviar and beluga sturgeon meat originating from wild-caught fish or range country hatcheries may be transferred into and out of the United States without threatened species permits. We will also exempt interstate and foreign commerce in these products from permit requirements, if that trade occurs in the United States or involves U.S. citizens. However, after an initial 6 months of information gathering in the range states, these exemptions will occur only after the range countries have fulfilled certain requirements as described below. In addition, all relevant provisions of CITES will continue to govern the international trade in all beluga sturgeon products. We are proposing to allow this conditional trade to promote effective conservation of *Huso huso* in the range countries, through demonstrable law enforcement and cooperative management activities.

**DATES:** Comments must be received by July 29, 2004. Public hearing requests must be received by July 14, 2004.

**ADDRESSES:** Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203, or by fax, 703-358-2276, or by e-mail, [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov). Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

**FOR FURTHER INFORMATION CONTACT:** John Field at the above address, or by phone,

703-358-1708; fax, 703-358-2276; or e-mail, [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 21, 2004, the Service published a final rule (69 FR 21425) to list beluga sturgeon, *Huso huso*, as threatened throughout its range under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That listing in 50 CFR 17.11 will prohibit all trade (foreign, international, and interstate) in beluga sturgeon, except as provided in this special rule. We delayed the effective date of the listing until October 21, 2004, in order to gather public comments on this special rule, allow adequate time to address those comments, and promulgate a final special rule.

The beluga sturgeon is a large fish from which highly valued beluga caviar is obtained. The species' range was reduced during the 20th century, and is now limited to the Caspian and Black Sea basins, which comprise the territorial waters of 11 countries (Azerbaijan, Bulgaria, Georgia, Iran, Kazakhstan, Moldova, Romania, Russia, Turkey, Turkmenistan, and Ukraine). Hereafter the term "Black Sea" describes both the Black Sea and Sea of Azov basins, which are connected via the Kerch Strait. The species is threatened by habitat modification and degradation, over-exploitation for trade, and limited natural reproduction. The species has benefited from a number of positive conservation measures for all Acipenseriformes species (sturgeons and paddlefishes), which are listed in Appendices I (2 species of sturgeons) and II (23 species of sturgeons and paddlefishes) of CITES. Although commercial trade in Appendix-I species is prohibited, CITES Appendix-II species (such as beluga sturgeon) may be traded commercially under a system of permits and international cooperation by the importing and exporting countries.

Over the last several years, the CITES Parties that harvest and trade in sturgeons and sturgeon products (especially caviar) have been compelled by other CITES Parties to commit to cooperative quota setting, better trade controls, and new management systems to help ensure the species' conservation. We believe that conservation measures for Caspian Sea and Black Sea sturgeon species (like beluga sturgeon) that have been required by the CITES Standing Committee could be effective if fully implemented and expanded upon. We also believe that the most effective way to motivate range countries to implement these measures is to allow

continued open access to U.S. commercial markets (currently responsible for 80 percent of beluga caviar trade) while requiring specific improvements in regional and national management programs for the species. Therefore, we are proposing this special rule, as permitted under Section 4(d) of the Act, to permit continued commercial importation of certain beluga sturgeon products subject to specific provisions. We believe this special rule is necessary and advisable for the species' conservation because it: (a) Offers the greatest incentive for range countries to remain engaged with the United States in *Huso huso* recovery and conservation; (b) exceeds the requirements of CITES for data reporting, management planning, and research transparency; and (c) will continue to impose requirements on the range countries after they satisfy current CITES stipulations.

##### Description of the Special Rule

The purpose of this proposed special rule is to enhance conservation of wild beluga sturgeon by requiring properly designed and implemented fishery management programs in the range countries. We believe that the greatest benefit for the conservation of beluga sturgeon will be attained through continued involvement with range countries that have access to our commercial sturgeon markets, and by conditioning this access on proper management and recovery of wild populations in their waters. The alternative to this special rule is to strictly prohibit U.S. trade in beluga sturgeon products, except as permitted under Section 10 of the Act. We believe this alternative is less advisable than the special rule for a number of reasons, as described at the end of the section entitled "Effects of the Special Rule." We intend to use this special rule to build upon the progress already made by the range countries in CITES forums, while recognizing that there are certain data gaps and information and management needs yet to be filled.

For example, we note that since 2001 the range countries in the Black Sea and Caspian Sea basins have committed to cooperative management frameworks, including the Black Sea Sturgeon Management Group and the Commission on Aquatic Bioresources of the Caspian Sea.

These bodies have set annual quotas for beluga and other sturgeon species in the two basins, and have representatives from each of the sturgeon-harvesting and -trading range countries in the respective regions. Despite the progress made by the range countries, we concur

with findings of recent reports from the CITES Secretariat (Anonymous, 2002a; 2002b) on problems in national and regional *Huso huso* management. These include: (a) The absence of a formal, written management plan for Caspian Sea and Black Sea beluga sturgeon as called for in CITES Resolution Conf. 12.7 and Decision 12.50; (b) a lack of transparency in data analysis and quota setting; (c) continued high levels of poaching and illegal trade; and (d) a data-poor evaluation of hatchery protocols and restocking programs. Therefore, for those range countries wishing to export beluga sturgeon caviar and meat to the United States, this special rule would require:

1. Submission of basin-wide beluga sturgeon management plans for the Black Sea and Caspian Sea range countries;
2. Submission of national regulations that implement the basin-wide cooperative plan mentioned in item 1, including information on hatchery and restocking protocols and monitoring results;
3. Submission of annual reports documenting management measures in place and current status of *Huso huso* in the given country;
4. Labeling of exported, re-exported, and domestically traded beluga caviar products as per CITES Resolutions and Decisions;
5. Biennial review by the Service of range country management and restocking programs for beluga sturgeon;
6. Compliance with CITES provisions and recommendations (including permits) for beluga sturgeon imports into the United States; and
7. Suspension of imports basin-wide or by country if the conservation status or management approach for *Huso huso* changes and compromises the recovery of beluga sturgeon in the wild. See discussion below for how such a suspension would be imposed.

The trade in caviar and meat taken from wild or hatchery-origin beluga sturgeon and originating from the range countries would be exempt from threatened species permits under this special rule. The current range countries are Azerbaijan, Bulgaria, Georgia, Iran, Kazakhstan, Moldova, Romania, Russia, Turkey, Turkmenistan, and Ukraine. For the purposes of this special rule, "beluga caviar" refers to processed unfertilized eggs from female *Huso huso* intended for human consumption. "Beluga meat" refers to excised muscle tissue of *Huso huso* destined for human consumption.

This special rule would not exempt from threatened species permit requirements the international trade in

live specimens of beluga sturgeon, including adults, gametes (eggs or sperm), fingerlings, and viable eggs. It would not exempt beluga sturgeon or any beluga products derived from aquaculture or grow-out operations outside the range countries from the provisions of the Act, which we believe could undermine the economic incentives for sustainable harvests of wild *Huso huso* in the range countries. Furthermore, non-range country aquaculture of the species, if exempted from provisions of the Act under this special rule, could utilize *Huso huso* broodstock from the range countries without any direct benefit to wild populations. We also believe that aquaculture or grow-out of foreign sturgeon species in the United States poses a risk to the recovery efforts for several native sturgeon species listed under the Act or under interstate recovery plans. This risk comes from the potential competition between native sturgeons and unintentionally released fish from facilities culturing foreign sturgeon and disease transmission from foreign species (ASMFC, 1998; NMFS, 1998; USFWS and GSMFC, 1995). Therefore, import, export, re-export, or interstate or foreign commerce involving any beluga sturgeon products that originate from aquaculture operations outside the range countries would still require a threatened species permit in addition to any applicable CITES documents (except as provided for captive-bred wildlife in 50 CFR 17.21(g)).

As per CITES Resolution Conf. 12.9, and existing U.S. policy, this special rule would allow for the legal importation of personal effects of caviar. Under Resolution Conf. 12.9, individuals may import up to 250 grams of any Appendix-II Acipenseriformes caviar without a CITES permit. This allowance would apply in the United States, and importation of personal effects of beluga caviar (as defined by the CITES Parties) would not require a threatened species permit under the Act, if the proposed rule is adopted. However, any trade suspension administratively implemented under this special rule would also prohibit the importation of beluga caviar personal effects.

Under the proposed rule we will require the submission of certain documentation from the range countries, specifically:

1. Within 6 months of the effective date of this special rule, if adopted, range countries wishing to export beluga caviar and meat to the United States must submit a written, basin-wide management plan that addresses *Huso*

*huso* conservation. This plan must be agreed to by each country within the range of beluga sturgeon in the relevant basin (not just exporting nations). Presently, these include Bulgaria, Georgia, Moldova, Romania, Turkey, and Ukraine in the Black Sea and Azerbaijan, Iran, Kazakhstan, Russia, and Turkmenistan in the Caspian Sea. This basin-wide management plan must contain the following elements:

- a. A clear statement of the recovery and management objectives for the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

- b. A statement of standard management strategies to be utilized by the nations involved (e.g., size limits, target harvest rates, quotas, seasons, fishing gear, or effort caps);

- c. A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

- d. A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

- e. Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards mentioned in paragraph (b); and

- f. A complete schedule by which nations must take particular actions to be in compliance with the plan.

The Service's Division of Scientific Authority will immediately review these basin-wide management plans upon receipt for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate range states to provide additional information within 60 days of the date we contact them. If the range states fail to respond or fail to submit basin-wide management plans by the specified deadline, or if we are unable to confirm that all range states are signatories to those plans, we will immediately suspend trade with all range states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist.

2. Within 6 months of the effective date of this special rule, if adopted, all range countries wishing to export beluga caviar and meat to the United States must submit copies of national legislation and national fishery

regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. These laws and regulations must exhibit clear means to implement the cooperative management plans mentioned in paragraph 1 above. Upon receipt, the Service's Division of Scientific Authority will immediately review these laws and regulations for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate range states to provide additional information within 60 days of the date we contact them. If the range states fail to respond or fail to submit copies of national laws and regulations by the specified deadline, we will immediately suspend trade with the given range states until we are satisfied that such laws and regulations are in effect.

3. No later than November 1, 2005, and every year on that anniversary, all range states wishing to export beluga sturgeon products to the United States must submit an annual report to the Service, if this proposed rule is adopted. This annual report must contain, at a minimum:

a. A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective range country, with any changes from the previous year highlighted;

b. A description of any revisions to the cooperative management program mentioned above, including any new models, assumptions, or equations used to set harvest and export quotas;

c. Updated time-series of information on beluga sturgeon obtained from monitoring programs, including estimates of relative or absolute stock size, fishing mortality, natural mortality, spawning activity, habitat use, hatchery and restocking programs, or other relevant subjects;

d. A summary of law enforcement activities undertaken in the last year, and a description of any changes in programs to prevent poaching and smuggling;

e. A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective range country, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (e.g., revenues allocated to hatchery and re-stocking programs or research programs); and

f. Export data for the previous calendar year.

Starting in November 2005, the Service will conduct a review of information in the annual reports and

any other pertinent information on wild beluga sturgeon conservation if the proposed rule is adopted. Thereafter, we will continue to conduct these reviews biennially. If any elements of the annual reports are missing or unclear, the Service will ask the appropriate range states to provide additional information within 60 days of the date we contact them. If the range states fail to respond or fail to submit annual reports by the specified deadline, we will immediately suspend trade with the given range states. We propose to use these reviews to determine whether range country management programs are leading to recovery of wild beluga sturgeon stocks.

Although we have no ability to regulate take or institute recovery plans for beluga sturgeon in the range countries, we have identified general short-term and long-term recovery objectives for beluga sturgeon in the Caspian and Black Seas. These objectives will help us gauge the efficacy of this special rule, and monitor progress toward beluga sturgeon restoration in the wild as indicated in the annual reports mentioned above. The short-term objective is to prevent further reduction of existing wild populations of beluga sturgeon. Baseline population indices for each beluga sturgeon stock are under development (Anonymous, 2002c) or in the planning stages (Anonymous, 2002a; *ibid.* 2002b), and changes in these indices will be evaluated over 3- to 5-year periods. The long-term recovery goal for beluga sturgeon is to establish self-sustaining stocks in the Caspian and Black Sea basins that can withstand directed fishing pressure. A self-sustaining stock is one in which the average rate of recruitment to the juvenile stage at least equals the average mortality rate across the population over a 12- to 17-year period (the period required for beluga sturgeon to reach maturity).

Based on the biennial review of annual reports, we propose to administratively suspend or restrict imports of beluga sturgeon products from the range countries if we determine that wild beluga sturgeon stock status worsens or threatens to the species increase. Trade restrictions or suspensions may result basin-wide or for specific range countries under one or more of the following scenarios:

1. Failure to submit any of the reports, legislation, and management plans described above, or failure to respond to requests for additional information;

2. A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

3. A change in range country laws or regulations that compromises beluga

sturgeon recovery or survival in the wild;

4. Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

5. 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;

6. 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;

7. Failure of the range countries to address the loss of beluga sturgeon habitat quality or quantity;

8. 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);

9. Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries; or

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

Under this proposed special rule, if adopted, we will decide whether to suspend trade in beluga sturgeon products for an entire basin or on a country-specific basis, including re-exporting countries. This decision, made by the Service's Division of Scientific Authority in consultation with relevant experts, will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a local, national, or region-wide scale. Upon determination that a trade restriction or suspension is necessary, we will publish our findings in the **Federal Register** with the following information:

1. The problem(s) identified in the annual reports or other salient documents.

2. The scope of the problem and the number of nations involved.

3. The scope of the trade restriction or suspension we are imposing, including products covered, duration of the restriction or suspension, and criteria for lifting it.

4. How the public can provide input, make comments, and recommend remedial action to withdraw the trade measures imposed.

#### **Effects of the Special Rule**

Consistent with Sections 3(3) and 4(d) of the Act, this proposed special rule

would amend 50 CFR 17.44 to allow importation, re-exportation, and foreign and interstate commerce of beluga sturgeon caviar and meat, without a threatened species permit otherwise required by 50 CFR part 17, if all requirements of the special rule and 50 CFR part 13 (General Permit Procedures), part 14 (Importation, Exportation, and Transportation of Wildlife), and part 23 (Endangered Species Convention—CITES) are met.

This proposed special rule does not end protection for the species. For permit exemptions under this special rule, beluga sturgeon caviar and meat will have to originate from fish taken in range countries that have complied with the management and reporting requirements mentioned above, beluga caviar must be labeled as per the recommendations of the CITES Parties (even for U.S. domestic trade), and all beluga sturgeon products must be accompanied by valid CITES Appendix-II export permits or re-export certificates. The special rule will not undermine conservation efforts for wild beluga sturgeon in the range countries since import, export, re-export, and interstate and foreign commerce (involving people under U.S. jurisdiction) in live *Huso huso* (usually destined for aquaculture operations outside the range countries) would still require a threatened species permit. Issuance of these permits is predicated on some direct benefit to wild populations of beluga sturgeon in the range countries.

Trade with the United States in beluga sturgeon products will be allowed only with countries that have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as countries from which Parties are asked not to accept shipments of beluga sturgeon specimens or all CITES-listed species. This restriction will also apply to intermediary countries that re-export beluga sturgeon to the United States. The Service's Division of Management Authority will provide on request a list of those countries that have not designated either a Management Authority or a Scientific Authority, or that have been identified as a country from which Parties are asked not to accept shipments of specimens of any CITES-listed species that would include beluga sturgeon.

As noted above, this special rule exempts certain trade in beluga caviar or meat from the issuance of threatened species permits. We will consider

issuing threatened species permits for the import, export, re-export of, or commerce in, other beluga sturgeon specimens when the activity enhances the conservation of the species in the wild or the other criteria for threatened species permits as described in 50 CFR 17.32. In addition, all exports, re-exports, and imports of beluga sturgeon specimens will require the presentation of valid CITES permits and certificates as per 50 CFR part 23.

As noted above, the Service's Division of Scientific Authority will conduct a review beginning in November 2005 and every 2 years thereafter based on information in the annual reports, and other available information, to determine whether range country and regional management programs are effectively achieving conservation benefits for wild beluga sturgeon populations. Trade restrictions or a trade suspension could be placed on a range country if the Service's Division of Scientific Authority administratively determines that the conservation or management status of beluga sturgeon in that country has changed such that continued recovery of the species is compromised. This provision gives the Service the ability to react effectively to potential conservation concerns that may emerge, such as persistent high levels of poaching in some areas, or changes in laws or regulations that appear to be detrimental to the species in the wild, or the lack of submission of the required annual reports and management plans.

We believe the issuance of this special rule is necessary and advisable for the conservation of the species for the following reasons:

1. Exempting the commercial trade in wild-origin and hatchery-origin beluga caviar and meat from permit requirements, with conditions, will expedite transfer of specimens into and out of the United States without compromising the species' recovery. This expedited trade offers an incentive to range countries to meet the requirements in this special rule, which are stricter than those imposed by CITES and provide more detailed information on stock status and management measures than CITES reports.

2. Without this special rule, we would prohibit all commercial trade in beluga caviar and meat unless approved via threatened species permits and appropriate CITES documentation. Such a restriction could reasonably be expected to: (a) Hamper or cease multilateral discussions between the United States and the range countries on beluga sturgeon conservation; (b)

diminish or eliminate the revenue gained from U.S. beluga caviar markets that is used by range countries to support recovery programs for the species; (c) re-direct beluga sturgeon products from monitored international trade into unmonitored domestic markets; and (d) force us to rely on limited international trade data when assessing changes in harvest levels and market demand. All of these outcomes increase the conservation risks for the species while reducing the amount of data needed for informed decision making at the regional and international level.

3. Nearly all of the recommendations promulgated by the CITES Standing Committee for the range countries have been achieved or nearly achieved, according to the CITES Secretariat. We are unable to predict, therefore, how the CITES system will require updates and systematic changes in range country management programs for *Huso huso* after the Standing Committee reviews compliance with the 2001 recommendations (including the so-called "Paris Agreement") after 2004. If pressure from CITES processes abates, this special rule offers our most promising tool for getting information from the range countries and influencing the recovery programs for beluga sturgeon throughout its range.

#### Comments Solicited

The Service invites comments on this proposed rule. Comments should be sent to the Service's Division of Scientific Authority (*see ADDRESSES* section). Comments must be received by the date specified in the **DATES** section above.

#### Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to

understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail the comments to [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### Required Determinations

A Record of Compliance was prepared for this proposed rule. A Record of Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Without this proposed special rule, individuals subject to the jurisdiction of the United States would be prohibited from engaging in domestic, foreign, and international trade in beluga sturgeon meat and caviar except as permitted by Section 10 of the Act. Without this rule, anyone engaging in those activities would need to seek an authorization from us through a permit under section 10(a) of the Act. This process takes time and can involve an economic cost. The rule would allow these individuals to avoid the costs associated with abstaining from conducting these activities or with seeking a threatened species permit from us. These economic benefits, while important, do not rise to the level of "significant" under the following required determinations.

#### Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action. This rule would not have an annual economic impact of more than \$100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This rule would reduce the regulatory burden of the listing of the beluga sturgeon under the Act as a threatened species by providing certain exemptions to the section 9 prohibitions. These exemptions would reduce the economic costs of the listing; therefore, the economic effect of the rule would benefit citizens and the economy. This effect does not rise to the level of "significant" under Executive Order 12866. This rule will not create inconsistencies with other Federal agencies' actions. Other Federal agencies would be mostly unaffected by this proposed rule. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule would allow individuals to continue otherwise prohibited activities without first

obtaining individual authorization, the rule's impacts on affected individuals would be positive. This rule will not raise novel legal or policy issues. We have previously promulgated section 4(d) rules for other species.

#### Regulatory Flexibility Act

We have determined that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. To assess the effects of the rule on small entities, the Service focused on the caviar import, re-export, and aquaculture industries in the United States because these are the entities most likely to be affected by the rule, particularly those engaged in beluga caviar importation, production, and distribution in the United States. In 2002, the most recent year for which we have import data, 15 businesses accounted for all of the foreign-source sturgeon caviar legally imported into the United States. It is possible that some of these businesses did not trade in beluga sturgeon. In those 15, the 10 largest importers accounted for 94 percent of all imported caviar (by weight), while the top 6 importers accounted for 85 percent of the U.S. trade (by weight). Illegal imports are not readily quantifiable, and were not addressed further in our analysis.

According to our analysis, no U.S. entities are involved in the commercial aquaculture of pure (*i.e.*, non-hybridized) *H. huso* products such as caviar and meat. However, at least one U.S. institution is conducting feasibility studies on the commercial aquaculture of hybrid "bester" sturgeon products. This type of aquaculture utilizes live beluga sturgeon and live sterlet (*Acipenser ruthenus*) to produce caviar in controlled, *ex situ* environments. Neither the threatened listing for beluga sturgeon nor the special rule affects trade in bester sturgeon products directly. However, there may be certain amounts of live beluga sturgeon required by these entities from the range countries. Given the apparently limited aquaculture use of beluga sturgeon, the section 9 prohibition on trade in live and aquacultured beluga sturgeon should have no significant economic impact in U.S. markets.

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This rule would not have an annual effect on the economy of \$100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

The Service examined each of the four exemptions of the Act's section 9 trade prohibitions that would be created by the special rule (import, re-export, interstate commerce, and foreign commerce). We determined that the foreign commerce exemption would have little or no economic effect (*i.e.*, would not ease any significant cost that would have been imposed by section 9, without the rule). In foreign countries, this exemption would allow individuals and businesses subject to U.S. jurisdiction to engage in commerce involving beluga sturgeon products originating from range countries without the need for threatened species permits. We are not aware of such commerce currently, and therefore this exemption would create minimal benefits.

The Service also examined the impact of the special rule on import, re-export, and interstate commerce in beluga sturgeon products originating from a range country. This exemption would not have significant economic effects in regard to scientific samples or personal effects moving in and out of the United States, given our recorded low volume of such transactions. However, this exemption would create significant benefits to beluga sturgeon traders commercially importing, re-exporting, and selling (across State lines) beluga sturgeon caviar and meat originating from the range countries. Without the rule, section 9 would prevent all current import, re-export, and interstate commerce, and traders would receive no income from lucrative U.S. markets for beluga sturgeon meat or caviar. With the rule, this international and interstate commerce could continue with an estimated annual net income of \$16 million to \$39 million per year for the traders, a beneficial effect of the rule.

#### Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*) this rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule would not have a significant or unique effect on State, local, or tribal

governments or the private sector. A Small Government Agency Plan is not required.

### Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. By reducing the regulatory burden placed on affected individuals resulting from the listing of the beluga sturgeon as a threatened species, this rule would reduce the likelihood of potential takings. Affected individuals would have more freedom to pursue activities (*i.e.*, import and re-export) involving beluga sturgeon without first obtaining individual authorization.

### Federalism

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

### Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a "collection of information" as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "10 or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This rule refers to CITES permits required for the export to the United States of beluga sturgeon caviar and meat. Our CITES permit applications are already approved by OMB under OMB control number 1018-0093, which expires May 31, 2004. OMB is currently reviewing our request to renew the approval for OMB control number 1018-0093 for another 3 years.

In addition, this rule would newly require certain other information,

including national management plans, national regulations, annual reports, and labeling of shipments, to be provided to the Service by countries wishing to export beluga sturgeon products to the United States. The new information requirements do not, however, require OMB approval under the Paperwork Reduction Act, as explained below.

Although we identify 11 countries in the current biological range of the beluga sturgeon, only 7 of these countries (Azerbaijan, Bulgaria, Iran, Kazakhstan, Romania, Russia, and Turkmenistan) currently have a national program to commercially harvest and export beluga sturgeon. In addition, Serbia and Montenegro (a federation bordering the Adriatic Sea) routinely declare catch and export quotas for beluga sturgeon, but the species is considered extirpated from the Adriatic Sea. Therefore, only those 7 countries with existing national harvest programs would be able to provide the information required by this rule to the Service. As such, the threshold of 10 or more respondents per year is not met, and OMB approval is not required. If, in the future, additional countries develop national programs to commercially harvest and export beluga sturgeon, and it therefore becomes necessary to collect information from 10 or more respondents per year, we will first obtain information collection approval from OMB.

### National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA), and have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA, and it would not involve unresolved conflicts concerning alternative uses of available resources (516 DM 2.3A). Therefore, this rule is categorically excluded under 516 DM 2, Appendix 1.10.

### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes. We have determined that, because no Indian trust resources occur within the range of the beluga sturgeon, this rule would have no effects on federally recognized Indian Tribes.

### Executive Order 13211

We have evaluated this proposed rule in accordance with E.O. 13211 and have determined that this rule would have no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

### Literature Cited

- Anonymous, 2002a. Caspian Sea sturgeons. Interpretation and implementation of the Convention, significant trade in Appendix-II species. 47th meeting of the Standing Committee, 1-2 November 2002; Santiago, Chile. SC47 Doc. 11.
- Anonymous, 2002b. Conservation of Acipenseriformes; implementation of Decisions 11.59 and 11.152. Notification to the Parties 2002/012. 6 March 2002; Geneva, Switzerland.
- Anonymous, 2002c. Report on results of complex interstate all-Caspian Sea expedition on the assess of sturgeon species stocks. FSUI CaspNIRKh, Atyrau branch of KazNIRKh, AzerNIRKh, State Fishery Department of Turkmenistan, Iran Scientific Research Center (Shilat). Astrakhan, 2002.
- ASMFC, 1998. Amendment 1 to the interstate fishery management plan for Atlantic sturgeon. Fishery management report no. 31 of the Atlantic States Marine Fisheries Commission. July 1998. 43 pp.
- NMFS, 1998. Final recovery plan for the shortnose sturgeon, *Acipenser brevirostrum*. December 1998. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. 104 pp.
- USFWS and GSMFC, 1995. Gulf sturgeon recovery plan. U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission. Atlanta, Georgia. 170 pp.

### Author

The primary author of this rule is John Field, Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, U.S. Fish and Wildlife Service, Arlington, VA 22203 [telephone, 703-358-1708].

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Proposed Regulation Promulgation

For the reasons stated in the preamble, the Service hereby proposes to amend part 17, subpart B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### PART 17— [AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for the “Sturgeon, beluga,” under “Fishes,” on the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Sturgeon, beluga.	<i>Huso huso</i>	Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Islamic Republic of Iran, Kazakhstan, Republic of Moldova, Romania, Russian Federation, Turkey, Turkmenistan, Ukraine, Yugoslavia (Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov, and all rivers in their watersheds).	Entire	T	743	NA	17.44 (y)

3. Amend § 17.44 by adding paragraph (y) to read as follows:

**§ 17.44 Special rules—fishes.**

\* \* \* \* \*

(y) *Beluga sturgeon*. This paragraph applies to the threatened beluga sturgeon (*Huso huso*).

(1) *How are various terms defined in this special rule?* In addition to the definitions specified in § 10.12 of subchapter B of this chapter, we define certain terms that specifically apply to the beluga sturgeon trade and this special rule as follows:

*Aquacultured beluga sturgeon products*. Eggs, larvae, fingerlings, or other products derived from *Huso huso* bred in captivity or grown in captivity for commercial purposes.

*Beluga caviar*. Processed unfertilized eggs from female *Huso huso* intended for human consumption, including products containing such eggs (e.g., cosmetics).

*Beluga meat*. Excised muscle tissue of *Huso huso* destined for human consumption.

*Black Sea*. The contiguous waters of the Black Sea and the Sea of Azov.

*CITES*. The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

*Hatchery-origin beluga sturgeon*. Specimens of *Huso huso* bred in captivity solely in the range countries, primarily for reintroduction and stock enhancement purposes.

*Live beluga sturgeon*. Any living specimen of *Huso huso*, including viable unfertilized or fertilized eggs, adults, fingerlings, and juveniles.

*Range countries*. Azerbaijan, Bulgaria, Georgia, Iran, Kazakhstan, Moldova,

Romania, Russia, Turkey, Turkmenistan, and Ukraine.

*Re-export*. Export of beluga sturgeon specimens that were previously imported.

*Wild beluga sturgeon*. Specimens of *Huso huso* born and reared in the natural marine environment within the current or former geographic range of the species.

(2) *What activities involving beluga sturgeon are prohibited by this rule?*

(i) *International trade in beluga sturgeon*. Except as provided in paragraph (y)(3) of this section, all prohibitions and provisions of § 17.31(a) apply to the international trade in beluga sturgeon, including its parts and derivatives. This rule provides no exemption to the prohibitions and provisions of § 17.32 for aquacultured beluga sturgeon products produced outside the range countries or live beluga sturgeon.

(ii) *Trade without CITES documents*. Except as provided in paragraph (y)(3) of this section, you may not import, export, or re-export, or present for export or re-export beluga sturgeon or beluga sturgeon products without valid CITES permits and other permits and licenses issued under parts 13, 17, and 23 of this chapter.

(iii) *Commercial activity*. Except as provided in paragraph (y)(3) of this section and § 17.32, you may not sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any beluga sturgeon or beluga sturgeon products.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be

committed any acts described in paragraphs (y)(2)(ii) and (iii) of this section.

(3) *What activities are exempted from threatened species permits by this rule?*

(i) *Import, re-export, and interstate commerce involving certain caviar and meat obtained from beluga sturgeon*. You may import, re-export, or conduct interstate or foreign commerce in beluga sturgeon caviar and meat without a threatened species permit issued according to § 17.32 only if the caviar and meat are derived from wild or hatchery-origin beluga sturgeon that were caught and processed in the range countries. Also, the provisions in parts 13, 14, and 23 of this chapter and the following requirements must be met:

(A) Any beluga caviar must comply with all CITES labeling requirements, as defined in relevant Resolutions or Decisions of the Conference of the Parties, including beluga caviar in interstate commerce in the United States. All individuals or businesses in the United States wishing to engage in interstate domestic commerce of beluga sturgeon caviar must follow the CITES caviar labeling requirements.

(B) The shipment must be accompanied by a valid CITES permit or certificate.

(C) For each shipment covered by this exception, the country of origin and each country of re-export, and the country of import involved in the trade of a particular shipment, must have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country



from which Parties should not accept permits for beluga sturgeon or all CITES-listed species in general.

(D) The range country from which the beluga sturgeon caviar or meat originated has complied with all of the requirements shown in paragraph (y)(4) of this section, and none of the exporting, importing, or re-exporting countries involved in the commercial activity has been subject to an administrative trade restriction or suspension as outlined in paragraphs (y)(5) and (6) of this section.

(ii) *Import and re-export of noncommercial personal or household effects.* Article VII(3) of the CITES Convention recognizes a limited exemption for the international movement of personal and household effects, including specimens of beluga sturgeon.

(A) *Stricter national measures.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national measures.

(2) In the United States, you must obtain any permission needed under other regulations in this subchapter.

(B) *Required CITES documents.* You must obtain a CITES document for personal or household effects and meet the requirements of this part if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (y)(3)(ii)(C) through (E) of this section.

(3) The personal or household effect exceeds 250 grams of beluga caviar. To import or re-export more than 250 grams, you must have a valid CITES document for the entire quantity.

(C) *Personal effects.* You do not need a CITES document to import or re-export any part, product, derivative, or manufactured article of a legally acquired beluga sturgeon specimen to or from the United States if all of the following conditions are met:

(1) No living beluga sturgeon is included.

(2) You personally own and possess the item for noncommercial purposes, including any item intended as a personal gift.

(3) The item and quantity of items are reasonably necessary or appropriate for the nature of your trip or stay.

(4) You are either wearing the item as clothing or an accessory or taking it as

part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, car, or train as you.

(5) The item was not mailed or shipped separately.

(D) *Household effects.* You do not need a CITES document to import or re-export any part, product, derivative, or manufactured article of a legally acquired beluga sturgeon specimen that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) No living beluga sturgeon is included.

(2) You personally own the item and are moving it for noncommercial purposes.

(3) The item and quantity of items are reasonably necessary or appropriate for household use.

(4) You import or re-export your household effects within 1 year of changing your residence from one country to another.

(5) The shipment, or shipments if you cannot move all of your household effects at one time, contains only items purchased, inherited, or otherwise acquired before you moved your residence.

(E) *Trade restrictions.* Regardless of the provisions above for personal and household effects, any trade suspension or trade restriction administratively imposed by the Service under paragraphs (y)(5) or (6) of this section could also apply to personal and household effects of beluga caviar.

(4) *What must beluga sturgeon range countries do to be authorized under the special rule to export to the United States?* The following requirements apply to the range countries wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under § 17.32. These requirements apply to all shipments of beluga caviar and beluga meat that originate in the range countries, even if the shipments are re-exported to the United States via an intermediary country. (See paragraph (y)(6) of this section for more information on the Service's biennial reviews under the special rule.)

(i) *Basin-wide beluga sturgeon management plans.* By [insert date 6 months after the effective date of this special rule], each range country wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under § 17.32 must submit a copy of a cooperative management plan for their respective basin (*i.e.*, Black Sea or Caspian Sea)

that addresses *Huso huso* conservation. Each of these two basin-wide management plans must be agreed to by all of the range countries (not just exporting nations) in the Black Sea or the Caspian Sea, as appropriate. Upon receipt, the Service's Division of Scientific Authority will immediately review these basin-wide management plans for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate range states to provide additional information within 60 days of the date we contact them. If the range states fail to respond or fail to submit basin-wide management plans by the specified deadline, or if we are unable to confirm that all range states are signatories to those plans, we will immediately suspend trade with all range states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist. Submission of documents in English may help expedite the Service's review. These cooperative management plans must contain the following elements:

(A) A clear statement of the recovery and management objectives of the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

(B) A statement of standard regulations (*e.g.*, size limits, target harvest rates, quotas, seasons, fishing gear, or effort caps) to be utilized by the nations involved;

(C) A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

(D) A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

(E) Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards mentioned in paragraph (y)(4)(i)(B) of this section; and

(F) A complete schedule by which nations must take particular actions to be in compliance with the plan.

(ii) *National regulations.* By [insert date 6 months after the effective date of this special rule], each range country wishing to export beluga caviar or beluga meat to the United States under this special rule must provide us with copies of national legislation and

regulations that implement the basin-wide cooperative management plan described in paragraph (y)(4)(i) of this section, including regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. Upon receipt, the Service's Division of Scientific Authority will immediately review these basin-wide management plans for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate range states to provide additional information within 60 days of the date we contact them. If the range states fail to respond or fail to submit copies of national laws and regulations by the specified deadline, we will immediately suspend trade with the given range states until we are satisfied that such laws and regulations are in effect. Submission of documents in English may help expedite the Service's review.

(iii) *Annual report.* Range country governments wishing to export specimens of beluga sturgeon caviar or meat to the United States under this special rule will need to provide an annual report containing the most recent information available on the status of the species, following the information guidelines specified below. The Service must receive the first annual report no later than November 1, 2005, and every year thereafter on the anniversary of that date. Starting in November 2005, and thereafter on a biennial basis, the Service will conduct a review of information in the annual reports and any other pertinent information on wild beluga sturgeon conservation. If any elements of the annual reports are missing or unclear, the Service will ask the appropriate range states to provide additional information within 60 days of the date we contact them. If the range states fail to respond or fail to submit annual reports by the specified deadline, we will immediately suspend trade with the given range states. Submission of documents in English may help expedite the Service's review. We propose to use these reviews to determine whether range country management programs are leading to recovery of wild beluga sturgeon stocks. For each range country, the following information must be provided in the annual report:

(A) A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective range country, with any changes from the previous year highlighted;

(B) A description of any revisions to the cooperative management program

mentioned in paragraph (y)(4)(i) of this section, including any new models, assumptions, or equations used to set harvest and export quotas;

(C) New information obtained in the last year on beluga sturgeon distribution, stock size, models used for quota-setting, spawning activity, habitat use, hatchery programs and results, or other relevant subjects;

(D) A summary of law enforcement activities undertaken in the last year, and a description of any changes in programs to prevent poaching and smuggling;

(E) A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective range country, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (e.g., revenues allocated to hatchery/re-stocking programs or research programs); and

(F) Export data for the previous calendar year.

(iv) *Caviar labeling.* All caviar shipments imported into the United States must follow the CITES caviar labeling requirements as agreed to in the relevant Resolutions and Decisions of the CITES Parties.

(v) *CITES compliance.* Except as provided in paragraph (y)(3)(ii) of this section, all shipments of beluga sturgeon specimens, including those exempted from threatened species permits under this special rule, will require accompanying valid CITES permits and certificates.

(vi) *Initial reporting period.* Until [insert date 6 months after the effective date of this rule], no threatened species permits will be required for the import, re-export, or interstate or foreign commerce of beluga sturgeon caviar and meat that originated in the range countries, in order to provide the range countries time to submit the required documentation. After this 6-month period, the exemption from threatened species permits will continue only under the terms and conditions specified in paragraphs (y)(4)(i) through (v) of this section.

(5) *How will the Service inform the public of CITES restrictions in trade of beluga sturgeon?* We will issue an information bulletin that identifies a restriction or suspension of trade in specimens of beluga sturgeon and post it on our websites (<http://le.fws.gov> and <http://international.fws.gov>) and at our staffed wildlife ports of entry if any criterion in paragraphs (y)(5)(i) or (ii) of this section is met:

(i) The country is listed in a Notification to the Parties by the CITES

Secretariat as lacking a designated Management Authority or Scientific Authority for the issuance of valid CITES documents or their equivalent.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, as a country from which Parties are asked not to accept shipments of specimens of beluga sturgeon or all CITES-listed species. A listing of all countries that have not designated both a Management Authority and Scientific Authority, or that have been identified as a country from which Parties should not accept permits, is available by writing to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203.

(6) *How will the Service set trade restrictions or prohibitions under the special rule?* The Service's Division of Scientific Authority will conduct a biennial review of beluga sturgeon conservation based on information in the cooperative basin-wide management plans, national regulations and laws, and annual reports (submitted as per paragraph (y)(4) of this section). We will combine that review with a review of other relevant sources (e.g., scientific literature, law enforcement data, government-to-government consultations) to determine whether range country management programs are effectively achieving conservation benefits for beluga sturgeon. Based on this information, or the failure to obtain it, the Service may restrict trade from a range country, a re-exporting intermediary country, or an entire basin (i.e., the Caspian Sea or Black Sea) if we determine that the conservation or management status of beluga sturgeon has changed and the continued recovery of beluga sturgeon in that country or basin may be compromised. The decision to restrict trade in beluga sturgeon products on a national, basin, or region-wide scale will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a national, basin, or region-wide scale.

(i) Trade restrictions or suspensions may result basin-wide or for specific range countries under one or more of the following scenarios:

(A) Failure to submit any of the reports, legislation, and management plans described above, or failure to respond to requests for additional information;

(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 threatens 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]

**BILLING CODE 4310-55-P**

## 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](mailto: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