

requirements. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a “significant regulatory action” under the Executive Order and therefore has been reviewed by the Office of Management and Budget.

#### **Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

#### **Congressional Review**

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

#### **Assessment of Federal Regulations and Policies on Families**

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

#### **Executive Order 13132**

Executive Order 13132 on federalism applies to policies that have federalism implications, defined as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government”. This rule does not have federalism implications for State or local governments as defined in the Executive Order.

#### **List of Subjects in 45 CFR Part 303**

Child support, Grant programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: June 28, 2004.

**Wade F. Horn,**

*Assistant Secretary for Children and Families,*

Date Approved: August 6, 2004.

**Tommy G. Thompson,**

*Secretary of Health and Human Services.*

- For the reasons discussed above, title 45 CFR chapter III is amended as follows:

#### **PART 303—STANDARDS FOR PROGRAM OPERATIONS**

- 1. The authority citation for part 303 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

- 2. Amend § 303.72 by revising paragraphs (b)(1), (b)(2) introductory text, (d)(1), (d)(2), (f)(3), (g)(4), and (i)(1) to read as follows:

##### **§ 303.72 Requests for collection of past-due support by Federal tax refund offset.**

\* \* \* \*

(b) \* \* \*

(1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support to the Office according to the timeframes and in the manner specified by the Office in instructions.

(2) To the extent specified by the Office in instructions, the notification of liability for past-due support shall contain with respect to each delinquency:

\* \* \* \*

(d) \* \* \*

(1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury.

(2) The State IV-D agency shall, within timeframes established by the Office in instructions, notify the Deputy Director of any deletion of, or any change in, the arrears balance, if the change is significant according to the guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

\* \* \* \*

(f) \* \* \*

(3) If the administrative review results in a deletion of, or change in, the arrears balance, the IV-D agency must notify OCSE within timeframes established by the Office and include the information

specified in paragraph (b) of this section.

\* \* \* \*

(g) \* \* \*

(4) If the administrative review results in a deletion of, or change in, the arrears balance, the State with the order upon which the referral for offset is based must notify the submitting State within timeframes established by the Office and include the information specified in paragraph (b) of this section. The submitting State must then notify the Office within timeframes established by the Office and include the information specified in paragraph (b) of this section.

\* \* \* \*

(i) \* \* \*

(1) A refund offset fee, in such amount as the Secretary of the U.S. Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the U.S. Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the U.S. Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount of the offset must be credited against the obligor's payment record. The fee which the Secretary of the U.S. Treasury may impose with respect to non-IV-A submittals shall not exceed \$25 per submittal.

\* \* \* \*

[FR Doc. 04-23953 Filed 10-25-04; 8:45 am]

**BILLING CODE 4184-01-P**

#### **DEPARTMENT OF THE INTERIOR**

##### **Fish and Wildlife Service**

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

##### **RIN 1018-AU02**

#### **Endangered and Threatened Wildlife and Plants; Interim Rule for the Beluga Sturgeon (*Huso huso*)**

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

**ACTION:** Interim rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, will allow the trade in beluga sturgeon (*Huso huso*) and its by-products, provided that specimens are accompanied by valid permits issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This interim rule will be effective until the publication of a final rule under Section 4(d) of the Endangered Species Act of

1973, as amended (Act), pertaining to trade in beluga sturgeon and its by-products. This interim rule allows the take, import, export, re-export, and interstate and foreign commerce in beluga sturgeon, without the issuance of a threatened species permit under the Act for those specimens that are traded in accordance with the requirements of CITES. This rule will benefit entities which trade in these products and help further conservation of this threatened species.

**DATES:** This rule is effective immediately October 21, 2004. The reasons for this accelerated implementation for making this rule effective less than 30 days after publication in the **Federal Register** are described below in the section titled, "Need for Interim Rule."

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, at 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (phone: 703) 358-1708). For permitting information contact: Peter Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (phone: 703-358-2104, or toll free, 1-800-358-2104).

#### SUPPLEMENTARY INFORMATION:

##### Background

Upon petition from the public, the Service promulgated a rule (69 FR 21425, April 21, 2004) to list beluga sturgeon (*Huso huso*) as threatened throughout its range under Section 4(d) of the Endangered Species Act of 1973, as amended (Act). That listing in 50 CFR 17.11 prohibits all trade (foreign, international, and interstate) in beluga sturgeon, except as allowed by permit in 50 CFR 17.32. We delayed the effective date of the listing until October 21, 2004, in order to promulgate a special rule under Section 4(d) of the Act. The proposed 4(d) rule, published on June 29, 2004 (69 FR 38863), included specific exemptions from the regulatory requirements of the Act for the trade in caviar and meat of threatened beluga sturgeon. Contingent upon whether Black and Caspian Sea countries meet the requirements set forth in the proposed 4(d) rule, it allows the continued trade in beluga sturgeon species while continuing to provide the protection under CITES.

The proposed 4(d) rule links U.S. import requirements for beluga sturgeon trade under the Act to Resolutions and Decisions on sturgeon trade under the Convention on International Trade in

Endangered Species of Wild Fauna and Flora (CITES). However, given the specific criteria of the Act, the proposed 4(d) rule would improve on the status quo of beluga sturgeon under CITES, since the proposed rule aims to improve transparency of range country actions and requires more specific information than the CITES process. The proposed 4(d) rule sets quantitative goals for the species' recovery, with specific targets for range countries to meet in order for U.S. entities to continue to import beluga sturgeon products into the United States without ESA permits.

Under the proposed 4(d) rule, range countries in the Caspian Sea and Black Sea basins would have 6 months from the proposed 4(d) rule's effective date to submit their beluga sturgeon conservation and management plans to the Service for review. During this time, imports, exports, re-exports, and interstate and foreign commerce in certain beluga sturgeon products would not require threatened species permits, but must have legal documentation under CITES. The proposed 4(d) rule exempts the transfer of beluga caviar and meat into and out of the United States from additional threatened species regulatory requirements of the Act when the specimens are obtained from fish that are wild-caught or hatchery-reared from range countries that have complied with the rule. The proposed 4(d) rule also exempts interstate and foreign commerce in these products from the threatened species regulatory requirements of the Act, if that trade occurs in the United States or involves U.S. citizens.

In the proposed 4(d) rule, aquacultured specimens (*i.e.*, from commercial captive-breeding operations) from non-range countries, including the United States, and live specimens are not exempted from threatened species' permits. The Service lacked information on how aquaculture in non-range countries would benefit the conservation of wild populations, and, instead had an indication that the expansion of aquaculture in non-range countries could actually diminish the importance of beluga sturgeon conservation by reducing incentives to protect the species in the wild. We were concerned that any additional aquaculture of foreign sturgeon species in the United States might pose a risk to domestic recovery efforts for several native sturgeon species listed under the Act or under interstate recovery plans. The Service believed that countries without native beluga populations, if exempted from the provisions of the Act under the proposed 4(d) rule, might use broodstock from countries with native

wild populations to generate products for export to the U.S. marketplace, and would not afford any conservation benefit to the wild populations. The proposed 4(d) rule did not include an exemption for live specimens because of concerns about potential disease risks to native sturgeon and invasive species concerns associated with possible accidental introductions that may result with exotic sturgeons.

The proposed 4(d) rule has not been completed and is under review in order to fully address the public comments received on the rule. Therefore, absent a 4(d) rule, the Service is issuing this interim rule to allow the continued trade in beluga sturgeon products, provided that shipments are accompanied by valid CITES permits or are subject to a CITES exemption. This interim rule will be effective until the publication of the final 4(d) rule. This interim special rule allows the take, import, export, re-export, and interstate and foreign commerce of beluga sturgeon and its by-products, without the issuance of additional threatened species permits.

##### Need for Interim Rule

This interim special rule is necessary to allow the CITES-consistent trade in beluga sturgeon and its by-products without a threatened species permit until a final 4(d) rule is completed and published. The Service's intent was to publish the final 4(d) rule to coincide with the effective date of the beluga sturgeon threatened listing on October 21, 2004. However, the process to finalize the 4(d) rule required more time than anticipated because the Service received comments on the proposed rule on a number of complex issues. We also received new information, which the Service lacked, related to:

- The development of aquaculture for beluga sturgeon within the United States,
- How aquaculture in non-range countries could benefit the conservation of wild populations, and
- On the scope of aquaculture activities with this species in the United States, including information on cooperative activities between U.S. entities and range countries.

The Service did not anticipate the extent of the public response from aquaculturists, scientists, and State offices related to this issue. It is the Service's responsibility to carefully review all public comments on this issue and to consider whether some adjustments should be made, and if so, to determine what measures are necessary to regulate the trade in aquacultured beluga sturgeon from non-

range countries, including the United States. This interim rule will provide the Service additional time to carefully and appropriately respond to all the comments received, including those related to the role of aquaculture in the conservation of and trade in sturgeon species and their products without disrupting the trade and current conservation efforts for beluga sturgeon. The Service is actively working to complete the final special 4(d) rule and to publish it by the end of January. Without this interim rule, commercial activities involving beluga sturgeon and its by-products would be prohibited by the general threatened species regulations under the Act, thereby disrupting CITES-consistent, sustainable trade in beluga sturgeon.

Under these circumstances, the Service has determined that prior notice and opportunity for public comment are contrary to the public interest and there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. If necessary, we will amend the Code of Federal Regulations to remove this rule when the final 4(d) rule is effective.

#### **Required Determinations**

##### *Executive Order 12866 (Regulatory Planning and Review)*

This interim rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Under the criteria in Executive Order 12866, this interim rule is not a significant regulatory action.

a. This interim rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This interim rule will not create inconsistencies with other agencies' actions. We are the lead agency regulating international wildlife trade, domestic wildlife trade, the issuance of permits to conduct activities affecting wildlife and their habitats, and carrying out U.S. obligations under CITES. Therefore, this interim rule has no effect on other agencies' responsibilities and will not create inconsistencies with other agencies' actions.

c. This interim rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This interim rule will not raise novel legal or policy issues. This rule is basically a special 4(d) rule under the ESA. The Service has issued numerous

4(d) rules in the past to ensure the conservation of endangered and threatened species.

##### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

We have determined that this rule will 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, 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), whereas 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 the information available to us, only two U.S. entities are involved in the commercial aquaculture of pure (i.e., non-hybridized) *H. huso* to obtain products such as caviar and meat, and neither is generating these products yet. 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 Black and Caspian Sea countries. Given the apparently limited aquaculture use of beluga sturgeon, this rule should have no significant economic impact on 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 will not have an annual effect

on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will 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.

This rule will have little or no economic effect on the import, export, interstate commerce, and foreign commerce. In foreign countries, this exemption will allow individuals and businesses subject to U.S. jurisdiction to engage in commerce involving beluga sturgeon products without the need for threatened species permits. We are not aware of such commerce currently, and therefore this exemption will create minimal benefits.

This rule will 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 rule will provide significant benefits to beluga sturgeon traders commercially importing, exporting, and selling across State lines beluga sturgeon caviar and meat. Without the rule, Section 9 of the Act would prevent all current import, export, and interstate commerce, and traders would receive no income from lucrative U.S. markets for beluga sturgeon and its by-products. With the rule, this international trade and interstate commerce can continue without interruption, a beneficial effect of the rule.

We are unable to quantify the U.S. economic impact of the exemption from permits granted for aquaculture facilities outside of the Caspian and Black countries (including U.S. operations). This is primarily because (1) U.S. aquaculture facilities are not yet producing beluga sturgeon caviar and meat; and (2) the global extent of aquacultured beluga sturgeon production is largely unquantified. Given the information available on the species' long reproductive cycle and the high cost of starting beluga sturgeon aquaculture, we expect the economic impact to be relatively small.

##### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this interim rule will not "significantly or uniquely" affect small governments.

a. This interim rule will not significantly or uniquely affect small governments. A Small Government

Agency Plan is not required. We are the lead agency regulating wildlife trade through the declaration process, the issuance of permits to conduct activities affecting wildlife and their habitats, and carrying out the United States obligations under CITES. No small government assistance or impact is expected as a result of this interim rule.

b. This interim rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This interim rule will not result in any combined expenditure by State, local, or tribal governments.

#### *Executive Order 12630 (Takings)*

Under Executive Order 12630, this interim rule does not have significant takings implications or affect any constitutionally protected property rights. This interim rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required. Therefore, this interim rule does not have significant takings implications.

#### *Executive Order 13132 (Federalism)*

Under Executive Order 13132, this interim rule does not have significant Federalism effects. A Federalism assessment is not required. This interim rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### *Executive Order 12988 (Civil Justice Reform)*

Under Executive Order 12988, the Office of the Solicitor has determined that this interim rule does not overly burden the judicial system and meets

the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this interim rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This interim rule does not contain any information collection requirements that require approval by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

#### *National Environmental Policy Act*

This interim rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This interim rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This interim rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

#### *Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)*

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import, export, buy, sell, transport, receive or acquire beluga sturgeon products.

#### *Executive Order 13211*

We have evaluated this rule in accordance with E.O. 13211 and have determined that this rule will 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.

#### **List of Subjects in 50 CFR Part 17**

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

#### **Regulation Promulgation**

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter 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. Amend § 17.31 by adding a new paragraph (d) as set forth below:

#### **§ 17.31 Prohibitions.**

\* \* \* \* \*

(d) Except for specimens that are or have been imported into the United States in compliance with the requirements of CITES, the prohibitions of § 17.21 and this section and the permit requirements of § 17.32 apply to the take, import, export, re-export, and interstate and foreign commerce in beluga sturgeon (*Huso huso*) and its by-products.

Dated: October 21, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04–23993 Filed 10–21–04; 5:07 pm]

**BILLING CODE 4310–55–P**