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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 151113999-6206-01]

RIN 0648-BF55

Designating the Sakhalin Bay-Nikolaya Bay-Amur River Stock of Beluga Whales as a Depleted Stock under the Marine Mammal Protection Act

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to designate the Sakhalin Bay-Nikolaya Bay-Amur River Stock of beluga whales (*Delphinapterus leucas*) as a depleted stock of marine mammals pursuant to the Marine Mammal Protection Act (MMPA). This action is being taken as a result of a status review conducted by NMFS in response to a petition to designate a group of beluga whales in the western Sea of Okhotsk as depleted. The biological evidence indicates that the group is a population stock as defined by the MMPA, and the stock is depleted as defined by the MMPA.

DATES: Comments must be received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES:

You may submit comments on this proposed rule, identified by NOAA-NMFS-2015-0154, by either of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A list of references cited in this proposed rule and the status review report are available at www.regulations.gov (search for docket NOAA-NMFS-2015-0154) or http://www.fisheries.noaa.gov/pr/species/mammals/whales/beluga-whale.html or upon request.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301-427-8402, *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 115(a) of the MMPA (16 U.S.C. 1383b(a)) allows interested parties to petition NMFS to initiate a status review to determine whether a species or stock of marine mammals should be designated as depleted. On April 23, 2014, NMFS received a petition from the Animal

Welfare Institute, Whale and Dolphin Conservation, Cetacean Society International, and Earth Island Institute (petitioners) to "designate the Sakhalin Bay-Amur River stock of beluga whales as depleted under the MMPA." NMFS published a notice that the petition was available (79 FR 28879, May 20, 2014). After evaluating the petition, NMFS determined that the petition contained substantial information indicating that the petitioned action may be warranted (79 FR 44733, August 1, 2014). Following its determination that the petitioned action may be warranted, NMFS convened a status review team and conducted a status review to evaluate whether the Sakhalin Bay-Amur River group of beluga whales is a population stock and, if so, whether that stock is depleted. This proposed rule is based upon that status review.

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term "depletion" or "depleted" to include "any case in which…the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals…determines that a species or a population stock is below its optimum sustainable population." NMFS' authority to designate a stock as depleted is not limited to stocks that occur in U.S. jurisdictional waters. Although the Sakhalin Bay-Amur River group of beluga whales does not occur in U.S. jurisdictional waters, NMFS has authority to designate the stock as depleted if it finds that the stock is below its optimum sustainable population.

Status Review

A status review for the population stock of beluga whales addressed in this proposed rule was conducted by a status review team (Bettridge *et al*. 2016). The status review compiled and analyzed information on the stock's distribution, abundance, threats, and historic take from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. The draft status review report was submitted to independent peer

reviewers, and comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the report.

Sea of Okhotsk Beluga Whales

Beluga whales are small, toothed whales distributed throughout the Arctic and inhabiting subarctic regions of Russia, Greenland, and North America. They are found in the Arctic Ocean and its adjoining seas, including the Sea of Okhotsk, the Bering Sea, the Gulf of Alaska, the Beaufort Sea, Baffin Bay, Hudson Bay, and the Gulf of St. Lawrence. Beluga whales may also be found in large rivers during certain times of the year.

Beluga whales are found throughout much of the Sea of Okhotsk, including Shelikov Bay in the northeast and throughout the western Sea of Okhotsk including the Amur River estuary, the nearshore areas of Sakhalin Bay, in the large bays to the west (Nikolaya Bay, Ulbansky Bay, Tugursky Bay and Udskaya Bay), and among the Shantar Islands. Use of the bays and estuaries in the western Sea of Okhotsk is limited primarily to summer months when belugas may molt (Finley 1982) and give birth to and care for their calves (Sergeant and Brodie 1969). The whales move into the ice-covered offshore areas of the western Sea of Okhotsk in the winter (Melnikov 1999). In the status review and this proposed rule, we refer to the beluga whales found in the Amur River estuary and the nearshore areas of Sakhalin Bay during summer as the Sakhalin River-Amur Bay beluga whales**.**

The best available estimate of abundance of beluga whales in the Sakhalin Bay-Amur River area is 3,961 (Reeves *et al*. 2011). This estimate was based on aerial surveys conducted in 2009 and 2010 and was further reviewed by an International Union for Conservation of Nature (IUCN) scientific panel of beluga whale experts (Reeves *et al*. 2011). The minimum population

estimate for the Sakhalin Bay-Amur River population was determined to be 2,891 (Reeves *et al*. 2011).

Information on potential sources of serious injury and mortality is limited for the Sea of Okhotsk beluga whales. The IUCN panel identified subsistence harvest, death during live-capture for public display, entanglement in fishing gear, vessel strike, climate change, and pollution as human activities that may result in serious injury or mortality to Sea of Okhotsk beluga whales (Reeves *et al*. 2011). The greatest amount of available information is from the estimates of annual take from the commercial hunt. As noted in the petition and the IUCN review, monitoring of other types of mortality in the Sea of Okhotsk is low, if existent at all, and information on possible threats and sources of mortality in Sea of Okhotsk beluga whales is highlighted by a lack of substantiated data, and is largely anecdotal.

Identifying a "Population Stock" or "Stock" Under the MMPA

To designate the Sakhalin Bay-Amur River group of beluga whales as a depleted stock under the MMPA, it must be determined to be a "population stock" or "stock." The MMPA defines "population stock" as "a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature" (MMPA section 3(11)). NMFS' guidelines for assessing stocks of marine mammals (NMFS 2005) state that many different types of information can be used to identify stocks, reproductive isolation is proof of demographic isolation, and demographically isolated groups of marine mammals should be identified as separate stocks. NMFS has interpreted "demographically isolated" as "demographically independent" (see, for example, Weller et al. 2013, Moore and Merrick (eds.) 2011).

The guidelines state, specifically: "Many types of information can be used to identify stocks of a species: e.g., distribution and movements, population trends, morphological

differences, differences in life history, genetic differences, contaminants and natural isotope loads, parasite differences, and oceanographic habitat differences. Different population responses (e.g., different trends in abundance) between geographic regions is also an indicator of stock structure, as populations with different trends are not strongly linked demographically. When different types of evidence are available to identify stock structure, the report must discuss inferences made from the different types of evidence and how these inferences were integrated to identify the stock.

"Evidence of morphological or genetic differences in animals from different geographic regions indicates that these populations are reproductively isolated. Reproductive isolation is proof of demographic isolation, and, thus, separate management is appropriate when such differences are found. Demographic isolation means that the population dynamics of the affected group is more a consequence of births and deaths within the group (internal dynamics) rather than immigration or emigration (external dynamics). Thus, the exchange of individuals between population stocks is not great enough to prevent the depletion of one of the populations as a result of increased mortality or lower birth rates." (NMFS 2005)

The Sakhalin Bay-Amur River Group of Beluga Whales as a Stock

At the broadest geographic scale in the Sea of Okhotsk, there is strong evidence for genetic differentiation, in both mitochondrial DNA (mtDNA) and nuclear DNA, between beluga whales that summer in the northeastern Sea of Okhotsk off the west Kamchatka coast (east of 145° E longitude) and those that summer in the western Sea of Okhotsk from Sakhalin Bay to Udskaya Bay, west of 145° E longitude (Meschersky et al. 2013). Since the petition involves individuals in the western aggregations, this proposed rule does not further consider the

northeastern aggregations because they are clearly distinct from the beluga whales in the western Sea of Okhotsk.

Available evidence regarding the stock structure of the Sakhalin Bay-Amur River beluga whales relative to other western Sea of Okhotsk beluga whales is limited. A variety of genetic studies have been performed on beluga whales from the western Sea of Okhotsk (see below), and limited telemetry data are available. NMFS considered the following lines of evidence regarding the Sakhalin Bay-Amur River beluga whales to answer the question of whether the group comprises a stock: 1) genetic comparisons among the summering aggregations in the western Sea of Okhotsk; 2) movement data collected using satellite transmitters; and 3) geographical and ecological separation (site fidelity). Below we summarize the information considered, including information presented in the status review report.

Genetic Data

A variety of genetic studies have been performed on beluga whales from the western Sea of Okhotsk (Meschersky *et al*. 2008, 2013; Meschersky and Yazykova 2012). In these studies, 107 individuals were sampled from the Sakhalin Bay-Amur River area over seven sampling years with relatively even sampling per year and an overall relatively even split between males and females. However, Meschersky *et al*. (2013) suggested that there was a duplicate sample so we considered the correct number to be 106. This sampling is fairly robust and likely sufficiently representative of the haplotypic frequency distribution of the full population. Sampling from the four other bays in the western Sea of Okhotsk (Nikolaya, Ulbansky, Tugursky, and Udskaya) has been less thorough, most of it having been conducted in a single year, and the samples from all four bays are skewed towards males (Meschersky *et al*. 2013). The sample size from Nikolaya

Bay is particularly small, making it difficult to draw conclusions about the relationship of whales in this bay to the other bays based on genetic data.

The genetic comparisons between samples from the beluga whales of the Sakhalin Bay-Amur River and the beluga whales of the other bays consistently found significant differentiation in mtDNA haplotype frequencies among bays, but not between Sakhalin Bay and the adjacent Nikolaya Bay, though the small sample size in Nikolaya Bay may have played a role (Meschersky *et al*. 2013). In some cases, haplotypes were found that were unique to a bay, indicating that most recruitment is internal. However, the presence of some common haplotypes across bays suggests that there may be some external recruitment or, alternatively, founding events have been recent enough that there has not been sufficient time for lineage sorting amongst the bays, resulting in some common haplotypes over large geographic ranges.

Analysis of nuclear microsatellite markers found no evidence for genetic differentiation among the bays of the western Sea of Okhotsk with the exception of a comparison of Sakhalin Bay to the distant Ulbansky Bay (Merschersky 2012, Merschersky *et al*. 2013). This negative finding for differentiation in nuclear DNA does not rule out that beluga whales in these different summer feeding areas could constitute stocks under the MMPA. The mtDNA differences alone are considered to be sufficient evidence for demographic independence.

Telemetry Data

Telemetry data, although sparse, support the conclusions drawn from the genetic data. From 2007-2010, 22 beluga whales were tagged at Sakhalin Bay. Tags transmitted data for 2.5-9.5 months, with an average of six months. Most whales stayed close to the tagging site in summer (Shpak *et al*. 2010), though several tagged whales were sighted in Nikolaya Bay in summer (Shpak *et al*. 2011). Ten whales tagged in 2010 moved in the fall to Nikolaya Bay and

the eastern Shantar region, and four went as far as Ulbansky Bay, spending up to three months in these areas. In winter, tagged whales moved north and west into offshore waters (Shpak *et al*. 2012). Though not very many whales have been tagged, the data available to date suggest whales present in the summer in Sakhalin Bay also use Nikolaya Bay, but there is little evidence for movement between Sakhalin Bay and the other bays further to the west during spring and summer.

Geographical and Ecological Separation

Beluga whales in other, better studied areas form strong social groups that follow learned, predictable annual movements between breeding and feeding areas. Summer aggregations often focus on seasonally available fish runs. Site fidelity to summer feeding areas is not uncommon in cetaceans and can often result in genetic differentiation in mtDNA. In some cases, site fidelity is strong enough and occurs over a long enough time period that mtDNA lineage sorting can occur, resulting in mtDNA haplotypes unique to a given feeding area. Sakhalin Bay-Amur River beluga whales exhibit behaviors and frequency differences in mtDNA haplotypes consistent with the general beluga whale life history strategy seen in Alaska, and therefore are considered to be similar to aggregations defined as stocks within Alaska. The two Alaska beluga stocks with movements and seasonal cycles most similar to the Sakhalin Bay-Amur River beluga whales are the Eastern Bering Sea stock and the Bristol Bay stock. Together, genetic and movement data indicate that beluga whales in the western Sea of Okhotsk exhibit life history characteristics and levels of differentiation very similar to beluga whales in Alaska that have been designated as stocks.

Stock Determination

Given the limitations on available data, the status review team used structured expert decision making (SEDM) procedures to evaluate the available data for beluga whales in the western Sea of Okhotsk as they relate to delineating stocks. This approach is often employed as a means to elicit expert opinion while also characterizing uncertainty within the expert opinion, whereby an expert is asked to distribute plausibility points among the choices/scenarios for a given statement reflecting his or her opinion of how likely that choice or option correctly reflects the population status. The status review team members were largely in agreement that Sakhalin Bay-Amur River beluga whales were either their own stock (44.4% of the team's SEDM plausibility points) or belonged to a stock that also included whales that summer in Nikolaya Bay (42.5% of the team's SEDM plausibility points). These results were largely based on mtDNA evidence. The team concluded that, together, genetic and movement data indicate that beluga whales in the western Sea of Okhotsk exhibit life history characteristics and levels of differentiation very similar to beluga whales in Alaska that have been designated as stocks. Given the available data and the assumptions outlined in the status review report, NMFS finds no reason to disagree with the conclusions of the status review team regarding stock structure.

As required by the MMPA, NMFS consulted with the Marine Mammal Commission related to the petition to designate the Sakhalin Bay-Amur River group of beluga whales as a depleted population stock. In a letter dated December 7, 2015, the Commission recommended NMFS take a precautionary approach and define the Sakhalin Bay-Amur River stock to include whales in Nikolaya Bay and promptly publish a proposed rule under section 115(a)(3)(D) of the MMPA to designate this stock as depleted.

Multiple lines of evidence indicate that Sakhalin Bay-Amur River beluga whales are their own stock or are a stock that also includes whales that summer in Nikolaya Bay. The status

review team's evaluation of whether the Sakhalin Bay-Amur River stock is discrete or includes whales in Nikolaya Bay was almost evenly divided, based on the lines of evidence reviewed (see above). Given the currently available information, it is equally plausible that the beluga whales in Nikolaya Bay are part of the demographically independent population stock of Sakhalin Bay-Amur River beluga whales than not. Including Nikolaya Bay in the delineation and description of the stock would be a more conservative and precautionary approach, as it would provide any protection afforded under the MMPA to the beluga whales in Sakhalin Bay-Amur River to those beluga whales in Nikolaya Bay. Therefore, based on the best scientific information available as presented in the status review report and this proposed rule, NMFS is identifying the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales as a population stock.

The Depleted Determination

As described above, NMFS finds that the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales is a population stock. Therefore, the second question to be analyzed is whether the stock is depleted.

Status of the Stock

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term "depletion" or "depleted" to include any case in which "the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals…determines that a species or a population stock is below its optimum sustainable population." Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)]…with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent

element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., carrying capacity, or K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, would be considered depleted under the MMPA. Historically, MNPL has been expressed as a range of values (between 50 and 70 percent of K) determined on a theoretical basis by estimating what stock size, in relation to the historical stock size, will produce the maximum net increase in population (42 FR 12010, March 1, 1977). In practice, NMFS has determined that stocks with populations under the mid-point of this range (i.e., 60 percent of K) are depleted (42 FR 64548, December 27, 1977; 45 FR 72178, October 31, 1980; 53 FR 17888, May 18, 1988; 58 FR 58285, November 1, 1993; 65 FR 34590, May 31, 2000; 69 FR 31321, June 3, 2004). For stocks of marine mammals, including beluga whales, K is generally unknown. NMFS, therefore, has used the best estimate available of maximum historical abundance as a proxy for K (64 FR 56298, October 19, 1999; 68 FR 4747, January 30, 2003; 69 FR 31321, June 3, 2004). One technique NMFS has employed to estimate maximum historical abundance is the back-calculation method, which assumes that the historic population was at equilibrium, and that the environment has not changed greatly. The back-calculation approach looks at the current population and then calculates historic carrying capacity based on how much the population has been reduced by anthropogenic actions. For example, the back-calculation approach was applied in the management of the subsistence hunt of the Cook Inlet beluga whale stock (73 FR 60976, October

15, 2008). The status review team concluded, and NMFS agrees, that the back-calculation technique is the most appropriate to use in determining the abundance of the stock relative to OSP. This analysis is summarized below.

Application of back calculation to Sakhalin Bay – Nikolaya Bay – Amur River beluga whales

As stated above, the back-calculation method looks at the current population level and then calculates historical carrying capacity based on how much the population has been reduced by human actions. The best available estimate of abundance beluga whales in the Sakhalin Bay-Amur River area is 3,961 (Reeves *et al*. 2011; see details in the *Population Size* section below). The best available removal data for the Sakhalin Bay-Amur River stock of beluga whales are a time series of removals by hunt and live capture since 1915 (Shpak *et al*. 2011; see details in the *Catch History* section below). It was not feasible to develop an estimate of any additional anthropogenic mortality on this stock. These data, plus an estimate of the stock's productivity, allow back-calculation of the historical stock size (i.e., K) that probably existed prior to the beginning of the catch history.

A population model was used to perform the necessary calculations. In short, for each year, the model calculates the expected number of animals added to the stock (by natural population growth) and it subtracts the number removed, and then the model grows or shrinks the population for the next year according to the difference between the growth and the removals. A computer spreadsheet search routine finds the value of K that is large enough to have accommodated the removals and low enough to have resulted in a population in 2009-2010 that matches the observed abundance in those years.

The population equation used was $N_{t+1} = N_t(1+r(1- (N_t/K)^z)-H_t$ where:

N_t is the population size in year t,

r is the annual rate of increase (productivity) when the population is small,

K is the carrying capacity,

z controls the rate at which productivity declines as N_t approaches K, and

H_t is the removals in year t.

The values of r and z have not been measured for Sakhalin Bay-Amur River beluga whales so values (r=0.04 and z=2.39) were used in the "base case." The value for r= 0.04 is a default value for cetaceans used in PBR calculations (NMFS 2005), and z=2.39 is in the middle of the range considered reasonable for cetaceans. Alternate plausible values for r and z were also evaluated to test the model's sensitivity to changes in these parameters.

Once the back-calculation estimated the value of K that results in the estimated population size in 2009-2010, the population model was projected forward to 2015 to estimate the current population size. The current depletion level was then calculated by dividing the 2015 stock size (estimated by the model) by the estimated carrying capacity (K).

Catch History

Commercial hunts of the Sakhalin Bay-Amur River beluga whale population began in 1915 (Shpak *et al*. 2011) and subsistence hunts have occurred prior to, during, and since this date (see Appendix 1 of the Status Review Report). There are a number of years with known but poorly documented hunts, and years for which more than one estimate is provided. A complete catch history is required to estimate carrying capacity by the back-calculation method, so two options were considered: a "high take" and a "low take" scenario. The high take scenario gave a conservative estimate of depletion, because higher take results in a higher estimated historic K and a more depleted current population relative to K (i.e., lower percentage of K). The low take scenario uses what is thought to be the lowest take possible and provides a minimum estimate for

K, resulting in a less depleted current population relative to K (i.e., higher percentage of K). The low take scenario thus provides an upper bound for the population's status relative to K. Both options used catch data from Shpak *et al*. (2011).

The low-take scenario used the take estimates when they were available, and when more than one estimate of take was available, used the lowest value. Years with no indication that takes occurred were left blank and treated as zero. The low-take option was included to evaluate whether this unlikely scenario would still result in a depleted population.

The high take scenario used the take estimates where they were available, and when more than one estimate of take was available, used the highest value. For years when hunts are thought to have occurred but no record is available, missing values were estimated or interpolated from adjacent years with similar hunts. For years when removals for live display are known to have occurred but no record is available, missing values were also estimated or interpolated from adjacent years with known data. The high take scenario is considered the better of the two because it accounts for times when takes are known to have occurred but are not documented. Additionally, the analysis did not account for beluga whales that are struck and lost because these were unavailable, so the high take option may even be an underestimate.

Population Size

The most recent estimate of abundance, 3,961, is based on aerial surveys in 2009 and 2010 (Reeves et al. 2011). The estimate is from only the Sakhalin Bay–Amur River area because there is no current abundance estimate of the Nikolaya Bay region. However, few animals are thought to be in Nikolaya Bay in the survey period compared to the Sakhalin Bay-Amur River, so the estimate accounts for nearly all of the population (Shpak *et al*. 2011). The estimate

includes a correction factor, which accounts for beluga whales that were submerged during overflight and not available to be counted.

Estimated Carrying Capacity and Depletion Level

The back-calculation investigated the sensitivities of the effects of a range of parameter values and the high and low catch scenarios. The status review team considered the value of K resulting when r = 0.04 (the default value for MMPA PBR calculations for cetaceans) and z = 2.39 and the high take scenario (which assumes some medium level of catch for years with missing data when take is thought to have or known to have occurred) to be representative of the most likely scenario. The estimate of K for this scenario is 17,700, the projected current (2015) abundance estimate is 4,520, and the estimated depletion level is 25.5% of K. The status review team also estimated the value of K resulting when r = 0.04 and z = 2.39 under the low take scenario, which assumes no mortality for all years with missing data and the lowest level of subsistence take. The estimate of K for this scenario is 13,200, the projected current (2015) abundance estimate is 4,626, and the estimated depletion level is 35.0% of K. Both scenarios indicate the population is currently below MNPL and below the lower limit of the OSP range (which is reached at a depletion level of 60% K).

As noted above, in its OSP analysis, the team used a 2009-2010 abundance estimate from only the Sakhalin Bay-Amur River area because there was no current abundance estimate of the Nikolaya Bay region. However, because few animals are thought to be in Nikolaya Bay in the survey period compared to the Sakhalin Bay-Amur River, the estimate accounts for nearly all of the population (Shpak *et al*. 2011). To conduct the OSP analysis for the combined group of Sakhalin Bay-Amur River and Nikolaya Bay whales, the team added 500 to the abundance estimate to account for Nikolaya Bay, and ran the model using the high take scenario where r =

0.04 and z = 2.39. The result was an increase of fewer than 100 animals in the estimate of K (K = 17,726), and an estimated depletion level of 28.9% of K (projected abundance estimate for 2015 = 5,125). Thus, including Nikolaya Bay whales in the analysis would not change the estimate of K significantly; it would result in a slightly higher percentage of K (i.e., less depleted), but the population is still below OSP (i.e., less than 60% of K).

Based on the best scientific information available data, and considering the assumptions outlined in the status review report, NMFS finds no reason to disagree with the conclusions of the status review team regarding the status of the stock. Therefore, based upon the best scientific information available, NMFS finds that the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales is below its optimum sustainable population level, and proposes to designate the stock as a depleted stock under the MMPA. The proposed depletion designation applies to all biological members of the stock, regardless of whether those individuals are in the wild or in captivity.

Consultation with the Marine Mammal Commission

As required by the MMPA, NMFS consulted with the Marine Mammal Commission on our efforts related to the petition to designate the Sakhalin Bay-Amur River group of beluga whales as a depleted population stock. In a letter dated December 7, 2015, the Commission recommended NMFS take a precautionary approach and define the Sakhalin Bay-Amur River stock to include whales in Nikolaya Bay and promptly publish a proposed rule under section 115(a)(3)(D) of the MMPA to designate this stock as depleted.

Public Comments Solicited

NMFS is soliciting comments from the public on this proposed rule for the designation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales as depleted under the MMPA.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Similar to Endangered Species Act listing decisions, which are based solely on the best scientific and commercial information available, depleted designations under the MMPA are determined "solely on the basis of the best scientific information available." 16 U.S.C. 1533(b)(1)(A) and 16 U.S.C. 1383b(a)(2). Because Endangered Species Act listings are thus exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (*see* NOAA Administrative Order 216-6.03(e)(1)), NMFS has determined that MMPA depleted designations are also exempt from the requirements of the National Environmental Policy Act. Thus, an environmental assessment or environmental impact statement is not required and have not been prepared for the proposed depleted designation of this stock under the MMPA.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. If implemented, this proposed rule would designate a group of beluga whales in Russian waters (known as the Sakhalin Bay-Nikolaya Bay-Amur River group) as depleted; however, if implemented, this rule would not, by itself, directly regulate the public, including any small entities. The MMPA authorizes NMFS to take certain actions to protect a stock that is designated as depleted. For

example, a stock that is designated as depleted meets the definition of a strategic stock under the MMPA. Under provisions of the MMPA, a take reduction team must be established and a take reduction plan developed and implemented within certain time frames if a strategic stock of marine mammals interacts with a Category I or II commercial fishery. However, NMFS has not identified any interactions between commercial fisheries and this group of beluga whales that would result in such a requirement. In addition, under the MMPA, if NMFS determines that impacts on areas of ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, it may develop and implement conservation or management measures to alleviate those impacts. However, NMFS has not identified information sufficient to make any such determination for this group of beluga whales. The MMPA also requires NMFS to prepare a conservation plan and restore any stock designated as depleted to its optimum sustainable population, unless NMFS determines that such a plan would not promote the conservation of the stock. NMFS has determined that a conservation plan would not promote the conservation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales and therefore does not plan to implement a conservation plan. In summary, this rule, if implemented, would not directly regulate the public. If any subsequent restrictions placed on the public to protect the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales are included in separate regulations, appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures.

The MMPA prohibits the importation of any marine mammal designated as depleted for purposes of public display (see 16 U.S.C. 1371(a)(3)(B) and 1372(b)). Therefore, this rule, if implemented, would have the indirect effect of prohibiting the future importation of any marine mammal from this stock into the United State for public display. There are 104 facilities in the

United States that house marine mammals for the purposes of public display. Of these, only six facilities house beluga whales. There are currently twenty-seven beluga whales at these facilities. None of these beluga whales were taken in the wild from the Sakhalin Bay-Nikolaya Bay-Amur River stock; three whales are progeny of animals taken in the wild from this stock. NMFS receives very few requests to import beluga whales into the United States for purposes of public display, and has no pending requests to import beluga whales for public display. NMFS notes the small number of U.S. entities that house beluga whales and the small number of beluga whales from this stock that are currently permitted for public display in the United States. Because this rule, if implemented, would not prevent an entity from requesting to import a beluga whale from a non-depleted stock for purposes of public display, NMFS finds that this rule, if implemented, would not result in a significant economic impact on a substantial number of small entities.

Accordingly, this proposed rule, if implemented, would not result in a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this proposed rule has been prepared. NMFS invites comment from members of the public who believe this rule, if implemented, will result in a significant economic impact on a substantial number of small entities, or who have additional information relevant to NMFS' analysis.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: March 30, 2016.

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

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

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

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

2. In § 216.15, paragraph (j) is added to read as follows:

§ 216.15 Depleted species.

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(j) Sakhalin Bay-Nikolaya Bay-Amur River beluga whales (*Delphinapterus leucas*). The stock includes all beluga whales primarily occurring in, but not limited to, waters of Sakhalin Bay, Nikolaya Bay, and Amur River in the Sea of Okhotsk.

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