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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 140429386-4386-01]

RIN 0648-XD275

Petition to Designate Sakhalin Bay-Amur River Beluga Whales Stock as Depleted Under the Marine Mammal Protection Act; Finding

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

ACTION: Notice of 60-day petition finding; call for information.

SUMMARY: NMFS received a petition to “designate the Sakhalin Bay-Amur River stock of beluga whales (*Delphinapterus leucas*) as a depleted stock under the Marine Mammal Protection Act (MMPA).” NMFS finds that the petition presents substantial information indicating that the petitioned action may be warranted and will initiate a status review promptly. NMFS solicits information from the public that may contribute to the status review.

DATES: Information and comments must be received by close of business on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: The petition and a list of references contained in this notice are available in electronic form via the Internet at <http://www.nmfs.noaa.gov/pr/>. A copy of the petition and/or its supporting documents may be requested from Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

You may submit comments, identified by [NOAA-NMFS-2014-0056], by any 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, Attn: Beluga petition.

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.

FOR FURTHER INFORMATION CONTACT: Dr. Shannon Bettridge, Office of Protected Resources, Silver Spring, MD; [shannon.bettridge@noaa.gov](mailto:shannon.bettridge@noaa.gov); (301) 427-8402.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 23, 2014, NMFS received a petition from the Animal Welfare Institute, Whale and Dolphin Conservation, Cetacean Society International and Earth Island Institute to “designate the Sakhalin Bay-Amur River stock of beluga whales as depleted under the MMPA.” The petition asserts this group of whales constitutes a stock and that this stock is below its

optimum sustainable population (OSP) and qualifies for a depleted designation. It also argues that the stock continues to decline and faces a number of threats.

Section 3(1)(A) of the Marine Mammal Protection Act (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., 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.

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 original stock size, will produce the maximum net increase in population (42 FR 12010, March 1, 1977). 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). For stocks of marine mammals, K is often unknown. Therefore, NMFS has used the best available estimate of historical abundance as a proxy for K (68 FR 3483, January 24, 2014).

The MMPA 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. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the Federal Register that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

#### Petition

The Animal Welfare Institute's petition alleges that the causes of the stock's decline include: large-scale commercial hunting from 1915-1963; unsustainable removal quotas; hunting permits; incidental mortality from fishing operations; accidental drowning during live-capture operations; vessel strikes; and other anthropogenic threats. Copies of the petition are available from NMFS (see ADDRESSES).

Pursuant to Section 115(a)(3)(A) of the MMPA, NMFS published a notice in the Federal Register that the petition had been received and was available for public review (79 FR 28879, May 20, 2014). In response to its announcement that the petition had been received, NMFS received 17 comments, all expressing support for the petitioned action. Several non-governmental organizations submitted letters of support, providing information similar or identical to the information provided in the petition. These comments and supporting information can be found at [www.regulations.gov](http://www.regulations.gov) (Docket ID: NOAA-NMFS-2014-0056).

Section 115(a)(3)(B) of the MMPA requires NMFS to publish a notice in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted. After reviewing information presented in the petition, readily available

in our files, and submitted through the public comment process, NMFS finds there is substantial information indicating that the petitioned action may be warranted.

As required by the MMPA, NMFS will promptly begin a status review of the Sakhalin Bay-Amur River beluga whales. NMFS must publish a proposed rule as to the status of the stock no later than 210 days after receipt of the petition.

#### Analysis of the Petition on Sakhalin Bay-Amur River Beluga Whales

The Sakhalin Bay-Amur River beluga whales utilize areas in the western Sea of Okhotsk that include Russian territorial waters and the Russian Exclusive Economic Zone. The petition presents information on NMFS' authority to designate stocks outside of U.S. jurisdictional waters as depleted. The petition also asserts that the Sakhalin Bay-Amur River population of beluga whales comprises a stock. In addition, the petition presents information suggesting that the Sakhalin Bay-Amur River stock of beluga whales is depleted.

NMFS evaluated the petitioner's request based upon the information in the petition, including its references, information readily available in our files, and any additional information submitted through public comments (as solicited by the Notice of Petition Availability).

#### Sakhalin Bay-Amur River Beluga Whales as a Separate Stock

The petitioners suggest that genetic and satellite tag tracking data indicate the existence of at least two beluga whale populations in the Sea of Okhotsk: one in the northeastern region and the other in the western region (Shpak and Glazov, 2013). The petition presents information suggesting that the beluga whales in the western region of the Sea of Okhotsk comprise, and should be managed as, more than one stock. The petitioners state that for the beluga whales in the western region of the Sea of Okhotsk, evidence of distinct matrilineal lines, separate summer birthing and feeding distributions, and high site fidelity, all indicate that the region supports more

than one stock of beluga whales, including a distinct Sakhalin Bay-Amur River stock. The petitioners point out that the International Union for the Conservation of Nature has recognized the existence of a distinct Sakhalin Bay-Amur River stock (Reeves et al., 2011). Additionally, the petition provides information demonstrating that the International Whaling Commission's Scientific Committee (IWC SC) recognized the Sakhalin Bay-Amur River beluga whales as a separate stock in 1999 (IWC Report of the Sub-Committee on Small Cetaceans, 2000). A study included with the petition and in our files by Berzin et al. (1990) also concludes the Sakhalin Bay-Amur River beluga whales constitute a stock.

#### Sakhalin Bay-Amur River Beluga Whale Stock as Depleted

The petition presents information from 2009 and 2010 stock surveys indicating that the best current abundance estimate of the Sakhalin Bay-Amur River beluga whales is 3,961 whales (Reeves et al., 2011). The petitioners assert that this estimate is well below 60 percent of the lowest available estimate of historical abundance (7,000-10,000; Berzin and Vladimirov, 1989), and that the Sakhalin Bay-Amur River population of beluga whales therefore qualifies as depleted. The petition also notes that, after reviewing the available information on the status of beluga whales globally, the IWC SC described the Sakhalin Bay Amur-River stock of beluga whales as having a "likely depleted status relative to historical abundance" (IWC Report of the Sub-Committee on Small Cetaceans, 2000).

NMFS has analyzed the petition and its references, and information readily available in our files. Based on the surveys conducted in September 2009 and August 2010, NMFS believes that the best available science indicates that the minimum current population estimate of beluga whales in the Sakhalin-Amur area is 2,891 whales, and the best population estimate (including a correction factor for whales not available to be viewed during the survey) is 3,961 whales

(Reeves et al., 2011). NMFS recognizes that there is very little documented information about historical abundance levels of beluga whales in the Sakhalin-Amur area. The best available information on historical abundance indicates that there were 7,000 to 10,000 beluga whales in the Sakhalin-Amur area in 1989 (Berzin and Vladimirov, 1989). Because the correction factor used in the 1989 survey was higher than the correction factor used in the 2009-2010 surveys, direct comparison of these surveys is not appropriate. However, NMFS believes that these population estimates provide substantial information indicating that the population of the beluga whales in the Sakhalin Bay-Amur River area may have declined from historical levels and a depleted designation therefore may be warranted. NMFS will further examine the extent of population decline during the status review.

In addition to abundance estimates, the petition contains information on factors contributing to the decline of the Sakhalin Bay Amur-River population of beluga whales, including: large-scale commercial hunting from 1915-1963; unsustainable removal quotas; hunting permits; incidental mortality from fishing operations; accidental drowning during live-capture operations; vessel strikes; and other anthropogenic threats. While the threat of large-scale commercial hunting to the population has diminished, NMFS acknowledges that the petition provides information demonstrating that other threats to the population persist. Information readily available in our files confirms the petition's assertion that whales are removed from this population for public display; the effect of this activity on the population's abundance will be evaluated during the status review. In addition, although NMFS recognizes that there is little information available on the number of whales taken from this population incidentally, our files indicate that other sources of human-caused serious injury or mortality cannot be fully discounted or assumed to be zero (NMFS Final Environmental Assessment

2013). NMFS will further examine threats to the population's status during the status review.

#### Petition Finding

Based on our analysis of the information provided in the petition and its references, the public comments received, and information readily available in our files, NMFS finds that the petition presents substantial information indicating that the petitioned action may be warranted and will initiate a status review.

#### Information Solicited

To ensure that the status review is based on the best scientific information available, we are soliciting scientific information relevant to the status of the Sakhalin Bay-Amur River beluga whales from the public, including individuals and organizations concerned with the conservation of marine mammals, persons in industry which may be affected by the determination, and academic institutions. Specifically, we are soliciting information related to (1) the identification of Sakhalin Bay-Amur River beluga whales as a stock, (2) the historical or current abundance of this group, and (3) factors that may be affecting the group.

#### References Cited

A complete list of references is available upon request to the Office of Protected Resources (see ADDRESSES).

Dated: July 18, 2014.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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