

**Billing Code: 4310-55-P**

**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:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are promulgating a special rule under Section 4(d) of the Endangered Species Act of 1973, as amended (Act), to exempt the import and export of and foreign and interstate commerce in certain products of beluga sturgeon (Huso huso) from threatened species permits normally required under 50 CFR 17.32. The beluga sturgeon's historical range includes 18 countries within the watersheds of the Caspian Sea, Black Sea, Sea of Azov, and the Adriatic Sea. The species is currently known to occur only in the Caspian and Black Seas and certain rivers connected to these basins. Of the 14 countries where the species still occurs, only 11 have significant beluga sturgeon habitat in the Caspian Sea, Black Sea or Danube River and consequently these countries take responsibility for cooperative management of the species (Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan,

Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine; hereafter referred to as the “littoral states”). Overharvest, 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 rule listing the beluga sturgeon as threatened, we delayed the effective date of the listing for 6 months to allow time for us to promulgate a special rule under Section 4(d) of the Act. The listing became effective on October 21, 2004, yet this 4(d) rule was not yet promulgated. Therefore, we promulgated a special interim rule on October 21, 2004, to continue to allow CITES-consistent trade in all beluga sturgeon and products until this 4(d) rule was finalized and effective. When this 4(d) rule becomes effective, it will repeal the special interim rule and the Act will prohibit all trade (import, export, re-export, and foreign and interstate commerce) in beluga sturgeon and beluga sturgeon products, except as provided in the special rule or with permits under the provisions of Section 10 of the Act. This special rule initially allows littoral states 6 months from the rule’s effective date to submit a suite of reports and management measures to us for review. During this initial 6-month period, imports, re-exports, and exports of, and interstate and foreign commerce in, certain beluga sturgeon caviar and meat will continue without a requirement for threatened species permits. This is intended to provide the littoral states time to submit the required documents. Similarly, we will consider making programmatic permit exemptions for commercial aquaculture facilities outside the littoral states if they meet certain criteria for: (1) enhancing the survival of populations of wild beluga sturgeon; and (2) not threatening native aquatic fauna in the country in which the facility is located. CITES documentation will still be required for any international movement of beluga sturgeon and beluga sturgeon products, except as they may qualify for an exemption as personal or household effects.

After an initial 6 months of gathering information from the littoral states, these exemptions will occur only if the information provided fulfills certain requirements, as described below. In addition, all relevant provisions of CITES will continue to govern international trade in

all beluga sturgeon products. We are allowing this conditional trade to promote the effective conservation of Huso huso in the littoral states, through demonstrable law enforcement and cooperative management activities.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The reasons for this accelerated implementation, which replaces the standard 30-day time frame, are described below in the “Background” section.

**ADDRESSES:** The complete file for this rule is available for inspection by appointment during normal business hours in the office of the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to: Division of Management Authority, Branch of Permits-International, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Scientific Authority, at the above address (phone: 703-358-1708). For permitting information, contact: Tim Van Norman, Chief, Branch of Permits-International, at the address above(phone: 703-358-2104, or toll free, 1-800-358-2104).

**SUPPLEMENTARY INFORMATION:**

**Background**

The beluga sturgeon is a large fish from which highly valued beluga caviar is obtained. The species’ range was reduced during the 20<sup>th</sup> Century and is now limited to the Caspian and

Black Sea basins (including the Danube River upstream into Hungary). The species' historic range comprises Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, the Islamic Republic of Iran, Italy, Kazakhstan, Moldova, Romania, the Russian Federation, Slovenia, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine. Only the 11 littoral states (Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine) apparently have significant remaining habitat for beluga sturgeon, and these countries take responsibility for cooperative management and conservation of beluga sturgeon in the Caspian Sea and Black Sea. Hereafter the term "Black Sea" describes both the Black Sea and Sea of Azov basins, which are connected via the Kerch Strait, although the species is believed to be extremely rare or extinct in the Sea of Azov. Hereafter, the term "basin" refers to an inland sea (e.g., Black Sea or Caspian Sea) and its bordering coastal lands.

The species is threatened by habitat modification and degradation, overexploitation for trade, and limited natural reproduction. On April 21, 2004, the Service published a final rule (69 FR 21425) to list the 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 (import, export, re-export, and foreign and interstate commerce) in beluga sturgeon, except as provided in this special rule. We delayed the effective date of the listing until October 21, 2004, so that we could gather public comments on this special rule, allow adequate time to address those comments, and promulgate a final special rule.

On June 29, 2004, we published a proposed rule under Section 4(d) of the Act (69 FR 38863). This proposal, also announced on our website, initiated a 30-day comment period that closed July 29, 2004. This abbreviated comment period was chosen because of the proximity of the October 21, 2004, effective listing date for the species. We also distributed the preamble (including a full description of the proposed rule and its effects) in both English and Russian to 52 entities in 9 countries at the beginning of the comment period. These entities included national fisheries agencies, research institutes, caviar traders, and non-governmental organizations in the

littoral states and elsewhere. In addition, we sent the English and Russian translations of the preamble to 10 of the littoral states via U.S. embassies and diplomatic visits. Also, we invited embassy personnel from 9 littoral states that have diplomatic relations with the United States to a briefing on July 22, 2004, at the Service's offices in Arlington, Virginia. Officers from the embassies of Romania, Russia, and Ukraine attended that briefing and listened to Service personnel introduce the proposed rule, but did not offer substantive comments at that time. Written comments were eventually received from government officials in six littoral states, as summarized below. No range countries outside the littoral states commented on the proposed rule. Service personnel also met and discussed the proposed rule with sturgeon aquaculturists and representatives of Caviar Emptor, a consortium of non-governmental organizations that originally petitioned the Service to list the beluga sturgeon under the Act.

As mentioned above, the listing of beluga sturgeon as threatened under the Act became effective on October 21, 2004. This special rule to govern and condition the U.S. trade in threatened beluga sturgeon was not completed on that date, and thus we promulgated a special interim rule on October 21, 2004, to allow the continuation of CITES-consistent trade in beluga sturgeon. This special interim rule was published in the Federal Register on October 26, 2004 (69 FR 62415), and was intended to remain in effect until the present special rule could be finalized and promulgated. Therefore, the special interim rule is repealed with the promulgation of this special rule.

The proposed rule described circumstances and limitations that would govern U.S. trade in beluga sturgeon and related products. It proposed an exemption for U.S. traders wishing to import beluga sturgeon caviar and meat originating from the littoral states above, on the condition that these countries submit copies of cooperative fishery management plans and meet certain reporting requirements (these requirements are detailed in "Description of the special rule" below). Under the proposed exemption, individuals or businesses would not have to obtain a threatened species permit from the Service, as required under Section 10 of the Act, prior to trading in (importing, exporting, re-exporting, or shipping in interstate or foreign commerce)

beluga sturgeon caviar or meat that came from the Caspian or Black Sea basins, regardless of whether these products were of wild or hatchery origin. Under the proposed rule, these traders could not use the exemption to trade in live beluga sturgeon. Furthermore, the proposed exemption did not extend to aquacultured beluga sturgeon products from outside the littoral states (including from U.S. facilities), which still would have required threatened species permits.

Beluga sturgeon populations have 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 wild-caught 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 the other CITES Parties to commit to cooperative quota setting, better trade controls, improved enforcement of harvest and trade restrictions, 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 littoral states to implement these measures is to allow continued open access to U.S. commercial markets (currently responsible for 80 percent of the legal international beluga caviar trade) contingent upon specific improvements in regional and national management programs for the species. Therefore, we are promulgating this special rule, as authorized under Section 4(d) of the Act, to permit continued commercial trade of certain beluga sturgeon products subject to specific provisions. We believe this special rule is necessary and advisable for the species' conservation because it: (1) offers the greatest incentive for littoral states to remain engaged with the United States in Huso huso recovery and conservation; (2) exceeds the requirements of CITES for data reporting, management planning, and research transparency; (3) will continue to impose

requirements on the littoral states beyond those currently stipulated by CITES; and (4) will encourage the dissemination of knowledge and expertise from foreign captive-breeding operations to the littoral states. In accordance with 5 U.S.C. 553(d)(3), we find good cause to make this rule effective less than 30 days following the date of publication in the Federal Register. We are making this rule effective upon publication. We believe that an immediate effective date is necessary to expedite the engagement of the littoral states, initiate the deadlines imposed for reporting and management actions, and prevent further delays in conserving beluga sturgeon in the wild.

### **Summary of comments and recommendations**

We received 33 written comments within the comment period on the proposed rule. Of these, three commenters requested an extension of the comment period. These requests were denied due to the short time frame before the species became effectively listed as threatened on October 21, 2004. Of the 33 comments received, 4 were generally in support of the proposed special rule, 25 expressed concerns regarding all or certain parts of the proposed rule, and 4 were generally neutral regarding the proposed rule.

A large number of the responses received referred specifically, generally, or additionally to information contained in the April 21, 2004, final rule (69 FR 21425) listing beluga sturgeon as threatened under the Endangered Species Act throughout its range. Comments on the proposed special rule are summarized below. Comments of a similar nature are grouped under a number of general issues.

### **Issues and Discussion**

Issue 1—The rule is ambiguous about how it will treat hybrids of beluga sturgeon, such as bester (a cross between Huso huso and Acipenser ruthenus).

Response–The final rule that listed Huso huso as threatened (69 FR 21425) did not address hybrids, nor did it describe why protecting beluga sturgeon hybrids would contribute to the conservation of the species. Therefore, hybrids of Huso huso are not given any protection under the Act, and the special rule (which governs activities in the listed species only) does not affect activities involving bester or other hybrids of beluga sturgeon. This is articulated in the Required Determinations section on the Regulatory Flexibility Act, as well as the definitions of terms in paragraph (y) of the rule (which only refer to Huso huso, and not its hybrids). However, international trade and interstate commerce in pure beluga (*i.e.*, specimens with only the Huso huso genotype) used in the pursuit of creating hybrids would be covered by the provisions of the Act and this special rule.

Issue 2–The proposed rule poses an unfair trade barrier to aquaculture facilities raising and selling beluga sturgeon outside of the littoral states.

Response–After reviewing the information available to us while developing the rule, we had determined that limiting the permit exemption to beluga sturgeon products from the littoral states would be the best way to engage those nations in cooperative conservation for the species. We believed that such a focused approach would maximize the littoral states’ willingness to provide all of the reports and management plans we are requiring for the exemption. However, for reasons outlined under the next issue, we have modified the rule such that certain aquaculture facilities outside the littoral states may apply for programmatic exemptions from threatened species permits governing trade in their products.

Issue 3–The special rule should be expanded to include a threatened species permit exemption for aquaculture facilities outside the littoral states.

Response–While developing the proposed rule, we had concerns about the potential for U.S. or other aquaculture facilities outside the littoral states to expand rapidly, shift markets away from wild fisheries that financially support recovery programs, and substantially diminish the importance of beluga sturgeon in littoral state conservation priorities. In addition, we determined that such a permit exemption should not apply to live beluga sturgeon, including

fertilized eggs, larvae, fingerlings, and juveniles. Continued prohibitions on imports of live beluga sturgeon would help prevent expanded and continual introductions of this exotic species into and within the United States, where they may compete with or transmit diseases to other threatened or endangered fishes, including other Acipenseriform species. This control over exotic species introductions is consistent with Federal recovery plans for listed species in the United States. However, several comments on the proposed rule have provided new insight to the nature of the trade in aquacultured beluga sturgeon and the potential benefits to wild populations. For instance, several comments from government officials and non-governmental entities indicated that the sale of aquacultured beluga sturgeon generates revenue for restocking initiatives, research, and law enforcement in the Caspian and Black Sea basins.

Based on the comments received, it appears that littoral state sturgeon recovery efforts benefit from technology transfer and scientific expertise provided by the aquaculture community abroad. We now have evidence that aquaculturists from the United States and other countries conduct technical exchanges on tagging, physiology, release protocols, and other aspects of captive breeding that directly benefit hatchery programs in the littoral states. It is also apparent in the comments received that many if not all aquaculture facilities outside the littoral states utilize captive-bred broodstock (*i.e.*, F1 generation and beyond), rather than relying on wild harvest to supply breeding fish for their operations. Given this new information, we have modified the special rule to allow certain exemptions from threatened species permits for aquaculture facilities outside the littoral states. Such exemptions would permit the import, re-export, and export of, and interstate and foreign commerce in, aquacultured beluga sturgeon caviar and meat from certain aquaculture facilities outside the littoral states. The Service would issue these exemptions after a facility had satisfactorily demonstrated to us that: (1) the relevant regulatory authority has certified that the facility implements sufficient controls to prevent the escape of live animals and disease pathogens; (2) the facility does not rely on wild-origin broodstock for beluga sturgeon production; and (3) the facility has engaged with one or more littoral states in formal agreements to study, protect, or recover wild populations of beluga

sturgeon. This programmatic approach to permit exemptions is outlined below. Any such exemption, if granted, will not apply to international trade or interstate commerce in live beluga sturgeon (including viable eggs, larvae, fingerlings, and juveniles) given our ongoing concerns and statutory obligations outlined above. Furthermore, the caviar from such facilities must be labeled as per CITES requirements to allow us to distinguish such products in trade.

Issue 4—In §17.44(y)(3)(i)(B), it appears that the Service is requiring CITES documents to accompany beluga sturgeon specimens throughout interstate commerce in the United States. This would be extending CITES beyond its usual application, and should be clarified.

Response—We do not intend to require CITES documentation for beluga sturgeon products to move in interstate commerce within the United States. We have clarified this language in the appropriate section of the special rule.

Issue 5—Beluga sturgeon are close to extinction, and therefore the special rule should not allow any commercial trade in the species. The elements of the special rule do not meet the requirements of Section 4(d) of the Act, which mandates that such a rule provide for the conservation of such species.

Response—In our final rule of April 21, 2004 (69 FR 21425), we stated the reasons why we did not conclude that beluga sturgeon are endangered with extinction. As stated earlier, Section 4(d) does not prescribe specific actions that must be accomplished with a special rule. Rather, this section of the Act says the Secretary shall issue regulations as deemed “necessary and advisable” for the conservation of the species. In our proposed rule, we articulated why we concluded that permit exemptions for littoral state beluga sturgeon products were advisable. Specifically, this special rule should enhance conservation of wild beluga sturgeon by requiring properly designed and implemented fishery management programs in the littoral states. We believe that the greatest benefit for the conservation of beluga sturgeon will be attained through continued involvement with littoral states that have access to our commercial markets for sturgeon products, especially caviar, 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, which are described below in the section “Effects of the Special Rule.”

Issue 6–The proposed rule appears unnecessary and duplicative with the current CITES processes to address sturgeon trade, and may well serve to undermine them. Perceived inadequacies in the CITES resolution governing sturgeon trade should be fixed before a country moves to unilateral measures affecting other CITES Parties.

Response–The special rule acknowledges that the CITES Parties have instituted a suite of sound recommendations for the Caspian Sea littoral states, including the “Paris Agreement” in 2001 and subsequent policies, which stipulated numerous conservation actions on behalf of these countries. We also note that there has been measurable progress on these recommendations, and that Parties have codified sturgeon conservation in CITES by adopting Resolution Conf. 12.7, “Conservation of and trade in sturgeons and paddlefish.” However, since 2001 the CITES approach to sturgeon conservation in Eurasia has largely involved littoral states reporting directly to the CITES Secretariat for review of their actions under the Paris Agreement. The Secretariat has since then announced its findings, and the reasons behind them, to the other CITES Parties (including the United States). The Secretariat has used these findings to endorse national export quotas for the littoral states. Prior to the listing of beluga sturgeon under the Act, the United States had little authority or reason to scrutinize this arrangement between the littoral states and the Secretariat. However, after we made the determination that the beluga sturgeon is threatened, we had a statutory obligation to ensure the species’ conservation and recovery. We determined that simple reliance on third-party reports (e.g., Secretariat newsletters, Notifications to the Parties, etc.) about activities in the littoral states was insufficient to meet our obligations under the Act, and could not provide the level of detail we require to gauge recovery of the species in the wild, and thus compromised our ability to delist the species in the future. This approach is in accordance with Article XIV of CITES, which states that the treaty’s provisions “shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions for

trade, taking, possession or transport of specimens” covered by the treaty.

Issue 7–The proposed annual report schedules are inappropriate. December 1 should be the deadline for submitting annual reports under the special rule, because the beluga sturgeon fishery is still going on in November. It’s unclear why reports should be submitted annually, when the Service will only review them biennially. If annual reports remain part of the special rule, then the Service should take the time to review those submissions annually.

Response–These recommendations are sensible, and we have changed the reporting schedules to reflect reviews of biennial reports due on December 1.

Issue 8–There are no standards or requirements for what must be contained in the management plan for it to be deemed sufficient by the Service. Moreover, international efforts to get the littoral states to come up with such a plan have so far proved fruitless. The rule appears to rely on subjective determinations by the Service, with no recourse for verifying the reports from the littoral states.

Response–In paragraph (y)(4)(i) of the special rule, we specify the minimum requirements for littoral state management plans. These include statements of the recovery goals and objectives, definitions of overfishing, statements of standard size limits or other regulations, quota-setting models and their underlying data, and schedules for adoption. In its official comments on the proposed rule, Iran submitted a copy of the basin-wide management plan for Caspian Sea living resources (including sturgeon). This plan had the signatures of representatives from all but one of the littoral states in the basin (Turkmenistan), and is apparently agreed to for implementation. The Service has working relationships with governmental and non-governmental institutions in Eurasia, and we intend to use these to gather information and clarify the contents of reports submitted under the special rule.

Issue 9–The special rule does not indicate a time frame under which decisions are to be made about the reports submitted. For this regulatory regime to work effectively, there must be a high level of confidence that decisions will be made, with justification given, in a timely and consistent manner.

Response—We acknowledge that the special rule does not specify a time frame for the Service to finish its review of management plans and the required national reports, stating that we will conduct such reviews “immediately” after receiving the national reports. We allowed this latitude because we were uncertain of how long the national reports would be, whether the deadline would coincide with unrelated Service deadlines in a particular year, whether translation into English would be required, or how long it would take to establish contact with appropriate officials in the littoral states. We chose to establish unchanging deadlines so that the public could consistently know when we were to begin our reviews, and question us about progress accordingly. However, given the timelines we impose on littoral states and the desire to clarify the Service’s review process, we have imposed a 90-day time limit on the Service’s review of management plans and national reports.

Issue 10—As a CITES Party, the United States should first attempt to strengthen CITES processes for conservation of beluga sturgeon before taking unilateral measures that affect other CITES Parties.

Response—The decision to list the beluga sturgeon under the Act was prompted by a petition requesting the Service to list the species as endangered. We are obligated to respond to petitions to list species under the Act, and to list the species if listing is warranted. Because we determined that the species qualifies as threatened under the Act, we were obligated to list the species. However, in making the determination to list the species as threatened, we did consider the actions taken by the CITES Parties, including Resolutions and Decisions that are still in effect. We have also crafted a special rule that closely parallels the management and enforcement actions mandated by the CITES Parties, and we have linked the exemptions of the special rule to CITES permitting requirements. We will also continue to actively work for continued improvements in the conservation of sturgeons through CITES.

Issue 11—Sturgeon restoration in the Caspian and Azov–Black Sea regions will be possible only by introducing a complete moratorium on sturgeon harvest, directing littoral countries’ efforts toward restoration, and strictly regulating the internal markets of those countries.

Response—Through the special rule, we intend to leverage the monetary value of beluga caviar to accomplish these very goals, by using continued access into the U.S. market as an incentive to make improvements in management and enforcement for beluga sturgeon. Based on the reporting requirements, and by using corroborating information, we intend to encourage littoral countries to limit harvest to sustainable levels, implement recovery measures for wild populations, and improve enforcement and control overharvest and trade, both domestically and internationally. However, the United States cannot unilaterally impose a ban on harvest in the littoral countries, and such a ban is unlikely as long as the possibility exists to either export to other countries or to use beluga sturgeon caviar and meat within the littoral states.

Issue 12—Implementation of the special rule, as proposed, will necessitate verification of information supplied by the littoral states, including a determination of whether they have taken the necessary actions required by the special rule. It is difficult to imagine that the Service has the capacity to undertake such a responsibility.

Response—The Service implements a number of other similar special rules, which depend on information from range countries as well as other sources, including the monitoring of trade at our ports, CITES trade data, trade reports from TRAFFIC and other non-governmental organizations, and consultation with relevant experts. Indeed, the decision to list the species under the Act required the same type of information-gathering and analysis—including obtaining information from littoral states—as will be required for determining whether to allow trade under the special rule.

### **Summary of differences between proposed and final special rules for beluga sturgeon**

Based on the comments received and our professional judgment, we modified only a few components of the proposed special rule when finalizing it for promulgation. These changes are noted above in the “Issues and Discussion” section, and summarized here for ease of interpretation.

The most notable change to the proposed rule was in the treatment of aquaculture facilities outside the littoral states. In the proposed rule, trade in beluga sturgeon caviar and meat originating from these facilities would not have been exempt from threatened species permits if such trade was conducted by persons under U.S. jurisdiction (except for personal and household effects). In the final rule, we have made allowances for aquaculture facilities outside the littoral states (including those in the United States) to apply for programmatic exemptions from threatened species permits. Such exemptions would only apply to beluga sturgeon caviar and meat from these facilities, and caviar must be labeled to note its origin as per the requirements of CITES (even in U.S. interstate trade). Under this final rule, such programmatic exemptions will only be granted if: (1) the relevant regulatory agency has certified that the facility is using best management practices to prevent escapes and disease introduction into surrounding habitats, and the Service has approved the specific practices; (2) the facility has entered into a formal agreement with one or more littoral states to study, conserve, or otherwise enhance the survival of wild populations of beluga sturgeon; and (3) the facility is utilizing only captive-bred beluga sturgeon (*i.e.*, captive F1 generation and beyond) in its production systems. See paragraph (y)(5) below in the Regulation Promulgation section for more detail on these programmatic exemptions.

Second, we modified the proposed rule language to clarify that we will not require CITES permits to accompany beluga sturgeon caviar and meat in U.S. interstate commerce. This language change was noted and corrected in the final language for §17.44(y)(3)(i)(B).

Third, we modified certain reporting deadlines and schedules in the proposed rule. The proposed rule would have required littoral states wishing to have their beluga sturgeon caviar and meat exempted from threatened species permits to submit annual reports on November 1 of each year. These reports would have been reviewed by the Service biennially to determine if a trade suspension should be enacted for beluga products from a particular country. In the final rule, we modified this schedule so that the reporting deadline is December 1 and national reports must be submitted biennially (instead of annually) to coincide with our review schedule. We also inserted

a 90-day deadline for the Service to initially review management plans, national regulations, and biennial reports. There was no such time limit on the Service in the proposed rule.

### **Description of the Special Rule**

The purpose of this special rule is to enhance the conservation of wild beluga sturgeon by requiring properly designed and implemented fishery management programs in the littoral states. We believe that the greatest benefit for the conservation of beluga sturgeon will be attained through continued involvement with littoral states 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 “Effects of the Special Rule.” We intend to use this special rule to build upon the progress already made by the littoral states 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 littoral states 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 littoral states in the respective regions. Despite the progress made by the littoral states, 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: (1) the absence of a formal, written management plan for Black Sea beluga sturgeon as called for in CITES Resolution Conf. 12.7 (rev. COP13); (2) a lack of transparency in data analysis and quota setting; (3) continued high levels of poaching and illegal trade; and (4) a data-poor evaluation of hatchery protocols and restocking programs.

Therefore, for those littoral states 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 littoral states;
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 biennial reports documenting management measures in place and current status of Huso huso in the given country;
4. Labeling of imported, exported, and domestically traded beluga caviar products as per CITES Resolutions and Decisions;
5. Biennial review by the Service of littoral state management and restocking programs for beluga sturgeon;
6. Compliance with CITES provisions and recommendations (including permits) for beluga sturgeon imports and exports involving 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 originating from the littoral states would be exempt from threatened species permits under this special rule.

This special rule would not exempt from threatened species permit requirements international trade (import, export, re-export, or foreign commerce) or interstate commerce in live specimens of beluga sturgeon, including adults, gametes (eggs or sperm), viable eggs, fingerlings, and juveniles. We have concluded that aquaculture or grow-out of foreign sturgeon species in the United States can pose 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 exotic

sturgeons and disease transmission from foreign species. These concerns are articulated in both State and Federal sturgeon recovery plans (ASMFC 1998; NMFS 1998; USFWS and GSMFC 1995), as well as Federal policy on invasive species and fish health. Therefore, we intend to use this special rule to limit the dispersal of live beluga sturgeon throughout the United States yet utilize existing captive populations for maximum conservation benefit in the littoral states. Except in certain circumstances, this special rule does not exempt beluga sturgeon or any beluga sturgeon products derived from aquaculture or grow-out operations outside the littoral states from the provisions of the Act, which could (1) undermine the incentives for conserving wild Huso huso in the littoral states; (2) utilize Huso huso broodstock from the littoral states without any direct benefit to wild populations; and (3) result in the release of beluga sturgeon or disease pathogens into habitats outside their native range. Therefore, import, export, re-export, or interstate or foreign commerce involving any beluga sturgeon products that originate from aquaculture operations outside the littoral states will normally 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)). However, the Service will consider programmatic exemptions to this prohibition for beluga caviar and meat from aquaculture facilities that provide information to our offices to demonstrate that (1) the relevant regulatory agency has certified that the facility is using best management practices to prevent escapes and disease introduction into surrounding habitats, and the Service has approved the specific practices; (2) the facility has entered into a formal agreement with one or more littoral states to study, conserve, or otherwise enhance the survival of wild populations of beluga sturgeon; and (3) the facility is utilizing only captive-bred beluga sturgeon (i.e., captive F1 generation and beyond) in its production systems. The facilities will be required to file biennial reports with the Service in order for us to document the results and efficacy of any arrangements with littoral states. See paragraph (y)(5) below in the Regulation Promulgation section for more detail on these programmatic exemptions.

As per CITES Resolution Conf. 12.9, and existing U.S. policy, this special rule would allow for the legal export, re-export, and import of personal effects of caviar. Under Resolution

Conf. 12.9, individuals may export, re-export, or import up to 250 grams of any Appendix-II *Acipenseriformes* caviar without a CITES permit. This allowance would apply in the United States, and export, re-export, or import of personal effects of beluga caviar (as defined by the CITES Parties) would not require a threatened species permit under the Act. However, any trade suspension administratively implemented under this special rule would also prohibit the importation of beluga caviar personal effects.

Under the rule we will require the submission of certain documentation from the littoral states, specifically:

1. Within 6 months of the effective date of this special rule, if adopted, each littoral state 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 to the Service's Division of Scientific Authority a copy of a cooperative management plan for their respective basin. This plan must be agreed to by each littoral state in the relevant basin (not just exporting nations). These comprise Bulgaria, Georgia, Romania, Serbia and Montenegro, Turkey, and Ukraine in the Black Sea and Danube River, and Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, 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 fishery management measures and habitat improvement strategies to be utilized by the nations involved (e.g., size limits, target harvest rates, quotas, seasons, fishing gear, effort caps, fish passage improvement, water quality controls);
  - 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 review these basin-wide management plans within 90 days of receipt for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit basin-wide management plans by the specified deadlines, or if we are unable to confirm that all littoral states are signatories to those plans, we will immediately suspend trade with all littoral 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, all littoral states wishing to export beluga caviar and meat to the United States exempt from threatened species permits 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 review these laws and regulations within 90 days for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate littoral state(s) to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit copies of national laws and regulations by the specified deadlines, we will immediately suspend trade with the given

littoral states until we are satisfied that such laws and regulations are in effect.

3. No later than December 1, 2005, and every 2 years on that anniversary, all littoral states wishing to export beluga sturgeon products to the United States must submit a report to the Service. This report must contain, at a minimum:
  - a. A description of the specific fishery regulations that affect the harvest of Huso huso in the respective littoral state, with any changes from the previous report 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, and other relevant subjects;
  - d. A summary of law enforcement activities undertaken in the last 2 years, and a description of any changes in programs to prevent poaching and smuggling, including indicators of their effectiveness;
  - e. A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective littoral state, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (e.g., revenues allocated to hatchery and restocking programs or research programs); and
  - f. Export data for the previous 2 calendar years.

Starting in December 2005, the Service will conduct a review of information in the littoral state reports and any other pertinent information on wild beluga sturgeon conservation.

Thereafter, we will continue to conduct these reviews biennially within 90 days of receiving the reports. If any elements of the biennial reports are missing or unclear, the Service will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit biennial reports by the

specified deadline, we will immediately suspend trade with the given littoral states. We propose to use these reviews to determine whether littoral state 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 littoral states, 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 biennial 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, 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 review of biennial reports, we propose to administratively suspend or restrict imports, exports, and interstate commerce involving beluga sturgeon products from the littoral states if we determine that wild beluga sturgeon stock status worsens or threatens to the species increase. Any such restriction would also apply to foreign commerce in beluga sturgeon products involving U.S. citizens. Trade restrictions or suspensions may result basin-wide or for specific littoral states under one or more of the following scenarios:

1. Failure to submit copies of 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 littoral state 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 littoral states or re-exporting countries, as documented in national reports described above or other law enforcement sources;
  7. Failure of the littoral states to address the loss of beluga sturgeon habitat quality or quantity;
  8. Failure of the littoral states 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;
  10. An aquaculture facility outside the littoral states has been issued a programmatic exemption from threatened species permits, but is not abiding by the conditions placed on that facility by the Service, or
  11. Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

Under this special rule, 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 (i.e., those that import beluga sturgeon products from elsewhere and then export them to the United States). 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:

- (A) The problem(s) identified in the biennial reports or other salient documents.
- (B) The scope of the problem and the number of nations involved.
- (C) 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 and reinstating any exemption to threatened species permits.
- (D) 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 special rule amends 50 CFR 17.44 to allow importation and exportation of, and foreign and interstate commerce in, 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 special rule also repeals 50 CFR §17.31(d), which resulted from our special interim rule of October 21, 2004, and is now replaced by the provisions of this special rule.

This special rule does not end protection for the species. To qualify for permit exemptions under this special rule, beluga sturgeon caviar and meat must originate from: (1) fish taken in littoral states that have complied with the management and reporting requirements mentioned above, or (2) aquaculture operations in countries other than littoral states that enhance the survival of beluga sturgeon and do not pose a threat to native species where they are located. Furthermore, beluga caviar must be labeled as per the recommendations of the CITES Parties (even for U.S. domestic trade), and all beluga sturgeon products imported into or exported from the United States must be accompanied by valid CITES Appendix-II export permits or re-export

certificates. The special rule will not encourage the export and diversion of hatchery broodstock from the littoral states into the United States, which could undermine conservation efforts for wild beluga sturgeon in the littoral states. Import or export of, and interstate and foreign commerce in (involving persons under U.S. jurisdiction), all live Huso huso would still require a threatened species permit. Issuance of these permits is predicated on some direct benefit to wild populations of beluga sturgeon in all range countries (including the littoral states) and avoidance of risk to U.S. native species posed by the expansion of exotic sturgeon aquaculture.

Imports into the United States of beluga sturgeon products will be allowed from 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 specimens of beluga sturgeon or all CITES-listed species. This restriction will also apply to intermediary countries that import beluga sturgeon products and subsequently export them 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 trade in beluga caviar or meat from the requirements for threatened species permits when the caviar or meat originates from certain aquaculture facilities outside of littoral states, provided they meet certain criteria to ensure protection of wild beluga sturgeon as well as the ecosystems of the countries in which they are located. We will exempt these specimens from threatened species permits for import, export, re-export, and interstate and foreign commerce when the activity enhances the conservation of the species in the wild and does not pose a threat to native species (especially other Acipenseriformes) or ecosystems where the facilities are located. In addition, all imports, exports, and re-exports 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 December 2005 and every 2 years thereafter based on information in the littoral state reports, and other available information, to determine whether littoral state and regional management programs are effectively achieving conservation benefits for wild beluga sturgeon populations. Trade restrictions or a trade suspension can be placed on a littoral state 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, changes in laws or regulations that appear to be detrimental to the species in the wild, or the lack of submission of the required biennial 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 littoral states to meet the requirements in this special rule, which are stricter than those imposed by CITES and require 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 authorized with a 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 littoral states on beluga sturgeon conservation; (b) diminish or eliminate the high revenue gained from U.S. beluga caviar markets that is used by littoral states to support recovery programs for the species; (c) redirect 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 littoral states have been achieved or nearly achieved, according to the CITES Secretariat. The CITES Parties have recently modified their resolution on trade in sturgeons, calling for some ongoing review of littoral state conservation strategies in the Black Sea and Caspian Sea basins. At this time, however, we are unable to predict how the CITES system will require updates and systematic changes in littoral state management programs for Huso huso after the Standing Committee and the Parties review compliance with the 2001 recommendations and the new Resolution on sturgeon conservation. If pressure from CITES processes abates, this special rule offers our most promising tool for getting information from the littoral states and influencing recovery programs for beluga sturgeon throughout its range.

### **Required Determinations**

A Record of Compliance was prepared for this 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 special rule, individuals subject to the jurisdiction of the United States would be prohibited from engaging in domestic 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, this rule is a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866. We have prepared a Record of Compliance (ROC) that describes the economic effects of this final rule, and this ROC is available upon request. Our analysis examined each of the five exemptions of ESA Section 9 trade prohibitions that would be created by the 4(d) rule. Any costs incurred are associated with businesses satisfying particular conditions to partake in import and export trade and aquaculture. In terms of benefits, we do not expect any changes due to this rulemaking. All trade exemptions will permit the continuation of current activities. This rule will not create inconsistencies with other Federal agencies' actions. Other Federal agencies will be mostly unaffected by this rule. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule will allow individuals to continue otherwise prohibited activities without first obtaining individual authorization, the rule's impacts on affected individuals will be positive. This rule will not raise novel legal or policy issues. We have previously promulgated special rules under Section 4(d) of the Act for other species, including other foreign species.

## **Regulatory Flexibility Act**

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, we focus 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. The U.S. Small Business Administration

defines a “small business” as one with annual revenue or employment that meets or is below the established size standard, which is \$6 million for “Fish and Seafood Markets” (NAICS 445220), 100 employees for “Fish and Seafood Merchant Wholesalers” (NAICS 424460), and \$750,000 for “Finfish Farming and Fish Hatcheries” (NAICS 112511). The U.S. Economic Census does not capture the detail necessary to determine the number of small businesses that are engaged in commerce with beluga products.

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 to the United States. It is possible that some of these businesses did not trade in beluga sturgeon. For those 15 importers, the 10 largest importers accounted for 94% of all imported caviar (by weight), whereas the top 6 importers accounted for 85% of the U.S. trade (by weight). All importers in 2002 and 2003 had estimated retail sales less than \$6 million in beluga caviar products (based on the average \$3,200/kg). However, it is likely that these businesses sell other products in addition to beluga caviar. Therefore, it is difficult to estimate the size of each business and the relative impact of the proposed rulemaking.

Currently, there are no U.S. entities commercially producing caviar and meat from aquaculture of pure (i.e., non-hybridized) H. huso. However, there is at least one U.S. institution that is currently holding beluga sturgeon for future commercial production of beluga caviar and meat, the State of Florida is working with aquaculture facilities on the feasibility of commercial aquaculture of hybrid “bester” sturgeon products (bester is a hybrid of beluga sturgeon and sterlet, Acipenser ruthenus, another sturgeon species), and another facility in Nevada has been identified that is working toward production of bester caviar. These businesses may be impacted by the costs to meet the conditions outlined earlier. We do not expect these costs to have a significant impact.

This rule reduces the regulatory burden of the listing of beluga sturgeon, because without this rule all trade prohibitions of Section 9 of the ESA would apply to the import, export, re-export, or foreign and interstate commerce in H. huso. This rule allows certain activities to

continue, avoiding costs that may be associated with abstaining from trade in beluga sturgeon or going through the ESA permitting process. The rule exempts five activities from the trade prohibitions: the take, import, export (including re-export), foreign commerce, and interstate commerce in beluga sturgeon products originating from the waters of the Caspian and Black Seas or derived from aquaculture. The rule also exempts the international movement of personal effects (as defined in the rule itself) containing beluga sturgeon from ESA permitting provisions.

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. Accordingly, a Small Entity Compliance Guide is not required.

### **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.

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

The Service also examined the impact of the special rule on import, export, and re-export of, and interstate commerce in, beluga sturgeon products originating from littoral states. This exemption 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 exemption will create significant benefits to beluga sturgeon traders commercially importing, exporting, and selling across State lines beluga sturgeon caviar and meat originating from the littoral states. Without the rule, Section 9 would prevent all current import, export, 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 trade and interstate commerce could continue with an estimated annual net income of \$16–39 million for the traders, 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 littoral states (including U.S. operations) under paragraph (y)(5) in the rule. 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 individual beluga sturgeon aquaculture operations, we expect the economic impact of such exemptions to be positive, but relatively small.

### **Unfunded Mandates Reform Act**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, et seq.), this rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule will 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 will reduce the likelihood of potential takings. Affected individuals will 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 or from 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 June 30, 2007.

In addition, this rule will newly require certain other information, including national management plans, national regulations, annual reports, and labeling of shipments, to be provided to the Service by littoral states wishing to export beluga sturgeon products to the United States. The rule also requires information to be submitted by aquaculture facilities outside of littoral states if they wish to be exempted from permit requirements under the Endangered Species Act. The new information requirements do not, however, require OMB approval under the Paperwork Reduction Act, as explained below.

Although we identify 11 countries with significant habitat in the current range of the beluga sturgeon, only 8 of these countries (Azerbaijan, Bulgaria, Iran, Kazakhstan, Romania, Russia, Serbia and Montenegro, and Turkmenistan) currently have a national program to commercially harvest and export beluga sturgeon. Therefore, only those 8 countries with existing beluga sturgeon export industries will be able to provide the information required by this rule to the Service. In addition, we are currently aware of only one aquaculture facility, located in the United States and which is not yet commercially viable, that may eventually take advantage of the exemption for aquacultured specimens originating from outside littoral states. Therefore, the threshold of 10 or more respondents per year is not met, and OMB approval is not required.

### **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 will 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 will have no effects on Federally recognized Indian Tribes.

### **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.

### **Literature Cited**

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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**

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

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

#### **Regulation Promulgation**

For the reasons stated in the preamble, the Service hereby amends 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: