



Animal Welfare Institute

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September 2, 2014

SUBMITTED VIA REGULATIONS.GOV

Ms. Nicole R. Le Boeuf, Chief
Marine Mammal and Sea Turtle Conservation Division
Office of Protected Resources
U.S. National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3226

Re: Docket No. NOAA-NMFS-2014-0056 and Positive 60-Day Finding on Petition to Designate the Sakhalin Bay-Amur River Stock of Beluga Whales as a Depleted Stock under the U.S. Marine Mammal Protection Act

Dear Ms. Le Boeuf:

Animal Welfare Institute (AWI), Whale and Dolphin Conservation (WDC) Cetacean Society International, and Earth Island Institute (Co-Petitioners) submit this comment and additional information in support of the 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).¹

Background and Prior Comment Letter

On April 23, 2014, NMFS received the petition.² NMFS published a notice of petition availability on May 20, 2014, which included a request for “comments and information related to the statements in the petition and additional background on the status of [the] Sakhalin Bay-Amur River beluga whales.”³

In response, Co-Petitioners submitted a detailed comment, providing additional information on stock structure, use of maximum historical abundance as a proxy for carrying capacity, and unsustainable removal levels.⁴ For example, Co-Petitioners discussed new information demonstrating that the most recent five-year average of actual permanent removals

¹ See AWI et al., *Petition to Designate the Sakhalin Bay-Amur River Stock of Beluga Whales (Delphinapterus leucas) as Depleted under the MMPA*, at 10 (Apr. 23, 2014).

² 79 Fed. Reg. 28,879, 28,880 (May 20, 2014).

³ *Id.*

⁴ See AWI et al., NOAA-NMFS-2014-0056-0006, *Depleted Petition Comment Letter with Exhibits* (June 19, 2014) (tracking no. 1jy-8cr1-a24d).

by live-capture is 50.8 animals per year.⁵ This five-year average, which does not include removals caused by additional sources of human-caused mortality, is approximately 1.75 times the potential biological removal (PBR) level of 29 or 30 animals for the stock considered by a scientific review panel of the International Union for Conservation of Nature (IUCN).⁶ Using a more conservative recovery factor of 0.1 and 0.3, this five-year average is approximately 8.75 times a PBR level of 5.9, or approximately 2.9 times a PBR level of 17.3, respectively.⁷ This stock clearly warrants the use of a recovery factor less than 0.5 because of strong evidence of historical depletion, the startling acceleration in 2013 of increasing live captures for public display, uncertainty in the overall level of human-caused mortality, a preponderance of females in the live captures, and localized depletion caused by the stock's fine-scale site fidelity.⁸ In addition, Co-Petitioners discussed in detail NMFS's conservative estimate of maximum historical abundance of 13,000 to 15,000 animals, based on reliable commercial hunting data.⁹

On August 1, 2014, NMFS published its finding under § 1382b(a)(2)(B) of the MMPA that the “petition presents substantial information indicating that the petitioned action [a depleted designation for the Sakhalin Bay-Amur River stock] may be warranted” and initiated a status review of the stock.¹⁰ Section § 1383b(a)(3)(D) of the MMPA provides that “[n]o later than two hundred and ten days after the receipt of the petition [April 23, 2014], [NMFS] shall publish in the Federal Register a proposed rule as to the status of the . . . stock, along with the reasons underlying the proposed status determination.” Accordingly, the MMPA mandates that NMFS publish a proposed rule as to the status of the stock on or before November 19, 2014.

Additional Scientific Information

Co-Petitioners are not aware of any new scientific information on the Sakhalin Bay-Amur River stock of beluga whales published since their June 19, 2014 comment. Co-Petitioners provide an updated copy of Gross Exports Report for Beluga Whale from the U.N. Environment Programme's CITES Trade Database, which shows the export of an additional three live beluga whales from Russia in 2012, for a total reported (not actual) export of 20 live animals.¹¹

Conservative Maximum Historical Abundance Estimate of 13,000 to 15,000 Animals

With this comment, Co-Petitioners also wish to address NMFS's failure to discuss commercial hunting data in its 60-day finding. In the 60-day finding, NMFS states:

⁵ *Id.* at 7, Table 1 (table of actual permanent removals by live-capture from Sakhalinsky Bay for export and domestic use (not including animals temporarily removed and released to the wild), including a five-year running average for such removals).

⁶ *See id.* at 8.

⁷ *See* NMFS, NMFS-OPR-47, *Guidelines for Assessing Marine Mammal Stocks: Report of the GAMMS III Workshop*, at 49 (Jeffrey E. Moore & Richard Merrick, eds., 2011) (discussing choice of recovery factor “between 0.1 and 0.5” for “stocks below OSP”) (Ex. H). The PBR calculation using a 0.1 recovery factor is $0.5(0.04)(2,891)(0.1) = 5.8$.

⁸ *See Report of the GAMMS III Workshop, supra* note 7, at 49.

⁹ *See* June 19, 2014 Comment Letter, *supra* note 4, at 3–5.

¹⁰ 79 Fed Reg. 44,733, 44,735 (Aug. 1, 2014).

¹¹ U.N. ENVIRONMENT PROGRAMME CITES TRADE DATABASE, Gross Exports Report for Beluga Whale: 1989–2013, (last visited Aug. 31, 2014), <http://www.cites.org/eng/resources/trade.shtml> (Ex. I).

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.

Co-Petitioners emphasize, as they did in their June 19, 2014 comment, that “the petition primarily relies on a comparison of NMFS’s estimate of the maximum historical abundance of the Sakhalin-Amur stock of 13,000 to 15,000 animals (based on reliable commercial harvest data) with the best current abundance estimate of 3,961 animals (CV = 2.4%).”¹² The petition does *not* primarily rely on, and NMFS should not solely use as a proxy for carrying capacity, historical abundance estimates from the 1980s. The historical abundance estimates from the 1980s do not reflect pre-exploitation abundance of the Sakhalin Bay-Amur River beluga whales. This is significant as, in the past, NMFS has stated that “comparing current to *pre-exploitation* abundance has, indeed, been used most often in assessing the status of marine mammal stocks relative to their [optimum sustainable populations].”¹³

Co-Petitioners strongly urge NMFS to not only consider historical abundance estimates from the 1980s, but also its own conservative maximum historical abundance estimates (13,000 to 15,000 animals) based on reliable commercial hunting data, in conducting its status review of the Sakhalin Bay-Amur River stock. For reasons discussed in the petition and Co-Petitioners’ June 19, 2014 comment, “the best available population estimate for Sakhalin Bay-Amur River beluga whales is 3,961 animals, well below 60 percent of K using NMFS’s own historical population estimates [of 13,000 to 15,000 animals].”¹⁴ As NMFS explained:

[I]t is highly likely that an historical maximum of this stock is even greater than this estimate [10,000]. Large-scale beluga whaling in Sakhalin Bay occurred over a period of 25-30 years prior to, and just after, World War II. The average annual take in this harvest was approximately 1,000 belugas ranging from 607–2,817 over a 20 year period (Shpak et al. 2011). By the early 1960s the harvest ceased when commercial pelagic whaling for larger species increased. **Based on the more reliable commercial harvest data, the population had to be at least 13,000–15,000 whales during this period to support the removal of over 20,000 whales (average 1,000 whales per year for 20 years).** Therefore we consider 10,000 as below the lower end of an historical maximum.¹⁵

Attached to this comment is Appendix 4 to Shpak (2011), which contains the commercial hunting data.¹⁶ In addition to this commercial hunting data, Co-Petitioners point to the

¹² June 19, 2014 Comment Letter, *supra* note 4, at 3.

¹³ *Id.* (quoting Sixty-Day Finding for a Petition to Conduct a Status Review of the E. N. Pac. Population of Gray Whale under the MMPA, 75 Fed. Reg. 81,225, 81,226 (Dec. 27, 2010)) (emphasis added).

¹⁴ June 19, 2014 Comment Letter, *supra* note 4, at 4.

¹⁵ NMFS, *Denial Letter & Decision Mem.* 37 (Aug. 5, 2013), available at http://www.nmfs.noaa.gov/pr/permits/sci_res_pdfs/17324_denial_letter_final.pdf.

¹⁶ Shpak, Olga V. et al., *Current Status of the Sakhalin-Amur Beluga Aggregation (the Okhotsk Sea, Russia): Sustainability Assessment, Report for 2007–2010 Stages: Results of 4 Years of Study and Preliminary Conclusions*, App. 4 (IUCN Independent Sci. Review Panel, Working Paper, March 2011) (Ex. J).

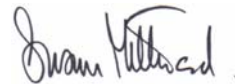
following passage from Melnikov (1999) as further support for a finding that a pre-exploitation, maximum historical abundance of 13,000 to 15,000 is conservative:

From the early 1930s (Dorofeev, Klumov, 1935) it was the practice to count schools of belukhas and estimate the number of individuals in a group moving past the north-western shore of Sakhalin. In 1983, in order to obtain results for comparison with the 1930 count . . . we conducted a similar count of belukha groups passing by the same site (Liugi village). The results indicated that both the number of belukha groups and the number of individual belukhas in groups were only a tenth of what they were in 1930.¹⁷

In summary, as highlighted in this letter, and discussed in detail in Co-Petitioners' June 19, 2014 letter and the petition, there is strong evidence that the stock has declined by more than 50 percent. **As such, under NMFS's Revised Guidelines for Assessing Marine Mammal Stocks, the Sakhalin Bay-Amur River stock is "below [OSP] with high probability."**¹⁸ In addition, the stock faces serious current threats, including clearly unsustainable removals due to live capture for public display. Therefore, NMFS must designate the stock as depleted under the MMPA.

Thank you for the opportunity to submit these additional comments in support of the petition. Please do not hesitate to contact me if you have any questions about the content of this letter, our June 19, 2014 letter, or the petition.

Sincerely,



Susan Millward
Executive Director

And on behalf of:

Whale and Dolphin Conservation
Cetacean Society International
Earth Island Institute, International Marine Mammal Project

Cc: Dr. Shannon Bettridge, Office of Protected Resources, NMFS

¹⁷ Melnikov, V. V., *The Beluga Whale (Delphinapterus leucas) of the Sea of Okhotsk*, INT'L WHALING COMM'N SCI. COMM. 51st Annual Mtg. 1999, at 7. (Ex. K).

¹⁸ *Guidelines for Assessing Marine Mammal Stocks*, 77 Fed. Reg. 3,450, 3,452 (Jan. 24, 2012) (Ex. L).

References

Guidelines for Assessing Marine Mammal Stocks, 77 Fed. Reg. 3,450 (Jan. 24, 2012) (Ex. L).

Melnikov, V. V., *The Beluga Whale (Delphinapterus leucas) of the Sea of Okhotsk*, INT'L WHALING COMM'N SCI. COMM. 51st Annual Mtg. 1999 (Ex. K)

NMFS, NMFS-OPR-47, *Guidelines for Assessing Marine Mammal Stocks: Report of the GAMMS III Workshop* (Jeffrey E. Moore & Richard Merrick, eds., 2011) (EX. H)

Shpak, Olga V. et al., *Current Status of the Sakhalin-Amur Beluga Aggregation (the Okhotsk Sea, Russia): Sustainability Assessment, Report for 2007–2010 Stages: Results of 4 Years of Study and Preliminary Conclusions*, App. 4 (IUCN Independent Sci. Review Panel, Working Paper, March 2011) (Ex. J)

U.N. ENVIRONMENT PROGRAMME CITES TRADE DATABASE, Gross Exports Report for Beluga Whale: 1989–2013, (last visited Aug. 31, 2014), <http://www.cites.org/eng/resources/trade.shtml> (Ex. I).