



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Environmental Assessment
on the Effects of the Importation of Three Beluga Whales
(Permit File No. 116-1843)

I. Proposed Action: The Permits, Conservation, and Education Division of National Marine Fisheries Service (NMFS) proposes to issue a public display permit to Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821-8097 [Brad Andrews, Responsible Party]. This permit would authorize the importation of three beluga whales from Marineland of Canada in Ontario, Canada to Sea World of Florida in Orlando, Florida pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking, importing, and exporting of marine mammals (50 CFR 216).

The purpose and need of the proposed action is to promote conservation education and enhance North American cooperative breeding programs for beluga whales. Public display is a recognized exception to the take moratorium under the MMPA.

II. Program Description: Section 104 of the MMPA allows for issuance of permits to take marine mammals for the purposes of public display. These permits must specify the number and species of animals that can be taken, and designate the manner, period, and locations in which the takes may occur. MMPA regulations promulgated at 50 CFR Part 216 specify criteria to be considered by the Director, Office of Protected Resources (Office Director) in reviewing applications and making a decision regarding issuance of a permit or an amendment to a permit. Specifically, 50 CFR 216.33(c) requires that the Office Director make an initial determination under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) as to whether the proposed activity is categorically excluded from further environmental impact review, or whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is necessary; and prepare any required EA or EIS if an initial determination is made that the activity proposed is not categorically excluded from such further review. This initial determination must be made prior to publishing notice of receipt of the permit application in the *Federal Register*. Public display permits are in general categorically excluded from the requirement to prepare an EA or EIS (NOAA Administrative Order Series 216-6, May 20, 1999).

The NMFS' Office of Protected Resources received an application for a public display permit for the importation of three beluga whales. The application was published in the *Federal Register* (71 FR 33281) on June 8, 2006. During the public comment period, some commenters considered this action to be significant and controversial in nature. As a result, NMFS has determined that preparation of an EA is warranted to analyze the environmental effects that would result from the issuance of this permit.



III. Description of the Proposed Action: The NMFS' Permits, Conservation and Education Division proposes to issue a public display permit, pursuant to section 104 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*). The permit would authorize the importation of three captive-born beluga whales for the purpose of public display. The importation authority of the permit would expire one year after issuance (in 2007). However, the acquired animals would remain in permanent captivity as public display animals for the duration of their lives unless permits are requested for either scientific research/enhancement or release to the wild. Given that these animals were born in captivity and would be incorporated into Sea World's education and breeding program, it is unlikely that these animals would be appropriate candidates for release. The terms and conditions of the permit would remain in effect as long as the marine mammals imported are maintained under the authority and responsibility of Sea World, Inc.

The proposed activity is described in Sea World's submitted application dated May 22, 2006. The beluga whales proposed to be imported are captive-born males and have been maintained at Marineland of Canada all of their lives. These animals are the progeny of beluga whales collected from the waters of Russia and subsequently imported to Canada in 1999.

NMFS is satisfied that the applicant meets public display criteria as specified in the MMPA. The applicant has documented the conservation/education program of the facility and admission policies in the application. The USDA's Animal and Plant Health Inspection Service (APHIS) has confirmed that Sea World of Florida is licensed (number 58-C-0077) under the Animal Welfare Act (AWA) and has adequate facilities to maintain the requested number of animals.

IV. Alternatives Under Consideration, Including the Proposed Action: There are two alternatives considered regarding this permit application: (A) complete denial of the permit and (B) issuance of a public display permit with conditions.

A. Complete Denial of the Permit (no action): Under this alternative, NMFS would not authorize any aspect of this public display permit. This is the no action alternative.

B. Issuance of Complete Permit with Conditions (proposed action): This alternative would authorize importation of the animals as proposed in the application, with appropriate conditions as recommended by reviewers and standard conditions for captive public display permits administered by the Permits, Conservation and Education Division.

V. Description of Affected Environment: Three beluga whales (*Delphinapterus leucas*) currently maintained by Marineland of Canada may be adversely affected by issuance of this permit by transport to Sea World of Florida. There are minimal risks to the subject animals associated with the transport and maintenance of marine mammals. The action area of this permit application covers Mainland of Canada located in Ontario, Canada and Sea World of Florida in Orlando, Florida. No geographic area or animals in the wild would be affected.

Beluga Whales (*Delphinapterus leucas*)

Species Description and Distribution

Beluga whales are members of the taxonomic family, Monodontidae, which includes the narwhal (*Monodon monoceros*). The beluga is considered a medium-sized toothed whale between 3.5-5.5 meters long and weighing up to 1500 kg (O’Corry-Crowe 2002). Males are up to 25% longer than females and have a more robust build. This species lacks a dorsal fin and is unique among cetaceans in having unfused cervical vertebrae, permitting lateral mobility of the head and neck.

Beluga whales are distributed throughout the arctic and subarctic waters of the Northern Hemisphere (Leatherwood and Reeves 1983). Depending on season and region, beluga whales may occur in both offshore and coastal waters. Beluga whales are a social species and can often be found in aggregations of more than a thousand animals, particularly in the summer months (Leatherwood and Reeves 1983). The beluga whale species can be subdivided into subpopulations or stocks based on a phylogeographic approach “which includes: 1) Distributional data: geographic distribution discontinuous in summer; distribution unknown outside of summer; 2) Population response data: possible extirpation of local populations; distinct population trends between regions occupied in summer; 3) Phenotypic data: unknown; and 4) Genotypic data: mitochondrial DNA analyses indicate distinct differences among summering areas” (Angliss and Lodge 2004). The existence of population segregation is sufficient evidence to designate the various subpopulations as separate management stocks (O’Corry-Crowe 2002).

Life History Information

Female beluga whales become sexually mature at five years of age, males around age eight (O’Corry-Crowe 2002). A single calf is born after a gestation period of approximately 14 months in the late spring-early summer. Calves are born slate gray to pinkish brown. As they develop, their coloring turns blue to bluish grey. Sometime after reaching sexual maturity, beluga whales attain their characteristic white color (Leatherwood and Reeves 1983).

Female beluga whales nurse their calves for two years. The calving interval averages three years. Little is known about the mating behavior or mating season of this species. It is hypothesized that mating occurs in late winter-early spring, however mating has been observed at other times of the year providing the possibility of delayed implantation in this species (O’Corry-Crowe 2002).

Population Status and Trends

Beluga whales are not listed as "endangered" or "threatened" under the Endangered Species Act, however the Cook Inlet stock was designated as “depleted” in 2000. In addition, the beluga

whale was listed as an Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1979.

The three belugas the applicant wishes to import are progeny from beluga whales captured in the Russian arctic. The Scientific Committee of the International Whaling Committee (IWC) has recognized 29 beluga whale populations worldwide (IWC Scientific Committee Report 1999). IWC reported that a few live captures were being conducted per year for display in dolphinariums from the Sea of Okhotsk populations. The exact number of belugas inhabiting the Russian arctic is unknown, however, according to the IWC 1999 report, 18 – 20,000 beluga whales were estimated to reside in the larger Sea of Okhotsk (representing three stocks) as of 1987. Compared to other stocks that have shown significant depletion, the trend status indicates that Sea of Okhotsk stocks are depleted or stable (IWC 1999). Potential or known threats to the Sea of Okhotsk stocks include increasing petroleum developments in the known area of this species (IWC 1999).

VI. Environmental Consequences: The action proposed in this application under consideration consists of the importation of three beluga whales from Canada for public display purposes. The consequences of the proposed action, as well as the alternatives, on the individual animals and populations as a whole must be considered. There are no geographic areas or plant or animal species other than the marine mammals specifically referenced that would be affected by the proposed activities. Following is a review of the consequences of the alternatives presented in Section IV (Alternatives Including the Proposed Action) above.

A. Consequence of Non-issuance of Permit (no action): If this permit is not issued, the subject animals would remain at Marineland of Canada in Ontario, Canada. Marineland of Canada has an established beluga whale program and the impacts of continued maintenance of these animals at Marineland of Canada would be minimal. Denial of this permit would prevent enhancement of the North American cooperative breeding program for beluga whales and the education program established at Sea World of Florida. Public display is an activity endorsed by the MMPA and permits may be granted for such activities.

B. Consequence of Issuance of a Public Display Permit, with Conditions:

Public display of marine mammals is identified as an exception under Section 104 of the MMPA and is a purpose for which permits may be issued. Specifically, the statute allows for the importation of marine mammals under special exception permits for the purpose of public display. Furthermore, NMFS is satisfied that the applicant meets all of the requirements of public display as specified in the MMPA. Sea World, Inc. at Sea World of Florida has demonstrated that they meet the criteria set forth in Section 104(c)(2)(a) of the MMPA to hold marine mammals for public display purposes. Sea World of Florida is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the Association of Zoos and Aquariums and the Alliance for Marine Mammal Parks and

Aquariums; and (3) holds an Exhibitor's License, number 58-C-0077, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131 - 59).

Beluga whales are not listed as "endangered" or "threatened" under the Endangered Species Act, nor have the Russian stocks of belugas been designated as "depleted" under the MMPA. While the exact number of belugas inhabiting the waters of Russia is unknown, the IWC estimates between 18 – 20,000 beluga whales in the Sea of Okhotsk as of 1987 (1999).

These animals proposed to be imported were born in captivity to parents collected from the waters of Russia and imported to Canada in 1999, and have been maintained at Marineland of Canada since their birth. As such this permit would only affect the three individual animals that are the subject of this action. There would be no significant effects on the population of belugas in the wild due to the fact that the animals were born at Marineland of Canada and remain in captivity. It is highly unlikely that these animals or their progeny would be considered appropriate candidates for release. Release to the wild would only be authorized under a scientific research permit and the subsequent NEPA analysis would consider the potential impacts to both the individual animals and the wild population. Given that these animals were born in captivity and are dependant on humans, it is unlikely that such a permit would be granted.

There would be minimal adverse effects on the subject animals from the proposed activities, i.e., transport into the U.S. Sea World has been instrumental in the development of successful transport techniques and has considerable experience in the transport of cetaceans. A description of transport procedures can be found in the CRC Handbook of Marine Mammal Medicine: Chapter 39 (Antrim and McBain 2001). The importation will be conducted by trained personnel, including a veterinarian. In addition, the transport will adhere to Animal Welfare Act regulations and accepted professional standards. These animals would be transported in a specially designed and constructed transport unit from Marineland of Canada to Sea World of Florida. Transport would occur via truck and charter aircraft. The transport would be expected to take less than 20 hours in total, absent unusual circumstances. The transport procedures have been reviewed and certified as appropriate by Jim McBain, D.V.M., Vice President of Corporate Veterinary Services, Sea World, Inc.

While there is the potential for an adverse effect on a protected species, three beluga whales, it is unlikely. No highly intrusive procedures would be performed and the animals would be trained to provide samples voluntarily. Routine care and husbandry of all the animals maintained at Sea World includes behavioral observations, blood sampling, urine and fecal collection, medical cultures, and husbandry training. Complete physical examinations are performed quarterly. During these examinations blood samples are collected from the tail flukes for complete hematology and serum chemistries. The blood samples would be collected using professionally accepted techniques with trained animals volunteering husbandry behaviors. Sedation is not necessary. An accurate weight is obtained using stationary or sling suspended scales at the time of the physical. The animals are vaccinated on a case-by-case basis as appropriate and directed

by the attending veterinarian. Collection of other medical samples would be conducted as necessary for diagnostic purposes as determined by the attending veterinarian. All of the procedures to be performed have already been and/or are being performed on other beluga whales in captivity.

These animals would be incorporated into a North American breeding program for this species. Sea World cooperates with other public display facilities holding beluga whales to maintain a sustainable captive population. Sea World is currently conducting numerous research projects on the reproductive physiology of this species and these animals would be made available to participate in these studies. Maintenance of a healthy sustainable population in captivity will reduce the need for future collections from the wild and these animals will add to the genetic diversity of the captive population.

Public Comments: During the public comment period, comments were received from the following groups: the Humane Society of the United States (HSUS) on behalf of HSUS and Earth Island Institute, the Whale and Dolphin Conservation Society (WDCS), Zoocheck Canada, Inc., and the Animal Welfare Institute (AWI). The issues raised are organized into categories and are summarized below.

Opposition to captivity: AWI does not support captivity of healthy cetaceans for the purpose of public entertainment, even for the purpose of education. The only instances in which captivity should be condoned include animals rescued from life threatening situations that are being rehabilitated for release to the wild, or if release is impossible, are being cared for in a safe, adequate, and environmentally enriched conditions without the need to perform.

Response: These comments are beyond the scope of issues to consider under the MMPA. The MMPA provides for exceptions to the moratorium on take for the purpose of public display. With regards to NEPA, the impact to the subject animals is minimal. As described above, the animals would be transported by trained personnel, under the supervision of a veterinarian. The animals would be given daily care, treated humanely, and provided with routine veterinary care. These animals were born in captivity and it is unlikely that these animals would ever be considered appropriate candidates for release.

Age of the animals: HSUS notes that Sea World has represented the subject animals as adults in their application. Sea World indicates that these animals are between 3 and 4 years of age that would not qualify them as adults. HSUS is concerned that these animals may be still socially dependant on their mothers. WDCS concurs that removal of these animals from their pool mates is not in their best interest given their age.

Applicant Response: "The Humane Society of the United States actually commented as follows: " . . . these three juveniles . . . in the wild might still be socially dependent on their mothers . . ." While we disagree even with that statement, here we are dealing with three male belugas in a managed environment, as opposed to the wild, who are not even

housed in the same pools as their mothers any longer. These males are weaned and independent and thus we do not believe that there will be any detriment to them in being transferred to SeaWorld. As we stated in the application, "it is possible that the individual animals may experience temporary social changes upon arrival at SeaWorld Florida when they are added to SeaWorld's cooperative breeding program. Our experience with the relocation of other whales has shown that acclimation will take [only] several days." As to the comments by the WDCS asking NMFS to consider the implications of removing the whales from their pool mates in Marineland, once again, based on our experience, it is our firm opinion that there will be no adverse effects, especially since the three males will be together at SeaWorld and will easily acclimate with their new pool mates once there."

Response: Section 102(b) prohibits the importation of animals that are pregnant or nursing or less than eight months old at time of taking. These are the only "age" prohibitions on public display imports in the MMPA and the permit contains conditions to prohibit the above imports. NMFS is satisfied with the applicant's response regarding the social dependency of these animals to their mothers and poolmates. Concerns regarding animal care and maintenance fall under the AWA and are under the jurisdiction of APHIS. APHIS has reviewed this application and finds the transport plans provided to be sufficient to ensure for the health and well-being of these animals. Sea World, Inc. has significant experience transporting beluga whales. This import would occur under the supervision of a veterinarian and other experienced personnel. Therefore, the impacts to the animals due to transport and relocation to Sea World of Florida would be minimal.

North American breeding program: WDCS provided the following concerns regarding the mentioned breeding program. The animals to be imported are not sexually mature at this time. Beluga whales have low breeding success in captivity. Incorporation of these animals into the breeding program will result in the mixing of genetically distinct stocks (Canadian and Russian whales). The progeny of this breeding program will never be candidates for release to the wild based on genetic differences nor is this the intent of this program.

Response: These comments are beyond the scope of issues to consider under the MMPA and are covered under the AWA. APHIS has reviewed and commented on this application and had no comments regarding the breeding program with respect to AWA concerns. With regards to NEPA, it has been established that there are minimal risks associated with the importation and continued maintenance to these individual animals. The North American breeding program will be enhanced through the introduction of new founder animals into the captive population. Given that it is unlikely that these animals or their progeny would ever be considered appropriate candidates for release, there is no risk of breeding animals of genetically distinctive stocks. For the captive population, this mixing would be considered beneficial in that it would be increasing the genetic diversity within the captive population and preventing the over-representation of certain animals

that might lead to inbreeding. Sea World continues to cooperate with other public display facilities holding beluga whales and to carry out numerous research projects on the reproductive physiology of this species. In addition, there may be a positive impact to the wild populations by reducing the future need for wild captures to maintain the captive population.

Transport concerns: WDCS believes that transport of marine mammals should only occur in cases where urgently needed improvements are required in an animal's living conditions and is in the best interests of its health and welfare. This is not the case for this application. Based on previous marine mammal transports, there is a real risk to the health and welfare of the animals as a result of moves between facilities.

Response: This comment is beyond the scope of issues to consider under the MMPA and is covered under the AWA. NMFS provided APHIS a copy of the application and requested consultation regarding such concerns that would fall under their jurisdiction. Under NEPA, there would be minimal adverse effects on the subject animals from the transport into the U.S. Sea World has been instrumental in the development of successful transport techniques and has considerable experience in the transport of cetaceans. Details of the transport have been previously described above and reviewed by both APHIS and the attending veterinarian, Jim McBain, D.V.M.

Marineland of Canada: WDCS noted that there are no approved standards for public display facilities in Canada and reference a 1998 report (Zoocheck Canada) which details general welfare concerns raised about Marineland of Canada. This report explores five recurrent themes: the well-being of the animals; Marineland's failure to play a legitimate conservation role; the facility's negative educational value; inadequate public health and safety measures; and the absence of adequate legislation governing the capture, trade, and maintenance of captive wildlife. AWI adds that Marineland of Canada is a poorly run facility where the animals are held in substandard accommodations and treated as monetary commodities.

Response: These comments are beyond the scope of issues to consider under the MMPA.

Sea World of Florida: WDCS expressed concern regarding non-compliance issues found in the submitted inspection reports for Sea World of Florida. Furthermore, Sea World of Florida's USDA license will expire in January 2007. WDCS questions the issuance of a permit that extends further into the future than the expiration of their USDA license, a requirement for holding marine mammals for public display.

Response: NMFS has consulted with APHIS on the above concerns and they had no objections based on Sea World's overall compliance history under the AWA. According to APHIS, Sea World of Florida has maintained a good compliance history and there is no reason to believe that their exhibitor's license will not be renewed. APHIS licenses

are renewed yearly following a facility inspection and exhibitors would be entitled to due process before a license would be revoked, suspended, or terminated. The permit is conditioned such that Sea World, Inc. must continue to meet the three public display criteria required by §104(c)(2)(a) of the MMPA. In addition, Sea World, Inc. must notify the Office Director by certified mail if the APHIS licenses issued to any of its facilities are revoked, suspended, or terminated.

Capture of the parents: Several commenters believe that the capture of the parents was both illegal and inhumane and therefore in violation of the MMPA.

- **Illegal (CITES):** Several of the commenters questioned the validity of the non-detriment finding issued by Russia given the little assessment and unknown impact to the wild population. They state that U.S. (NMFS) is not legally bound to accept another country's standards for capture, maintenance, record keeping and transport, when those standards threaten, violate, or weaken U.S. law. They further argue that the U.S. has the right to establish conditions under which imports of products will be allowed under CITES and those import conditions may be stricter than the export conditions required by the treaty. There is little data on the current population of Russian beluga stocks and it is impossible to determine if capture operations and hunting are having an impact on the stocks. As such, the sustainability of the beluga captures cannot be determined.
- **Inhumane:** The commenters refer to the footage obtained by the International Fund for Animal Welfare documenting capture techniques used in Russia in 1999. The commenters describe the processes used to capture and house belugas (Vladivostok facility) as brutal and grossly substandard. WDCS further references Mark Simmonds (WDCS's Director of Science) comments on the above video which describe the capture methods used in Russia as inhumane. HSUS further states that this import would be in violation of the MMPA given that the public display industry uses the progeny of animals as products in a commercial business. The MMPA prohibits the sale or purchase of "any marine mammal or marine mammal part that is taken in violation of this chapter" and the progeny are the resultant "products" of breeding inhumanely taken parents.

Response: The action under consideration is the importation of three beluga whales that were captive-born and legally maintained in Canada. Their import will have no direct effect on the wild population. The original take of the parents in Russia is not relevant to the action being considered. Concern has also been raised regarding the potential for Marineland to replace these belugas with additional imports from Russia; this has been addressed below (see International trade concerns).

International trade: Between 1990 and 2005, WDCS reports that 186 beluga whales have been exported, all captured from the wild. WDCS is concerned about the increasing trade in belugas to other countries where they may be held in conditions that may compromise their health and well-being. In addition, Zoocheck claims issuance of this permit will encourage breeding programs using founder animals in other countries with intent to provide progeny to U.S.

facilities, thus encouraging further captures that may also be inhumane and unsustainable. Issuance of this permit will at the least provide a perception of a U.S. market for beluga whales that increase the incentive for future captures. Commenters question Marineland of Canada's commitment to no further imports from Russia given their past acquisition history. The decade long relationship between Marineland of Canada and Russia will continue with additional imports of beluga whales and the prospect of potential sales to facilities in the U.S.

Response: Regarding international trade of marine mammals, the MMPA provides NMFS with authority to issue permits for the importation and holding marine mammals in captivity for public display purposes (16 U.S.C. 1374; Section 104 (c)). Issuance of this permit would not establish a precedent for future actions or represent a decision in principle about future proposals. Each permit application received is evaluated upon its own merits relative to the criteria established in the MMPA and NMFS' implementing regulations. Issuance of a permit to a specific individual or organization for a given activity does not in any way guarantee or imply that NMFS would authorize other individuals or organizations to conduct the same or a similar activity.

As previously discussed, the action under consideration is the importation of three beluga whales that were captive-born and legally maintained in Canada. Their import will have no direct effect on the wild population. The original take of the parents in Russia is not relevant to the action being considered. Furthermore, Marineland of Canada has provided written assurance that they have no plans to import beluga whales from the wild or other facilities to replace those animals being offered to Sea World and NMFS has not reason, at this time, to question this assurance.

Chain of trade: The issue for several commenters is whether the chain of trade of Russian belugas, beginning with the capture of belugas in the Sea of Okhotsk and ending with the import into the U.S. of captive-bred progeny of those animals, is consistent with the letter and intent of the MMPA. They further stated that the Secretary would violate the requirements of the MMPA if animals were imported for public display by failing to determine that the method by which the whales were or will be captured is consistent with the MMPA provisions, and also by failing to ascertain the optimum sustainable population (OSP) of the species of whale involved, before issuing permits. The commenters argued that these omissions render the issuance of the permits invalid under the Administrative Procedure Act (APA) as not being in accordance with law or, alternatively, arbitrary and capricious, and thus an abuse of discretion.

Response: Again, the action under consideration is the importation of three beluga whales that were captive-born and legally maintained in Canada. The only whales to be imported under the permit will be beluga whales that were born in captivity and are currently in captivity, and as such, their removal will have no direct effect on the wild population. The determination of OSP would only be relevant if this action involved the direct take of marine mammals from the wild. The original take of the parents in Russia has already occurred and is not relevant to the action being considered.

Beluga whale status: Prior to any take permit being issued, Congress mandated in the MMPA that the impact of the take must be determined including the impact of the taking to achieve OSP for each species. Several commenters stated that there is insufficient information on the status of beluga whales to make a determination that the import, in combination with the capture of the parent stock [and future captures] will not likely have a significant adverse impact on the Russian stocks. There are no historical or current population assessments for Russian beluga whales. AWI reports that the Russian quota for beluga whales is currently over one thousand animals annually without information on the population size and status. The status of the entire species is of concern given that in 1999, the Scientific Committee of the International Whaling Committee (IWC) concluded that only 4 of 29 beluga whale populations were stable. They are threatened across their range by oil and gas development, over-hunting, over-fishing, vessel traffic, industrial development and pollution. IWC's Scientific Committee describe the White Sea population of belugas as "depleted" and numbering a "few hundred" animals. WDCS believes that any removal of any animals would be severely detrimental to the population. WDCS provided an online reference that indicated that the Red Book of the Russian Federation lists beluga whales as category 3, Rare. In 2001 the IWC passed a resolution regarding small cetaceans which notes the "depleted or unknown status of many beluga stock" and "supports the recommendations of the Scientific Committee in 1999 that beluga range states continue studies to resolve the structure of beluga stocks, conduct contaminant analysis and health assessments and provide relevant scientific data to the Scientific Committee."

Response: This argument is not relevant given that the action under consideration concerns the importation of three beluga whales born in captivity. The animals in question were not, and there are no plans for these animals to be, part of a wild population. The determination of OSP is based on scientific data. The original take of the parents has already occurred and was a legal take in Russia in accordance with their established quotas. Furthermore, no OSP (or Potential Biological Removal (PBR)) has been established for this population. PBR is defined as the maximum number of animals that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Marineland of Canada has also indicated that they will not be replacing the animals that will be exported through additional imports from the wild or other facilities. Therefore, there will be no impacts to the wild from this import.

Upon consultation with the Red Book as referenced, NMFS could not find a ranking for beluga whales. Beluga whales are not listed as "endangered" or "threatened" under the Endangered Species Act, nor have the Russian stocks of belugas been designated as "depleted" under the MMPA (see status of the stocks above).

Burden of proof: CSI claims it is Sea World as the applicant who must prove the sale of these animals will not stimulate further captures and international sales of wild Russian belugas, that those captures will be from stocks that can sustain approved take quotas, and that the capture,

maintenance and transport of those animals would be acceptable under U.S. law. This is consistent with the spirit of the law and the intent of Congress.

Response: The action in question is the importation of three captive-born beluga whales that are being legally maintained at Marineland of Canada. These animals have never been part of the wild population, nor is it likely that they ever will be, and therefore the impact of their import will not affect the species in the wild. Furthermore, Marineland of Canada has indicated in writing that they have no plans to replace these animals with additional imports to their facility.

Compliance with the National Environmental Policy Act (NEPA): The commenters regard this application as highly controversial and precedent setting for future actions with significant effects. Therefore, they request preparation of an Environmental Impact Statement under NEPA. NMFS indicated in its receipt of application published in the Federal Register that this action would qualify under a categorical exclusion. The commenters feel that this level of analysis would be insufficient given the degree of significance and controversy. The commenters state that issuance of this permit is a major federal action with significant consequences via the chain of trade that was established by the capture and importation of the parents. They assert that areas of impact include 1) unique geographic area (habitat modifications from removal and disturbance of resident belugas); 2) uncertain activities (unknown impacts from beluga takes); 3) involves unknown risks (abetting unsustainable takes); 4) represents a decision in principle about a future consideration (precedent setting); 5) may affect historical resources adversely and must include a review of cumulatively significant impacts. The commenters concluded that an EIS is necessary to determine if imports of wild caught Russian belugas and their progeny are legal under U.S. law.

Response: During the public comment period for this application, some commenters considered this action to be significant and controversial in nature. As a result, NMFS determined that preparation of this EA was warranted to analyze the environmental effects that would result from the issuance of this permit. The action under consideration is the issuance of a permit for the importation of three captive-born beluga whales from Canada to the United States. While the issue of the origin of the parents was considered significant and controversial by the commenters, the proposed action is the importation of captive-bred progeny of those animals into the U.S. The capture and import of the parents has already occurred and these animals are being legally maintained in Canada. The EA demonstrates that the proposed transport and maintenance of these progeny will not result in significant environmental effects. Although the appropriateness of the proposed action is under question as a public policy, the action is allowed under the MMPA and its environmental impacts are not considered to be either significant or controversial for NEPA compliance purposes.

VII. Mitigative Measures: This permit would not authorize any takes in the wild, as the only activity under this permit's consideration is the importation of three currently captive beluga whales. Conditions that would be included in the permit are stated below:

- The subject animals must be transported from Canada to the United States in accordance with the U.S. Department of Agriculture's standards entitled "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (9 CFR Part 3, Subpart E).
- Prior to importation into the United States, Sea World, Inc. must have the travel plan documented at their facility, and the animals must be accompanied by health certificates signed within 10 days of the transport.
- The importation of marine mammals is subject to the provisions of 50 CFR part 14 (*i.e.*, no marine mammal may be imported without the required CITES permits).

VIII. Cumulative Impacts: A cumulative effects analysis is a requirement of the National Environmental Policy Act (NEPA). An environmental assessment must consider cumulative effects when determining whether an action significantly affects environmental quality. The cumulative impact is the impact on the environment which results from the incremental impact of the action, when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Significance cannot be avoided if it is reasonable to anticipate a cumulatively significant impact on the environment. The Council on Environmental Quality NEPA Regulations (40 CFR Parts 1500-1508) prohibit labeling effects temporary or short-term, or breaking them down into smaller component parts.

Commenters have expressed concern that the issuance of this permit will encourage additional captures of Russian beluga whales in the future. Whether or not captures in Russia will continue or to what extent is speculative. NMFS will monitor the trade of belugas in Russia with regard to any future import requests that may be received. The impact of this action, the importation of three captive-born beluga whales to the U.S., is insignificant.

NMFS does not have under its consideration any other permits requesting the importation of beluga whales. There are currently no permits for the collection of animals from the wild for public display. Furthermore, issuance of this proposed permit would not authorize any takes in the wild. Thus, minimal cumulative impacts to the species and the environment would result from issuance of this permit.

IX. Compliance with other Acts

1. Compliance with the Endangered Species Act: Beluga whales are not listed as endangered or threatened under the Endangered Species Act. Therefore, there was no need for consultation.

2. Compliance with the Magnuson-Stevens Act: The action in the application for Permit No. 116-1843 would not impact any Essential Fish Habitat or Habitat Areas of Particular Concern, so no consultation was conducted.

3. Coordination with the National Ocean Service: The action in the application for Permit No. 116-1843 would not impact a National Marine Sanctuary, so no consultation was conducted.

4. Compliance with CITES: The requested species is listed on Appendix II of CITES. Special Condition B.1.e. requires a CITES export permit from Canada prior to importation of these animals.

X. Recommendation: It is recommended that the proposed action be determined not to have a significant impact on the quality of the human environment and that the preparation of an environmental impact statement not be required.

XI. Literature Cited:

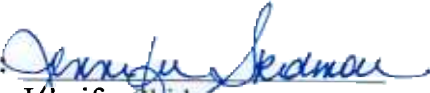
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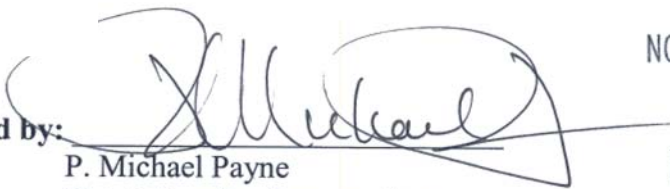
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NOV 8 2006

Date



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

**Finding of No Significant Impact
for Issuance of Endangered Public Display Permit No. 116-1843 to
Sea World, Inc. at Sea World of Florida
for the Importation of Three Beluga Whales**

National Marine Fisheries Service

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. Section 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

- 1. Are there any expected beneficial or adverse significant effects?* The animals under consideration of this permit were captive-born at Marineland of Canada. The parents of these animals have already been removed from the wild, thus only the animals acquired under this permit would be affected by its issuance. Therefore, any impacts (beneficial or adverse) would not be significant in nature.
- 2. Can the action be reasonably expected to have a substantial adverse impact on public health and safety and/or involve highly toxic agents or pathogens?* The proposed action would not have a substantial adverse impact on public health and safety. These animals would be incorporated into the public display and captive breeding program of Sea World, Inc. and maintained in accordance with the Animal Welfare Act. The applicant is highly trained in handling and sampling techniques for marine mammals. The applicant is capable of supervising the care and maintenance of these animals and assuring that staff are properly trained in husbandry protocols and safety procedures.
- 3. Will the action affect any unique characteristics of the geographic area?* The action area is limited to Sea World of Florida and Marineland of Canada. No area in the wild and no animals in the wild would be affected.
- 4. To what degree are the effects on the quality of the human environment expected to be highly controversial?* During the public comment period, some commenters assert that the proposed action was significant and controversial. As a result, NMFS determined that preparation of an EA was warranted before the issuance of this permit.

Comments were categorized into the following topic areas: 1) animal care and maintenance concerns at both facilities, 2) concern regarding the transport of the belugas, 3) claims of the illegal and inhumane capture of the parents of these progeny, 4) chain of trade of the parents,



including burden of proof, 5) potential increase in the international trade in belugas, 6) unknown status of Russian beluga whale stocks in the wild, and 7) NEPA compliance concerns (see Section V.B. of the EA for further analysis of the public comments).

The MMPA specifically allows for public display of marine mammals and for the issuance of permits for acquisition of animals for that purpose. NMFS is satisfied that Sea World of Florida meets the requirements of the MMPA to hold marine mammals for public display purposes. Care and maintenance issues concerning marine mammals, including transport, are under the preview of the Animal Welfare Act (AWA) and the Animal and Plant Health Inspection Service (APHIS). APHIS has reviewed the application and stated that they have no objections to issuance of this permit. With regards to NEPA, the impact to the subject animals is minimal. As described in the EA, the animals would be transported by trained personnel, under the supervision of a veterinarian. The animals would be given daily care, treated humanely, and provided with routine veterinary care. These animals were born in captivity and it is unlikely that these animals would ever be considered appropriate candidates for release.

The capture of beluga whales by Russia or any other country and the maintenance of those animals in a foreign country is irrelevant. The original take of the parents has occurred and these animals are being legally maintained in Canada. The original acquisition of the progeny, captive-born to animals being legally maintained at Marineland of Canada, is the focus of this EA.

Regarding international trade of marine mammals, the MMPA provides NMFS with authority to issue permits for the importation and holding marine mammals in captivity for public display purposes (16 U.S.C. 1374; Section 104 (c)). Issuance of this permit would not establish a precedent for future actions or represent a decision in principle about future proposals. Marineland of Canada has provided written assurance that they have no plans to import beluga whales from the wild or other facilities to replace those animals being offered to Sea World.

Beluga whales are not listed as "endangered" or "threatened" under the Endangered Species Act, however the Cook Inlet stock was designated as "depleted" in 2000. In addition, the beluga whale was listed as an Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1979. While the exact number of belugas inhabiting the waters of Russia is unknown, the IWC estimates between 18 – 20,000 beluga whales in the Sea of Okhotsk as of 1987 (1999).

The action under consideration is the issuance of a permit for the importation of three captive-born beluga whales from Canada to the United States. While the issue of the origin of the parents was considered significant and controversial by the commenters, the proposed action is the importation of captive-bred progeny of those animals into the U.S. The capture and import of the parents has already occurred and these animals are being legally maintained in Canada. The EA demonstrates that the proposed transport and maintenance of these progeny will not result in significant environmental effects. Although the appropriateness of the proposed action

is under question as a public policy, the action is allowed under the MMPA and its environmental impacts are not considered to be either significant or controversial for NEPA compliance purposes.

5. *To what degree are the effects highly uncertain or involve unique or unknown risks?* The effects of the proposed action are not highly uncertain nor do they involve unique or unknown risks. The MMPA specifically allows for the public display of marine mammals and the potential effects of maintaining marine mammals in captivity are known and addressed in the Animal Welfare Act. This EA demonstrates that the transport and maintenance of beluga whales in captive has been done before with little, if any, adverse impacts to the individual animals.

6. *To what degree will the action establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?* Issuance of the permit would not establish a precedent for future actions or represent a decision in principle about future proposals. The MMPA allows for importation of marine mammals for the purpose of public display and each permit application received is evaluated on its own merits relative to the criteria established in the MMPA and NMFS' implementing regulations. Issuance of a permit to a specific individual or organization for a given activity does not in any way guarantee or imply that NMFS will authorize other individuals or organizations to conduct the same or similar activity.

7. *Can the action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?* The action is not expected to result in any cumulative adverse effects on the species affected by the action. The individual animals under consideration were captive-born and their parents removed from the wild population. No adverse effects are expected on non-target species, as there are none.

8. *To what degree will the action adversely affect entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?* The proposed action would not adversely affect entities listed in or eligible for listing in the National Register of Historic Places, nor would it cause loss or destruction of significant scientific, cultural, or historic resources.

9. *Can the action be reasonably expected to have a substantial adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?* Beluga whales are not listed under the ESA. The animals under consideration have been maintained in captivity since their birth. No ESA listed species would be affected and there would be no impact to critical habitat.

10. *Will the action result in a violation of Federal, state, or local law for environmental protection?* The action would not result in any violation of Federal, state, or local laws for

environmental protection. As previously stated, the MMPA recognizes public display as an exception to the take moratorium under the Act.

11. Will the action result in the introduction or spread of a nonindigenous species? The proposed action is not likely to result in the introduction or spread of a nonindigenous species. Animals under consideration were captive-born and are to be permanently maintained in captivity. This permit would be conditioned to prohibit the release of any of these animals to the wild. Release to the wild could only be authorized under a scientific research permit. During the processing of this permit, impacts to the wild population would be considered in the subsequent NEPA analysis.

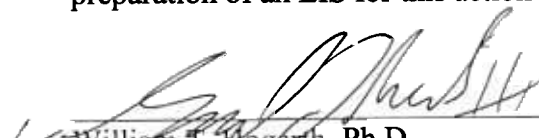
12. Can the action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs? The animals under consideration were captive-born at Marineland of Canada; therefore this action would not impact any ocean or coastal habitats including national marine sanctuaries, coral reef ecosystems or Essential Fish Habitat.

13. Can the action be reasonably expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)? As the animals under consideration were captive-born and their parents removed from the wild population, there would be no substantial impact on biodiversity and ecosystem function.

14. Are significant social or economic impacts interrelated with significant natural or physical environmental effects? There would be no significant social or economic impacts interrelated with significant natural or physical environmental effects.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for issuance of Public Display Permit No. 116-1843, it is hereby determined that the issuance of this permit to Sea World, Inc. will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



 William T. Hogarth, Ph.D.
 Assistant Administrator for Fisheries, NOAA

11/13/06
 Date