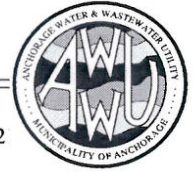




Municipality of Anchorage



General Manager's Office

3000 Arctic Boulevard • Anchorage, Alaska 99503-3898 • Telephone (907) 786-5502 • Fax (907) 562-342
<http://www.muni.org> • <http://www.awwu.biz>

Mayor Dan Sullivan

Anchorage Water & Wastewater Utility

March 3, 2010

Kaja Brix
Assistant Regional Administrator, Protected Resources
Alaska Region, National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Attention: Ellen Sebastian
Subject: Comments offered in response to the Proposed Designation of
Critical Habitat for Cook Inlet Beluga Whales (Federal Register /Vol.
74, No. 230/ Tuesday, Wednesday, December 2, 2009)

Dear Ms. Brix,

Thank you for the opportunity to comment on the proposed designation of critical habitat for the Cook Inlet beluga whale (CIBW) under the Endangered Species Act. Please note that the Anchorage Wastewater Utility ("AWWU" or "Utility") has already provided significant commentary in our May 14, 2009, letter to you offering information in response to the Advance Notice of Proposed Rulemaking on CIBW critical habitat. We incorporate that material by reference herein. Additional relevant information we can offer is available to the public at our website, www.awwu.biz/einfo, under the subtitle "Cook Inlet Water Quality."

Maintaining water quality essential for beluga whales and other marine species is a top operational goal for AWWU. The Utility intends to continue working cooperatively with federal agencies to make sure that its actions achieve this goal and are based on the best available science. In order for this to occur, we believe that the proposed critical habitat designation for CIBW needs to be refined. The current lack of clarity is likely to give rise to unnecessary confusion, litigation, and regulatory burdens. This letter explains the Utility's concerns.

Anchorage Water and Wastewater Utility

AWWU provides water and wastewater services for nearly the entire population of the Municipality of Anchorage. Over 280,000 people benefit from water supply and distribution and wastewater collection and treatment provided by the Utility, over 40 percent of the population of the State of Alaska. We receive and process domestic wastewater from Elmendorf Air Force Base and Fort Richardson, as well as septage collected from thousands of private on-site wastewater disposal systems not directly connected to the municipal sewer system.

The Utility is particularly proud of its role in environmental stewardship. The Utility works to keep Cook Inlet and the rivers and streams that flow into it

Community, Security, Prosperity

clean, and to ensure that our marine and freshwater wildlife populations remain healthy. The Utility's primary facility is the John M. Asplund Water Pollution Control Facility (Asplund WPCF) at Point Woronzof. The Asplund WPCF provides treatment in accordance with a permit issued by the U.S. Environmental Protection Agency under the federal Clean Water Act. In 2009, the operating team at the Asplund WPCF met or surpassed every operating condition of the Clean Water Act permit, once again qualifying for the prestigious Gold Award from the National Association of Clean Water Agencies, placing the facility and its highly-skilled work force among the elite in the Clean Water industry.

Additionally, in the past 10 years, AWWU has invested over \$40 million in new technology at the Asplund WPCF to ensure that the facility is in peak condition and current with standards of professional practice. The Utility is committed to keeping up such high standards, in order to support a balanced indigenous population of wildlife in Cook Inlet, and to help protect the CIBW.

Asplund WPCF is effective at protecting Cook Inlet water quality

Based on two decades of environmental monitoring data, the Utility is confident that its activities are fully compatible with the proposed critical habitat designation, and that we do not discharge pollutants of a type and amount that can cause harm to the habitat or the CIBW.

More specifically, AWWU has conducted environmental monitoring continually since 1985. The monitoring has uniformly shown no adverse effects on Cook Inlet water quality, no toxicity in Cook Inlet attributable to the discharge, no accumulation or contamination of sediments attributable to the discharge, and no accumulation of contaminants in marine and intertidal biota.

To augment the records from 24 years of monitoring, AWWU is currently working in concert with the EPA and NMFS to further evaluate the effects of the Asplund WPCF discharge on Cook Inlet water quality for CIBW, including analysis of emerging pollutants of concern for which water quality criteria have not yet been established. This effort is being conducted by top scientists in the fields of oceanography, whale biology, and environmental chemistry. The conclusions from this biological evaluation will become the scientific foundation for the consultation between the federal agencies. It is important, therefore, for NMFS to precisely describe the primary constituent elements of critical habitat in order for the biological evaluation to address them properly.

Primary Constituent Elements Must Be Clarified

AWWU is very concerned that without further clarification about the nature and function of the CIBW primary constituent elements (PCEs), the designation will be vulnerable to mischaracterization and erroneous application.

One example of a concerningly vague PCE is PCE #3, which is intended to address pollutants. What constitutes "*The absence of toxins or other agents of a type or amount harmful to beluga whales*"? A PCE with this level of generality creates the potential for widely differing interpretations, and associated needless litigation. We recommend that PCE #3 be amended to recognize that substances have toxic effects at different concentrations, depending on the type of substance, and that potential for harm to the beluga population is only

Community, Security, Prosperity

relevant when type **and** amount of a constituent are considered together. Furthermore, to properly gage the risk of toxic effects, the potential for exposure and uptake of toxins must be taken into account.

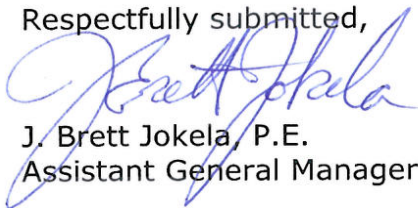
Additional clarity is also needed with respect to PCE #1, which identifies a certain water depth and proximity to streams as features of critical habitat, based on research by Goetz, et al. (2007). The concept of "high and medium flow accumulation anadromous fish streams", while framed by the researchers as a quantitative metric, is not definitive and should not be used as a prescriptive delimiter of habitat function. The authors note that "*incorporating measures of prey distribution in general, and anadromous fish runs in particular, could offer greater predictive accuracy about the distribution of belugas*" (Goetz, et al., page 254). The research points to some success in correlating beluga utilization of habitat that meet certain geographic metrics, and model results are presented predicting a habitat preference for large expanses of mudflats and shallow tidelands northwest of the Points Campbell and Woronzof, and southwest of Anchorage in lower Turnagain arm. However, there are **no** beluga sightings reported by Goetz, et al. to corroborate those predictions.

Neither the listing document nor the cited publication provides a rationale for selection of the five mile threshold buffer for the PCE feature around high and medium flow accumulation streams. The listed thresholds for proximity to these streams do not appear to be well-founded, and need to be recrafted with greater attention to detail and scientific support.

Conclusion

It is very important to AWWU that the proposed designation contain significantly greater clarity about the PCEs for the Cook Inlet beluga whale. Those PCEs form the foundation for the designation and will be the touchstone for consultations going forward. It is imperative that they are clear and precise, and based in sound science. Otherwise, they will give rise to multiple interpretations, distracting and expensive litigation, significant and unnecessary burdens for entities such as the AWWU, and will detract from the intended purpose of the critical habitat designation.

Respectfully submitted,



J. Brett Jokela, P.E.
Assistant General Manager

Reference

Goetz, K.T., et al., (2007), "Habitat Use in a marine ecosystem; beluga whales *Delphinapterus leucas* in Cook Inlet, Alaska", Marine Ecology Process Series, Vol. 330: 247-256, 2007.