



February 23, 2010

Kaja Brix
Assistant Regional Administrator
Protected Resources Division,
Alaska Region
NMFS PO Box 21668
Juneau, AK 99802

Attention: Ellen Sebastian

Re: RIN 0648-XT72
Proposed Critical Habitat Designation for Cook Inlet Beluga Whales

Dear Ms. Brix:

The Pebble Limited Partnership appreciates this opportunity to comment on the proposed critical habitat for Cook Inlet Beluga whales as an interested prospective developer of possible port facilities in Iliamna and Iniskin bays.

Iliamna Bay lies along the west coast of lower Cook Inlet within Area 2 of the proposed critical habitat for Cook Inlet beluga whales. A port facility in this area could result in some loss of tidelands, construction noise, and vessel traffic, but would not be expected to result in significant adverse modification of beluga habitat.

Designating the west coast of lower Cook Inlet as critical habitat for beluga whales is not scientifically justified, nor is it beneficial for the beluga or human populations of Cook Inlet. Cook Inlet belugas have coexisted with community discharges, the petroleum industry, commercial fishing, vessel traffic and other coastal development without significant impact for nearly half a century. Population surveys for belugas show an increase during and after major development projects in the Inlet such as pipeline construction, oil and gas exploration and production and ongoing shipping. The Pebble Limited Partnership is strongly supportive and committed to operating in a manner that furthers this beneficial coexistence through practices that are protective of wildlife and their habitat.

BELUGA PRESENCE IN ILIAMNA AND INISKIN BAYS IS NOT SUFFICIENT TO JUSTIFY A CRITICAL HABITAT DESIGNATION

Beluga whales infrequently visit Iliamna and Iniskin bays, but they are not high density users of this area. When they are present, it is very sporadic and usually only occurs in the late fall or early winter. The limited use of this area brings into question the rationale for selecting it as proposed critical habitat. All available data on beluga use of these two bays, as compiled

through a literature search and field studies conducted by ABR Consultants, are summarized below:

- In a compilation of opportunistic sightings from the National Marine Mammal Laboratory (NMML), only 18 sightings are shown in the Iniskin and Iliamna/Cottonwood bays over the last four decades (Vate-Bratstrom et al. 2010).
- Commercial-fisheries biologists with the Alaska Department of Fish and Game (ADFG) in Homer occasionally recorded belugas in Kamishak Bay, including Iliamna and Iniskin bays, while conducting herring surveys during late April–early June 1978–2002.
- Three studies recorded belugas in the vicinity of Iniskin and Iliamna bays before 2004. First, during the annual NMFS survey for belugas, a pair of belugas (an adult and a juvenile) was seen in Iniskin Bay on 4 June 1994 (Rugh et al. 2000; K. Goetz, NMFS, *in litt.*, ABR, Inc. 7 *Cook Inlet Beluga Observations* 2007). Second, Loren Buck (*in litt.*, 2005), a marine ecologist from Kodiak, observed 12–15 belugas off the mouth of Iniskin Bay while he was flying herring surveys in lower Cook Inlet during 26 March–1 April 1997. He did not see them enter the bay and did not see any belugas in the vicinity of Iniskin or Iliamna bays during aerial surveys in 1992. Finally, sporadic observations of belugas were reported during the ADFG herring surveys conducted from 1978 through 2002. These additional data suggest that belugas historically concentrated primarily in Iniskin Bay, with only a few individuals seen in Iliamna Bay (no data were collected in Chinitna Bay). The nine records of belugas on ADFG herring surveys occurred in 1983 (one sighting), 1986 (two), 1987 (one), 1994 (three), and 1996 (two).
- NMFS has conducted annual aerial surveys for belugas throughout Cook Inlet during May–August since 1993 (Rugh et al. 2000a, 2000b, 2001, 2002, 2003, 2004a, 2004b, 2005a, 2005b, 2006a, 2006b). Survey coverage included Iliamna, Iniskin, and Chinitna bays and the bight between the former two bays. NMFS biologists used satellite telemetry to track the movements of 14 belugas in Cook Inlet during 2000–2003 (Hobbs et al. 2005). Satellite tracking provided detailed information on seasonal movements and habitat use and demonstrated that belugas move farther down the inlet in winter than in summer. None of the 14 tagged belugas in that study were observed utilizing Iniskin or Iliamna bays, they did not move south of Chinitna Bay.
- From 2004 through 2009, ABR conducted a total of 256 hours of boat-based surveys for marine wildlife, 29 hours of fixed-wing surveys for waterbirds, 180 hours of fixed-wing surveys for harbor seals, and 219 hours of helicopter-based surveys for marine wildlife in Iliamna, Iniskin, and Chinitna bays and northern Kamishak Bay. The total 684 hours of survey effort occurred during all months of the year, with the greatest effort being concentrated in May. ABR surveyed for approximately twice as many hours during the spring and summer (March–August) as they did in the fall and winter (September–February). During all surveys ABR conducted from 2004 through 2009, ABR recorded beluga whales only in September and October 2007 when they saw groups of up to 14 whales in Iliamna, Iniskin, and Chinitna bays and near the Iniskin Islands. In those two

months, ABR saw 5 groups of belugas totaling 27 individuals, including probable repeated observations of some of the same individuals. ABR saw 14 and 13 belugas during fixed-wing and helicopter surveys, respectively.

- In September 2007, ADFG personnel conducting salt-marsh studies recorded 25–30 belugas (including juveniles) in Chinitna Bay (S. Baird, *in litt.*, 2007) and 12 belugas were seen by a fisherman in upper Iniskin Bay (B. Faulkner, *in litt.*, 2007).
- In October 2008, biologists from Pentec Environmental who were conducting fish surveys near the mouth of Iliamna Bay saw one pair of belugas that appeared to be an adult and a juvenile (J. Houghton, *in litt.*, 2008). That was the only sighting of belugas made by Pentec, despite having conducted surveys of intertidal invertebrates and nearshore fishes in the study area on a total of 83 days during 2004–2008. Before 2004, Jon Houghton and colleagues conducted similar surveys in the area on 30 days during April–September 1978 and on 2 days in June 1996 and did not see any belugas. However, because these scientists were not focused on surveying marine wildlife over the entire area every day, their effort cannot be considered equivalent to the effort expended in the dedicated surveys for marine wildlife conducted by ABR during 2004–2008.

SELECTION OF SHALLOW COASTAL WATERS ALONG LOWER COOK INLET IS NOT REPRESENTATIVE OF IMPORTANT BELUGA HABITAT

The selection of the west coast of lower Cook Inlet as critical habitat due to the shallow nature of its waters is questionable. NOAA/NMFS publications state that beluga whales generally occur in shallow coastal waters; as a result the agencies appear to have focused their selection of critical habitat on all shallow coastal areas within the known full range of the Cook Inlet beluga whales. While the determination that Cook Inlet beluga whales rely on shallow coastal areas may be true in upper Cook Inlet, scientific studies along the west coast of lower Cook Inlet do not indicate that beluga whales utilize the nearshore habitat except on rare occasions. Examples of this discrepancy are as follows:

- The use of shallow coastal waters is important for calving where warmer waters from freshwater sources may be important to newborn calves during their first few days of life (Katona et al). While this statement may be true, it is not relevant to the west coast of lower Cook Inlet as there is no known beluga calving habitat in this area. As stated in the NMFS *Draft Conservation Plan for the Cook Inlet Beluga Whale*, Alaska Natives described calving areas within Cook Inlet as the northern side of Kachemak Bay in April and May, off the mouths of the Beluga and Susitna Rivers in May, and in Chickaloon Bay and Turnagain Arm during the summer.
- Belugas are known to use shallow areas in summer when they are following the Eulachon and King Salmon runs up the rivers. This statement represents well documented habitat use in upper Cook Inlet, but it is not relevant to the west coast of lower Cook Inlet. Beluga distribution during summer, when the Eulachon and King Salmon are running, is concentrated in the upper inlet. The west coast of lower Cook Inlet does not serve this same purpose. Several quotes out from the *NMFS Draft Conservation Plan for the Cook Inlet Beluga Whale* document this:

- “These data also found that in August, beluga whales were concentrated in Knik Arm, along the Little Susitna River delta, or in the area of Fire Island, Point Possession, and Turnagain Arm. In September they continued to use Knik Arm and increased use of the Susitna delta, Turnagain Arm and Chickaloon Bay, and also extended use along the west coast of the upper Inlet to the Beluga River. In October, beluga whales ranged widely down the Inlet in coastal areas, reaching Chinitna Bay, and Tuxedni Bay and continued to use Knik Arm, Turnagain Arm, Chickaloon Bay, and Trading Bay (MacArthur River). November use was similar to September. *In December, beluga whales moved offshore with locations distributed throughout the upper to mid-Inlet. In January, February, and March, beluga whales used the central offshore waters moving as far south as Kalgin Island and slightly beyond.*” [Kalgin Island is > 50 miles north of Iliamna Bay]
- “The available information indicates that CI beluga whales remain in the mid and upper Inlet during the winter months, but their range extends throughout much of the Inlet. Their winter distribution does not appear to be associated with river mouths, as it is during the warmer months.”
- “It appears, then, that these whales primarily reside in Cook Inlet, as shown by satellite tagging studies, traditional wisdom and knowledge, surveys, archeological studies, anecdotal accounts, and stranding records. Traditional wisdom and knowledge presented by Huntington (2000) documents beluga whale use in Cook Inlet, especially the upper Inlet, from April to November. In the winter, CI beluga whales concentrate in deeper waters in mid- Inlet down to Kalgin Island [> 50 miles north of Iliamna Bay] with occasional forays into the upper Inlet, even to the upper ends of Knik and Turnagain Arms. Dive behavior indicates they make deeper dives in these areas, plausibly to feed. Deeper mid-Inlet winter habitats may be important to the life cycle of CI beluga whales.”
- Beluga use of shallow waters to escape predation by Orcas has been another supporting argument for the selection of critical habitat in shallow areas, again this may be true in the upper inlet, but it is not relevant along the west coast of the lower inlet for the reasons listed below:
 - The *NMFS Draft Conservation Plan for The Cook Inlet Beluga Whale* states that only the transient Orca populations appear to feed on beluga whale. It goes on to state that transient killer whales usually occur in Turnagain and Knik Arms, or along the riptide that extends from Fire Island to Tyonek. Orca whales found in lower Cook Inlet are a resident population that is not believed to feed on beluga whales
 - All documented beluga strandings, which have been theorized to be an escape behavior in response to Orca predation, have occurred in the upper inlet.
 - All proposed ESA research on Orca predation on Cook Inlet belugas is limited to upper Cook Inlet, supporting its lack of relevance to lower Cook Inlet.



Study results and NMFS's statements that beluga use shallow waters are not relevant to the west coast of lower Cook Inlet and documentation shows that belugas, rarely present along the west coast of lower Cook Inlet, mostly utilize the deeper water when they do visit the area in fall and winter. Yet despite these findings, the proposed critical habitat follows the shallow waters along the west coast of lower Cook Inlet. This critical habitat selection appears to lack scientific justification. There is no apparent benefit for the conservation of the Cook Inlet beluga whale population associated with the designation of critical habitat in the shallow waters along the west coast of lower Cook Inlet.

OVER-SELECTION OF CRITICAL HABITAT IS CONTRADICTORY TO THE INTENT OF THE ENDANGERED SPECIES ACT

Area 2 encompasses 2,275 square miles and includes the entire western nearshore of lower Cook Inlet as well as Kachemak Bay. This area has been included as part of a geographical range, no scientific support has been provided to establish this area as essential habitat based on geomorphology, prey abundance, habitat use, or other valid scientific reasoning as is required by section 3(5)(A)(i) of the Endangered Species Act.

Furthermore, the Endangered Species Act states that "critical habitat shall not include the entire geographical area which can be occupied". However, the proposed area appears to be an attempt to *effectively* address any and all potential development within the entire present and historical range of beluga habitat by selecting all coastal areas suitable for development. While this may meet the letter of the law, it appears to defy the intent of the law.

FULL ECONOMIC ANALYSIS HAS NOT BEEN CONDUCTED AS REQUIRED BY THE ENDANGERED SPECIES ACT

If the proposed critical habitat for Area 2 were to be approved, any development in this region would incur high costs associated with beluga whale studies and the ESA consultation process. Additionally, projects could be required to assume substantial costs during operations due to restrictions associated with the presence of an endangered species in its critical habitat. The economic analysis conducted for NMFS, as required to meet the requirements for proposing critical habitat, did not address the full scope of economic impacts associated with the establishment of critical habitat. The analysis only addressed ESA consultation costs, without full consideration of the costs of beluga surveys or costs resulting from impacts to construction and operation schedules of all potential development activities in Cook Inlet as a result of the probable terms and conditions attached to Section 7 analyses. The scope of the economic analysis also did not include operational costs to comply with regulations or costs for project delays, nor the costs of litigation which can be filed whether or not there is a solid legal issue at stake. A thorough economic analysis is necessary for an informed discussion on the proposed critical habitat.



CONCLUSION

There is no scientific justification for designating the west coast of lower Cook Inlet as critical habitat for beluga whales. If the Endangered Species Act is allowed to be used as a pretense to stop all development in Cook Inlet, it will diminish the protection for belugas in areas of true critical habitat. There will be a loss of focus on more effective and meaningful conservation measures. Economic development which most often requires some level of coastal development including ports and related infrastructure will be hampered. The loss of economic opportunities will continue to impact the standard of living for rural Alaskans with no inherent benefit related to the conservation of beluga whales.

Sincerely,

A handwritten signature in black ink that reads "Charlotte MacCay". The signature is written in a cursive, flowing style.

Charlotte MacCay
Manager, Permitting