

Ms. Kaja Brix
Assistant Regional Administrator
Protected Resources Division, Alaska Region

National Marine Fisheries Service
ATTN: Ellen Sebastian
P.O. Box 21668

Juneau, AK 99802-1668

Re: RIN 0648-AX50; Comments of Mary Ann Pease, MAP Consulting, LLC on December 2, 2009 Proposed Rule Designating Critical Habitat for the Cook Inlet Beluga Whale (74 Fed. Reg. 63,080)

Dear Ms. Brix:

The NMFS has indiscriminately designated all of upper Cook Inlet as critical habitat for the beluga, without regard for either the actual use of different areas of the Inlet by belugas or the economic impact of the designation. While these two issues are inter-related, they need to be examined separately, because of the very different components that come into play for each.

A critical habitat designation is supposed to be used to protect specific areas of habitat critical to the survival of an endangered species. A critical habitat designation carries with it a host of restrictions and limitations on human activities that the designating agency may use to drastically reduce human contact with the designated habitat. But, the ESA is not to be used as a foil for development, or to promote an environmental agenda. Because of its major and dramatic impact on human activity, it is to be used sparingly to protect those areas legitimately needed to give an endangered species the best chance to recover.

Unfortunately, a limited and judicious application of the ESA did not occur when NMFS indiscriminately designated all of upper Cook Inlet as critical habitat. NMFS did not rely upon science and studies to properly designate areas critical to the survival of the beluga. Instead, it made a blanket designation of thousands of square miles of the Inlet, without regard to the limited use that a critical habitat designation requires. Accordingly, the critical habitat designation must be redone in accordance with the parameters and intent of the ESA. NMFS must justify and rationalize the designation of each area of critical habitat for the Cook Inlet beluga within upper Cook Inlet. The ESA requires that level of detail and analysis for each such specification for a critical habitat and it was not followed by NMFS. NMFS must justify each specific area within the upper Inlet based upon observed sustained uses of the area by belugas, and not random sightings or a speculated presence of whales in the area. Moreover, the critical habitat designation, for those areas where there is a scientific basis for such a designation, must

quantify the extent and time of use of the area by belugas, so human activity is not unreasonably limited or restricted at times when the area is not being consistently used by the belugas. NMFS has failed to comply with these provisions of the ESA, and this failure mandates that the ESA critical habitat designation for the Cook Inlet beluga be reevaluated to conform to the ESA.

Also noticeably lacking from the critical habitat designation of the entire upper Inlet is the required economic assessment of such a designation on south-central Alaska. The region is the economic center of Alaska, and everything from shipping to oil production to recreation makes use of the upper Inlet. The potential impact on these activities is summarily dismissed by NMFS as creating de minimus economic impact over the next several years. It is incredible that NMFS claims under \$1 million in impact for industry operating in and around the Inlet. This figure is so clearly devoid of any legitimate backing or support from anyone with economic credentials as to be laughable. Indeed, several operators in the Inlet have already spent more than \$1 million EACH (Port of Anchorage, Chevron, KABATA) on beluga related issues in an attempt to conform existing operations and projected plans to the ESA listing of the beluga. Recently reported by the Port of Anchorage – they are spending \$10 -\$15 million annually on Beluga Mitigation. That number directly correlates to increased goods and services from the Port and directly passed on to Alaskans! These expenses were incurred prior to any critical habitat designation and represent a fraction of the expenditures that will be necessary to conduct any economic activity in the critical habitat area. This blatant disregard by NMFS of the required valid economic assessment of a critical habitat designation also calls into question the basis for designating of the entire upper Inlet as critical habitat, without similar scientific support for year round use by the beluga as required under the ESA.

Also completely ignored in the seemingly non-existent economic analysis of the upper inlet critical habitat designation is an objective and realistic evaluation of what it will cost existing operations to conform to the critical habitat designation, let alone implement new operations or expand existing ones. For example, it is undisputed that if AWWU must upgrade its sewage treatment plant under the critical habitat designation, the cost will be between \$600 million and \$1 billion. Nowhere is this reflected or accounted for in the economic impact assessment of the NMFS designation, which is clearly contrary to the requirements of the ESA. A reworking of this portion of the critical habitat designation is necessary.

The projected economic impact as detailed in the critical habitat designation, if it is to be believed, has to mean that there will be minimal interference, delay or disruption of ongoing and contemplated activities in the Inlet by NMFS. Six hundred thousand in economic impact over 10 years is certainly a manageable number when spread among the many Inlet users affected by the NMFS habitat designation. But, the clear error in this figure was recently

revealed when NMFS officials, undergoing questioning in Juneau, claimed that the economic figure represented the cost to NMFS to implement Inlet regulations. What? Since when does the ESA allow the economic impact analysis of a habitat designation to be limited to the cost to an agency to prepare regulations? Such blatant failure to comply with specific sections of the ESA calls into question the entire process used by NMFS to identify critical habitat for the Cook Inlet beluga.

Environmentalists claim that NMFS has required less than one percent of projects to be redesigned to conform to a critical habitat designation. These assurances have not come from NMFS and the entire upper Inlet habitat designation makes it clear that all projects in the Inlet will incur significant cost increases due to NMFS restrictions. Accordingly, there are enormous economic consequences for those operating in the Inlet. These costs have not been addressed in the proposed critical habitat designation as required by the ESA. There is no guarantee or accountability to require NMFS to conform its approval of projects in the upper Inlet to the estimated economic impact it has set out in the critical habitat designation. Those who live, work and recreate in the Inlet are entitled to know what economic hurdles they face with the critical habitat designation, and that is not reflected in the present NMFS designation. The upper Inlet economic impact from the critical habitat designation must be redone to accurately reflect the cost to existing and future operations in the Inlet as mandated by the ESA.

Sincerely,

Mary Ann Pease
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