

MUNICIPALITY OF ANCHORAGE



Office of the Mayor

Phone: 907-343-7100

FAX: 907-343-7180

Mayor Dan Sullivan

March 1, 2010

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

Re: Proposed Designation of Critical Habitat for Cook Inlet Beluga Whale

Dear Ms. Brix:

On behalf of the people and businesses of the Municipality of Anchorage (MOA), I would like to express my appreciation to NOAA Fisheries for the opportunity to provide our comments on the proposed designation of critical habitat for the Cook Inlet Beluga Whale (CIBW), published in the Federal Register on December 2, 2009 (74 Fed. Reg. 63080-63095). I would also like to acknowledge at the outset the constructive working relationship that the Municipality and our several agencies and departments have developed with NOAA Fisheries on the topic of beluga whales. I offer my comments today in that same constructive spirit, and intend in doing so to express our commitment to continue working with you in that same vein.

After giving serious consideration, I have come to the conclusion that we must oppose the proposed designation, as I explain further below. I therefore respectfully request that NOAA Fisheries exercise its considerable statutory discretion to conclude that the designation is not prudent and withdraw the proposal. I also commend to you the findings of the Alaskan Legislature, which has reached a similar conclusion in its enactment of House Joint Resolution 40 approved on Monday, March 1, 2010, a copy of which I have enclosed for your consideration. Allow me to explain the basis of my request.

The Vital Economic and National Security Functions of Cook Inlet

One of the primary considerations that the MOA has taken into account in deciding to oppose the designation is the magnitude of the potential burdens that are likely to result from the designation – whether intended by NOAA Fisheries or not. An apparent additional layer of regulation as presented by this proposal necessarily represents an additional regulatory and financial burden on our community, and this one in particular creates significant uncertainties and will generate huge opportunities for useless and expensive litigation. In Cook Inlet, these concerns about an additional regulatory layer are magnified. The stakes are uniquely high here because the Municipality and the State rely so heavily on Cook Inlet and the essential lifeline that it represents for all of Alaska.

More specifically, Cook Inlet serves as a critical transportation conduit for goods and services into the entire state of Alaska. Approximately 85% of all the goods entering Alaska come through the Port of Anchorage. These goods provide for the most fundamental needs of all of Alaskans: Virtually everything on our food shelves and homes and in our dealerships and stores comes through the Port. In addition, Cook Inlet supports hugely significant oil and gas production, fishing, mining and a growing year-round tourism industry. Cook Inlet is the engine of economic activity for the surrounding towns and cities and for the entire region.

In addition, the continued availability of these transportation functions is vital to the continued reliable execution of the national security functions of our nation's military in Alaska. The Department of Defense has unequivocally certified the importance of the Port in the attached letter from Lieutenant General Dana T. Atkins. As indicated in that letter, Alaska's strategic location continues to be vitally important to the overall U.S. defense strategy. As one of 19 National Strategic Ports, the Port of Anchorage plays a major role in support of Alaska-based military forces at all five of their installations as, as well as the U.S. Coast Guard. There is a growing U.S. Navy presence in Gulf of Alaska in support of joint military training missions. In addition, there are more than 30 military-related locations across Alaska. Large-scale, multi-service, and multi-national training exercises are routinely conducted here. Fort Richardson and Elmendorf Air Force Base lie within the Municipality, and more than 20,000 military personnel and their family members are stationed here. The Port supports the Alaska military as its primary source of daily operating supplies. These key strategic and military functions could not occur without the vessel traffic that comes through Cook Inlet and the Municipality.

High Risks Due to Significant Uncertainties

The risks to these vital functions are exacerbated by the significant and powerful uncertainties inherent in the proposed designation. The proposed rule is fundamentally vague about how it relates to the existing protections associated with the CIBW listing that is already in place. The proposed rule is also fundamentally vague about what its impacts will be on pre-existing

authorizations. These types of uncertainties are not only unacceptable and unfair to the regulated community; they also create a fertile ground for litigation and misuse of the regulation. This in turn translates into higher risks and costs for entities such as the MOA.

The rule's economic analysis (Entrix 2009) compounds the uncertainty about what the proposed rule will mean in practice, and at the same time is woefully inadequate in assessing the real costs. While the MOA understands that economic projections are difficult, they are also relevant, important and required by law. Here, because there is such vagueness about what compliance will entail, the task of estimating compliance costs is understandably tough. But it is implausible that compliance costs will total \$575,000 unless, in fact, this proposal properly construed adds no additional protections for the CIBW. If indeed that is the case, then that merely bolsters the conclusion that it is simply not justified and should be withdrawn.

No Apparent Benefit to Belugas

Indeed, from the Municipality's perspective, the proposed designation is unnecessary and would not result in any material benefits to the species. The Port of Anchorage's ESA consultation on the CIBW is instructive on this point. It amply demonstrates that habitat needs of the CIBW can, and have been, properly and fully addressed through the existing consultation processes. The Port's Biological Opinion addressed each of the proposed Primary Constituent Elements, one by one. It called for multiple (and expensive) additional requirements on the Port as a result of that analysis. Since it is clearly possible to protect CIBW habitat in this way, it is very difficult to see what need or benefit would be served by layering on an additional regulatory framework through the designation of critical habitat.

The analysis of benefits as set out in the proposed rule is not compelling. The proposed rule states that the primary benefit of designation is that it will require all agencies to ensure that their actions are not likely to destroy or adversely modify critical habitat. 74 Fed.Reg. 63090. This is, with all due respect, circular logic that adds little, and it is not a persuasive rationale for proceeding with the designation. Another alleged benefit is that notice of areas and features important to species conservation can be effective for education and outreach. If that is so – and it may be a fair point – then let's just address that objective directly through a public education program designed to describe what is important for the beluga. Using the designation of critical habitat as a means to educate people that healthy habitat is important is a very blunt and unnecessary instrument. Other "ancillary" benefits listed, while potentially valid, simply cannot outweigh the risks to vital services outlined above.

Conclusion

The Municipality of Anchorage is committed to doing its fair share in helping to rebuild the populations of the Cook Inlet beluga whales. The listing of the CIBW as endangered has already

Letter to Ms. Kaja Brix
March 1, 2010
Page 4

triggered a panoply of regulatory requirements under the ESA that we are bound by and are adhering to faithfully. This additional proposal of critical habitat for the CIBW is fraught with uncertainties that will invite litigation and confusion, and add little or nothing of benefit. The ESA gives NOAA Fisheries significant latitude in deciding whether and when to designate critical habitat for listed species. The ESA itself specifically calls upon NOAA Fisheries to take into consideration the economic impact and the impact on national security of specifying any particular area as critical habitat. 16 USC 1533. Moreover, critical habitat designation is not prudent if it would not be beneficial to the species. 50 CFR 424.12. Given the vital functions of Cook Inlet as the economic engine for the entire region, and the paucity of real conservation benefits that will ensue from the designation, we respectfully request that NOAA Fisheries withdraw the proposal as not warranted and terminate this proceeding accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Sullivan". The signature is fluid and cursive, with a large initial "D" and "S".

Daniel A. Sullivan
Mayor

Attachments: House Joint Resolution 40
Lieutenant General Atkins' letter dated January 26, 2010

CS FOR HOUSE JOINT RESOLUTION NO. 40(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/26/10

Referred: Rules

Sponsor(s): REPRESENTATIVES MILLETT, Neuman, Lynn, Johnson, Keller, Gatto, Olson , Stoltze, Johansen

A RESOLUTION

1 **Opposing the proposed designation by the National Marine Fisheries Service of 3,000**
2 **square miles of upper Cook Inlet, the mid-inlet, all of the inlet's western shores, and**
3 **Kachemak Bay as critical habitat for beluga whales.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** the Endangered Species Act requires economic effects to be taken into
6 account for critical habitat designations, and areas may be excluded from critical habitat if it
7 is determined that the benefit of such exclusion outweighs the benefit of specifying such areas
8 as critical habitat; and

9 **WHEREAS** the National Marine Fisheries Service has proposed declaring 3,000
10 square miles of upper Cook Inlet, the mid-inlet, all of the inlet's western shores, and
11 Kachemak Bay as critical habitat for beluga whales; and

12 **WHEREAS** scientists in the National Marine Fisheries Service have concluded that
13 the sole reason for the population decline was the unsustainable subsistence harvest in the
14 1990s; and

15 **WHEREAS** a cooperative harvest management plan was put into place in 2000; and

1 **WHEREAS** scientists predicted signs of recovery of the beluga whale population
2 would take five to seven years after a cooperative harvest management plan was instituted;
3 and

4 **WHEREAS**, in 2005, the population of beluga whales was 278, and, in 2009, the
5 population was 321, a four percent increase a year; and

6 **WHEREAS** the State of Alaska has given notice of its intent to sue challenging the
7 Cook Inlet beluga whale Endangered Species Act listing; and

8 **WHEREAS** there is no evidence that human activity has harmed the beluga whale's
9 environment, migration, or ecology; and

10 **WHEREAS** the National Marine Fisheries Service has stated that the additional
11 regulatory oversight will cost only an additional \$600,000 over the next decade; and

12 **WHEREAS** the cost estimate does not factor in the extra costs that existing and future
13 operations may have to pay to meet unnecessary new regulatory burdens; and

14 **WHEREAS** a critical habitat designation in Cook Inlet may hurt community and
15 economic development; and

16 **WHEREAS** permitting and construction projects may suffer costly delays, and
17 economic development could be curtailed; and

18 **WHEREAS** the proposed Knik Arm Bridge, Port Mackenzie, tourism, and vessel
19 traffic may be negatively affected; and

20 **WHEREAS** infrastructure development in Cook Inlet for resource development and
21 energy projects could be threatened by critical habitat designations; and

22 **WHEREAS** the Port of Anchorage serves 85 percent of the population of the state
23 and receives 90 percent of the goods coming into the state, and the port has already fully
24 addressed the conservation needs of the Cook Inlet beluga whales relating to the whales'
25 activity, based on the best scientific information available, working with the National Marine
26 Fisheries Service and other experts; and

27 **WHEREAS** military deployments from the Port of Anchorage, military flight
28 patterns, and military operations could be negatively affected or limited with no benefit to
29 beluga whales; and

30 **WHEREAS** environmental lawsuits may add significant delays and millions of
31 dollars to the cost of economic development projects in the Cook Inlet area; and

1 **WHEREAS** decades of safe and environmentally responsible oil and gas production,
2 vessel transportation, community development, commercial, sport, and subsistence fishing,
3 and other economic activity in Cook Inlet have taken place without harming Cook Inlet
4 beluga whales; and

5 **WHEREAS** future oil and gas exploration, development, and production could be
6 gravely affected by critical habitat designations; and

7 **WHEREAS** southcentral Alaska energy needs have been met predominantly through
8 responsible oil and gas production in Cook Inlet for nearly 50 years while beluga whale
9 populations thrived; and

10 **WHEREAS** there is no evidence that commercial or sport fishing is harming the
11 beluga whale population; and

12 **WHEREAS** the commercial and sport fishing industries will be gravely threatened by
13 a critical habitat designation because the beluga whale's primary food source is fish; and

14 **WHEREAS** lost development opportunities because of critical habitat designations
15 could ultimately lead to lost revenue to the State of Alaska and to local governments; and

16 **WHEREAS** all three members of Alaska's congressional delegation and Governor
17 Sean Parnell are opposed to the critical habitat designation; and

18 **WHEREAS** designation of such broad areas of municipal, commercial, and industrial
19 interest, without any known or identifiable link between these activities and the conservation
20 status of the Cook Inlet beluga whale is contrary to the public interest; and

21 **WHEREAS** the conservation benefits, which are entirely uncertain and speculative,
22 are outweighed by the costs and impediments posed by designation of critical habitat in this
23 instance in most, if not all, of the proposed designation area;

24 **BE IT RESOLVED** that the Alaska State Legislature opposes the proposed
25 designation by the National Marine Fisheries Service of 3,000 square miles of upper Cook
26 Inlet, the mid-inlet, all of the inlet's western shores, and Kachemak Bay as critical habitat for
27 beluga whales; and be it

28 **FURTHER RESOLVED** that the State of Alaska requests a more robust economic
29 analysis be completed by the National Marine Fisheries Service before finalizing any critical
30 habitat designation.

31 **COPIES** of this resolution shall be sent to the Honorable Barack Obama, President of

1 the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and
2 President of the U.S. Senate; the Honorable Nancy Pelosi, Speaker of the U.S. House of
3 Representatives; the Honorable Gary F. Locke, United States Secretary of Commerce; Dr.
4 Jane Lubchenko, Under Secretary of Commerce for Oceans and Atmosphere, United States
5 Department of Commerce; Kaja Brix, Director, Protected Resources Division, Alaska Region,
6 National Marine Fisheries Service, National Oceanic and Atmospheric Administration; the
7 Honorable Dan Sullivan, Mayor of the Municipality of Anchorage; the Honorable John C.
8 Combs, Mayor of the City of Palmer; the Honorable Verne E. Rupright, Mayor of the City of
9 Wasilla; the Honorable Talis Colberg, Mayor of the Matanuska Susitna Borough; the
10 Honorable James C. Hornaday, Mayor of the City of Homer; the Honorable Pat Porter, Mayor
11 of the City of Kenai; the Honorable Peter A. Micciche, Mayor of the City of Soldotna; the
12 Honorable Dave Carey, Mayor of the Kenai Peninsula Borough; and the Honorable Lisa
13 Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young,
14 U.S. Representative, members of the Alaska delegation in Congress.



HEADQUARTERS
ALASKAN COMMAND (ALCOM)
ELMENDORF AIR FORCE BASE ALASKA 99506

JAN 26 2010

Lieutenant General Dana T. Atkins
Commander, Alaskan Command
10471 20th Street, Suite 139D
Elmendorf AFB AK 99506-2200

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

Ref: RIN 0648-AX50

Dear Ms. Sebastian

I would like to take this opportunity to inform you of the critical importance of the Port of Anchorage to national security and to Alaska's five major military installations.

In 2004, the Maritime Administration designated the Port of Anchorage as one of America's 19 National Strategic Ports. The Port of Anchorage supports our mission and requirement to receive and deploy combat forces stationed in Alaska. Alaska is now home to an Army Stryker brigade, an airborne brigade, and a combat aviation brigade, with the likelihood of additional forces being home-stationed here in the future. Since 2005, almost 18,000 pieces of military cargo in the form of combat vehicles, weaponry, and support equipment have passed through the Port. Over 33 million gallons of military aviation fuel is received annually by barge and tankers offloading via the Port. Our ability to project this power to combat theaters around the globe depends heavily upon sealift through the Port of Anchorage.

The Port of Anchorage's commitment under the Strategic Port program to provide at least 25 acres of land area within its boundaries during a deployment is critical to the efficient staging and loading of our combat equipment. Due to the high worldwide operations tempo, we have executed several large military movements through the Port recently.


The Port of Anchorage is not only the strategic hub for military deployments and operations, it is also one point of throughput for the commodities we stock in our base exchanges, commissaries, and troop stores in support of 55,000 military and family members in Alaska.

As you can see, the Port of Anchorage is critical to the success of military operations in, and deploying out of, the State of Alaska. I want to echo General Duncan McNabb, Commander of U. S. Transportation Command, when he stated that *"Since we rely on commercial infrastructure*

Guardian of the North

to support defense needs, infrastructure projects that improve the capability to receive, stage, and load commercial freight into ocean-going vessels tend to also benefit DoD." I ask that any proposed critical habitat designation take this information into account, especially when NMFS is considering implementing measures which could constrain the movement of equipment and material flowing through the Port of Anchorage in the future.

Sincerely


DANA T. ATKINS
Lieutenant General, USAF
Commander