

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

14 May 2009

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

Dear Ms. Brix:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's 14 April 2009 advance notice of proposed rulemaking and request for information (74 Fed. Reg. 17131) concerning designation of critical habitat for the endangered Cook Inlet stock of beluga whales under the Endangered Species Act. As indicated in the Commission's 24 April 2006 comments on the Service's status review of this stock and in its 3 August 2007 letter commenting on the proposed listing rule, the designation of critical habitat for Cook Inlet beluga whales is one of the most important actions that can be taken to prevent the extinction of the population, and we strongly support the Service in completing this action as soon as possible.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service designate all waters of Cook Inlet from Kalgin Island northward to the headwaters of Knik and Turnagain Arms and all coastal waters less than 18 meters deep in the remaining portions of the inlet as critical habitat for Cook Inlet beluga whales.

RATIONALE

The *Federal Register* notice specifically requests information related to the identification of critical habitat and essential physical or biological features of such habitat for endangered Cook Inlet beluga whales. The Endangered Species Act requires the agency to designate critical habitat at the time of listing unless it is deemed not to be determinable. In its 3 August 2007 letter to the Service on the listing of the Cook Inlet beluga whale (enclosed and incorporated by reference), the Commission noted that the scientific information then available was sufficient to identify areas that should be designated as critical habitat for the population. The Commission also reviewed the information from aerial abundance surveys carried out since 1993, research on winter dispersal of beluga whales, satellite-tracking of tagged animals during 2000–2002, and observations of beluga whale feeding behavior and ecology and provided its recommendation for a reasonable designation of critical habitat. The Commission's analysis and recommendation remain pertinent to the current request for information.

This being the case, the Marine Mammal Commission again recommends that the National Marine Fisheries Service designate all waters of Cook Inlet from Kalgin Island northward to the

headwaters of Knik and Turnagain Arms and all coastal waters less than 18 meters deep in the remaining portions of the inlet as critical habitat for Cook Inlet beluga whales. This corresponds to three key habitat types identified in the draft conservation plan for Cook Inlet beluga whales: high value/high sensitivity habitats (type 1), high value habitats (type 2), and winter habitat areas, secondary summering sites, and historic habitat sites (type 3).¹ In the enclosed 24 April 2006 letter, the Commission recommended that the Service, at a minimum, consider designating as critical habitat all areas identified in the draft conservation plan as high value/high sensitivity and high value habitats. When it revisited this issue in 2007, the Commission recommended the inclusion of additional areas in order to protect winter habitat, secondary summer habitat, and habitat that was used historically and will likely be important to support future population recovery. The Commission continues to believe that the inclusion of all such areas in the designation of critical habitat is essential for the conservation and recovery of the Cook Inlet beluga whale population.

Section 4(b)(2) of the Endangered Species Act specifies that a critical habitat designation is to be based on the best scientific data available after taking into consideration the economic and other relevant impacts of including any particular area in the designation. The Service may exclude an area from the designation if it determines that the benefits of the exclusion outweigh the benefits of the designation—unless it determines that the failure to designate the area as critical habitat will result in the extinction of the species. The Commission has based its recommendation exclusively on the first half of this equation—that is, based on the best available science, those areas that are essential for the conservation of the species and are in need of special management or protection. Although it recognizes that a variety of commercial activities are carried out within Cook Inlet, the Commission does not have specific information on the economic impact of including the particular areas that we have recommended be designated as critical habitat. Presumably, those whose activities might be impacted by a critical habitat designation will provide information that can be used in conducting the required cost-benefit analysis.

In considering whether to exclude certain areas from the critical habitat designation based on economic or other considerations, the Commission calls on the Service to focus on the requirement that any such exclusion not result in the extinction of the stock. The population viability analysis cited in the final rule listing the Cook Inlet beluga whale stock as an endangered species concluded that there was 62 percent probability that the population would continue to decline, a 26 percent chance of extinction within 100 years, and a 70 percent chance of extinction within 300 years. At the same time, the final rule identified several possible causes for the observed population trends. These include—

...the continued development within and along upper Cook Inlet and the cumulative effects on important beluga whale habitat. Ongoing activities that may impact this habitat include: (1) continued oil and gas exploration, development, and production; and (2) industrial activities that discharge or accidentally spill pollutants (e.g.,

¹ These habitat categories are more or less retained as type 1 and type 2 habitats in the final conservation plan published in October 2008.

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petroleum, seafood processing waste, ship ballast discharge, effluent from municipal wastewater treatment systems, and runoff from urban, mining, and agricultural areas). Destruction and modification of habitat may result in “effective mortalities” by reducing carrying capacity or fitness of individual whales, with the same consequence to the population survival as direct mortalities. Therefore, threatened destruction and modification of Cook Inlet beluga whale DPS habitat contributes to its endangered status.

Until further research is done to identify which factor or factors are causing or contributing to the decline of the population and its endangered status, or to identify which factors can be discounted, the exclusion of any of the areas where these activities are occurring from a critical habitat designation based on economic considerations may well result in the extinction of the species.

Please contact me if you would like to discuss our recommendation or other comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Gork" followed by a flourish and the letters "for".

Timothy J. Ragen, Ph.D.
Executive Director

Enclosures