

Export Council of Alaska



February 12, 2010

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

ATTN: Ellen Sebastian

RIN 0648-AX50

Dear Ms. Brix:

The following comments are provided on behalf of the Export Council of Alaska (ECA) in response to the National Marine Fisheries Service (NMFS) proposed rule and request for comment regarding Endangered and Threatened Species; Designation of Critical Habitat for Cook Inlet Beluga Whale [Docket No. 090224232-91321-03] published in the Federal Register on December 2, 2009. The ECA is commenting on both the November 17, 2009, Draft Regulatory Impact review/Section 4(b)(2) Preparatory Assessment/Initial Regulatory Flexibility Act Analysis (RIR/4(b)(2)PA/IRFA) and the proposed rule.

The ECA is one of a nationwide network of export councils intended to foster the international competitiveness of the United States. Nationwide, export councils link together 1,500 leaders of business, government, and academia with the International Trade Administration of the U.S. Department of Commerce. Each member is appointed to a limited term by the Secretary of Commerce on behalf of the President. We serve as an advisory group and communications link between the exporting community and the U.S. Department of Commerce. In Alaska, we focus on expanding awareness of companies and individuals to opportunities in markets abroad and assist those firms engaged in exporting. Exports of liquefied natural gas, fish, minerals, and other items valued at hundreds of millions of dollars move through Cook Inlet and its ports every year. Many projects are proposed or under development in this area; some of these projects are directly related to exports, while others are infrastructure projects that are indirectly related to exports in that they improve the international competitiveness of Alaska and the United States. The designation of Cook Inlet beluga whale critical habitat should be tailored to have minimal or no impact on these exports.

Comments on Draft RIR/4(b)(2)PAIRFA:

The Draft RIR/4(b)(2)PAIRFA significantly undercounts the costs, and exaggerates the benefits, of the critical habitat designation and arbitrarily and capriciously concludes that the benefits of such designation exceed its costs. NMFS should revise this document to address the weaknesses described in the following paragraphs:

Significantly Undercounts the Costs:

The Draft RIR/4(b)(2)PAIRFA significantly undercounts the costs of the critical habitat designation by failing to include the costs associated with several energy and transportation projects in the Cook Inlet region. These projects include the following:

Turnagain Arm Tidal Energy Generation Project: On November 17, 2009, the Turnagain Arm Tidal Energy Corporation filed an application with the Federal Energy Regulatory Commission (FERC) for a preliminary permit to study the feasibility of a tidal energy generation system on the Turnagain Arm of Cook Inlet. Section 7.7 of the Draft RIR/4(b)(2)PAIRFA analyzed cost impacts of critical habitat designation for two other tidal energy projects, and should be revised to include the potential costs of critical habitat designation to the Turnagain Arm Tidal Energy Generation project as well.

Mt. Spurr Geothermal Power Plant: Section 7.7 of the Draft RIR/4(b)(2)PAIRFA states that this project was reviewed, but it was not analyzed further because a decision to go forward with the plant has not been made. Table 6-28 of the Draft RIR/4(b)(2)PAIRFA describes the status of the project as “pre-decisional, geothermal lease in place, no permits have been requested”. Ormat Technologies, a company with a history of successfully developing geothermal projects in other countries, is the major lease holder for the Mt. Spurr geothermal development. It has a better record of success than any of the tidal energy companies whose projects were analyzed in the Draft RIR/4(b)(2)PAIRFA. Power transmission lines for this project may need to cross Cook Inlet to reach Anchorage or the Kenai Peninsula. Ormat has identified the North Forelands Dock and Industrial Area as its logistics base for construction and operation of this project, which would result in an increase in vessel traffic through this area. This project is expected to have a total construction cost, including supporting infrastructure, of approximately \$1 billion. Because this project is highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales’ habitat, project modification costs should be estimated. Section 7.7 should be revised to include the potential costs of critical habitat designation to the Mt. Spurr Geothermal Power Plant project as well.

Chakachamna Hydropower Plant: Section 6.4.7 of the Draft RIR/4(b)(2)PAIRFA states that this project was reviewed, but determined to not have a connection with the critical habitat designation due to its inland location and lack of physical connection with Cook Inlet. However, the project description clearly describes the projects planned measures to protect salmon, which are designated as a primary constituent element (PCE) of the critical habitat. The project would discharge water flow from the facility into the MacArthur River near its confluence with Cook Inlet. The power transmission lines may need to cross the MacArthur River, and potentially Cook Inlet, to reach Anchorage or the Kenai Peninsula. Chakachamna Power has identified the North Forelands Dock and Industrial Area as its logistics base for construction and operation of this project, which would result in an increase in vessel traffic through this area. A preliminary permit application for this project was filed with FERC on December 10, 2009. This project is expected to have a total construction cost, including supporting infrastructure, of \$1.75 billion. Because this project is highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated. Section 7.7 of the Draft RIR/4(b)(2)PAIRFA should be revised to include the potential costs of critical habitat designation to the Chakachamna Hydropower Plant project.

North Forelands Dock and Industrial Area aggregate mining and export: The Tyonek Native Corporation is developing plans to mine and export high quality aggregate from its North Forelands Dock and Industrial Area using the existing adjacent pier, which would require modification (see www.tyonek.com/Presentations/tnc_wci08.pdf). This project would result in increased vessel traffic through this area. This project is expected to have a total construction cost of approximately \$20 million. Because this project is highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated. Sections 6.4.2, 7-2 and 9-2-1.1 and Table 6-28 of the Draft RIR/4(b)(2)PAIRFA should be revised to include the potential cost impacts of critical habitat designation to this project.

Beluga Coal to Liquids Plant: Alaska Natural Resources to Liquids recently completed a \$1.5 million preliminary feasibility study with the help of the Alaska Industrial Development and Export Authority (see www.aidea.org/PDF%20files/BelugaCTLOverview9-20-06.pdf). Plans call for using coal from the Chuitna coal fields to produce 80,000 barrels per day of diesel and naphtha for U. S. West Coast markets in addition to jet fuel and petrochemical feedstocks. This fuel would be shipped out of the existing North Forelands Dock, which would require modification, and result in increased vessel traffic through this area. This project is expected to have a total construction cost, including supporting infrastructure, of approximately \$12 billion. Because this project is highly unlikely to jeopardize the

existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated. Sections 6.4.2, 7-2 and 9-2-1.1 and Table 6-28 of the Draft RIR/4(b)(2)PA/IRFA should be revised to include the potential cost impacts of critical habitat designation to this project.

Alaska natural gas pipeline projects: Multiple major natural gas pipeline projects are in various stages of development in Alaska, all of which would require the shipment of large quantities of materials through Cook Inlet to the Anchorage area for staging and shipment inland. Because these projects are highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated. Sections 6.4.2, 7-2 and 9-2-1.1 and Table 6-28 of the Draft RIR/4(b)(2)PA/IRFA should be revised to include the potential cost impacts of critical habitat designation to these projects

North Slope to Lower 48 through Canada: Public Law 108-324 authorized the development of this pipeline and \$18B in federal loan guarantees to facilitate its construction. In 2009, the Senate Energy and Natural Resources Committee reported out legislation to increase the federal loan guarantee amount to \$30 billion. Two projects are competing to build this pipeline: AGIA (TransCanada's \$26 billion, 1,715 mile pipeline) and Denali (BP and Conoco Phillips' \$32 billion, 1,500 mile pipeline). The Alaska Natural Gas Transportation Projects, Office of the Federal Coordinator is reviewing both projects, and both have initiated the FERC application process.

ANGDA spur pipeline to Cook Inlet: Alaska Natural Gas Development Project (ANGDA) is planning a \$2 billion pipeline to divert a portion of the gas from the above pipeline project to Cook Inlet to replace dwindling local reserves and provide processed natural gas liquids for export from a to-be-developed facility through Cook Inlet. This pipeline would run from Delta, through Glennallen to a Beluga gas facility near Wasilla.

Enstar bullet pipeline: This \$4B pipeline would connect Alaska North Slope gas fields through Fairbanks to the Beluga gas facility. This project is competing with the ANGDA spur line project above for both local consumption and liquid products export. Enstar is currently pursuing Alaska environmental permits for this project.

Port MacKenzie Projects: Sections 6.4.4, 7-4 and 9-2-1.1 and Table 6-28 of the Draft RIR/4(b)(2)PA/IRFA analyzed cost impacts of critical habitat designation for two port MacKenzie projects: Deep Draft Dock Expansion and Barge Dock Expansion. The port also plans to spend \$18M to construct a ferry terminal for the service to Anchorage and Tyonek. On July 17, 2009, the Surface Transportation Board, a federal agency, published a Notice of Availability of Final Scope of Study for the Environmental

Impact Statement (EIS) for an extension from Port MacKenzie to the Alaska Railroad Corporation (ARRC) main line between Wasilla and north of Willow, Alaska. The purpose of this extension is to transport mined minerals to Port MacKenzie for export. The ARRC Port MacKenzie to Willow project is expected to cost \$200M, with most of the required materials being shipped through Cook Inlet to Port MacKenzie. Both of these projects would significantly increase vessel traffic through Port MacKenzie, so they should be included in the above sections and table of the Draft RIR/4(b)(2)PAIRFA. Because these projects are highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated.

Ferry service to Tyonek: Sections 6.4.3, 7.3, and 7.7 and Table 6-28 of the Draft RIR/4(b)(2)PAIRFA describe the Cook Inlet ferry service as being planned only for service between Port MacKenzie and Anchorage. However, the Matanuska-Susitna Borough signed a memorandum of understanding with the Native Village of Tyonek in July, 2008, to provide ferry service between Tyonek and the Matanuska-Susitna valley. This was reported in Alaska News on July 16, 2008. Either the existing Ladd Landing or North Foreland waterfront sites would be used for this purpose and a suitable ferry landing would have to be constructed at either site. This project is expected to have a total construction cost of approximately \$14 million. Because this project is highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated. The above sections and table of the Draft RIR/4(b)(2)PAIRFA should be revised to include the potential costs of critical habitat designation to the Tyonek ferry landing development and the extended ferry service.

Road and bridge projects connecting West Cook Inlet settlements and projects: The Alaska Department of Transportation has designated rights of way for a system of roads to connect West Cook Inlet settlements and development sites. These road systems include bridges crossing several of the medium and high flow-accumulation rivers entering Cook Inlet identified in the proposed rule as supporting prey species for the Cook Inlet beluga whale (see <http://www.fakr.noaa.gov/protectedresources/whales/beluga/management.htm#habitat>). These projects would connect Anchorage to several of the West Cook Inlet energy projects described in this letter and the Draft RIR/4(b)(2)PAIRFA. They are expected to have a total construction cost of approximately \$200 million. Because these projects are highly unlikely to jeopardize the existence of Cook Inlet beluga whales but may affect a small portion of the whales' habitat, project modification costs should be estimated. Sections 6.4.3, 7-3 and 9-2-1.1 and Table 6-28 of the Draft RIR/4(b)(2)PAIRFA should be revised to include the potential cost impacts of critical habitat designation to these projects.

Section 4.1.2 of the Draft RIR/4(b)(2)PAIRFA describes how project modification costs are to be calculated in addition to federal agency consultation costs. However, in the Section 7 analysis of total potential costs of critical habitat designation, no project modification costs are included. In addition to the project modification costs for the projects described above, such costs should also be estimated for the other projects included in Section 7.

The Draft RIR/4(b)(2)PAIRFA should be revised to expand the valuation of the anticipated costs to address the above concerns.

Exaggerates the Benefits:

The Draft RIR/4(b)(2)PAIRFA exaggerates the benefits of the critical habitat designation by: (1) failing to adequately differentiate between the benefits that accrue from the designation of the Cook Inlet beluga whale as endangered and the benefits of the designation of the whale's critical habitat; (2) failing to account for the baseline requirements of the Endangered Species Act (ESA) that, without the designation of critical habitat, NMFS would be required to not take any action that would jeopardize the Cook Inlet beluga whale's existence due to inadequate stocks of prey fish species; and (3) attributing benefits to fishermen from such critical habitat designation while ignoring legal requirements other than the ESA for fisheries conservation and the increased consumption of fish by the resulting larger whale population.

Section 3.3.1 of the Draft RIR/4(b)(2)PAIRFA states that "The baseline for the critical habitat designation analysis is the existing state of regulation that provides protection to the Cook Inlet beluga whales under the ESA, as well as under other federal, state, and local laws and guidelines, without the critical habitat designation...Absent a designation of CH, Section 7 of the ESA requires Federal agencies to consult with NMFS to ensure that any action authorized, funded, or carried out will not likely jeopardize the continued existence of any endangered or threatened species."

While Section 5.5 of the Draft RIR/4(b)(2)PAIRFA states that "in all cases, the types of economic benefits associated with CHD are largely co-extensive with listing the Cook Inlet beluga whale as endangered", Section 5.2.1.1 proposes that the designation of critical habitat may sustain healthy stocks of Cook Inlet beluga whale prey fish and increase the consumptive value from fishing in and adjacent to such critical habitat. Sections 7.8, 7.9, and 7.10 of the Draft RIR/4(b)(2)PAIRFA also presume an increase in fish stocks from critical habitat designation. These presumptions ignore the baseline requirements for NMFS and the Alaska Department of Natural Resources to maintain the reproductive capacity of such fish stocks through managing human harvesting of

these stocks and the increased consumption of such fish stocks by a larger Cook Inlet beluga whale population that NMFS expects to result from such critical habitat designation. Preserving designated critical habitat is more likely to help maintain such prey fish at current stock levels, not increase them, since such designation merely retains the status quo with respect to the condition of such habitat and does not require improving such habitat. On the other hand, to the extent to which the designation of critical habitat would increase the Cook Inlet beluga whale population above the baseline condition, the consumption of such fish stocks by such whale population would clearly increase, leaving fewer fish available for fishermen to catch. In summary, the net effect of critical habitat designation is more likely to be a reduction in the consumptive value from fishing in and adjacent to such critical habitat, and therefore would not be a benefit to fishermen.

Appendix A is titled "Nonuse Values of Critical Habitat for the Cook Inlet Beluga Whale". However, the analysis included in Appendix A discusses the nonuse value of both the critical habitat and protecting Cook Inlet beluga whales and most of the studies cited therein pertain to valuation of a species, not the critical habitat of such species. The protection of the species from extinction is a baseline requirement of the ESA without critical habitat designation. Therefore, it should be separated from the nonuse valuation of the protection of such species' critical habitat before comparing costs and benefits of critical habitat designation. As with calculating the costs of critical habitat designation, the calculation of the benefits of such designation must be limited to the incremental value provided by such designation over the baseline protections afforded by the ESA without such designation. Unfortunately, the statement on page A-4 that "Therefore, it is logical to conclude that in the absence of critical habitat the species would go extinct" and the analysis that follows fail to adequately separate out the protections that would be provided to such habitat under the ESA under the baseline condition without designation of critical habitat.

In its discussion of the Kontoleon and Swanson (2003) study, Appendix A fails to show that the preference for preserving a species in its natural habitat versus in a reserve does not represent a valuation of a preference that a species remain in its natural habitat rather than being relocated to a reserve (i.e., a negative reaction to the unnatural condition of animal) and not a valuation of preserving the habitat itself. Therefore, the conclusion that the Kontoleon and Swanson (2003) study provides grounds for believing that some portion of the public's value for the Cook Inlet beluga whale is attributable specifically to critical habitat is premature, as the choice in this case does not involve preservation of the beluga whale in an unnatural habitat.

The literature cited in the Draft RIR/4(b)(2)PA/IRFA may represent the best available science on the subject of valuation of protecting endangered species and their critical

habitat, however, the analysis in this document of this scientific data clearly falls short of meeting the requirements of the ESA. The Draft RIR/4(b)(2)PA/IRFA should be revised to narrow the valuation of anticipated benefits to address the above concerns.

Arbitrarily and Capriciously Concludes that Benefits Exceed Costs:

Section 5 and Appendix A of the Draft RIR/4(b)(2)PA/IRFA describe several methods for calculating the value of several forms of benefits, but do not attempt to place a quantitative value on the benefits of Cook Inlet beluga whale critical habitat designation above the benefits of the baseline protection of the ESA without such designation. Similarly, the document also does not attempt to develop a qualitative measurement of such value or attempt to describe how such benefits were compared with the more easily calculated (although in this case, undercounted) costs of such designation. Instead, section 8 of the Draft RIR/4(b)(2)PA/IRFA in two short paragraphs simply states that the anticipated benefits would outweigh the anticipated costs and a net benefit to the nation would result. No support is provided for this statement. No basis is provided that would allow an outside disinterested expert to reach such a conclusion using the same information provided in the document. NMFS simply throws up its hands and says that a valuation of the benefits can't be done, yet it concludes that such benefits would exceed the expected costs. The lengthy separate discussions of the costs and benefits do not overcome the opaque, arbitrary and capricious manner in which the comparison of the two was made and in which the conclusion was reached. This is especially egregious when the agency undercounts the costs and exaggerates the benefits for the purposes of this comparison.

The Draft RIR/4(b)(2)PA/IRFA should be revised to include a detailed method of comparing quantitative and qualitative valuations of costs and benefits and an explanation of how such a comparison was made using costs and benefits information revised to address the inaccuracies described above. The resulting net cost or benefit conclusion should be supported in a manner that is repeatable by outside disinterested experts using the same data.

Comments on Proposed Rule (all page numbers reference the December 2, 2009 Federal Register Vol. 74, No. 230):

Page 63081, second column, second full paragraph, seventh sentence: Change the estimated economic impact range to account for the additional costs identified above.

Page 63084, Figure 1: Revise Figure 1 to include the proposed changes to Areas 1 and 2 described later in this letter.

Page 63087, second column, first full paragraph, second sentence: Change to read: 'The effects of prolonged harassment may also include the prolonged abandonment of habitat.'

Rationale: To remove the potential for incorrectly interpreting the original sentence to mean that momentary incidents of harassment could result in the prolonged abandonment of habitat by the endangered species.

Page 63087, second column, physical or biological feature number 1: Insert before the semicolon at the end the following: ", except as excluded by the descriptions of Areas 1 and 2".

Rationale: To clarify that these features only apply to the waters included in Areas 1 and 2.

Page 63087, second column, physical or biological feature number 3: Change to read: "The absence of non-naturally occurring toxins or other agents of a type and amount that would kill or injure Cook Inlet beluga whales or cause the prolonged abandonment of their critical habitat areas;"

Rationale: These changes clarify that federal agencies are not required to eliminate naturally occurring irritants to Cook Inlet beluga whales and replace the vague standard of harm with effects-based language from physical or biological feature number 5.

Page 63087, second column, physical or biological feature number 4: Change to read: "The absence of prolonged impediments to unrestricted passage within or between the critical habitat areas; and".

Rationale: To remove the potential for incorrectly interpreting the original sentence to mean that the changes in direction by Cook Inlet beluga whales to avoid a vessel or structure in Cook Inlet does not necessarily equate to denial of unrestricted passage.

Page 63087, second column, physical or biological feature number 5: Change to read: "The absence of in-water noise at levels and durations resulting in the prolonged abandonment of critical habitat by Cook Inlet beluga whales."

Rationale: This discussion on page 63088 of the impacts of noise on beluga whales describes two thresholds: one for impulsive noises and one for continuous noise. The revised language recognizes the duration basis for the two noise thresholds and incorporates the same abandonment clarification that is included in the previous

paragraphs. Again, this removes the potential for incorrectly interpreting this sentence to mean that the temporary avoidance by Cook Inlet beluga whales of a vessel operating in Cook Inlet at a noise level below the stated thresholds, which the whales would detect by sound, does not equate to abandonment of critical habitat. Cook Inlet experiences significant natural in-water noise levels from the shifting of ice during winter tidal changes, yet beluga whales continue to inhabit the region. Noise limits for vessels and other human activities should be set at levels higher than this natural noise level.

Page 63087, third column, Area 1 description: Insert before the period at the end the following: “, excluding those waters within ½ mile of the Port MacKenzie dock complex (61.27 N, 149.92 W) and within ½ mile of the Anchorage marine terminal (61.22N, 149.91W)”.

Rationale: Part 424.19 of title 50 of the Code of Federal Regulations authorizes the Secretary to exclude any portion of an area being considered for designation as critical habitat if benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat, and such exclusion does not result in the extinction of the species. Four economically significant activities are planned for Port MacKenzie: (1) deep draft dock expansion, (2) barge dock expansion, (3) ferry service to Anchorage and Tyonek, and (4) extension of the Alaska Railroad to Port MacKenzie from the main line between Wasilla and north of Willow, Alaska. These marine terminals are the gateways to the bulk of Alaskan exports and imports. The expansion of the Port of Anchorage has already started, an initial beluga whale incidental take authorization from NMFS, and several measures are being taken to protect the whales. Additionally, ferry service between Port MacKenzie and Tyonek will serve Anchorage. While these projects are in different stages of development, combined, they are critical to the economic development of the Cook Inlet region and the mobility of its residents. The inclusion of these small areas within Area 1 would likely result in the imposition of significant limitations on the development and use of the above projects, resulting in economic harm to the region. While Cook Inlet beluga whales have been sighted in the vicinity of Port MacKenzie and the Port of Anchorage marine terminal, the areas to be excluded are miniscule in comparison to the remaining critical habitat and their exclusion would have no significant impact on the Cook Inlet beluga whale's critical habitat or its continued existence. Clearly, the benefits of excluding these small portions of Area 1 exceed the benefits of including them in the critical habitat designation.

Page 63087, third column, Area 2 description: Insert before the period at the end the following: “, excluding those waters within 2 miles of the Ladd Landing pier (61.13N, 151.10W), within 1 mile of the North Forelands Dock (61.04N, 151.16W), within 1 mile of the Upland Rock Quarry at Cottonwood Bay (59.64N, 153.63W), and within ½ mile of the Kenai LNG export terminal (60.68N, 151.40W).” Strike “and the mouth of the

Douglas River (59.04 N., 153.45 W),” and insert “and 60.00 N. latitude,” or, alternatively, add to the excluded areas in the first sentence of this paragraph the following: “within 1 mile of the multimodal port site in Iniskin Bay (59.66N, 153.46W),”.

Rationale: The rationale for these changes is similar to that described in the preceding proposed change. Ladd Landing may be used for the export of Chuitna coal and as a landing for the ferry service to Port MacKenzie and Anchorage (which would require modifications to these piers). The North Forelands Dock may be used to export locally mined aggregate and locally produced coal to liquids fuel and may be used as a landing for the ferry service to Port MacKenzie and Anchorage (any of which may require modifications to the pier). A multimodal port facility may be built in Iniskin Bay to enable shipment by water of materials extracted from the Pebble Mine. The Upland Rock Quarry waterfront in Cottonwood Bay requires filling and dredging to support extraction and export of excavated materials. The Kenai LNG export terminal provides important revenue and a significant source of employment to the Kenai area. Combined, these facilities are critical to the economic development of the Cook Inlet region. The inclusion of these small areas within Area 2 would likely result in the imposition of significant limitations on the development and use of the above projects, resulting in economic harm to the region. The Alaska Fisheries Science Center 2008 Supplemental Status Review and Extinction Assessment of Cook Inlet Belugas shows: (1) a small presence of 2-10 belugas within 2 miles of the Ladd Landing site only during the 1993-1997 period, (2) no presence of belugas within 1 mile of the North Forelands Dock between 1978 and 2008, (3) a small presence of 2-10 belugas within Iniskin Bay only during the 1993-1997 period, (4) no information on beluga presence in Cottonwood Bay, (5) a small presence of 3-10 belugas in the Kenai River only during the 1978-1979 period, and (6) the 95% population area boundary for Cook Inlet beluga whales as far back as 1978-1979 does not include either Iniskin Bay or Cottonwood Bay. Clearly, the benefits of excluding these portions of Area 2 exceed the benefits of including them in the critical habitat designation.

Page 63090, first column, second full paragraph, second sentence: Insert before the period at the end the following: “, which may include adjusting agency actions to protect Cook Inlet beluga whale habitat”.

Rationale: To clarify that the baseline condition without critical habitat designation may still require Federal agencies to adjust their actions to protect Cook Inlet beluga whale habitat to prevent jeopardizing that species’ existence.

Page 63090, first column, third full paragraph, sixth sentence: Insert “beyond those prohibited by the Clean Water Act and other federal, state or local laws or regulations” between “Cook Inlet” and the comma.

Rationale: To clarify that the pollution reduction benefit of critical habitat designation is limited to only that which exceeds pollution limits required by current laws and regulations.

Page 63090, second column, first full paragraph, first sentence: Insert “beyond that required by the ESA Section 7 jeopardy provision” between “derived from protection of critical habitat” and “),”.

Rationale: To clarify that the increase in Cook Inlet beluga whale lives saved, longevity, health, productivity, etc. derived from critical habitat designation is limited to that which exceeds the baseline protections without critical habitat designation afforded by Section 7 of the ESA.

Page 63093, first column, first paragraph, first full sentence: Insert “geothermal and” between “FERC permits for” and “turbine”.

Rationale: To include the potential for geothermal project transmission line interactions with Cook Inlet.

Page 63093, second column, first paragraph, first full sentence: Strike “destruction of adverse modification” and insert “destruction or adverse modification”.

Rational: Correct typographical error.

Page 63094, third column, Area 1 description: Insert before the period at the end the following: “, excluding those waters within ½ mile of the Port MacKenzie dock complex (61.27N, 149.92W) and within ½ mile of the Anchorage marine terminal (61.22N, 149.91W)”.

Rationale: Same as described for page 63087 change.

Page 63094, third column, Area 2 description: Insert before the period at the end the following: “, excluding those waters within 2 miles of the Ladd Landing pier (61.13N, 151.10W), within 1 mile of the North Forelands Dock (61.04N, 151.16W), within 1 mile of the Upland Rock Quarry at Cottonwood Bay (59.64N, 153.63W), and within ½ mile of the Kenai LNG export terminal (60.68N, 151.40W).” Strike “and the mouth of the Douglas River (59.04 N., 153.45 W),” and insert “and 60.00 N. latitude,” or, alternatively, add to the excluded areas in the first sentence of this paragraph the following: “within 1 mile of the multimodal port site in Iniskin Bay (59.66N, 153.46W),”.

Rationale: Same as described for page 63087 change.

Page 63095 map: Revise the map to include the proposed changes to Areas 1 and 2.

Page 63095, first column, primary constituent element number (1): Insert before the period at the end the following: “, except as excluded by the descriptions of Areas 1 and 2”.

Rationale: Same as described on page 63087 for physical or biological feature number 1.

Page 63095, first column, primary constituent element number (3): Change to read: “The absence of non-naturally occurring toxins or other agents of a type and amount that would kill or injure Cook Inlet beluga whales or cause the prolonged abandonment of their critical habitat areas.”

Rationale: Same as described on page 63087 for physical or biological feature number 3.

Page 63095, first column, primary constituent element number (4): Change to read: “The absence of prolonged impediments to unrestricted passage within or between the critical habitat areas.”

Rationale: Same as described on page 63087 for physical or biological feature number 4.

Page 63095, first column, primary constituent element number (5): Change to read: “The absence of in-water noise at levels and durations resulting in the prolonged abandonment of critical habitat by Cook Inlet beluga whales.”

Rationale: Same as described on page 63087 for physical or biological feature number 5.

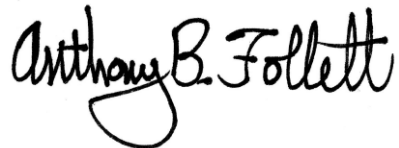
Conclusion

Due to the flaws in the Draft RIR/4(b)(2)PAIRFA, its conclusion that there would be a net benefit to the Nation by designating critical habitat for Cook Inlet beluga whales is suspect. The Draft RIR/4(b)(2)PAIRFA should be revised as described above and a new analysis of whether such critical habitat designation would result in a net cost or a net benefit should be performed. Should such an analysis result in a justified and repeatable conclusion that a net benefit would result, the above proposed changes to

the proposed rule should be included in that rule. Should such an analysis result in a justified and repeatable conclusion that a net cost would result, the ECA recommends that the proposed rule be revised to not designate critical habitat for the Cook Inlet beluga whale.

Respectfully yours,

Export Council of Alaska

A handwritten signature in black ink that reads "Anthony B. Follett". The signature is written in a cursive style with a large, looping initial "A".

Anthony B. Follett, Chairman