

HJR

28

1-LS0649G
Utermohle
3/19/99

G. Phillips
3/20/99

**CS FOR HOUSE JOINT RESOLUTION NO. 28()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES PHILLIPS, Ogan

A RESOLUTION

1 **Requesting that the National Marine Fisheries Service and the United States**
2 **Congress act immediately to reverse the decline of the Cook Inlet beluga whale**
3 **population and to regulate the harvest of the beluga whales in Cook Inlet until**
4 **the beluga whale population has recovered.**

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

6 **WHEREAS** the National Marine Fisheries Service (NMFS) is responsible under the
7 **Marine Mammal Protection Act (MMPA) for management and protection of beluga whales**
8 **in Alaska; and**

9 **WHEREAS** NMFS has concluded that, although the data on population trends of Cook
10 **Inlet beluga whales are incomplete, the Cook Inlet beluga whale population appears to have**
11 **declined in recent years; and**

12 **WHEREAS** NMFS has concluded that the Cook Inlet beluga whale population was
13 **at least 650 in 1994; and**

14 **WHEREAS** the most recent NMFS surveys place the Cook Inlet beluga whale
15 **population at a minimum of 347; and**

16 **WHEREAS** environmental groups have recently petitioned NMFS to list the Cook

1 Inlet beluga whale population as either threatened or endangered under the Endangered
2 Species Act; and

3 **WHEREAS** listing of this population under the Endangered Species Act would have
4 significant negative effects on the economies of Cook Inlet as well as the entire state; and

5 **WHEREAS** there are procedures under the MMPA that provide for the regulation of
6 the harvest of marine mammals; and

7 **WHEREAS** NMFS has apparently been reluctant to use its existing authority under
8 the MMPA allowing for the regulation of harvests; and

9 **WHEREAS** continued delays by NMFS could further contribute to the decline in the
10 Cook Inlet beluga whale population; and

11 **WHEREAS** the MMPA also specifically authorizes the Secretary of the United States
12 Department of Commerce to enter into cooperative agreements with Alaska Native
13 organizations to conserve marine mammals;

14 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests the
15 National Marine Fisheries Service to immediately begin the process of reviewing the status
16 of Cook Inlet beluga whales to determine whether the status under the Marine Mammal
17 Protection Act should be changed; and be it

18 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
19 the United States Congress immediately consider legislation amending the Marine Mammal
20 Protection Act to require the National Marine Fisheries Service to regulate the harvest of Cook
* 21 Inlet beluga whales in cooperation with the local Native subsistence users until the population
22 has recovered; and be it

23 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
24 the United States Congress provide the National Marine Fisheries Service with adequate
25 financial resources to secure, in cooperation with the Alaska Department of Fish and Game
* 26 and the local subsistence users, the information and management tools necessary to ensure that
27 the Cook Inlet beluga whale population is not placed in jeopardy, that Alaskans dependent on
28 the beluga whale resource are not unnecessarily penalized, and that associated industries in
29 the state are not placed at risk.

30 **COPIES** of this resolution shall be sent to the Honorable William M. Daley, Secretary
31 of the United States Department of Commerce; and to the Honorable Ted Stevens and the

- 1 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
- 2 Representative, members of the Alaska delegation in Congress.

Alaska Support Industry**ALLIANCE**

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**THE ALLIANCE**

... for responsible development of Alaska's Oil, Gas & Mineral Resources

March 22, 1999

Representative Scott Ogan

Alaska State Legislature

State Capital (MS 3100)

Juneau, Alaska 99801-1182

RE: House Joint Resolution 28 – Alliance Support

Dear Representative Ogan: *Scott*

The Alaska Support Industry Alliance (the Alliance) is a trade association representing nearly 350 members engaged in business within the oil and gas industries. Our mission is to foster and promote the safe and environmentally sound development of natural resources.

- The Alliance supports the proposed CS for House Joint Resolution 28 relating to the Cook Inlet Beluga Whales.

Recognizing the importance of healthy beluga whale presence in the Cook Inlet as essential, the Alliance supports management of the subsistence hunt to protect the beluga and keep federal regulations to a minimum. We further believe this management would allow an upcoming lease sale for oil and gas activity in Cook Inlet to continue in a timely manner.

Thank you for quickly addressing this issue, and allowing us to comment.

Sincerely,

Karen Cowart
General Manager



Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
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March 22, 1999

Representative Scott Ogan
State House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: House Joint Resolution 28

Dear Representative Ogan:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I would like to express our support of the proposed CS for House Joint Resolution 28 (HJR 28). This resolution is an important step toward reaching a responsible solution to the declining beluga whale population in Cook Inlet.

RDC's membership is very concerned with the current state of the beluga whale population in Cook Inlet. Continued decline of population could result in additional federal regulation of all activities in the Cook Inlet.

The Cook Inlet Areawide Lease Sale, shipping to and from the Port of Anchorage, the Municipality's sewage treatment facility at Point Woronzof, sport and commercial fishing, and tour operators will all be affected by additional federal oversight. RDC supports management of the subsistence hunt to protect the beluga and keep federal regulations to a minimum.

RDC applauds the Legislature for its rapid reaction to this issue. Due to the seriousness of the beluga's decline, no time can be wasted in implementing a plan to protect the health of the whales. HJR 28 is an important first step in addressing the issue.

Thank you for the opportunity to comment on this issue.

Sincerely,

**RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.**

Ken Freeman

**Ken Freeman
Executive Director**

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR 28

Revision Date: _____
Title: COOK Inlet Beluga Population

Dept. Affected _____
BRU _____
Component _____

Sponsor: Representative Gail Phillips
Requester: House Resources

Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No Fiscal Impact.

Prepared by

Lorali Meier, House Resources Aide

Phone 465-3715

Lorali M Meier

Phone _____

Date 3-17-99

Alaska State Legislature



Official Business
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State Capitol
Room 411
Juneau, Alaska 99801-1182

Representative Gail Phillips Sponsor Statement

HJR 28

A Resolution requesting that National Marine Fisheries Service (NMFS) and Congress act immediately to reverse the decline of Cook Inlet Beluga whales and regulate the harvest until the population has recovered.

Despite the fact that the available data concerning Cook Inlet Beluga whales is weak and incomplete, the information that is available through agency surveys indicates that this population appears to be declining. If the information is only a relative measure of abundance, the population has declined markedly.

The National Marine Fisheries Service has indicated that its data shows that this population could become extinct within a decade if the present trend is not reversed. According to NMFS this beluga population, estimated at around 350, has declined by nearly 50% since 1994.

Although there are some disagreements as to the accuracy of NMFS data and the cause of the apparent decline, according to the best scientific expertise available the major cause of the decline is hunter harvest. According to NMFS and the Alaska Department of Fish and Game, the harvest needs to be reduced from an annual harvest of about 70 - 80 to less than seven to allow for recovery.

According to the provisions of the Marine Mammal Protection Act (MMPA), Alaskan Native harvest of marine mammals cannot be regulated until a species has been declared depleted. It is recognized that this process is cumbersome and complicated, but the review and finding of depletion is the logical way to proceed, if the present information is even relatively accurate. A finding of depletion under the MMPA provides the federal agency with adequate authority to regulate the harvest until the population has adequately recovered.

We have been advised that some environmental and animal rights groups have petitioned NMFS to list the Cook Inlet Beluga whale under the Endangered Species Act (ESA) as either threatened or endangered. A listing of this species under the ESA could have devastating effects on a variety of economies in Cook Inlet, including oil exploration and production as well as commercial, recreational and subsistence fisheries.

This resolution calls for NMFS and Congress to live up to their responsibilities and address this issue before the agency or the federal courts determine that listing under the ESA is actually warranted. This resolution recommends that NMFS be given clear authority to regulate the harvest through a review and finding of "depletion" under the MMPA and that Congress amend the MMPA to give the agency authority to control the harvest -- at least for a specific period of time.

This resolution also calls for Congress to fund adequate research and management programs for NMFS to address the data deficiencies and to provide adequate funds for management needs. Nothing in this resolution precludes continuing efforts by NMFS and the local Beluga whale hunters from continuing to work cooperatively to address the decline of the whale population.

It is extremely important to stress that there is some urgency here. Continued delays and agency foot-dragging can only lead to severe economic consequences. It is unacceptable for the major economies of this region to be totally dependent on the uncertainties based on the chance that this population will show signs of recovery in subsequent years. Although it is arguable that this population truly qualifies for listing under the ESA at this time, there is little doubt that the federal courts will look favorably on litigation to list this population if the present decline continues. A look at the Steller sea lion in the North Pacific gives us plenty of ammunition to support this claim.

The time for action is now.

COOK INLET BELUGA WHALES

SUMMARY OF SURVEY DATA

<u>YR.</u>	<u>"ESTIMATES"</u>	<u>AGENCY OR GROUP</u>	<u>COMMENTS</u>
1963	300-400	STATE	
1964	300-400	STATE	
1978	450	UNIVERSITY OF AK	
1978	500	INTERAGENCY GROUP	
1982	400	STATE	SAW 200-300
1988	300-450	STATE	
1993	344	NMFS	SAW 344, NO CORRECTION
1994	653	NMFS	SAW 279, CORRECTED
1995	491	NMFS	SAW 328, CORRECTED
1996	594	NMFS	SAW 361, CORRECTED
1996	891	ABWC	
1997	440	NMFS	SAW 264, CORRECTED
1997	752-861	ABWC	
1998	347	NMFS	SAW 194, CORRECTED
1998	500	ABWC	

GENERAL INFORMATION:

Survey data most accurate from 1994 to present. Correction factors appear complicated, but are generally between 2 - 3 times number visually counted.

Concern for this population has existed for over 5 years. NMFS has discussed listing in early 1990's.

The early 1990's harvest was estimated at 15 - 20 per year. Present harvest levels are estimated between 70 - 100 per year. The last five year average harvest estimated to be approximately 75 per year.

Scientists agree that this population can not sustain the present level of harvest.

NMFS classified Anchorage as a Native village soon after the Marine Mammal Protection Act passed which makes it legal to sell beluga meat in that community.

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MEMORANDUM

TO: Ted Popely
Ron Somerville

FROM: Bill Horn *BH*
Beth Quevli *BQ*

DATE: March 1, 1999

RE: Possible Emergency Listing of Cook Inlet Belugas as Threatened Species

VIA TELEFAX

Several environmental groups, including the National Audubon Society and possibly the Center for Marine Conservation, Trustees for Alaska as well as several others, are expected to petition the federal government to list Cook Inlet Beluga whales as a threatened species under the Endangered Species Act.

The groups suggest the purpose of the petition is to temporarily stop Native subsistence hunting of the whales, whose population is estimated by the National Marine Fisheries Service to have dropped 65 percent in the last ten years. The potential petitioners contend that they are not against subsistence whale hunting, and that they would not be adverse to hunting resuming eventually under a more tightly controlled and monitored system.

Theoretically, the emergency petition would shorten the review period necessary before a listing can occur by 75 percent. However, such petitions are rarely granted, and, if this one was granted it would take until late spring, possibly June before a listing could be made.

The National Marine Fisheries Service has scheduled a meetings for March 8 and 9 to address the 1999 harvest of belugas and subsistence hunting issues.

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MEMORANDUM

TO: Ted Popley
Ron Somerville

FROM: Bill Horn *BH*
Beth Quevli

DATE: November 23, 1998

RE: Federal Register Notice regarding Cook Inlet Beluga Whales

VIA TELEFAX

The National Marine Fisheries Service (NMFS) announced that it is initiating a status review of the Cook Inlet beluga whale population to determine whether designation under the Marine Mammal Protection Act, or a change in ESA classification is warranted.

In a November 20 Federal Register Notice (63 FR 64228-64229), NMFS announced they would conduct the review, in conjunction with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council, to give consideration to the current status of the population, their distribution, abundance and trends, food habits, biohealth parameters, and reproductive parameters. The review will also examine the effects of Native subsistence harvest and the potential effects of other humanly induced impacts.

All interested parties should submit pertinent information and comments by January 19, 1999.

14 pgs.

Beluga hunting debated

Conference suggests extinction imminent

By TOM BELL
Daily News reporter

Cook Inlet beluga hunters must drastically cut back on their hunt or the whales will face extinction, officials from the National Marine Fisheries Service said Monday at a conference in Anchorage.

The beluga population, estimated at around 350, has declined by nearly 50 percent since 1994, said Doug DeMaster, director of the Seattle-based National Marine Mammal Laboratory. If current hunting levels continue, he said, the Cook Inlet beluga will likely be extinct in a decade.

To allow the beluga population to recover, he said, the hunters must reduce the total killed every year to about seven or fewer. Last year, hunters killed 78 whales, according to NMFS estimates.

About a dozen Native hunters attended the conference put on by the agency. Some agreed the whales are in danger and said they would stop hunting in the Inlet. But some disputed the scientists' methods as well as findings.

"I do not think there is much of a decline," said Art Nugrene of Anchorage. "These people come up from Seattle and spend a couple of days counting belugas. These whales don't stay in the Inlet. They follow the fish."

A group of hunters did propose putting an end to the commercial harvest of the whales. The hunters have formed a five-man committee that intends to negotiate a plan for protecting the belugas. Mark John, the committee's chairman, said the group would an-

Please see Back Page, BELUGAS

State rural panel calls for limited Native self-rule

By TOM KIZZIA
Daily News reporter

At a time when Alaska is "pulling apart at the seams," only Gov. Tony Knowles can take steps to assure that Native institutions can take place in the state, members of the governor's Rural Governance Commission said Monday.

Meeting with two of Knowles' top aides, the commission said the words "Native" and "tribe" seem taboo in the Alaska Legislature. They called on Knowles to heed their call for state recognition of limited tribal self-government.

The alternative, they said, would be growing Native militancy, civil disobedience and a turning away from the state to the federal government.

"The wedge is deeper and more hurtful than many people understand," said former state Sen. Arliss Sturgulewski, who said the 10-month-old commission had traveled to the Bush to hear village sentiments. "I think we're at real peril if we do not recognize what's really happening in this state."

"The governor can do a lot, just as gover-

nor," said Tanana Chiefs Conference president Will Mayo.

Commission members said they want the state to do more contracting with tribes and involve tribes more in managing natural resources, for example.

Knowles chief of staff Jim Ayers offered no specific promises to the commission at its Anchorage meeting. But he said Knowles recognized the importance of Alaska's diversity.

Please see Back Page, PANEL

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Please see Back Page, PANEL

PANEL: More Native control sought

Continued from Page A-1

Ayers urged the commission to work with the new federal Denali Commission, created at the behest of U.S. Sen. Ted Stevens. He said the commission appeared to have a secure source of funds and an interest in finding a way to make Alaska's rural governments work.

"That's where the governor feels the future is. It's not in trying to work some deal out with the Legislature," Ayers said.

Some Republican legislators have argued that the state's laws must be colorblind and should leave the historical recognition of tribes to the federal government.

Commission members said they found the visit from Ayers and Attorney General Bruce Botelho reassuring. But the Denali Commission is a federal initiative. They said they remain worried by what they view as attacks on rural Alaska inside state government.

Last year, urban-rural divisions broke out in the Legislature over school-funding formulas and subsistence. This year, commission members said, new splits are emerging over continued subsidies for village electricity, tribal authority over welfare, and the possibility of eliminating the Department of Community and Regional Affairs.

"It's the only agency (rural Natives) feel can hear them and that they can trust," said commission member Marlene Johnson.

Ayers said no restructuring decision had been made but the department wouldn't be eliminated without providing an alternative for rural Alaska.

Other issues perceived to be anti-Native were raised Monday, especially a new voter-approved official-English law. Willie Kasayulie of Akiachak, president of the School Board of the Yupiit School District, said the state's preparation of a new exit exam for high school seniors is viewed by many rural villagers as a threat.

"We know for sure that many Natives will fail that exit exam," he said.

At a time when Canada is creating the Nunavut territory, where politics will be dominated by a Native majority, Alaska's Northwest Arctic Borough and North Slope Borough have met together — a "historic" first — to begin discussing common interests, said Northwest Arctic Borough Mayor Chuck Greene.

"There's a sense in rural Alaska that this commission is our last chance," Greene said. "I think they're just holding out to see what happens here."

The rural governance commission was ap-

"There's a sense in rural Alaska that this commission is our last chance. I think they're just holding out to see what happens here."

— Northwest Arctic Borough
Mayor Chuck Greene

pointed by Knowles at the time of the U.S. Supreme Court's Venetie decision, which said tribes had only limited authority in Alaska. It was charged with finding creative ways to improve self-governance in rural Alaska.

"We want to help heal, not continue in any way to drive people apart," said commission co-chairman Byron Mallott. "This is a last chance for the state to come right."

Despite the governance commission's high profile in rural Alaska, the group was forced to cancel a meeting in December because it ran out of state funding, Mallott said. Ayers took blame for that and apologized.

The commission said it plans to present final recommendations to Knowles by June. It is discussing measures that would encourage the state to clarify contracting policies with tribes, strengthen village public safety, and cooperate with tribes on health, welfare and resource programs.

"If the governor will not provide the leadership in resolving this, I think Alaska is going to be in real trouble," said commission member Vic Fischer, another former state senator.

Native leaders said Monday they expect the new Denali Commission to focus mainly on construction projects. In addition, the Alaska Federation of Natives is holding hearings around the state as the group draws up recommendations to make to Congress about rural governance.

AFN president Julie Kitka told the commission Monday that many Natives are watching northern Canada, where the new territory of Nunavut will celebrate its inception April 1.

"Nunavut will have a great impact on what people here think about government," Kitka said.

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Whalers offer change

Feds hear proposal for new beluga hunting guidelines

By TOM BELL
Daily News reporter



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While federal officials ponder whether to list Cook Inlet's beluga whales as an endangered species, a group representing most of the Inlet's beluga hunters have proposed fundamentally changing the way they hunt.

They said they want to ban commercial hunting and register all hunters. They want to require hunters to harpoon whales before shooting, so fewer would sink and be lost, and to hunt only in shallow waters, where they would be easier to recover.



Their proposal comes as federal officials, tribal leaders and hunters begin hashing out some kind of agreement for regulating beluga hunting. Both sides say they want "co-management," which would involve various sides creating and implementing a conservation strategy together.

Carl Jack, one of the hunter leaders, and Daniel Alex, head of the Cook Inlet Marine Mammal Council, said it could take a year to put a deal together. In the meantime, before hunting begins this spring, all sides should agree to an interim plan, they said. Talks continue today and Thursday.

Jack said the hunters and the federal officials share the same goal.

"We want a healthy stock so people who hunt can continue to do that in the future," he said.

For the past several years, hunters and federal officials have been talking about creating a co-management plan, but nothing has come of it. Such agreements exist between Native hunters and the federal government elsewhere in Alaska.

The effort to forge an agreement has gained urgency because of

concern that the Inlet beluga population is declining rapidly. A federal scientist warned Monday that current hunting levels could drive the Inlet's familiar white whales to extinction in a decade.

Some hunters believe a co-management plan might be the only way to keep the whales from being listed as an endangered species. Last week, a former hunter and a coalition of conservation groups petitioned the government to implement such a plan.

If the National Marine Fisheries Service does not list the belugas as endangered by June, the peak of the hunting season, environmental groups will probably take legal action against the agency, said Doug DeMaster, director of the Seattle-based National Marine Mammal Laboratory.

Without a co-management plan in place, he said, the agency wouldn't stand much of a chance in court.

Valerie Brown, staff attorney for Trustees for Alaska, described the hunters' proposal as a significant step forward. But she said the Endangered Species Act sets explicit scientific criteria for listing animals as endangered, such as a dramatic drop in population. Whether NMFS can strike a deal with hunters, she said, has nothing to do with those scientific rules.

An interim agreement would help prevent the beluga population from declining more, she said, but "that's not going to stop them from being endangered. They are endangered now."

She said she suspects the government wants to avoid listing the animals as endangered for political reasons. The agency would then have to monitor all human activity in the Inlet, including the oil and gas industry, for the potential effects on the beluga population, she said.

On April 21, the state is scheduled to auction large sections of the Inlet for oil and gas development. At Tuesday's conference, Brown held up maps showing that some of those lease areas have been identified by scientists as critical habitat for belugas.

During public comment Tuesday, one former hunter read a "dear human beings" letter written from a whale's perspective. A woman wearing a kuspuk cried as she talked about her frustrations as she watched the whale population crash while people seemed unwilling to agree on a solution. Gilbert Paniptchuk, an Anchorage hunter, angrily said the whales are not in decline and that outsiders were intruding on the traditional lives of Natives.

"We are up against people who are trying to destroy what Native people have and enjoy," he said.

The fisheries service has up to a year to make a decision about whether to list the Inlet beluga as endangered, but it can also list it immediately. Even if it put the whale on the list today, the agency could not stop this year's whale hunt without going through a formal process that could take from several months to a year.

The beluga population, estimated at 350, has declined nearly 50 percent in five years, federal scientists say. They say the Cook Inlet beluga stock is distinct and isolated from the state's other belugas. Some Native hunters say the whales are part of a larger Gulf of Alaska population and that there are fewer whales in the upper Inlet because there are fewer fish here.

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