

**HJR**

**40**

# SENATE COMMITTEE REPORT

DATE: 3/2/10

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

**Resources Committee** considered CS FOR HOUSE JOINT RESOLUTION NO. 40(RES)

## HJR 40 COOK INLET/KACHEMAK BELUGA POPULATION

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

and recommends:

- be replaced with  SCS or  CS HJR 40 (RES)
- adopt previous  SCS or  CS \_\_\_\_\_
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

|                                     |                          |
|-------------------------------------|--------------------------|
| <b>SENATE BILL:</b>                 |                          |
| <input checked="" type="checkbox"/> | Same Title               |
| <input type="checkbox"/>            | New Title                |
| <hr/>                               |                          |
| <b>HOUSE BILL:</b>                  |                          |
| <input type="checkbox"/>            | Same Title               |
| <input type="checkbox"/>            | Technical Title Change   |
| <input type="checkbox"/>            | New Title w/ SCR # _____ |

**NEW FISCAL NOTE(S):**

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|------|--------|--------|------|-----|
|            |      |        |        |      |     |
|            |      |        |        |      |     |
|            |      |        |        |      |     |
|            |      |        |        |      |     |
|            |      |        |        |      |     |

**PREVIOUS FISCAL NOTE(S):**

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|------|--------|--------|------|-----|
| HRES       | 2/22 |        |        | ✓    |     |
|            |      |        |        |      |     |
|            |      |        |        |      |     |
|            |      |        |        |      |     |
|            |      |        |        |      |     |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | PRINTED LAST NAME | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|-------------------|---------|-------------|--------|-------|
|                                 | STEVE<br>Freese   |         |             | X      |       |
|                                 |                   |         |             | ✓      |       |
|                                 |                   |         |             |        |       |
|                                 |                   |         |             |        |       |
| CO-CHAIR:                       | WALTON            | X       |             |        |       |
| CO-CHAIR:                       | McLure            | ✓       |             |        |       |
| CO-CHAIR:                       | Wielechowski      |         |             | ✓      |       |

26-LS1376P  
Kane  
4/9/10

**SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 40(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:  
Referred:**

**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 primary 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 little 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 little evidence that commercial or sport fishing is harming the  
11 beluga whale population; and

12          **WHEREAS** the commercial and sport fishing industries could be gravely threatened  
13 by 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; and be it

31          **FURTHER RESOLVED** that the State of Alaska urges that any final critical habitat

1 designation, including any research conducted by State of Alaska marine mammal experts,  
2 that clearly links any designated critical habitat to the conservation and recovery of the Cook  
3 Inlet beluga whales be supported by sound science.

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

Amended

26-LS1376P  
Kane  
4/9/10

Adopted

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8 Jane Lubchenko, Under Secretary of Commerce for Oceans and Atmosphere, United States  
9 Department of Commerce; Kaja Brix, Director, Protected Resources Division, Alaska Region,  
10 National Marine Fisheries Service, National Oceanic and Atmospheric Administration; the  
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16 Honorable Dave Carey, Mayor of the Kenai Peninsula Borough; and the Honorable Lisa  
17 Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young,  
18 U.S. Representative, members of the Alaska delegation in Congress.

# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HJR 40  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title COOK INLET/KACHEMAK BELUGA POPULATION RDU \_\_\_\_\_  
Component \_\_\_\_\_  
Sponsor Representative MILLETT, Neuman, Lynn, Johnson, Keller \_\_\_\_\_  
Requester House Resources Committee Component Number \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

|                               | Appropriation<br>Required | Information |            |            |            |            |            |            |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
|                               |                           | FY 2011     | FY 2011    | FY 2012    | FY 2013    | FY 2014    | FY 2015    | FY 2016    |
| <b>OPERATING EXPENDITURES</b> |                           |             |            |            |            |            |            |            |
| Personal Services             |                           |             |            |            |            |            |            |            |
| Travel                        |                           |             |            |            |            |            |            |            |
| Contractual                   |                           |             |            |            |            |            |            |            |
| Supplies                      |                           |             |            |            |            |            |            |            |
| Equipment                     |                           |             |            |            |            |            |            |            |
| Land & Structures             |                           |             |            |            |            |            |            |            |
| Grants & Claims               |                           |             |            |            |            |            |            |            |
| Miscellaneous                 |                           |             |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b>        | <b>0.0</b>                | <b>0.0</b>  | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                            |            |            |            |            |            |            |            |            |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts      |            |            |            |            |            |            |            |            |
| 1003 GF Match              |            |            |            |            |            |            |            |            |
| 1004 GF                    |            |            |            |            |            |            |            |            |
| 1005 GF/Program Receipts   |            |            |            |            |            |            |            |            |
| 1037 GF/Mental Health      |            |            |            |            |            |            |            |            |
| Other Interagency Receipts |            |            |            |            |            |            |            |            |
| <b>TOTAL</b>               | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

|           |  |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Debra Higgins, Committee Aide Phone 465-3715  
Division: House Resources Committee Date/Time 2/22/10 3:00pm  
Approved by: Representative Craig Johnson, Co-Chair Date 2/22/2010  
House Resources Committee

**Alaska Legislature**  
**Representative Charisse Millett**

**Session:**

State Capitol Building, Room 412  
Juneau, AK 99801  
Phone (907) 465-3879  
Fax (907) 465-2069



**Interim:**

Anchorage LIO  
716 W 4<sup>th</sup> Ave., Room 630  
Anchorage, AK 99501  
Phone (907) 269-0222  
Fax (907) 269-0223

*District 30*  
*Co-chair, House Special Committee on Energy*

Date: 1/29/10  
Version: 26-LS1376\5

**Sponsor Statement – HJR 40**

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

House Joint Resolution 40 seeks to protect the economy of the entire Cook Inlet region from an unnecessary critical habitat designation for beluga whales. The designation would apply to 3,000 square miles of Cook Inlet. The National Marine Fisheries Service is considering the designation a way to protect Cook Inlet beluga whales.

NMFS scientists concluded years ago that an unsustainable harvest caused the decline in the beluga population. The beluga numbers are now increasing at the rate of four percent a year because a revised harvest management program was instituted in place in 2000.

All activities in and around Cook Inlet from the Port of Anchorage, to military operations, to sport and commercial fishing could be slapped with new restrictions if a critical habitat designation is issued.

I urge all my colleagues to join me, our congressional delegation and Governor Parnell in opposing the critical habitat designation.



OWNERS and  
OPERATORS of  
ANDERSON TERMINAL

## NORTH STAR TERMINAL AND STEVEDORE COMPANY, LLC

*Contracting Stevedores Terminal Operators Materials Handling Equipment Rental*

P.O. BOX 102019 ANCHORAGE, AK. 99510

TEL: (907) 272-7537

FAX: (907) 274-7608

February 23, 2010

Attn: Kaja Brix

Assistant Regional Administrator Protected Resources Division, Alaska Region NMFS  
PO Box 21668 Juneau, Alaska 99802

Re: RIN 0648-XT72 Proposed Critical Habitat Designation for Cook Inlet Beluga Whales

Thank you for the opportunity to comment on the above referenced proposed critical habitat designation. In general, the proposed critical habitat designation is far too broad and encompasses an area much larger than would seem to be necessary for protection of Cook Inlet Beluga whales.

First, it is worth commenting that the endangerment finding was flawed in the first place because indications are that the Beluga population in Cook Inlet is increasing. It is well documented that over harvest was the cause of the decline in population and recent curtailment of harvest has already reversed the trend. It would appear that existing marine related activity, such as shipping and energy development that utilize the proposed critical habitat area is not a significant factor in past decline of the population.

Having worked on the marine terminal in Anchorage for over 30 years as well as recreational boating and fishing in upper cook inlet, I have observed Beluga whales on many occasions. My observations is that the mouths and lower reaches of major rivers, such as the Little Susitna, Susitna and Beluga experience concentrations of Beluga whales, especially during salmon runs. The upper reaches of Turnagain Arm also attract significant numbers during times of hooligan and salmon migration. Otherwise, the whales seem to be fairly widely dispersed in the broader areas of the Inlet. If critical habitat designation is needed, it seems like it should be limited to such areas of high use and concentration. The fact that Belugas transit the larger parts of the Inlet does not justify critical habitat protection.

North Star Terminal & Stevedore Company operates at Anderson Dock in Anchorage, the Port of Anchorage, Port McKenzie, Rig Tenders Marine Terminal in Nikiski, and at both terminals in Homer. Critical habitat designation in the Port Mackenzie area and for the shipping lanes through upper Cook Inlet could be a serious impediment to all current and potential import and export opportunities. All of the necessary goods, commodities and supplies for over 70% of Alaska's population rely on these Ports to provide for the necessary shipment and handling of these necessities.

Alaskan's pay some of the highest energy costs in America. Development of our energy, mineral and other natural resources always has been, and will continue to be, vital to maintaining a healthy economy and good jobs for our citizens.. Hampering resource development and the flow of commerce in and around Cook Inlet will have far reaching


detrimental effects for most Alaskan's far and away many times more substantial in economic impact than estimated to date.

Cook Inlet is the most densely developed and heavily used region in Alaska with respect to resource development, human population and recreational activity. At the same time, it remains one of the biologically most productive regions in the State. Well developed management programs and diligent attention to environmental protection by industry have demonstrated that the marine environment and people can flourish in Cook Inlet. There is no reason the Beluga whales cannot recover and flourish again as well, without the harsh restrictions imposed by the proposed critical habitat designations.

In conclusion, no real Alaskan would approve of activities that truly endanger the Cook Inlet Beluga whales. Many, like me, have experienced the pleasure of watching these unique animals as part of our enjoyment of Cook Inlet. However, the proposal to place half of Cook Inlet in critical habitat designation will do nothing to protect the whales and has the potential to cripple future economic development in the region. I have 6 children and if Alaska's economy does not grow, they will be forced to leave to find gainful employment elsewhere. I want them to have the opportunity to enjoy Alaska's natural wonders as residents, not visitors.

Thank you for your consideration of my comments.

Sincerely,



Jeff Bentz  
President  
North Star Terminal & Stevedore Company LLC



February 25, 2010

Mr. Jason Brune  
Executive Director  
Resource Development Council for Alaska, Inc.

(Email: [jbrune@akrdc.org](mailto:jbrune@akrdc.org))

Re: HJR40

Dear Jason,

I was on the telephone yesterday and attended the hearing of HJR40. I did not get a chance to speak so here are my thoughts. Escopeta is in total support of HJR40 and stand with all those who testified yesterday.

Unfortunately Escopeta (and the people of Alaska indirectly) have already been affected by the Beluga proposal. Escopeta had contracts with very strong partners to bring a jack-up rig to the Cook Inlet this spring and drill the #1 Kitchen Lights Unit well. The project was put on hold indefinitely, due to the proposed Beluga Habitat designation. This is a fact, and once again places Escopeta on hold to develop the natural gas supply badly needed by each and every one of you.

I believe that this is just the beginning of serious financial trouble for all of you, if HJR40 does not stop the Federal Government from telling you how to run and operate your state.

Escopeta Oil is a small oil and gas company, but we are big on conservation. We believe in protecting every aspect of this great earth and all of its inhabitants. To this extent we must act with common sense, and combine conservation with business and commerce, which supports not only our industries and jobs, but also the future that lay in front of each of us. Escopeta has been put on hold by the Federal Government which has prevented Escopeta from moving forward to develop the Kitchen Lights Unit in 2010 as planned and promised. We are in total support of HJR40.

Jason, please pass my comments on to those you wish. Thank you for including me yesterday.

Yours truly,

A handwritten signature in black ink, appearing to read "DSD" with a flourish at the end.

Danny S. Davis

CC: Mr. Bruce Webb

# MUNICIPALITY OF ANCHORAGE



Office of the Mayor

Phone: 907-343-7100

FAX: 907-343-7180

*Mayor Dan Sullivan*

February 19, 2010

The Honorable Charisse Millett  
Alaska State Legislature  
State Capitol Room 412  
Juneau, AK 99801

Re: HJR 40 – Opposing Proposed Designation of Cook Inlet as Critical Habitat for Cook Inlet Beluga

Dear Representative Millett:

I support your resolution to oppose the proposed designation of 3,000 miles of the Cook Inlet as critical habitat for the Cook Inlet Beluga whale.

The Municipality of Anchorage (MOA) is committed to ensuring the long-term health and productivity of the Cook Inlet and to the conservation of its beluga population. Cook Inlet supports significant oil and gas production, fishing, mining and a year-round tourism industry to the benefit of all Alaskans. The Port of Anchorage is the essential conduit through which passes an astounding 85% of all goods entering the state, and 26% of the tonnage of U.S. international air freight moves through the city via Ted Stevens Anchorage International Airport.

Anchorage's strategic location continues to be vitally important to our nation's overall defense strategy. We are an excellent staging point for an array of military operations and equipment that is deployed – and redeployed – through our Port in support of our national strategic interests.

The proposed critical habitat designation adds nominal value to the protection of the Cook Inlet beluga. It is fundamentally vague, and because the Endangered Species Act already applies, the MOA is addressing the needs of the beluga responsibly, directly, and with best available science. The projections of economic costs associated with the proposed designation do not pass the red face test; the potential for new regulations, delayed development and increased costs will most certainly total more than the \$575,000 that NMFS included along with its proposal.

Thank you for your work and for the opportunity to provide comments. Please contact my intergovernmental affairs director, Stacy Schubert, if she can be of assistance to you. She can be reached at 343-7112 or by email: [schuberts@muni.org](mailto:schuberts@muni.org).

Sincerely,

Dan Sullivan  
Mayor

# Export Council of Alaska

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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](http://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](http://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)PAIRFA 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)PAIRFA 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)PAIRFA 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.

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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)PAIRFA 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.

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**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

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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.

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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.

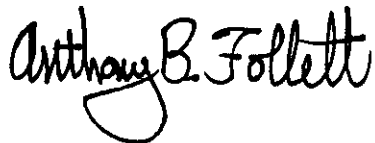
### **Conclusion**

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

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Changes to HJR 40\R that are included in CS HJR 40 ( )\E

1. Page 2, lines 13, 14, 16, 19 and 27, strike "will" and insert "may";
2. Page 2, strike lines 22 through 23 and insert the following:

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

3. Page 3, strike lines 7 through 10.