

John M. Starkey,
Attorney for Tyonek
1540 200 Street
St. Croix Falls, Wi. 54024
Phone and fax: - (715) 646-2555
email - starkey@lakeland.ws

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**IN THE MATTER OF:
PROPOSED REGULATIONS GOVERNING
THE TAKING OF COOK INLET, ALASKA, BELUGA
WHALES BY ALASKA NATIVES FOR SUBSISTENCE**

Docket No. 000922272-0272-01

**TYONEK'S RESPONSE TO THE SUBMISSIONS OF THE MMC AND
THE NMFS**

COMES NOW the Native Village of Tyonek through counsel John Starkey and hereby submits its response to the July 15 submissions by the Marine Mammal Commission (MMC) and the National Marine Fisheries Service (NMFS)

1. Tyonek proposes to call Ms. Barbara Mahoney and Brad Smith of the NMFS to testify about the Conservation Plan, the CI beluga surveys, other potential habitat and environmental impacts to the CI beluga population and "unusual mortalities" and in particular the mortalities observed in 2003 that prevented the 2004 subsistence harvest.
2. Tyonek also proposes to call no more than two CI beluga hunters from outside Tyonek to testify regarding the impact of the Plan on their subsistence way of life and the taking of male beluga.
3. Tyonek does not contest Dr. Goodman's qualifications to testify on many of the issues he raises in his Declaration. Dr. Goodman, however, does not appear to be an expert on the legal requirements of the MMPA or on the correct balance between recovery of the CI beluga population and providing for subsistence uses. There are several references to policy questions in Dr. Goodman's Declaration,

most if not all of which focus on the goal of recovery. There is little, if any acknowledgment that the MMPA also requires NMFS to balance recovery with the goal of providing for the continuation of the subsistence way of life. Thus, it is Tyonek's position that much of Dr. Goodman's analysis is based upon policy calls that are beyond his expertise and which are not consistent with the MMPA.

For example, Dr. Goodman states on page 2 that the Plan "fails to provide for reducing the harvest rate below the interim minimum as soon as substantial information demonstrates that the harvest rate should be reduced to ensure recovery **in accordance with the standard**". The "standard" Dr. Goodman refers to is the 25/95 standard. As Dr. Goodman acknowledges, however, subsection (c) of the parties stipulations stated that the harvest would not be reduced below 1.5 per year "without substantial information demonstrating that subsistence takings must be reduced below that level to allow recovery of the Cook Inlet beluga whale population from its depleted status." The stipulation does not refer to "the standard". Dr. Goodman overlooks this important point. Moreover, while Dr. Goodman is qualified to speak to what information is available to demonstrate recovery or lack thereof, he is not qualified to determine when that information reaches the point of being so **substantial** as to deny or reduce subsistence harvest. This mix of policy and analysis is a prevalent part of Dr. Goodman's Declaration.

4. Dr. Goodman states (p. 5) that his analysis "shows about a 46% probability that the growth capacity is negative." Many of the points he makes in his Declaration appear to follow from this analysis. Dr. Goodman calls this 46% probability (p.5) a "**substantial probability** that the population will actually decline during the period 2005-2009 even in the absence of any subsistence harvest." (Emphasis added). It is important to note that his analysis also shows (according to Tyonek's understanding) that there is a 54% probability that the growth capacity is positive.

5. See attached Declaration by Dr. Andre Punt.

6. Much of Dr. Goodman's analysis is based on the use of the 25/95 criteria. Tyonek strongly disagrees with these criteria driving the Plan.

7. Tyonek interprets Dr. Goodman's Declaration and the position of the MMC as having the greatest concern for the Cook Inlet beluga population at lower levels. This is consistent with the willingness of subsistence users to make greater sacrifices until the population reaches some population threshold (perhaps 500) where there is less risk of extinction. After that point, the argument that "Time is of the essence in population recovery" (p. 3 Goodman Declaration) carries less weight, and the rationale for using 25/95 or some other similar "delay in time to recovery" model) makes less sense. The Plan should use different criteria which are less conservative after the population recovers to a threshold. Several goals for

assessing the extent of recovery (500, 600 and 700 for example) should be included in the Plan and each judged according to standards that reflect the extent of recovery to that point and the associated lessened risk of extinction. Moreover, the plan should have a mechanism for periodic review at points that demonstrate either failure to recover or successful recovery.

DATED this 22nd day of July 2004.

John M. Starkey,
Attorney for Native Village of Tyonek

Counsel by his signature above certifies that a copy of the above pleading and all documents were served via email, fax and/or U.S. mail on all parties requiring service including Thomas Meyer, counsel for NMFS, Gladys Kaitell-Paul, ALJ Docketing Center, Joel and Debra Blatchford, Cook Inlet Treaty Tribes, Trustees For Alaska, Judith M. Brady, and Michael Gosliner.