

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

IN THE MATTER OF:

PROPOSED REGULATION GOVERNING

THE TAKING OF COOK INLET, ALASKA BELUGA

WHALES BY ALASKA NATIVES

DOCKET NUMBER 000922272-0272-01

DECLARATION OF KAJA BRIX

I, Kaja Brix, declare:

Since December 14, 2003 I have been the Assistant Regional Administrator for the Protected Resources Division of the Alaska Regional Office (ARO), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), which is located in Juneau, Alaska. There is also a Regional Field office located in Anchorage, Alaska.

My predecessor in this position is P. Michael Payne, who has participated in this action and presented a Declaration to the court during the December 2000 hearing in Anchorage, Alaska.

The Protected Resources Division is the focal point for all of the protected species programs within the Alaska region relating to marine mammal species, and their habitat conservation for NMFS/NOAA. The legislative mandates upon which the position is based are the Marine Mammal Protection Act (MMPA), the Endangered Species Act and the National Environmental Policy Act.

Prior to my current position I was Program Coordinator for management of harbor seals, the stranding program and some large whale species (humpback whales and AT1 group of killer whales) in the ARO, NMFS, NOAA. I held that position from November 1996 until December 2003. I have been with the ARO/NMFS/NOAA since 1993; from 1993 to 1996 I worked for the Sustainable Fisheries Division.

National Marine Fisheries Service is the Federal agency charged with trust responsibilities for certain marine mammals, including whales, seals, and sea lions. The Alaska Region of NMFS

has worked extensively with Cook Inlet beluga whales since 1993, during which time we became aware of high harvest levels and significant declines in the numbers of these whales.

NMFS has regularly consulted with the Alaska Native community concerning issues involving the Cook Inlet beluga, and has entered into several cooperative management agreements with the Cook Inlet Marine Mamma Council, an Alaskan Native Organization, as provided for under section 119 (16U.S.C. 1388) of the MMPA.

NMFS determined that the Cook Inlet beluga whales were a stock under Section 3(11) of the MMPA and that the stock was depleted, as defined by the MMPA (64 FR 56298, October 19, 1999) .

Based on a hearing held in December 2000, NMFS published an interim final harvest regulation for the period 2000 through 2004 (69 FR 17973; April 6, 2004), regulating the annual subsistence harvest of Cook Inlet beluga whales by Alaska Natives at 6 strikes in 4 years. With this action, and passage of P.L. 196-553 (which prohibits the hunting of Cook Inlet beluga except when done pursuant to an agreement signed by the NMFS), we believe excessive harvest practices are no longer a significant negative factor to this stock.

An Environmental Impact Statement was published in June 2003 in support of an interim and long term harvest regime. The interim harvest levels (2001-2004) are consistent with the preferred alternative of this EIS, as well as the March 2002 *Recommended Decision* in the matter of proposed regulations governing the taking of Cook Inlet, Alaska, beluga whales by Alaska Natives. The long-term harvest management plan submitted to the court is consistent with this alternative in terms of its impact to the stock and recovery time delays.

As a result of the administrative hearings on the depletion determination and the promulgation of interim harvest regulations, the Administrative Law Judge requested that NMFS work with the parties to the hearing to establish long term harvest regulations.

A technical group was established representing NMFS, the Marine Mammal Commission and the Cook Inlet Marine Mammal Council to establish the scientific basis for a long term harvest strategy.

NMFS also convened two meetings of the Parties in September and December 2003 in an effort to develop consensus on a long term harvest strategy .

NMFS developed the draft Subsistence Harvest Management Plan for Cook Inlet Beluga Whales (Management Plan) based on the outcome of the Technical Committee work and the meetings held in September and December 2003. That plan was formally submitted to the Parties for review and comment. Based on comments received, NMFS ARO developed a final plan that was submitted to the court on May 3, 2004.

In addition to the recommendations and input of the Technical Committee and the aforementioned meetings, the Management Plan considered the *Stipulations for Determinations of Issues* subject to the administrative hearing, which prescribed the development of harvest regulations that accomplish the following:

- a) provide reasonable certainty that the population will recover within an acceptable period of time to the point where it is no longer considered depleted;
- b) take into account the uncertainty concerning NMFS' knowledge of the population dynamics and vital rates of the Cook Inlet beluga whale population;
- c) allow for periodic adjustments of the allowable strike levels based upon the results of population abundance surveys and other relevant information, recognizing that the strike level and allocation regime will not be reduced below (present) minimum (1.5 belugas/yr) without substantial information demonstrating that subsistence takings must be reduced below this level to allow recovery of the CI beluga whale population from its depleted status; and
- d) can be readily understood by diverse constituencies.

Pursuant to the MMPA, NMFS' goals are to recover depleted stocks, maintain stocks at Optimum Sustainable Population (OSP) levels, and allow for subsistence use.

NMFS determined that a reasonable strategy for the subsistence harvest management of the Cook Inlet beluga whale would be to cause no more than a 25 percent delay in recovery (when compared to a zero harvest) with 95 percent certainty. This standard could be met under the Management Plan when there is positive growth within the stock. When no growth or a decline in the population occurs, the 25/95 goal requires that the harvest be reduced to zero. NMFS must balance the goal of recovery with the need to provide reasonable opportunity for traditional subsistence hunting by Alaska Natives. The Management Plan therefore allows subsistence harvests during circumstances when the "25/95" strategy cannot be met, but in a manner which is scientifically sound and which provides safeguards which continue to provide for the recovery of this stock. As such, if the stock declines below the current level or the population trajectory declines, strikes will be adjusted downward until the population reaches a critical threshold of 260 whales. No harvest will occur when abundance is below 260.

In the December 2003 meeting of the parties, the hunters agreed to a harvest of 1.5 whales per year for the period 2005 through 2009. While there was not unanimous consent of the Parties (the Marine Mammal Commission objected) to this agreement, NMFS has determined this level of harvest represents a reasonable removal which does not unduly delay recovery of this population. Harvest levels would be adjusted in subsequent 5 year blocks, based on the 25/95 strategy and population abundance and trends.

NMFS has committed to a continuing annual survey program to assess the abundance of the

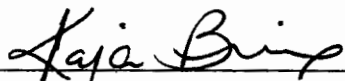
Cook Inlet belugas. This information is necessary to support the Management Plan and to determine whether and at what rate the stock is recovering.

NMFS is currently developing a Conservation Plan for the Cook Inlet beluga whale. Conservation Plans are mandated by the MMPA for all depleted stocks. Their purpose is to conserve and recover these animals to their Optimum Sustainable Population. The Conservation Plan will address issues other than subsistence harvest and provide a comprehensive plan for recovery. This Conservation Plan also incorporates the National Marine Mammal Laboratory's research plan for Cook Inlet beluga whales. The draft Conservation Plan is currently undergoing internal review.

The Management Plan reflects the application of the best available science, our mission to conserve and recover the Nation's depleted marine mammals, and best meets the cultural and nutritional needs of Alaska Natives in a responsible manner. We believe this plan, operating in tandem with the Cook Inlet Beluga Whale Conservation Plan, will provide the necessary framework for the recovery of the Cook Inlet beluga whale.

Pursuant to 28 U.S.C. Section 1746, I swear under penalty of perjury that the foregoing is true and correct and that if called upon to testify, I could competently do so.

Dated: 15th July 2004



Kaja Brix
Assistant Regional Administrator
for Protected Resources