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Alaska Field Office
425 G Street, Suite 400
Anchorage, AK 99501
Phone: (907) 258-9922
Fax: (907) 258-9933

Headquarters
1725 DeSoto Street,
Suite 600
Washington, DC 20036
Phone: (202) 429-5609
Fax: (202) 872-0619
Web: www.cmc.ocean.org

Ms. Donna Wieting
Chief, Marine Mammal Division
Office of Protected Resources
National Marine Fisheries Service
1335 East-West Highway
Silver Spring, MD 20910

27 November 2000

Dear Ms. Wieting,

The Center for Marine Conservation (CMC) appreciates the opportunity to comment on the Proposed Rule on the Taking of the Cook Inlet (CI), Alaska Stock of Beluga Whales by Alaska Native and the Draft Environmental Impact Statement (DEIS). CMC commends the National Marine Fisheries Service (NMFS) for recognizing the need to control the harvest in order to aid in the recovery of this stock. However, it is our opinion that the DEIS, in failing to consider the cumulative effects of various human activities on this severely depressed and vulnerable population, does not go far enough in addressing the needs of a conservation plan whose purpose is "conserving and restoring the species or stock to its optimum sustainable population." 16 U.S.C. § 13838b(b). It is imperative that the EIS, to be satisfactory in scope, include an analysis of the direct, indirect, and cumulative impacts of agency action. 40 C.F.R. § 1502.16

CMC supports NMFS preferred alternative to limit the harvest to no more than two strikes annually, prohibit the sale of Cook Inlet beluga whale products; permit hunting only after July 15 of each year; and prohibit the taking of all calves or adult whales with calves. As the agency has stated in its own analysis, there is likely to be minimal long-term difference between the preferred alternative and other alternatives allowing a minimal subsistence harvest. However, we disagree that human take is the only factor to be considered in planning for recovery and protection of these whales. Additionally, despite NMFS's finding that an ESA listing for the Cook Inlet Stock of beluga whales is not merited, CMC continues to assert that a listing of Cook Inlet beluga whales as endangered under the Endangered Species Act (ESA) is not only merited but also critical to achieving effective conservation and recovery of this population.

GENERAL COMMENTS

Commercial Fishing Interactions

CMC commends NMFS for placing observers on the Cook Inlet salmon set and drift gillnet fisheries. However, to fully ascertain the level of incidental takes in commercial fisheries throughout Cook Inlet, NMFS should more fully implement observer or alternate observer programs under 16 U.S.C. §1387(d). While NMFS may state that all other fisheries warrant placement into Category III (64 Fed. Reg. 56301), NMFS lacks accurate data to make this assertion. Therefore, CMC recommends that NMFS

implement full coverage observer programs to more accurately assess the level of incidental take of beluga whales in Cook Inlet commercial fisheries. The information gathered from additional observer coverage would provide critical information to assess the health of the stock and make management decisions under the MMPA. In addition, CMC reminds NMFS that if it were to list the Cook Inlet stock of beluga whales as endangered under the ESA, NMFS would have sufficient authority under section 118 of the MMPA to place observers, develop take reduction plans for this stock, and more effectively limit take in commercial fisheries. See 16 U.S.C. §§1387(d)(4)(A), (d)(7); see also §1371(a)(5)(E).

In addition, as NMFS stated: "If beluga whales were listed under the ESA, section 7 of that act will require Federal action agencies to consult with NMFS whenever any activity which they conduct, permit, or fund may affect the species." 64 Fed. Reg. 56301. The MMPA's provisions are insufficient to address and mitigate the impact of commercial fishing either on prey availability or habitat. As CMC has routinely stated, this provides another compelling reason for NMFS to reverse its decision and list the Cook Inlet stock of beluga whales as endangered under the ESA.

Health Assessment And Contingency Plans

NMFS must conduct studies on beluga tissue samples to assess the health of the population, the nutrition status, determine contaminant body burdens, and determine the effects of various pollutants on the Cook Inlet stock of beluga whales. This information is also vital to assessment and management decisions under the MMPA. NMFS states that it "does not plan to conduct research on the effects of polycyclic aromatic hydrocarbons on beluga whale genetics." 64 Fed. Reg. 56300. Instead, NMFS proposes only to sample tissues and archive these tissues under the Alaska Marine Mammal Tissue Archive. 64 Fed. Reg. 56300. Tissue archival provides no assessment of the overall health of the Cook Inlet beluga whale stock, health-related studies and other information that are critical to the recovery of this stock. Furthermore, it does not provide information to allow NMFS to assess and evaluate potential threats from pollution and prey resource availability.

In the DEIS, NMFS provides a formidable list of parasites that have been known to infect Cook Inlet belugas, yet without the much needed health assessment, necropsy results, and histopathology, this information is of little use in attempting to determine the impact of these parasites on the overall health of the population. Again this points to the need for an aggressive health assessment plan for this stock of beluga whales.

In 1999, a mass stranding of beluga whales and an oil spill threatened to further reduce this already small and vulnerable population. While it is encouraging that NMFS has developed a response plan with the State of Alaska to respond to marine mammal strandings in upper Cook Inlet, (64 Fed. Reg. 56302), NMFS must do more. CMC urges NMFS to develop, in coordination with the marine mammal stranding event program within the State of Alaska, Alaska Natives, and other public and private organizations, either a regional contingency plan or an operational plan for the national contingency plan developed under 16 U.S.C. §1421(c)(b). Developing such plans is critical to

prevent and effectively respond to strandings, unusual mortality events, and oil spills that could spell the demise of this stock of beluga whales.

Oil Spills

In the DEIS, NMFS did not cite any quantitative modeling data or undertake any risk assessment pertaining to oil spills. NMFS acknowledges that "studies indicate that an oil spill could have an effect on beluga whales if one were to occur." In the DEIS, NMFS did not attempt to quantify the probability that such a spill might occur in the future, the risk that it would pose to the population, or what its impacts on the long-term viability of the Cook Inlet beluga whale would be, but simply concluded that "oil and gas exploration and development are not expected to have a significant impact on the CI beluga stock," because it has not been able to establish a significant impact to date. Given the severely depleted nature of this stock, and its concentration in a relatively isolated geographic location, the existing oil production in upper Cook Inlet, and the potential production given the state and federal leasing schemes, an oil spill could have a catastrophic effect on the population. Under NEPA regulations, the agency must evaluate "reasonably foreseeable" impacts with potentially "catastrophic consequences, even if their probability of occurrence is low." 40 C.F.R. § 1502.22(b). In concluding "[i]t is difficult to accurately predict the effects of an oil spill of [sic] CI beluga whales" because there is no data "which describe any behavioral observations or deleterious effects of these spills to individual beluga whales" the DEIS fails to comply with this regulation and is contrary to the precautionary approach. CMC urges NMFS to undertake the quantitative modeling to assess the potential impact of an oil spill to Cook Inlet beluga whales.

Strandings and Predation

According to the DEIS (p. 65) "The recovery of the CI beluga whale stock is dependent on the identification of those factors which have caused this stock to decline and on the identification and implementation of measures to control those factors." However, the DEIS fails to consider the effects on the population of mass strandings and predation by killer whales as significant concerns because they were not identified as causative factors in the decline. CMC maintains that the failure of the DEIS to consider these sources of mortality in the cumulative effects analysis presents a serious shortcoming. The CI stock of beluga whales is particularly vulnerable to extirpation due to its very small population size and geographic isolation from other beluga whale stocks. While predation and strandings may not have played a role in the decline of the stock, they could easily become significant factors in inhibiting the recovery of, or further depleting- possibly to the point of extinction, this highly vulnerable stock. Given their already limited number and tendency toward seasonal concentrations at the mouths of streams, this stock could all too easily be reduced to perilously low numbers, or extirpated, by a single natural, but random, catastrophe (oil spill, mass stranding or killer whale predation). It is therefore imperative that NMFS include these stochastic events in modeling the cumulative effects in the final EIS analysis.

Conservation Plans

The MMPA requires NMFS to "prepare conservation plans for species or stocks designated as depleted . . ." 16 U.S.C. §1383b(b). These plans are to be modeled on recovery plans that are developed under the ESA, 16 U.S.C. §1383b(b)(2). CMC strongly urges NMFS to expeditiously prepare such a plan and to include in the plan clear research, conservation, and management measures that will conserve and restore this stock to its optimum sustainable population.

DETAILED COMMENTS ON PROPOSED REGULATION

Subsistence Hunting of CI beluga whales can occur only under an agreement between NMFS and an Alaska Native organization pursuant to section 119 of the MMPA.

CMC views a co-management agreement as a tool that allows the agency to consult with the Native community as the agency devises regulations and recovery measures to recover the CI beluga stock and regulate the harvest. Consequently CMC believes that NMFS should not limit its options for protecting the species by entering into a co-management agreement that would make the Cook Inlet Marine Mammal Commission (CIMMC) or any other Alaska Native organization either the sole or primary management authority. Any co-management agreement should supplement NMFS's authority to protect Cook Inlet beluga whales, not restrict that authority. Specifically, CMC maintains that any taking in violation of the regulations adopted to restrict the harvest by any Alaskan Native be viewed as a violation of the MMPA.

As part of NMFS implementation of any co-management agreement and harvest limits, NMFS must establish a clearly defined program for monitoring the harvest. NMFS may work in conjunction with the Native community, but Section 117 of the MMPA requires NMFS to assess the status of this stock and determine its incidental and direct sources of take. Therefore, NMFS must continue to conduct aerial surveys throughout the range of Cook Inlet beluga whales, especially during those times (May-July) when the population is most abundant in the Inlet. CMC encourages NMFS to work with the Native community to develop research programs, to provide hunters with the technical training necessary to assist NMFS in monitoring the harvest and collecting biological samples, as well as to learn from the hunters' traditional knowledge. In CMC's view, NMFS is not required to obtain approval from the Native community to collect biological specimens or to conduct its research programs. However, NMFS should encourage the support and cooperation of the Native community in its efforts to obtain these samples. Furthermore, once the species is listed under MMPA, the management and enforcement burden shifts from the Native community to NMFS. Consequently, NMFS must monitor the harvest to ensure compliance with the established harvest limits. CMC expects that NMFS will clearly define a program both to monitor the subsistence harvest and assess the population abundance and threats.

In implementing the final rule for taking CI beluga whales by Alaska Natives, NMFS must be the primary authority to enforce any harvest restrictions or regulations adopted

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pursuant to a co-management agreement or MMPA depleted listing. Both CIMMC and the Alaska Beluga Whale Committee have been unable to effectively enforce voluntary harvest limits or other restrictions (i.e. prohibitions on the commercial sale of beluga whales) related to Cook Inlet beluga whales. NMFS must implement, administer, and enforce the provisions of any co-management agreement or regulations developed pursuant to the MMPA depleted listing. Furthermore, NMFS must plainly delineate how it will enforce any co-management agreement or regulations. To augment its enforcement efforts, we encourage NMFS enforcement to work with the conservation and the Native communities to develop a system of community policing. Finally, to successfully recover Cook Inlet beluga whales, NMFS must make enforcement of the harvest limits its number one priority.

The harvest shall be limit to no more than two strikes annually.

CMC supports this provision and believes that NMFS should work with the Native Community to establish protocols that ensure that the harvest is conducted in a manner that maximizes strike efficiency.

Prohibition on the sale of Cook Inlet beluga whale products.

CMC supports this provision and concurs that must be a prohibition on the commercial sale of any beluga whale parts.

CONCLUSION

In conclusion, CMC supports the proposed rules for limiting harvest of CI beluga whales and strongly urges NMFS to undertake an analysis of the cumulative impacts of various human activities in addition to harvest, and possible sources of natural mortality including strandings and predation, in the final EIS.

Respectfully submitted,



Kris Balliet
Alaska Region Director
Center for Marine Conservation