

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 224**

[Docket No. 080401502-8537-01]

RIN 0648-XG94

**Endangered And Threatened Species; Endangered Status for the Cook Inlet Beluga Whale**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final determination regarding petitioned action; 6-month extension.

**SUMMARY:** We, NMFS, are extending the date by which a final determination will be made regarding the April 20, 2007, proposed rule to list a Distinct Population Segment (DPS) of beluga whale, *Delphinapterus leucas*, found in Cook Inlet, Alaska, as endangered under the Endangered Species Act of 1973, as amended (ESA). We believe that substantial disagreement exists regarding the population trend, and that allowing an additional 6 months to obtain the 2008 abundance estimate would better inform our final determination as to whether the Cook Inlet beluga whale should be listed as endangered under the ESA.

**DATES:** A final determination on this listing action will be made no later than October 20, 2008.

**ADDRESSES:** The proposed rule, maps, and other materials relating to this proposal can be found on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, (907) 271-5006, fax (907) 271-3030; Kaja Brix, NMFS, (907) 586-7235, fax (907) 586-7012; or Marta Nammack, NMFS, (301)713-1401.

**SUPPLEMENTARY INFORMATION:****Background**

We initiated a Status Review for the Cook Inlet beluga whale on March 24, 2006 (71 FR 14836). Subsequently, we received a petition from The Trustees for Alaska to list the Cook Inlet beluga whale as an endangered species on April 20, 2006. In response to the 2006 petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006). After completion of the Status Review, we re-affirmed that the Cook Inlet beluga whale constitutes a Distinct Population Segment under the ESA, and proposed this population be listed as an endangered species (72 FR 19854; April 20, 2007). We received public comment in response to the proposed rule, and held public hearings in Anchorage, Homer, and Soldotna, Alaska, and in Silver Spring, Maryland. We received approximately 180,000 responses to the proposed listing.

The majority of comments supported listing the Cook Inlet beluga whale as endangered under the ESA. However, several commenters, including Alaska Department of Fish and Game, questioned the sufficiency or accuracy of the available data used in the rulemaking. We have considered these comments, and we find that substantial disagreement exists over a certain aspect of the data presented in the proposed rule. In particular, there remains disagreement over the population trend of belugas in Cook Inlet, and whether the population is now demonstrating a positive response to the restrictions on subsistence harvest imposed in 1999.

**Extension of Final Listing Determination**

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed listing: (1) finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final

determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

The State of Alaska sent a letter to us outlining its disagreement with the abundance and population trend. The State's letter noted that the June 2007 count of beluga whales was the largest since 2001, indicating, in their estimation, that the population is beginning to recover from the unsustainable harvests in the early 1990s, as had been predicted by State and Federal biologists. An additional 6 months will allow us to complete an additional abundance survey in June 2008, which will provide additional information bearing on the dispute and may be sufficient to resolve it. The annual aerial survey for beluga whales in Cook Inlet will be conducted in June 2008, with the analyses that produce an annual abundance estimate that can be factored into a trend analysis expected to be completed by the end of September 2008. We will, therefore, extend the deadline for the final listing determination to allow for the collection of these data and the completion of the analysis that forms part of the trend in abundance to better inform our final decision and potentially resolve the disagreement over the scientific information upon which it will be based.

In consideration of the disagreement surrounding the population trend, we extend the timeline for the final determination for an additional 6 months (until October 20, 2008) to resolve the scientific disagreement.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: April 16, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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