

Challenge to Beluga Listing Decision

Governor Provides Feds with Notice

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Governor Announces Challenge to Beluga Listing Decision; Provides Federal Agencies with Notice of Intent to Sue

January 14, 2009, Anchorage, Alaska - Governor Sarah Palin announced today that the State of Alaska filed a notice of intent to file a lawsuit challenging the federal government's decision to list beluga whales in Cook Inlet as threatened under the Endangered Species Act.

"The State of Alaska has worked cooperatively with the federal government to protect and conserve beluga whales in Cook Inlet," said Governor Palin. "This listing decision didn't take those efforts into account as required by law."

The notice of the state's intent to sue was sent to the Secretary of Commerce and the National Marine Fisheries Service (NMFS). It asserts that the listing decision should be withdrawn due to failure to adequately consider conservation or protection efforts by Alaska, failure to provide to Alaska's agencies an adequate written justification for portions of NMFS' final rule not consistent with the agencies' comments, failure to properly document or support its determination that the beluga whales in Cook Inlet comprise a distinct population segment and failure to provide a public review and comment period on significant studies and documentation used to support the listing.

"With this notice of intent, we are informing the federal agencies that, unless corrected, we will file suit due to the decision's failure to comply with provisions of the Endangered Species Act and the Administrative Procedure Act," said Attorney General Talis Colberg. "Failure to consider protection measures already in place and failure to document and support key elements of this decision are major flaws in the final rule."

Concern about the decline in Cook Inlet Beluga whales led the State of Alaska to petition NMFS to list the whales as depleted under the Marine Mammal Protection Act (MMPA), which resulted in restrictions on harvest beginning in 2000. The population has since stabilized and shows signs of recovery. Population estimates have increased 30 percent since 2005.

The state has placed much of the important beluga habitat within Cook Inlet in protected status, including several state game refuges and critical habitat areas. Recent actions by the Alaska Department of Natural Resources have maintained protection of important habitat by removing it from lease and sale offerings, even though there was no evidence of any habitat decline or habitat-related cause for the population decline.

The listing decision failed to properly consider the substantial regulation by the state and its political subdivisions of beluga habitat and food supply covering nearly every aspect of the environment affecting beluga whales in Cook Inlet, including water quality, oil and gas

development, coastal and upland development, prey species management, cruise ship regulation, and port development, among many others. These laws, when considered together with existing federal regulations, ensure that beluga whales in Cook Inlet are well-protected. “Belugas are protected by the State of Alaska and the federal Marine Mammal Protection Act,” said Alaska Department of Fish and Game Commissioner Denby Lloyd. “An ESA listing is not appropriate or necessary at this time. The population is stable and beginning to recover, just as we predicted when advocating for MMPA protection.”

In written comments to the agency, the State of Alaska disagreed with many aspects of the decision including questionable use of computer population modeling, the contention that the belugas in Cook Inlet are a separate and distinct population from other belugas and the premise that a 1 percent chance of extinction in 50 years meets the criteria necessary for an endangered species listing.

“While challenging the listing, we will continue to protect beluga whales,” said Governor Palin. “We will also be assisting Alaskan communities and stakeholders with navigating the complex bureaucratic process this listing decision imposes on their projects and working cooperatively with federal agencies on the required consultations, designations of critical habitat and development of a recovery plan and objectives.”

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