

Suit filed over whales: Groups sue fisheries service over beluga listing

By Hal Spence | Peninsula Clarion

Saying there is no justification for delaying a decision, five conservation groups filed suit Monday in federal court in Washington, D.C., seeking to compel the Bush administration to issue a final listing determination for Cook Inlet beluga whales.

The groups are seeking immediate injunctive relief that would result in the beluga being listed as endangered under the Endangered Species Act, setting in motion efforts to ensure the species recovery. They named as defendants Sec. of Commerce Carlos Gutierrez and the National Marine Fisheries Service.

The Fisheries Service proposed listing the genetically distinct group of whales as endangered in April of last year and was to make a final listing decision no later than April 20 of this year. According to the plaintiffs, however, the agency bowed to pressure from the state of Alaska and development interests and announced April 22 it would impose a six-month delay in the decision, citing what it called "substantial disagreement" among scientists regarding the state of the beluga population.

NMFS scientists have estimated the population at around 375, down from around 1,300 in the 1980s.

Victoria Clark, an attorney with Trustees of Alaska, is representing the plaintiffs, who are the Alaska Center for the Environment, the Center for Biological Diversity, Cook Inletkeeper, the Natural Resources Defense Council and the North Gulf Oceanic Society.

"There is simply no lawful reason for further delay in protecting the Cook Inlet beluga whale," she said in a prepared statement Monday. "If we don't act soon we stand to lose this treasured part of Alaska's and the United States' natural heritage."

A six-month delay, however, will not harm the whales, said Alaska Department of Fish and Game spokesman Doug Vincent-Lang who has been following the beluga whale debate. He said the Palin administration supports the National Marine Fisheries Service taking the time it needs to render a good decision.

"We feel allowing them to take that time is not placing the population at any substantial risk," he said. "The largest threat to the whales -- hunting -- has been regulated."

The last substantial harvest, he said, was in the late 1990s and since around 1999, the population has remained relatively stable. There is debate about the threat to the beluga population, he said.

The suit disputes the Bush administration's claim that there was "substantial disagreement" among scientists about the data. But under the Endangered Species Act, that finding allowed the secretary to extend a decision deadline for up to six months.

In a May letter to Gutierrez, Timothy Ragen, executive director of the Marine Mammal Commission, said differences over whether harvest controls established in 1999 were contributing to a recent positive trend in population did not provide a "scientifically credible" reason to impose the delay.

The six-month delay would provide only enough time to add a 2008 population estimate to a data field that already has 14 data points dating back to 1993, all clearly showing a decline, though at a slowed rate since 1999.

A statistically questionable but slight increase since 2005 (variations up and down occur from time to time) was an insufficient reason to decide the species was not endangered, he said.

Indeed, statistical analysis shows that despite the recent apparent increase, there is a 97-percent chance the growth rate is less than 2 percent per year, and a 67 percent chance that growth is actually negative. Evidence strongly indicates the population is declining and the service has provided no credible reason to explain why. Ragen said.

"We believe that the accumulation of one more data point is an insufficient and unreasonable basis for delaying a listing decision that withholds protective measures from a population that ... is clearly at risk of extinction and in need of the

protection of the Endangered Species Act."

The NMFS' own scientists released a status review of the Cook Inlet whale only days prior to the April delay announcement. Citing that review, the suit said there was a 1-percent probability of extinction in 50 years (low because individual whales live so long), a 39-percent probability of extinction in 100 years, and an 86-percent probability within 300 years.

Vincent-Lang said 50 years represents about three beluga lifetimes. (A Web source said a lifespan was 25 to 30 years with the mammals reaching maturity in seven to nine years.) He also said the department was reviewing the extinction model used by NMFS.

Ragen described NMFS' treatment of endangered, threatened and depleted marine mammals as inconsistent. For instance, while the NMFS has delayed listing the beluga, it has refused to de-list the North Atlantic right whale from endangered status until its risk of extinction is known to be less than 1 percent in 100 years. Management of the beluga population "exemplifies such inconsistency," he said.

He recommended the Department of Commerce withdraw the six-month delay and immediately list the marine mammal under the Endangered Species Act.

Bob Shavelson, head of Cook Inletkeeper, said the science calling for listing the species was clear and challenged decisions by Gov. Sarah Palin and the Bush administration.

"The Palin administration's request for delay and the Bush administration's willingness to do so are not based on science but rather based on an ideology that always favors industry over the environment," he said in the press release.

Cook Inlet, Shavelson said, is subject to development pressures from oil and gas production, sewage discharges and contaminated runoff and spills, all of which can impact the beluga whale habitat. Future projects such as the Knik Arm Bridge, expansion of the Port of Anchorage, the Chuitna coals strip mine and the Port MacKenzie expansion would all affect whale habitat, he said.

Reached Monday, Brendan Cummings, ocean programs director with the Center for Biological Diversity, said plaintiffs hope to get a quick decision from the court.

"We have known for 20 years the belugas were vulnerable, and for a decade that they were reduced to dangerously low numbers," he said. "The point is not to document their extinction, but to prevent it."