

# AlaskaDispatch

News and voices from the Last Frontier

## Judge upholds endangered listing for Cook Inlet beluga whale, blasts state efforts

- Alex DeMarban

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A federal judge upheld the three-year-old endangered listing for the biologically distinct Cook Inlet beluga whale today, rejecting all state arguments and noting that the state's beluga conservation programs are ineffective and underfunded.

Most important, ruled Royce Lamberth, chief of the U.S. District Court in Washington, D.C., the National Oceanic and Atmospheric Administration articulated the rationale behind its decision, grounded the 2008 listing in the best available science, and provided full opportunity for state and public comment.

Julie Speegle, spokeswoman with NOAA, said the judge thoroughly analyzed the agency's efforts leading to its decision.

"It's clear from the court's 25-page opinion that the judge carefully examined all of the state's arguments before



rejecting each of them," said Speegle. "We complied with the law in every way."

The decision is proof that the state's time and money would be better spent trying to remove the biologically distinct Cook Inlet beluga from the list by enhancing its own conservation efforts, rather than fighting the Endangered Species Act, said Rebecca Noblin, Alaska director of the Center for Biological Diversity, one of several environmental groups that intervened on NOAA's behalf.

"The state has made a political decision to fight protection of these species when its resources would be far better spent working on

solutions to the problems these animals are facing," she said, noting that the state is taking a similar tact with threatened polar bears and Steller sea lions.

The state is considering its next step, Attorney General John Burns said in a written statement. "We maintain that the listing process was defective because it did not sufficiently involve the state or consider the conservation measures already in place to protect Cook Inlet belugas," he said.

The judge said most of the state's conservation efforts, such as efforts to protect Cook Inlet fisheries, provide only "incidental" benefit to the whale. What the state calls an extensive permitting program to address discharge into Cook Inlet may not be effective enough. And many of the recommendations in a draft conservation plan for the whales have not been funded.

Douglas Vincent-Lang, the state's representative on a federal team that's developing a beluga recovery plan for Cook Inlet, is on vacation and could not be reached for comment.

An industry representative on that recovery team said the federal government, not the state, shirked its duty to create an adequate conservation program. NOAA has spent very little studying the belugas, even though the animals are managed by the federal government.

"They're the ones who have dropped the ball," said Jason Brune, former executive director for the Resource Development Council and the group's representative on the 21-member federal recovery team. "They should have advocated for additional research and funding, but time and again the agency has said they cannot advocate for funds."

The population of the attractive white whales in Cook Inlet, a popular attraction for tourists and residents, has fallen dramatically in the last 30 years.

Its numbers have dropped from more than 1,300 to around 350, wrote Lamberty.

He said kills by subsistence hunters until 1998 -- up to 77 a year when they were counted -- were the most significant cause of the animal's decline.

But subsistence hunting was banned in 1999, and the population hasn't rebounded, indicating other factors are at play, Lamberty ruled.

The state, on the other hand, has maintained that the animals are recovering. In fact, the recovery is right on track, said Brune. A key study found that the population wouldn't begin to recover for about five to eight years, the time it takes a new calf to reach birthing age.

"Guess what? In 2005, the animal's numbers hit bottom, 278. Last year, their number was 340. That annual growth is what was predicted," said Brune.

This year's figures have not been released, he said. Belugas can live seven decades, and the 1,300 whales counted in 1979 existed for years with oil and gas development, before there was an Environmental Protection Agency or an Endangered Species Act, said Brune, a biologist himself.

It wasn't until subsistence hunting began that the

animal's numbers declined, he said. "Industry has proven it can coexist with the whales," he said. But the industry also seems to be coexisting with the listing: Several companies are moving forward with plans to produce oil and gas from Cook Inlet.

Under the act, developers must consult with federal agencies to ensure their activities don't endanger beluga habitat.

If the impact is potentially large enough, companies might face seasonal restrictions or geographical limits on where they can work, said Julie Speegle, NOAA spokeswoman in Alaska.

Speegle said she's not aware of any industry projects that have been put on hold because of the 2008 listing.

Escopeta Oil, which recently announced a major natural gas discovery in the inlet and joined the state as an intervenor plaintiff, did not have anyone available for comment today, said a representative in the company's Anchorage office.

The listing is a burden on companies and creates a

chilling effect on investment, because the consultation requires significantly more time and money before development can proceed, Brune said.

And the listing's economic impact could be far greater once oil and gas companies have moved beyond the exploration phase they're now in and hope to develop. New regulations could require no discharge of liquids from drilling into Cook Inlet, including even water pulled up from beneath the sea floor.

That water can currently be treated on site and released into the inlet, he said. But in the future, oil and gas companies may be required to build costly infrastructure, such as pipelines, to get that water to shore. It could make projects so costly they become uneconomic.

"The potential impacts are in the billions of dollars," he said.