



Enviros Try To Sink Seismic Oil Exploration Plans In Alaska

Case Title - Native Village of Chickaloon et al v. National Marine Fisheries Service et al

Court - Alaska

Nature of Suit - 893(Environmental Matters)

Case Number - 3:12-cv-00102

Judge - Sharon L. Gleason

Date Filed - May 14, 2012

By **Juan Carlos Rodriguez**

Law360, New York (May 15, 2012, 7:39 PM ET) -- An Alaskan tribe and two environmental groups on Tuesday sued the National Marine Fisheries Service for allegedly violating the Marine Mammal Protection Act by approving high-intensity seismic oil and gas exploration in Cook Inlet, Alaska, without proper environmental reviews.

The Chickaloon Native Village, Natural Resources Defense Council Inc. and Center for Biological Diversity say the seismic exploration generates some of the loudest, most disruptive sounds that humans put in the water, and would occur entirely within the designated critical habitat of a declining and recently declared endangered species, the Cook Inlet beluga whale.

The NMFS, a branch of the National Oceanic and Atmospheric Administration, issued the challenged authorization to Apache Alaska Corp., which intends to explore Cook Inlet for subsurface oil and gas reserves, according to the complaint.

Sounds made by seismic exploration are just slightly quieter than dynamite, the plaintiffs say.

“Day and night, for 160 days per year, Cook Inlet will be inundated with high-intensity sound pulses that are greater than 235 decibels at their source — billions of times more intense than the noise thresholds known to compromise foraging and other vital behavior in marine mammals,” the complaint said.

The authorization is for three years, according to the suit.

Marine animals, including whales, have been negatively affected by such exploration techniques in the past, the plaintiffs claim.

“Impacts from intense manmade underwater noise range from disruption of biologically critical behaviors — such as feeding, breeding, communicating and nursing — to temporary and permanent hearing loss. In some cases, the noise can cause injury and death,” the complaint said.

Because a seismic airgun array is capable of flooding substantial portions of Cook Inlet — including the critical habitat of the Cook Inlet beluga whale — with highly disruptive sound, the surveys that NMFS has authorized will repeatedly harm the same endangered populations of beluga whales and Steller sea lions, as well as killer whales, harbor porpoises, harbor seals and fish, according to the complaint.

The plaintiffs allege the NMFS violated the MMPA by issuing an incidental harassment authorization that allows Apache to repeatedly harm or harass beluga whales in their critical habitat, despite the fact that the MMPA limits such authorizations to “small numbers of marine mammals of a species or population stock,” requires no more than a “negligible impact” on species and stocks, and forbids “an unmitigatable adverse impact on the availability of such species or stock for taking for subsistence uses” by native peoples.

According to the complaint, the U.S. Marine Mammal Commission, appointed by Congress to provide expert advice on the protection of marine mammals and the implementation of the MMPA, recommended in a letter to the NMFS that the authorization not be issued.

A representative for the NMFS did not immediately respond to a request for comment Tuesday.

In November, Alaska lost its bid protesting the NMFS’ designation of beluga whales in Alaska’s Cook Inlet as an endangered species, with a Washington federal judge ruling that protecting the whales was reasonable because of a continuing population decline.

The state claimed the listing was arbitrary and capricious because the NMFS had determined in 2000 that whaling by Alaska Natives was the primary cause of the beluga’s decline, and that no endangered species listing was necessary because state laws and regulations had significantly cut back on hunting.

But U.S. District Judge Royce C. Lamberth said the agency had acted reasonably in revisiting the issue after the whale population didn’t undergo the recovery that was expected after the hunting bans.

The plaintiffs are represented by Rebecca Lynn Noblin of the Center for Biological Diversity and Rebecca J. Riley and Taryn Kiekow of the Natural Resources Defense Council.

The case is Native Village of Chickaloon et al. v. National Marine Fisheries Service et al., case number 3:12-cv-00102, in the U.S. District Court for the District of Alaska.

--Additional reporting by Dietrich Knauth. Editing by Elizabeth Bowen.