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Submitted via electronic mail

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Re: Development of Regulations for Requested Incidental Take by Port of Alaska for Modernization Program Phase 2B: Cargo Docks Replacement Project in Anchorage, Alaska

On behalf of the Center for Biological Diversity, we provide the following comments on the development of 5-year regulations for construction related to the Port of Alaska Modernization Project Phase 2B: Cargo Docks Replacement Project.¹ The proposed construction actions will further imperil the already critically endangered Cook Inlet beluga whale. While it is important to address safety risks and modernization needs at the Port, we have grave concerns regarding the National Marine Fisheries Service's ("Service") continuing failure to adequately protect Cook Inlet beluga whales from the Modernization Project and other industrial activities in their designated critical habitat. The Service must not issue any additional take authorizations or regulations without first conducting a programmatic Environmental Impact Statement and Biological Opinion.

The removal of even one endangered Cook Inlet beluga whale will impede the recovery of this species.² Noise is one of the primary threats to Cook Inlet belugas since harvest has ceased.³ We cannot stress enough that most of the proposed activities should not be authorized until and unless NMFS can ensure that take will not impede the survival and recovery of the Cook Inlet beluga whale population. Cook Inlet beluga whales are in trouble, and they have shown no signs of recovery since they were protected under the Endangered Species Act.⁴ There are an estimated 331 Cook Inlet beluga whales, and changes in survey methods bring into question the approach

¹ 89 Fed. Reg. 15,548 (Mar. 4, 2024).

² Muto, M., Stock Assessment Report: Beluga Whale (*Delphinapterus leucas*) Cook Inlet Stock (Dec. 30, 2021).

³ National Marine Fisheries Service, Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*) (Dec. 2016).

⁴ Valdivia, Abel, et al. (2019) Marine mammals and sea turtles listed under the U.S. Endangered Species Act are recovering, PLoS ONE 14(1): e0210164.

of determining any trend in population status.⁵ Recent advancements in integrated population modeling confirmed the negative trend in the Cook Inlet beluga population.⁶ The results indicate that low survival may be impeding recovery.⁷ A population viability analysis estimates that the population will decline at an average rate of 1.6% per year in the coming decades.⁸

The Marine Mammal Commission has repeatedly recommended, and specifically recommended for Port of Alaska construction activities, that the Service “defer issuance of the final incidental harassment authorizations to [Port of Alaska] or any other applicant proposing to conduct sound-producing activities in Cook Inlet until [it] has a reasonable basis for determining that authorizing any additional incidental harassment takes of Cook Inlet beluga whales would not contribute to or exacerbate the stock’s decline.”⁹ We urge the Service to initiate and complete such a comprehensive analysis of all Cook Inlet beluga takes without delay.

Should the Service develop regulations for Phase 2B of the Modernization Project, which estimates 479 instances of Level B take of endangered Cook Inlet beluga whales, we recommend robust mitigation measure be required.¹⁰ We recommend requiring the use of bubble curtains throughout the entire construction season, rather than only in August through October, as proposed.¹¹ We would also recommend passive acoustic monitoring, time-area restrictions, larger exclusion zones, and sound source verification.

We believe that the Service should not authorize any takes of Cook Inlet beluga whales for the Port of Alaska project in Cook Inlet without first conducting a programmatic Environmental Impact Statement and Biological Opinion. To the extent that the Service develops take regulations, it must impose stringent mitigation measures to ensure the least adverse impact on protected species. Thank you for your consideration of these comments.

Sincerely,

/s/ Cooper Freeman

Cooper Freeman

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⁵ NOAA, Abundance and Trend of Belugas (*Delphinapterus leucas*) in Cook Inlet, Alaska, June 2021 and June 2022 (2023).

⁶ Jacobson, E. K., Boyd, C., McGuire, T. L., Sheldon, K. E., Himes Boor, G. K., & Punt, A. E. (2020). Assessing cetacean populations using integrated population models: an example with Cook Inlet beluga whales. *Ecological Applications* e02114, at 1, 8, 9 (2020).

⁷ *Id.*

⁸ Warlick, A. J. et al., Identifying Demographic and Environmental Drivers of Population Dynamics and Viability in an Endangered Top Predator Using an Integrated Model, *Animal Conservation* (2023).

⁹ Marine Mammal Commission letter to Ms. Jolie Harrison, National Marine Fisheries Service, Comments on Proposed Incidental Harassment Authorization and Possible Renewal for Port of Alaska’s Petroleum and Cement Terminal, Anchorage, Alaska, 4 (Jan. 23, 2020).

¹⁰ Port of Alaska, Application for a MMPA Request for a Letter of Authorization: Cargo Terminals Replacement (CTR) Project at 6-36 (Oct. 2023).

¹¹ *Id.* at 1-22.

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