

January 21, 2021

Regulatory Division POA-2021-0000

Mr. Jon Kurland

Assistant Regional Administrator for Protected Resources

National Marine Fisheries Service,

Alaska Region Post Office Box 21668

Juneau, Alaska 99802

Dear Mr. Kurland:

The U.S. Army Corps of Engineers, Regulatory Division (Corps) has received and is reviewing a Department of the Army (DA) permit application submitted by Ms Betty Beluga on behalf of AKCargo LLC for the proposed project as described below. The Corps requests initiation of expedited informal consultation under section 7(a)(2) of the Endangered Species Act (ESA) for the proposed project. We have determined that the proposed activity may affect but is not likely to adversely affect Cook Inlet Beluga whales (*Delphinapterus leucas*) nor its designated critical habitat. Our supporting analysis is provided below. We request your written concurrence if you agree with our determination.

Project Description

The applicant is requesting reauthorization to extend for 10 more years ongoing maintenance dredging and disposal at the AKCargo dock. The last time extension occurred on February 2011, and will expire on February 2021. The renewal of this permit would allow for continued maintenance dredging of approximately 75,000 cubic yards annually from 1.43 acres (120-foot by 500-foot) below the High Tide Line and +8 feet Mean Lower Low Water (MLLW). The dredging ensures that the loaded cargo barges can dock safely and that they are grounded evenly on the tidal flats during low tide without causing structural damage to the barge. This requires an even and smooth barge grounding area at +8' MLLW at the dock face. There are approximately 15 low-tide windows each year between April and October when maintenance dredging can be done. Typically, a dredging event within each low-tide window requires 2 days to be completed with approximately 5,000 cubic yards of dredged material per event.

Dredging is expected to occur each low-tide between April and October; however, the actual dates of dredging each year vary because the dates of low-tide windows change. Disposal of dredged material would occur in 2.30 acres of mudflats (100 feet by 500 feet) immediately seaward from the dredged area. Work would be done using wide-tracked bulldozers at low-tide and in de-watered conditions. Dredging and disposal areas are located not less than 200 feet north from the Ordinary Highwater (OHW) mark of the Ship Creek tidal channel. All work would be performed in accordance with the enclosed plan (sheets 1-4), dated November 2020.

The project site is located within Section 12, T. 13 N., R. 4 W., Seward Meridian; USGS Quad Map Anchorage A-8; Latitude 61.227881° N., Longitude 149.902471° W. AKCargo Dock is approximately 1/3- mile southward from the Port of Alaska, Anchorage, Alaska (Figure 1).

Description of the Action Area

The action area is defined in the ESA regulations (50 CFR 402.02) as the area within which all direct and indirect effects of the project will occur. The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur. For the proposed project, the action area is approximately 6 acres, including the dredging area (1.43 acres) and the disposal area (2.30 acres), which is considered the geographic areas where all project effects/stressors may extend to (Figure 1). The project footprint area (3.73 acres) is located within the Port of Alaska critical habitat exclusion zone on the north shore of Ship Creek. However, we have considered the action area would extend into an extremely small area within Area 1 of designated critical habitat for the Cook Inlet beluga whale as turbidity from the disposal area could be carried into Area 1 (Figure 1).

NMFS Listed Species and Critical Habitat in the Action Area

Cook Inlet beluga whales (CIB) and their critical habitat occur within the action area. The action area is estimated to be approximately 6 acres (Figure 1). All work would occur during low tides in de-watered conditions. Although the footprint of the project is within the CIB critical habitat exclusion zone, the effects of the action (turbidity) would extend slightly into critical habitat Area 1 (Figure 1). Use of critical habitat in Knik Arm by CIB is highest in fall (August-November), sporadic in spring (April-May), and reduced during mid-summer (June-July) and winter (December-March) (Biological Assessment for Port of Anchorage (POA) modernization project, HDR 2020).

Most CIB observed in or near the proposed project action area are transiting between the upper Knik Arm and other portions of Cook Inlet; however, they have been observed at the mouth of Ship Creek foraging during salmon runs. CIB tend to follow their anadromous prey and travel in and out of Knik Arm with the tides. During the time in which CIB are in the critical habitat exclusion zone, they are typically transiting to and from the Upper Knik Arm, unless they are foraging on adult salmon at the mouth of Ship Creek. Because the proposed project would not involve pile driving nor any other in water noise production and will occur during times when the area is dewatered, protected species observers (PSOs) would not be needed as no CIB would be expected to be near the project area when the work was being done.

The conditions in the project area are naturally dynamic and under the influence of strong tidal fluctuations. Although disposal material will be moved out into Cook Inlet, tidal action is expected to quickly disperse the spoils. The short-term increase in turbidity resulting from dredging/disposal is also expected to disperse quickly under the strong tidal influence. In addition, Cook Inlet beluga whales are adapted to living in the highly turbid waters of Cook Inlet and it is unlikely that the slight increase in turbidity near the project area when the tide comes in would have a measurable effect on CIB. For these reasons, the effects of the dredging on CIB are expected to be immeasurably small and thus insignificant.

Mitigation Measures

The applicant has agreed to implement the following mitigation measures in order to minimize the risk of harm to the listed Cook Inlet beluga whales and their designated habitat:

1. Dredging/disposal activities will be conducted during the lowest possible tides. This will allow the work to occur when water is not present in the area and avoid in-water noise impacts.



Figure 1: Action Area (white rectangle) estimated ~6 acres, dredging area (red rectangle) 1.43 acres, & disposal area (yellow rectangle) 2.30 acres.

2. Dredging/disposal activities will be accomplished in approximately 2 days.

3. The applicant will be required to provide a spill cleanup protocol to prevent the introduction of hazardous materials into the mudflats during dredging and disposal operations.

Effects of the Action

Although most of the project area is within the critical habitat exclusion zone, the action area would extend into a small area of Cook Inlet beluga whale designated critical habitat Area 1 as it may be possible that low levels of sediment effects may drift into this area. For these reasons we considered each physical and biological features (PBFs) and how the proposed project may impact each one.

PBF 1: *Intertidal and subtidal waters of Cook Inlet with depths <30 feet Mean Lower Low Water (MLLW) and within five miles of high and medium flow anadromous fish streams.* The proposed dredging/disposal areas are less than 30 feet MLLW and are on the north shore of Ship Creek, a high flow anadromous fish stream. Intertidal and subtidal areas support important CIB feeding habitat because of their shallow depths and bottom structure, which act to concentrate prey and aid in feeding efficiency. The designation of critical habitat recognized that the physical attributes of this PBF could be modified or lost through filling, dredging, channel re-alignment, dikes, or other structures. Although this project is located adjacent to Ship Creek an area described by PBF 1, it is highly unlikely that the work will affect the intertidal or subtidal channels that concentrate prey because 1) the work is not occurring within the Ship Creek channel, 2) it is in an area that has been consistently disturbed by dredging for over 10 years, and 3) only 1.43 acres alongside a dock will be dredged. It is highly unlikely that an intertidal channel occurs within the proposed action area because of the prior dredging activities and the close proximity to the shore. For these reasons we conclude that effects to PBF 1 are immeasurably small.

PBF 2: *Primary prey species consisting of four species of Pacific salmon, (Chinook, sockeye, Chum, and Coho), Pacific eulachon, Pacific cod, Walleye pollock, Saffron cod, and Yellowfin sole.*

The project area is within designated essential fish habitat (EFH) for chum salmon (*Oncorhynchus keta*), coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*Oncorhynchus tshawytscha*), and pink salmon (*Oncorhynchus gorbuscha*). Other managed groundfish species (Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole) are believed to occur within the area during early life stages. The AKCargo dock is located north of the mouth of Ship Creek. Although these prey species may occur in the area, especially when spawning, the adjacent offshore areas are not pristine and likely do not provide optimal habitat. It is not anticipated the habitat quality or availability in Ship Creek will be affected, nor will access in or out of Ship Creek be impeded by the project. The short duration of the project and the small footprint indicates that the dredging/disposal is unlikely to affect the habitat availability or quality for prey species that support the critical habitat designation. In addition, because of the small area effected and the fact that it is already highly disturbed by human activities leading to poor habitat quality, prey species are unlikely to be directly affected because few to no prey would be present, especially when dredging is occurring because the area would be dewatered. For these reasons, it is highly unlikely the prey species will be affected and therefore effects to this PBF are extremely unlikely.

PBF 3: *Waters free of toxins or other agents of a type and amount harmful to CookInlet Beluga whales.* There is no documented contamination within the proposed dredging area or vicinity¹. The applicant will be required to provide a spill cleanup protocol to prevent the introduction of hazardous materials into the mudflats during dredging and disposal operations. During the 2008 annual maintenance operations at the Port of Alaska (located approximately 1/3-mile north of the proposed project), the Corps collected and evaluated samples at the dredging footprint to

¹ Alaska Department of Environmental Conservation (ADEC), 2020. ADEC Contaminated Sites Database. Accessed on 20 May 2020.

determine presence of contaminants (USACE 2008 cited on USACE 2017). Samples collected were tested for volatile and semi-volatile organic compounds, total recoverable petroleum hydrocarbons, PCBs, pesticides, cadmium, mercury, selenium, silver, arsenic, barium, chromium, and lead. Contaminant concentrations in the samples were below screening levels (State of Washington, Department of Ecology, Sediment Management Standards Minimum Cleanup Levels-Chemical Criteria) and were determined to be suitable for in-water discharge. Due to the project's proximity to the Port of Alaska, it is likely that sediment composition at the project area would be similar. In addition, the bulk of the dredged material will be removed from an area that has been dredged annually for over 10 years. As a result, the material being removed has only been in place for a short term and is not expected to be contaminated. Disposing of the recently deposited accumulated sediment would not introduce harmful materials into CIB critical habitat.

Based on the above, the accumulated sediments are not expected to contain contaminants harmful to the CIB whales and the proposed action is anticipated to have no effect on this PBF with respect to the whales or their critical habitat.

PBF 4: Unrestricted passage within or between the critical habitat areas.

Dredging and discharge activities are proposed to occur at the lowest tidal stage possible over approximately two days, from April to October, each year for 10 years. The extreme tidal fluctuations would prevent the sediment removed from the dock area from persisting in a manner that would inhibit the ability of CIB whales to access critical habitat or prevent passage between critical habitat areas. Dredging and disposal activities have always been conducted in such a way as to minimize navigation/passage disruptions and will continue to do so. This improves safety for the dock users and minimizes impacts to marine mammal passage. Finally, the amount of dredged material will be small in relation to the area available for passage. CIB are highly maneuverable, and they could avoid any small, temporary mound of sediment, if needed. As a result, no effect to this PBF is anticipated.

PBF 5: Waters with in-water noise below levels resulting in the abandonment of critical habitat areas by the Cook Inlet Beluga whales.

Dredging equipment would consist of bulldozers/loaders that would push sediment into the immediate offshore areas. Dredging would occur at the lowest tide during dry conditions to avoid any in water work. The noise associated with construction equipment is comparable to the noise generated by private/commercial motorboats in the area and would not introduce a louder noise source to the in-air and in-water environments. The equipment is not anticipated to generate any in-water or in-air noise that could disturb CIB. In addition, CIB are not expected to be in the area during very low tides. Based on these factors, it is extremely unlikely that CIB or their designated critical habitat would be affected by sounds created by the project and we conclude project effects are insignificant.

In summary, this is a small-scale project that is almost totally in the critical habitat exclusion zone. The action area is approximately 1.43 acres and designated critical habitat encompasses 1,929,645 acres (7,809 square kilometers). The project will occur in two day increments during the lowest tides possible. We conclude that all the effects are immeasurably small or extremely unlikely to occur and therefore we conclude that the project may affect but is unlikely to adversely affect Cook Inlet beluga whale or its critical habitat.

Conclusion

Based on the analysis that all effects of the proposed project will be insignificant or highly unlikely, we have determined that the proposed project is not likely to adversely affect CIB nor its critical habitat. We have used the best scientific and commercial data available to complete this analysis. We request your concurrence with this determination. Please contact me via email at xxx.yyy@usace.army.mil, by mail at the address above, by phone at (907) 111-1111, if you have questions.