



TRUSTEES FOR ALASKA

SUSTAIN | PROTECT | REPRESENT

August 11, 2011

Via U.S. Mail and E-mail

Col. Reinhard W. Koenig
Commander
U.S. Army Corps of Engineers
District of Alaska
P.O. 6898
JBER, Alaska 99506
reinhard.w.koenig@usace.army.mil

Mr. James W. Balsiger, Administrator, Alaska Region
Ms. Kaja Brix, Protected Resources Division
Alaska Regional Office
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668
jim.balsiger@noaa.gov
kaja.brix@noaa.gov

Re: Escopeta Oil Company Activity in Cook Inlet USACE #POA 2006-312-M1

Dear Col. Koenig, Mr. Balsiger and Ms. Brix:

This letter concerns Escopeta Oil's (Escopeta) activities in Cook Inlet and the impacts these activities are having, and will continue to have, on the Cook Inlet beluga whale. It is our understanding that several processes must be completed under the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and the National Environmental Policy Act (NEPA) before Escopeta can commence activities in Cook Inlet, including activities to moor the rig, operate the rig or commence drilling. This letter is submitted on behalf of Cook Inletkeeper.

I. Endangered Species Act Violations

Under the ESA, the Cook Inlet Beluga Whale is listed as endangered. 73 Fed. Reg. 62919 (October 22, 2008). Critical Habitat for the Cook Inlet Beluga Whale was designated in April 2011, including the upper half of Cook Inlet, the western shore of Cook Inlet and

Kachemak Bay. 76 Fed. Reg. 20180 (April 11, 2011). The ESA requires federal agencies to consult with NMFS to ensure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. § 1536.

The U.S. Army Corps of Engineers (Corps), as early as April 18, 2011, determined that Escopeta's activities in Cook Inlet "may affect, but is not likely to adversely affect" the Cook Inlet beluga whale or its critical habitat. On May 27, 2011, the Corps submitted additional information requested by NMFS concerning the project's effects on the whale and its critical habitat. NMFS replied to this request on July 14, 2011, and stated that NMFS lacks sufficient information to concur in the Corps' determination. NMFS also requested additional information, specifically, a thorough oil spill risk analysis, in order for NMFS to render a decision of concurrence or non-concurrence. The Corps is currently in the process of completing a Biological Evaluation, which NMFS will review and base its ESA Section 7 consultation concurrence/non-concurrence decision on. These necessary outstanding agency reviews and actions illustrate that the consultation process is not yet complete.

Section 7(d) of the ESA provides:

After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section. 16 U.S.C. § 1536(d); *see* 50 C.F.R. § 402.09.

Escopeta's current and proposed activities in Cook Inlet have the potential to irreversibly affect the Cook Inlet beluga whale and its critical habitat through its movement, use of side scanning sonar and other acoustic impacts, and potential fuel and/or oil spills and discharges. The Corps is not permitted to issue permits that constitute an irreversible and irretrievable commitment of resources *during* informal consultation and before a determination as to whether formal consultation is required has been made. *See* 16 U.S.C. § 1536(d); *Natural Resources Defense Council v. Houston*, 146 F.3d 1118 (9th Cir. 1998); *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1056-57 (9th Cir. 1994); *Conner v. Burford*, 848 F.2d 1441, 1455 (9th Cir. 1988).

By allowing Escopeta to enter Cook Inlet and begin preparations for drilling, including the use of side scanning sonar, the Corps is undermining the consultation process and violating §7(d) of the ESA. The consultation process is essential to developing Cook Inlet's resources in a sustainable and responsible manner, and it is concerning that the Corps has waited so long to conduct such basic inquiries. The Corps is derogating a process which ensures a thorough analysis of the impacts of a proposed activity and the implementation of reasonable and prudent measures to minimize such impacts. Until the Corps complies with the requirements of Section 7 of the ESA, Escopeta cannot moor the rig, operate the rig or commence drilling in Cook Inlet.

II. Marine Mammal Protection Act Violations

Under the MMPA, the term “take” is broadly defined to mean “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” 16 U.S.C. § 1361(13). “Harassment” is defined to mean:

Any act of pursuit, torment, or annoyance which – (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. 16 U.S.C. § 1362(18)(A) and (B).

NMFS currently uses generic threshold exposure level criteria to determine whether noise impacts amount to Level A or Level B harassment. Based on the results from a limited number of field studies, 180dB was set as the Level A harassment level¹ and 160dB was set as the Level B harassment level for pulsed noise and 120dB for continuous noise.² According to Escopeta’s plan of operations, the continuous in-water noise level will be monitored and reduced to below the “acceptable threshold established by the NMFS while whales are present”. This statement alone does not establish Escopeta’s compliance with NMFS’s current threshold exposure level criteria. Furthermore, even if Escopeta were to fully comply with NMFS threshold exposure level criteria, this does not rule out the potential for a “take” as defined under the MMPA.

There are numerous studies showing significant behavioral impacts to whales from received sounds well below 160 dB. For example, in its recent decision document related to seismic surveys associated with oil and gas exploration in the Chukchi Sea, NMFS imposed a 120 dB safety zone for aggregations of bowhead whales based on its finding that “bowhead whales apparently show some avoidance in areas of seismic sounds at levels lower than 120 dB.”³

Similarly, harbor porpoise, a species of marine mammal that is found in the project area, is known for its acute sensitivity to acoustic sources, responding strongly in both lab and field studies to various sources of anthropogenic noise at received pressure levels well below 140 dB.⁴

¹ 70 Fed. Reg. 1871, 1873 (Jan. 11, 2005).

² *Id.*

³ Minerals Management Service (2006). Programmatic Environmental Assessment for Arctic Outer Continental Shelf Seismic Surveys (OCS EIS/EA MMS 2006-019).

⁴ R.A. Kastelein, W.C. Verboom, M. Muijsers, N.J. Jennings and S. Van Der heul, The influence of acoustic emissions for underwater data transmission on the behaviour of harbor porpoises (*Phocoena phocoena*) in a floating pen, Marine Environmental Research 59:287-307 (2005); R.A. Kastelein, A.N. Jennings, W.C. Verboom, D. De Haan and N.M. Schooneman, Differences in the response of a striped dolphin (*Stenella coeruleoalba*) and a harbour porpoise (*Phocoena phocoena*) to an acoustic alarm, Marine Environmental Research 61:363-378 (2006); National Marine Fisheries Service, Assessment of acoustic exposures on marine mammals in conjunction with USS Shoup Active Sonar Transmissin in the Easter Strait of Juan de Fuca and Haro Strait, Washington, 5 May 2003 (2005); P. Olesiuk, M.A. Bigg and G.M. Ellis, Life history and population dynamics of resident killer whales (*Orcinus orca*) in the coastal waters of British Columbia and Washing state, Reports of the International Whaling Commission 12:209-243 (1990).

Indeed, for past MMPA incidental take authorization permits, NMFS has included in its take estimates any harbor porpoise exposed to sound pressure levels above 120 dB.⁵

Additionally, NMFS has acknowledged the impacts of sounds on belugas even at significant distances from a sound source. For example, in a recent proposed take authorization related to seismic surveys by the National Science Foundation, NMFS noted that belugas can be displaced at distances of up to 20 km from a sound source. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi).⁶

NMFS also has ample information on the link between received sound levels below these thresholds and marine mammal stranding and mortality events. For example, in 2002, two beaked whales (*Ziphius cavirostris*) were found to have stranded in the Gulf of California, Mexico, coincident with geophysical surveys that were being conducted in the area.⁷ That same year, endangered adult humpback whales were reported to have stranded in unusually high numbers along Brazil's Abrolhos Banks, where oil and gas surveys were being conducted.⁸ Additionally, studies suggest that critically endangered western Pacific gray whales were displaced from important feeding grounds and exhibited behavioral changes in response to seismic surveys off Russia's Sakhalin Island.⁹ Moreover, one court that addressed the likely impacts of seismic surveys on marine mammals found sufficient evidence of harm to enjoin the project.¹⁰ In each of these cases, the received sound levels for at least some of the affected marine mammals were likely lower than 180 dB.

For the Cook Inlet beluga, the potential consequences of a stranding event could be catastrophic. Given the beluga's foraging behavior and the large tidal fluctuations in Cook Inlet, the risk of stranding at low tide is relatively high even in the absence of anthropogenic

⁵ Taking and Importing Marine Mammals; Navy Training Activities Conducted Within the Northwest Training Range Complex Proposed Rule, 74 Fed. Reg. 33828, 33891 (July 13, 2009).

⁶ 71 Fed. Reg. 27997, 28004 (May 15, 2006).

⁷ Hildebrand (2004), "Impacts of anthropogenic sound on cetaceans," Paper submitted to the IWC Scientific Committee (SC/56/E13).

⁸ Engel et al. (2004), Are seismic surveys responsible for cetacean strandings? An unusual mortality of adult humpback whales in Abrolhos Bank, Northeastern coast of Brazil. Paper submitted to the IWC Scientific Committee (SC/56/E28).

⁹ Würsig et al. (1999) Gray whales summering off Sakhalin Island, Far East Russia: July-October 1997, A joint U.S.-Russian scientific investigation. Final contact report to Sakhalin Energy Investment Company; Weller et al. (2002), The western Pacific gray whale: A review of past exploitation, current status and potential threats," J. Cetacean Research and Management 4:7.

¹⁰ See *Center for Biological Diversity v. National Science Foundation*, 2002 WL 31548073 (N.D. Cal., Oct. 30, 2002) (Court issued temporary restraining order halting seismic surveys after finding that "if the airgun blasting continues, it is virtually inevitable that marine mammals will be injured, resulting in irreparable harm to the environment.").

disturbance.¹¹ When the likely displacement and avoidance behavior caused by Escopeta's activities is added to the mix, the possibility of a large-scale stranding event resulting in multiple mortalities cannot be discounted.

Although the physical process linking sonar to strandings is not perfectly understood, the record indicates that debilitating and very possibly lethal injuries are occurring in whales exposed to sonar at sea—only some of which may then strand. As first reported in the journal *Nature*, animals that came ashore during sonar exercises off the Canary Islands, in September 2002, had developed large emboli in their organ tissue and suffered from symptoms resembling those of severe decompression sickness, or —the bends.¹² It has been proposed that the panic led them to surface too rapidly or pushed them to dive before they could eliminate the nitrogen accumulated on previous descents. This finding has since been supported by follow-on papers, by published work in other fields, and by expert reviews.¹³ In any case, the evidence is considered —compelling that acoustic trauma, or injuries resulting from behavioral responses, has in some way led to the deaths of these animals.¹⁴

In addition to whale strandings and non-auditory injuries, the harmful effects of high-intensity sonar include temporary or permanent loss of hearing, which impairs an animal's ability to communicate, avoid predators, detect and capture prey, and avoid ship strikes; avoidance behavior, which can lead to abandonment of habitat or migratory pathways; disruption of biologically important behaviors such as mating, feeding, nursing, or migration, or loss of efficiency in conducting those behaviors; aggressive (or agonistic) behavior, which can result in injury; masking of biologically meaningful sounds, such as the call of predators or potential mates; chronic stress, which can compromise viability, suppress the immune system, and lower the rate of reproduction; habituation, causing animals to remain near damaging levels of sound, or sensitization, exacerbating other behavioral effects; and declines in the availability and viability of prey species, such as fish and shrimp. Over the past 20 years, a substantial literature has emerged documenting the range of effects of ocean noise on marine mammals.¹⁵

¹¹ In a review of impacts associated with the proposed Knik Arm Bridge, strandings were identified as a threat. Knik Arm Bridge Toll Authority *Request for Letter of Authorization under Section 101(a)(5) of the Marine Mammal Protection Act Incidental to Construction of the Knik Arm Crossing Project in Upper Cook Inlet, Alaska* at 41 (“[b]ecause belugas spend much of their time in shallow waters, stranding is a constant risk.”).

¹² See P.D. Jepson, M. Arbelo, R. Deaville, I.A.P. Patterson, P. Castro, J.R. Baker, E. Degollada, H.M. Ross, P. Herráez, A.M. Pocknell, F. Rodríguez, F.E. Howie, A. Espinosa, R.J. Reid, J.R. Jaber, V. Martín, A.A. Cunningham, A. Fernández, Gas-Bubble Lesions in Stranded Cetaceans, 425 *Nature* 575-576 (2003); Fernández et al., ‘Gas and Fat Embolic Syndrome’, 42 *Veterinary Pathology* at 415.

¹³ E.g., Cox et al., *Understanding the Impacts*. Of course it would be a mistake to assume that an animal must suffer bends-like injury or some other sort of acoustic trauma in order to strand. Some may die simply because the noise disorients them, for instance. See, e.g., NMFS, *Assessment of Acoustic Exposures* at 9-10.

¹⁴ Cox et al., *Understanding the Impacts*; see also P.G.H. Evans and L.A. Miller, *Concluding Remarks*, in *Proceedings of the Workshop on Active Sonar and Cetaceans* 74 (2004); K.C. Balcomb and D.E. Claridge, *A Mass Stranding of Cetaceans Caused by Naval Sonar in the Bahamas*, 8(2) *Bahamas Journal of Science* 1 (2001); D.E. Claridge, *Fine-Scale Distribution and Habitat Selection of Beaked Whales* (2006) (M.Sc. thesis); E.C.M. Parsons, S.J. Dolman, A.J. Wright, N.A. Rose, and W.C.G. Burns, *Navy Sonar and Cetaceans: Just How Much Does the Gun Need to Smoke before We Act?* 56 *Marine Pollution Bulletin* 1248 (2008)

¹⁵ For a review of research on behavioral and auditory impacts of undersea noise, see, e.g., L.S. Weilgart, *The Impacts of Anthropogenic Ocean Noise on Cetaceans and Implications for Management*, 85 *Canadian Journal*

Such displacement, injury and disturbance of the Cook Inlet beluga and its critical habitat clearly meets the statutory definition of harassment and demonstrates that NMFS has abdicated its responsibility by failing to inform Escopeta that it must apply for some form of incidental take authorization or will be acting in violation of the MMPA. This includes Escopeta's survey program, which would utilize side scan sonar, sub-bottom profiling, bubble pulse/geopulse seismic survey, and high resolution seismic survey, and is planned to commence before drilling begins.

The effects of an oil spill in Cook Inlet on the beluga whale and its critical habitat cannot be overstated. Smaller spills of oil or fuel are localized, short-term alterations in habitat and habitat use as a result of such a spill. Larger spills would obviously have a more profound effect on the Beluga whale population however both large and small spills would qualify as a "take" within the meaning of the MMPA.

It is well documented that exposure of at least some mammals to petroleum hydrocarbons through surface contact, ingestion, and especially inhalation can be harmful. Surface contact with petroleum hydrocarbons, particularly the low-molecular-weight fractions, can cause temporary or permanent damage of the mucous membranes and eyes (Davis, Schafer, and Bell, 1960) or epidermis (Hansbrough et al. 1985; St. Aubin 1988; Walsh et al., 1974). Contact with crude oil can damage eyes (Davis, Schafer, and Bell 1960). Ingestion of petroleum hydrocarbons can lead to subtle and progressive organ damage or to rapid death. Inhalation of volatile hydrocarbon fractions of fresh crude oil can damage the respiratory system (Hansen, 1985; Neff, 1990), cause neurological disorders or liver damage (Geraci and St. Aubin 1982), have anesthetic effects (Neff 1990) and, if accompanied by excessive adrenalin release, cause sudden death (Geraci 1988). Furthermore, a larger spill could reduce feeding efficiency and prey for belugas, further stressing the population. The results of a spill, while not directly lethal, are known as "effective mortalities" by reducing carrying capacity or fitness of individual whales, with the same consequence to the population survival as direct mortalities. 73 Fed. Reg. at 62927.

Escopeta will be drilling into unexplored target formations which carries a higher risk of blow-out. In addition, the capacity of the Spartan 151 to perform in Cook Inlet has not been established. The AOGCC was unable to fully inspect the Spartan 151 last March due to the unavailability of certain equipment. The rig was reportedly modified in Canada. The Spartan 151 stands in only 150 ft of water, was built for the Gulf of Mexico and has a variable deck weight that is low in relation to other rigs being brought into Cook Inlet. Neither Escopeta, the operator, nor Spartan Offshore Drilling LLC, who refurbished and upgraded the Spartan 151 in 2006, have cold water experience. We are particularly concerned about the blow-out prevention and the well control for the rig. The blowout preventer ram assembly has only three rams specified, when normally four rams are indicated for this type of operation. Because of recent oil

spills and the documented problems with blowout preventers (BOP), it is essential for Escopeta to establish that there has been an inspection of the BOPs, that there has been a pressure test of the BOP to 15, 000 lbs, that the shear rams are adequate, and that there is an inspection of the choke manifold. Without such assurances, the risk of a blowout is heightened. With respect to well control, the major inadequacy of the oil discharge prevention and contingency plan is the lack of a contract for a relief well to be transported to Cook Inlet, in the event the Spartan 151 is incapacitated in a blowout. Rig availability is notoriously uncertain, and Escopeta itself had difficulty securing the Spartan 151. Thus, Escopeta's failure to specifically identify a rig under contract to provide relief well capacity dramatically increases the potential harm to the Cook Inlet beluga if no rig is available on contract in the event of a blowout.

These facts illustrate that compared to other rigs and operators in Cook Inlet, the Spartan 151 has a higher risk of oil spill due to storm conditions, blow out, or operator error in an unforgiving and unfamiliar environment. The potential impacts from chronic or a catastrophic spill should be factored into any consultation and into any analysis under the MMPA.

Under 50 CFR 216.104(b) of NMFS' implementing regulations for the MMPA, NMFS must publish in the Federal Register a notice of a proposed IHA or a notice of receipt for a request for the implementation of regulations governing the incidental taking of Cook Inlet belugas for this project. Information gathered during the associated comment period is considered by NMFS in developing, if appropriate, IHAs and regulations governing the issuance of Letters of Authorizations (LOAs) for the proposed activity. Take authorization should not be granted unless and until mitigation measures are in place that truly minimize adverse impacts to protected species and their habitats, and only after full and adequate environmental review of the direct, indirect, and cumulative impacts of such activities on these species and their habitats has been undertaken.

III. National Environmental Policy Act Violations

NEPA is an action-forcing statute. Its sweeping commitment is to "prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). It requires the federal agency to ensure "that the agency will inform the public that it has indeed considered environmental concerns in its decision making process." *Baltimore Gas and Electric Company v. NRDC*, 462 U.S. 87, 97 (1983). NEPA requires that the Corps take a "hard look" at the environmental impacts of a proposed action. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998).

The Corps' issuance of a permit under §10 of the Rivers and Harbors Act is a major federal action which triggers NEPA requirements. "A threshold question in a NEPA case is whether a proposed project will 'significantly affect' the environment, thereby triggering the requirement for an [Environmental Impact Statement]." *Blue Mountains*, 161 F.3d at 1212. "As a preliminary step, an agency may prepare an [Environmental Assessment] to decide whether the environmental impact of a proposed action is significant enough to warrant preparation of an EIS." *Id.* (citing 40 C.F.R. § 1508.9). "The purpose of an EA is to provide the agency with

sufficient evidence and analysis for determining whether to prepare an EIS or to issue a [Finding of No Significant Impact].” *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (citing 40 C.F.R. § 1508.9). “Because the very important decision whether to prepare an EIS is based solely on the EA, the EA is fundamental to the decision-making process.” *Id.*; *see also* 40 C.F.R. § 1500.1(b); *Idaho Sporting Congress*, 137 F.3d at 1151. “[T]he public must be given an opportunity to comment on draft EAs and EISs.” *Anderson v. Evans*, 314 F.3d 1006, 1016 (9th Cir. 2002); *Citizens for Better Forestry v. U.S. Dep’t. of Agriculture*, 341 F.3d 961, 970 (9th Cir. 2003).

To our knowledge, the Corps has not completed, nor even initiated an Environmental Assessment. This process is required. To comply with NEPA, the Corps must consider all direct, indirect, and cumulative environmental impacts of the proposed action. 40 C.F.R. § 1502.16; 40 C.F.R. § 1508.8; 40 C.F.R. § 1508.25(c). Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. 40 C.F.R. § 1508.8(b). Both types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” *Id.* Cumulative effects are defined as the impacts resulting from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. Cumulative impacts result from individually minor but collectively significant actions taking place over a period of time. *Id.*

In this situation, the direct, indirect and cumulative effects of Escopeta’s navigation through Cook Inlet, storage in Kachemak Bay, and commencement of drilling operations (including sonar surveying), and potential oil spills must be studied and incorporated into an EA. Furthermore, while Escopeta’s use of 3-D and other high frequency sonar should be thoroughly studied itself, this activity, along with other high frequency sonar activities in Cook Inlet requires an evaluation of the cumulative impacts on the Cook Inlet beluga whale and its critical habitat. On August 9, 2011, Alaska Department of Natural Resources published notice of receipt of a geophysical exploration permit application for a multi-year 3-D seismic survey proposed for the Cook Inlet Basin.¹⁶ This activity, and other sonically intensive activities in Cook Inlet, must be studied in conjunction with Escopeta’s proposed use of sonar and drilling methods in order to understand the cumulative impacts.

NEPA and its implementing regulations therefore require that each EA include a discussion of: (1) the environment of the area to be affected by the alternatives under consideration, 40 C.F.R. § 1502.15; (2) the proposed project and its environmental impacts, 40 C.F.R. § 1508.9; (3) alternatives to the proposed project, 40 C.F.R. § 1508.9, NEPA § 102(2)(E); (4) the cumulative impacts of a proposed project, 40 C.F.R. § 1508.7; (5) mitigation measures that may be utilized to mitigate any adverse impacts that result from the project; and (6) connected actions, 40 C.F.R. § 1508.25. NEPA also requires that the public have the opportunity to review and comment on the above information before decisions are made and before actions

¹⁶ State of Alaska Online Public Notice August 9, 2011 Apache Alaska Corporation, Cook Inlet 3D Seismic Survey—Geophysical Exploration Permit MLUPCI-11-003

are taken. 40 C.F.R. § 1500.1(b). Before Escopeta can commence drilling activities, this process must be completed.

IV. Government-to-Government Consultation

The plan of operations for the Escopeta Exploration Plan mandates that Escopeta notify the local governments and tribal governments about the timing of its operations, which presumably included the arrival of the rig.¹⁷ Pursuant to Executive Order 13175 § 5(a), a federal agency implementing policy or actions that have substantial direct effects on one or more Indian tribes must first consult with the affected tribal officials early in the process of developing the proposed regulation or action. Given the very low subsistence harvest of Cook Inlet belugas authorized in recent years, the injury or mortality of even a single beluga by Escopeta's activities could very well have the effect of precluding any subsistence harvest in a given year or delay the resumption of any subsistence harvest by one or more years. Furthermore, the potential effects of an oil spill on Cook Inlet's ecosystem – which supports the subsistence and economic well-being of thousands – would be catastrophic. Escopeta's proposed activities in Cook Inlet have substantial direct effects on Native Alaskan tribal members located in Port Graham, Nanwalek, Ninilchik, Tyonek, Kenai, Seldovia and other areas of Cook Inlet.

It is our understanding that neither the Corps nor NMFS has consulted with tribes in the Cook Inlet area, and that there was no notice to the affected tribes and communities prior to the arrival of the Escopeta rig. We request that proper government-to-government consultation be undertaken, prior to the permitting and operation of the Escopeta rig.

Conclusion

We respectfully request that the Corps and NMFS uphold their statutory and regulatory responsibilities to ensure that the Escopeta Cook Inlet Exploration Program can proceed in a timely manner complying with all applicable laws and regulations. Escopeta already has demonstrated a willingness to skirt the law (e.g., Jones Act, Kitchen Lights unitization agreement) and it's vital that our state and federal agencies ensure exploratory drilling will be conducted safely and responsibly. We further request that NMFS and the Corps of Engineers respond to this letter within 5 days, given the exigencies of Escopeta's drilling schedule.

Sincerely,



Brian Litmans
Senior Staff Attorney

¹⁷ May 30, 2006 Letter from Bob Warthen, General Manager of Escopeta Oil stating: "Escopeta has committed in its plan of operations to contact all affected villages and provide specific project operations information *regarding location and timing of operations* and respond to requests regarding subsistence issues;" and "Escopeta has committed in its plan of operation con contact the Native Village of Tyonek, we plan also [to] conact the Cook Inlet Marine Mammal Council." (emphasis added.)

Notice of Violations Re: POA-2006-312-M1
August 11, 2011
Page 10

blitmans@trustees.org
907.276.4244 x107

cc: Cook Inletkeeper
Larry Hartig, Alaska Department of Environmental Conservation Commissioner
Alaska Oil and Gas Conservation Commission