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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

COOK INLETKEEPER et al.,	)	
Plaintiffs,	)	Case No. 3:19-cv-00238-SLG
	)	
v.	)	
	)	
WILBUR ROSS, Secretary of	)	
Commerce, et al.	)	
Defendants,	)	
and	)	
	)	
HILCORP ALASKA, LLC	)	
	)	
Intervenor-Defendant	)	
	)	
	)	

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**DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT**

Defendants Wilbur Ross, in his official capacity as the Secretary of Commerce, James Balsiger, in his official capacity as Regional Administrator of the National Marine Fisheries Service; and the National Marine Fisheries Service (“Fisheries Service”), (collectively “Defendants”), through undersigned counsel, hereby submit the following Answer to the First Amended Complaint for Declaratory and Injunctive Relief (“Complaint”) (ECF No. 28) filed by Plaintiffs. The Paragraph numbers in the Answer correspond to the Paragraph numbers in the Complaint. The topic headings used below are duplicated from Plaintiffs’ Complaint and are inserted for ease of reference. Use of these topic headings below does not constitute an admission or acknowledgment by Defendants of the headings’ relevance or accuracy.

## **INTRODUCTION**

1. The allegations in Paragraph 1 are characterizations of Plaintiffs’ lawsuit to which no response is required and are accordingly denied.
2. Defendants admit that seismic surveys use sound to characterize subsurface geology and to locate oil and gas reserves. Defendants admit that seismic surveys can disturb and injure marine mammals and other species in the marine ecosystem. To the extent the remaining allegations in Paragraph 2 are characterizations of scientific studies on marine mammals and the marine ecosystem or are characterizations of documents issued by Fisheries Service regarding oil and gas development activities, those documents speak for themselves and are the best evidence of their contents. The remaining allegations in Paragraph 2 are vague and ambiguous and Defendants lack information

sufficient to form a belief about the truth of the allegations and therefore no response is required. To the extent a response is required, Defendants deny the allegations.

3. Defendants admit that Hilcorp Alaska LLC's proposed activities in Cook Inlet include 2D and 3D seismic surveys, geohazard surveys, pile driving, well drilling, and vessel activity and that these activities could introduce noise into the marine environment where Hilcorp Alaska LLC's activities in Cook Inlet are proposed to occur. Defendants deny the remainder of the allegations in Paragraph 3.

4. Defendants admit the allegations in Paragraph 4 that marine mammals depend on sound for some essential life functions, that the noise generated by Hilcorp Alaska LLC's proposed activities in Cook Inlet can harm them in a variety of ways, including by auditory injury, avoidance or displacement from important habitats, and masking that impairs some species' ability to communicate, mate, find prey, and detect predators. Defendants deny the remainder of the allegations in Paragraph 4.

5. Defendants admit the allegation in Paragraph 5 that the Fisheries Service issued the final rule and incidental take regulations authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska. The remaining allegations in Paragraph 5 purport to characterize the final rule and incidental take regulations. These documents speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the documents is denied.

6. The allegations in Paragraph 6 purport to characterize the final rule and incidental

take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska. These documents speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the documents is denied.

7. The allegations in Paragraph 7 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska. These documents speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the documents is denied.

8. Defendants admit that the Marine Mammal Commission has submitted public comment letters to the Fisheries Service. The allegations in Paragraph 8 purport to characterize the contents of the Marine Mammal Commission's public comment letters. These documents speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the documents is denied.

9. Defendants admit that the Cook Inlet beluga whale distinct population segment ("DPS") is listed as endangered under the Endangered Species Act and that the Fisheries Service has identified the Cook Inlet beluga whale DPS as one of the "Species in the Spotlight" among the most at-risk of extinction. The remaining allegations in Paragraph 9 purport to characterize a Fisheries Service document (Species in the Spotlight Priority Actions: 2016-2020 Cook Inlet Beluga Whale). That document speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning,

or context of the documents is denied.

10. The allegations in Paragraph 10 purport to characterize the Recovery Plan for the Cook Inlet Beluga Whale, which speaks for itself and is the best evidence of its contents. That document speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of the document is denied.

11. The allegations in Paragraph 11 constitute Plaintiffs' characterizations of their claims, which Defendants deny.

12. Defendants admit that portion of the first sentence of Paragraph 12 that the Fisheries Service issued the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska. Defendants deny the remaining allegations in Paragraph 12.

13. The allegations in Paragraph 13 characterize Plaintiffs' Complaint and set forth legal conclusions, to which no response is required and are accordingly denied.

### **JURISDICTION AND VENUE**

14. The allegations in Paragraph 14 constitute conclusions of law, to which no response is required and are accordingly denied.

15. The allegations in Paragraph 15 constitute conclusions of law, to which no response is required and are accordingly denied.

### **PLAINTIFFS**

16. Defendants lack sufficient information to either admit or deny the allegations in

Paragraph 16 and on that basis deny them.

17. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 17 and on that basis deny them.

18. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 18 and on that basis deny them.

19. Defendants deny the allegations in Paragraph 19.

20. Defendants deny the allegations in Paragraph 20.

### **DEFENDANTS**

21. Defendants admit that Wilbur Ross is the Secretary of the U.S. Department of Commerce. The remaining allegations in Paragraph 21 characterize federal statutes, including the Endangered Species Act (“ESA”), Marine Mammal Protection Act (“MMPA”), and National Environmental Policy Act (“NEPA”), which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the statutes are denied.

22. Defendants admit that James Balsiger is the Regional Administrator of the Fisheries Service for the Alaska Region. The remaining allegations in Paragraph 22 characterize federal statutes, including the ESA, MMPA and NEPA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the statutes are denied.

23. Defendants admit that the National Marine Fisheries Service is an agency within the U.S. Department of Commerce and that the Fisheries Service is the agency to which

the Secretary of Commerce has delegated statutory authorities under the MMPA and ESA regarding certain species of marine mammals. The remaining allegations in Paragraph 23 characterize federal statutes, including the ESA, MMPA and NEPA, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the statutes are denied.

## **LEGAL BACKGROUND**

### **Marine Mammal Protection Act**

24. The allegations in Paragraph 24 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

25. The allegations in Paragraph 25 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

26. The allegations in Paragraph 26 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

27. The allegations in Paragraph 27 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

28. The allegations in Paragraph 28 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain

language, meaning, or context of the statute are denied.

29. The allegations in Paragraph 29 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

30. The allegations in Paragraph 30 characterize the MMPA. This statute speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

31. The allegations in Paragraph 31 purport to characterize the Fisheries Service's incidental take regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.

32. The allegations in the first and second sentences of Paragraph 32 purport to characterize the Fisheries Service's incidental take regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied. The allegations in the third sentence of Paragraph 32 purport to characterize an unnamed Ninth Circuit judicial opinion, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the judicial opinion are denied.

33. The allegations in Paragraph 33 purport to characterize the MMPA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the



regulations and statute are denied.

34. The allegations in Paragraph 34 purport to characterize the MMPA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

### **Endangered Species Act**

35. The allegations in Paragraph 35 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

36. The allegations in Paragraph 36 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

37. The allegations in Paragraph 37 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

38. The allegations in Paragraph 38 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

39. The allegations in Paragraph 39 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

40. The allegations in Paragraph 40 purport to characterize the ESA and its

implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

41. The allegations in Paragraph 41 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

42. The allegations in Paragraph 42 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

43. The allegations in Paragraph 43 constitute legal conclusions, to which no response is required and are accordingly denied.

44. The allegations in Paragraph 44 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

45. The allegations in Paragraph 45 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

46. The allegations in Paragraph 46 purport to characterize the ESA and its

implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied. Moreover, the allegations in Paragraph 46 constitute legal conclusions, to which no response is required and are accordingly denied.

47. The allegations in Paragraph 47 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied. Moreover, the allegations in Paragraph 47 constitute legal conclusions, to which no response is required and are accordingly denied.

48. The allegations in Paragraph 48 purport to characterize the ESA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

49. The allegations in Paragraph 49 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

50. The allegations in Paragraph 50 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

51. The allegations in Paragraph 51 purport to characterize the ESA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

52. The allegations in Paragraph 52 purport to characterize the ESA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

### **National Environmental Policy Act**

53. The allegations in Paragraph 53 purport to characterize the NEPA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

54. The allegations in Paragraph 54 purport to characterize the NEPA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

55. The allegations in Paragraph 55 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.

56. The allegations in Paragraph 56 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any

allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

57. The allegations in Paragraph 57 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

58. The allegations in Paragraph 58 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

59. The allegations in Paragraph 59 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

60. The allegations in Paragraph 60 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

61. The allegations in Paragraph 61 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and

statute are denied.

62. The allegations in Paragraph 62 purport to characterize the NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations and statute are denied.

### **Administrative Procedure Act**

63. The allegations in Paragraph 63 purport to characterize the Administrative Procedure Act ("APA"), which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

64. The allegations in Paragraph 64 purport to characterize the APA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

65. The allegations in Paragraph 65 purport to characterize the APA, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the statute are denied.

## **FACTS**

### **Cook Inlet, Alaska**

66. Defendants admit that Cook Inlet is a semi-enclosed tidal estuary in southcentral Alaska bounded to the east by the Kenai peninsula; that it is fed by rivers that include the Susitna, the Matanuska, and the Kenai; that Cook Inlet's watershed includes terrestrial

ecosystems, national parks and wildlife refuges, and state parks; and that the watershed includes the Denali Wilderness, the southern Kenai Peninsula, and the Susitna, Matanuska, and Kenai river deltas. Defendants lack sufficient information to either admit or deny the remainder of the allegations in Paragraph 66 and on that basis deny them.

67. Defendants admit that the Cook Inlet watershed provides habitat for wildlife. Defendants lack sufficient information to either admit or deny the remaining allegations in Paragraph 67 and on that basis deny them.

68. Defendants admit that almost two-thirds of Alaska's population resides in the Cook Inlet watershed. Defendants admit that the cities of Anchorage, Kenai, and Homer and Native villages of Eklutna, Knik, Salamatof, Tyonek, Chickaloon, Ninilchik, and Seldovia are located near Cook Inlet. Defendants admit that the Susitna River flows into Cook Inlet.

69. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 69 and on that basis deny them. To the extent the allegations in Paragraph 69 are characterizations of documents issued by the Fisheries Service regarding oil and gas development activities, those documents speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with the documents, Defendants deny the allegations.

70. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 70 and on that basis deny them. To the extent the allegations in Paragraph 70 are characterizations of documents issued by the Fisheries Service regarding oil and gas

development activities, those documents speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with the documents, Defendants deny the allegations.

71. Defendants admit that the lease schedule pursuant to Bureau of Ocean Energy Management's 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program includes a lease sale in Cook Inlet in 2021.

72. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 72 and on that basis deny them. To the extent the allegations in Paragraph 72 are characterizations of documents issued by the Fisheries Service regarding oil and gas development activities, those documents speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with the documents, Defendants deny the allegations.

73. Defendants lack sufficient information to either admit or deny the allegations in the first sentence of Paragraph 73 and on that basis deny them. The remaining allegations in Paragraph 73 purport to characterize a document issued by the Alaska Oil and Gas Conservation Commission, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of the document is denied.

74. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 74 and on that basis deny them.

### **Marine Mammals in the Project Area**



75. In response to the allegations of Paragraph 75, Defendants admit that the following marine mammal species could be present in Cook Inlet: humpback whale, minke whale, gray whale, fin whale, killer whale, beluga whale, Dall's porpoise, harbor porpoise, harbor seal, Steller sea lion, and California sea lion. Defendants deny the remainder of the allegations in Paragraph 75.

76. The allegations in Paragraph 76 purport to characterize the final rule authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas activities in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the final rule is denied.

77. Defendants admit that seismic surveys can affect marine mammals through hearing impairment; physiological changes like stress; behavioral impacts such as avoidance or displacement from important habitats; masking that impairs their ability to communicate, find prey, or detect predators; and harm to prey species like fish, invertebrates, and zooplankton. Defendants deny the remainder of the allegations in Paragraph 77.

78. The allegations in Paragraph 78 are vague and ambiguous and lack the necessary context to form a response and therefore no response is required. To the extent a response is required, Defendants deny the allegations.

79. The allegations in Paragraph 79 are vague and ambiguous and lack the necessary context to form a response and therefore no response is required. To the extent a response is required, Defendants deny the allegations.

80. Defendants admit that odontocetes are classified by the Fisheries Service as mid- and high-frequency cetaceans and that beluga whales are odontocetes. The remaining allegations in Paragraph 80 are vague and ambiguous and lack the necessary context to form a response and therefore no response is required. To the extent a response is required, Defendants deny the allegations.

81. Defendants admit that the Cook Inlet DPS of beluga whales is listed under the ESA as endangered. To the extent that the allegations in Paragraph 81 purport to characterize the Fisheries' Service's marine mammal stock assessments and rulemakings under the MMPA and ESA, those documents speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with these documents, Defendants deny the allegations. Defendants otherwise deny the remainder of the allegations in Paragraph 81.

82. Defendants admit the allegations in Paragraph 82 that Beluga whales are recognized by their range of vocal sounds, white color, social nature, "melon heads," and ability to move up rivers a few miles. Defendants otherwise deny the remainder of the allegations in Paragraph 82.

83. Defendants admit the allegations in Paragraph 83 that beluga whales live year-round in Cook Inlet and can be found throughout the Inlet at any time of year.

84. Defendants admit the allegations in the first sentence of Paragraph 84 that Cook Inlet beluga whales eat a range of foods, including octopus, shellfish, snails, and fish such as eulachon and salmon. Defendants deny the allegations in the second sentence of

Paragraph 84.

85. Defendants admit the allegations in Paragraph 85 that beluga whales make sounds across some of the widest frequency bands and are one of just five non-human animal species where there is evidence of frequency modulated vocal learning. Defendants lack information sufficient to admit or deny the remainder of the allegations in Paragraph 85 and on that basis deny them.

86. The allegations in Paragraph 86 purport to characterize a Fisheries Service document (Species in the Spotlight Priority Actions: 2016-2020 Cook Inlet Beluga Whale), which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of the document is denied.

87. Defendants admit the allegations in the first sentence of Paragraph 87 that the Fisheries Service designated the Cook Inlet Beluga Whale as “depleted” under the MMPA in 2000 in a Federal Register notice published on May 31, 2000 and “endangered” under the ESA in 2008 in a Federal Register notice published on October 22, 2008. Defendants deny the remainder of the allegations in Paragraph 87.

88. Defendants admit that in 2011 the Fisheries Service designated critical habitat for the Cook Inlet DPS beluga whale. The remainder of the allegations in Paragraph 88 purport to characterize the 2011 critical habitat final rule, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this final rule is denied.

89. The allegations in Paragraph 89 purport to characterize the 2011 critical habitat final rule, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this final rule is denied.

90. The allegations in the first sentence of Paragraph 90 purport to characterize the October 14, 2014 Notice of Intent To Prepare an Environmental Impact Statement on the Issuance of Take Authorizations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this Notice is denied. The allegations in the second sentence of Paragraph 90 purport to characterize a September 5, 2017 Notice of Intent, published at 82 Fed. Reg. 41,938, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this Notice is denied.

91. The allegations in Paragraph 91 purport to characterize a Fisheries Service document (Species in the Spotlight Priority Actions: 2016-2020 Cook Inlet Beluga Whale), as well as Fisheries Service guidelines for assigning priorities to species for listing, delisting, and reclassification as endangered and threatened under the Endangered Species Act. The referenced documents speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these agency documents is denied.

92. In response to the allegations of Paragraph 92, Defendants admit that the Fisheries Service has developed, for each of the nine “Species in the Spotlight,” five-year action plans. The referenced documents speak for themselves and are the best evidence of their

contents. Any allegation contrary to the plain language, meaning, or context of these agency documents is denied.

93. The allegations in Paragraph 93 purport to characterize a Fisheries Service document (Species in the Spotlight Priority Actions: 2016-2020 Cook Inlet Beluga Whale), which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this agency document is denied.

94. Defendants admit the first sentence of Paragraph 94, that in December 2016, the Fisheries Service published a Recovery Plan under the ESA for the Cook Inlet beluga whale. The remainder of the allegations in Paragraph 94 purport to characterize the 2016 Recovery Plan for the Cook Inlet Beluga Whale, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this agency document is denied.

95. The allegations in Paragraph 95 purport to characterize the 2016 Recovery Plan for the Cook Inlet Beluga Whale, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this agency document is denied.

96. The allegations in Paragraph 96 purport to characterize the 2016 Recovery Plan for the Cook Inlet Beluga Whale, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this agency document is denied.

97. The allegations in Paragraph 97 purport to characterize the 2016 Recovery Plan for the Cook Inlet Beluga Whale, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this agency document is denied.

98. The first sentence of Paragraph 98 purports to characterize public comment letters submitted to the Fisheries Service by the Marine Mammal Commission, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these letters is denied. The second sentence of Paragraph 98 contains allegations that are vague and ambiguous and Defendants lack sufficient information to admit or deny the allegations and on that basis deny them.

#### **The Fisheries Service's Incidental Take Regulations and Related Decisions**

99. Defendants admit the allegations in Paragraph 99 that the Fisheries Service received an application from Hilcorp Alaska LLC on April 17, 2018 requesting authorization to take marine mammals incidental to noise exposure resulting from oil and gas exploration, development, production, and decommissioning activities in Cook Inlet, Alaska, from May 2019 to April 2024, including 2D and 3D seismic surveys, geohazard surveys, vertical seismic profiling, vibratory sheet pile driving, and drilling of exploratory wells.

100. The remaining allegations in Paragraph 100 are characterizations of Plaintiffs' claims to which no response is required and are accordingly denied.

#### **The Incidental Take Regulations and Letters of Authorization**

101. Defendants admit that the Fisheries Service published a final rule on July 31, 2019, adopting regulations located at 50 C.F.R. §§ 217.160-217-169. The remaining allegations in Paragraph 101 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, the Fisheries Service issued to authorize Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the referenced agency documents is denied.

102. The allegations in Paragraph 102 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

103. The allegations in Paragraph 103 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the referenced agency documents is denied.

104. The allegations in Paragraph 104 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

105. The allegations in Paragraph 105 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

106. The allegations in Paragraph 106 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

107. The allegations in Paragraph 107 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations



in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

108. The allegations in Paragraph 108 purport to characterize the final rule authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of the referenced agency document is denied.

109. The allegations in Paragraph 109 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

110. The allegations in Paragraph 110 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

111. The allegations in Paragraph 111 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

112. The allegations in Paragraph 112 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

113. The allegations in Paragraph 113 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

114. The allegations in Paragraph 114 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet,

Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

115. The allegations in Paragraph 115 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

116. The allegations in Paragraph 116 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

117. The allegations in Paragraph 117 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

118. The allegations in Paragraph 118 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

119. The allegations in Paragraph 119 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

120. The allegations in Paragraph 120 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

121. The allegations in Paragraph 121 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet,

Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

122. The allegations in Paragraph 122 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

123. The allegations in Paragraph 123 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

124. The allegations in Paragraph 124 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

125. The allegations in Paragraph 125 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

126. The allegations in Paragraph 126 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

127. The allegations in Paragraph 127 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

128. The allegations in Paragraph 128 purport to characterize the final rule and incidental take regulations, as well as the letter of authorization, authorizing Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet,

Alaska, which speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of these referenced agency documents is denied.

129. Defendants admit that on August 16, 2019, the Fisheries Service published in the Federal Register a notice and request for comments on its proposed modification of Hilcorp Alaska LLC's July 31, 2019 Letter of Authorization. The remaining allegations in Paragraph 129 purport to characterize the August 16, 2019 Federal Register notice and request for comment on the proposed modification of the letter of authorization for Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

130. The allegations in Paragraph 130 purport to characterize the August 16, 2019 Federal Register notice and request for comment on the proposed modification of the letter of authorization for Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

131. The allegations in Paragraph 131 purport to characterize the August 16, 2019 Federal Register notice and request for comment on the proposed modification of the letter of authorization for Hilcorp Alaska LLC to take marine mammals incidental to oil

and gas operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

132. Upon information and belief, Defendants admit that Hilcorp Alaska LLC began seismic activities in Cook Inlet in September 2019 before a decision by the Fisheries Service on the proposed modification of the Letter of Authorization. Defendants deny the remaining allegations of Paragraph 132.

133. Defendants admit the allegations in Paragraph 133 that, on October 4, 2019, the Fisheries Service published in the Federal Register a notice of issuance of the modification of Hilcorp Alaska LLC's Letter of Authorization.

134. The allegations in Paragraph 134 purport to characterize the October 4, 2019 Federal Register notice on the issuance of a modified letter of authorization for Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

135. Defendants admit the first sentence of Paragraph 135, that the October 4, 2019 Federal Register Notice provided a hyperlink to the modified Letter of Authorization and that the modified Letter of Authorization was signed on September 20, 2019. The remaining allegations in Paragraph 135 purport to characterize the modified letter of authorization for Hilcorp Alaska LLC to take marine mammals incidental to oil and gas



operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

136. The allegations in Paragraph 136 purport to characterize the modified letter of authorization for Hilcorp Alaska LLC to take marine mammals incidental to oil and gas operations in Cook Inlet, Alaska, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

**The Biological Opinion for the Incidental Take Regulations and Letters of  
Authorization**

137. Defendants admit that the Regional Administrator of the Fisheries Service signed the Biological Opinion for the incidental take regulations on June 18, 2019. The remaining allegations in Paragraph 137 purport to characterize this Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

138. The allegations in Paragraph 138 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

139. The allegations in Paragraph 139 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any

allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

140. The allegations in Paragraph 140 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

141. The allegations in Paragraph 141 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

142. The allegations in Paragraph 142 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

143. The allegations in Paragraph 143 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

144. The allegations in Paragraph 144 purport to characterize the June 18, 2019 Biological Opinion, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency

document is denied.

**The Environmental Assessment and Finding of No Significant Impact for the  
Incidental Take Regulations and Letters of Authorization**

145. Defendants admit the allegation in Paragraph 145 that, on July 17, 2019, the Fisheries Service finalized an Environmental Assessment and Finding of No Significant Impact for the incidental take regulations under NEPA.

146. The allegations in Paragraph 146 purport to characterize the Environmental Assessment for the Issuance of Regulations and Letters of Authorization for the Take of Marine Mammals Incidental to Hilcorp Alaska LLC Oil and Gas Activities in Cook Inlet, Alaska (“EA”), which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

147. The allegations in Paragraph 147 purport to characterize the July 2019 EA, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

148. The allegations in Paragraph 148 purport to characterize the July 2019 EA, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

149. The allegations in Paragraph 149 purport to characterize the July 2019 EA, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

150. The allegations in Paragraph 150 purport to characterize public comment letters submitted to the Fisheries Service, including from the Marine Mammal Commission, those documents speak for themselves and are the best evidence of their contents. Any allegation contrary to the plain language, meaning, or context of the referenced comment letters is denied. The remainder of the allegations in Paragraph 150 constitute characterizations of Plaintiffs' claims, which Defendants deny.

151. The allegations in Paragraph 151 purport to characterize the July 2019 EA, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

152. The allegations in Paragraph 152 purport to characterize the July 2019 EA, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

153. The allegations in Paragraph 153 purport to characterize the Finding of No Significant Impact for the Issuance of Regulations and Letter of Authorization to Hilcorp Alaska LLC For Take of Marine Mammals by Harassment Incidental to Oil and Gas Exploration Activities, signed on July 17, 2019, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the plain language, meaning, or context of this referenced agency document is denied.

### **FIRST CLAIM FOR RELIEF**

(Violations of the Marine Mammal Protection Act and Administrative Procedure Act –  
Incidental Take Regulations)

154. Defendants incorporate by reference their responses to the all allegations in the preceding paragraphs as set forth above.

155. Defendants deny the allegations of Paragraph 155.

156. Defendants deny the allegations of Paragraph 156.

157. Defendants deny the allegations of Paragraph 157.

158. Defendants deny the allegations of Paragraph 158.

159. Defendants deny the allegations of Paragraph 159.

160. Defendants deny the allegations of Paragraph 160.

### **SECOND CLAIM FOR RELIEF**

(Violations of the Marine Mammal Protection Act and Administrative Procedure Act –  
Letter of Authorization)

161. Defendants incorporate by reference their responses to the all allegations in the preceding paragraphs as set forth above.

162. Defendants deny the allegations of Paragraph 162.

163. Defendants deny the allegations of Paragraph 163.

### **THIRD CLAIM FOR RELIEF**

(Violations of the Endangered Species Act and Administrative Procedure Act)

164. Defendants incorporate by reference their responses to the all allegations in the preceding paragraphs as set forth above.

165. Defendants deny the allegations of Paragraph 165.

166. Defendants deny the allegations of Paragraph 166.

167. The allegations in Paragraph 167 state legal conclusions to which no response is required and are accordingly denied.

168. Defendants deny the allegations of Paragraph 168.

#### **FOURTH CLAIM FOR RELIEF**

(Violations of the National Environmental Policy Act and Administrative Procedure Act)

169. Defendants incorporate by reference their responses to the all allegations in the preceding paragraphs as set forth above.

170. Defendants deny the allegations of Paragraph 170.

171. The allegations in Paragraph 171 state legal conclusions to which no response is required and are accordingly denied.

172. Defendants deny the allegations of Paragraph 172.

173. Defendants deny the allegations of Paragraph 173.

174. Defendants deny the allegations of Paragraph 174.

#### **PRAYER FOR RELIEF**

The allegations in this section contain Plaintiffs' Prayer for Relief and legal conclusions and no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

#### **GENERAL DENIAL**

Defendants deny each and every allegation in the Complaint, whether express or implied, that is not expressly admitted, denied, or qualified herein.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. This Court lacks subject matter jurisdiction to review one or more of Plaintiffs' claims.
3. Plaintiffs have failed to exhaust its administrative remedies with regard to one or more of its claims.
4. One or more of Plaintiffs' claims are barred by the statute of limitations.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs all relief requested, enter judgment in favor of Defendants on all of Plaintiffs' claims, award Defendants their costs and grant Defendants such other relief as the Court deems appropriate.

Dated this 19th day of November, 2019.

Respectfully submitted,

JEAN E. WILLIAMS  
Deputy Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

*/s/ Jacqueline Brown*  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system.

Dated: November 19, 2019

/s/ John H. Martin

