



MARINE MAMMAL COMMISSION

11 July 2016

Mr. Gary D. Frazer
Alternate Commissioner, U.S.-Russia Polar Bear Commission and
Assistant Director-Ecological Services
U.S. Fish and Wildlife Service
1849 C Street Northwest, Room 3242
Washington, D.C. 20240

Dear Mr. Frazer:

I am writing regarding your letter of 20 June 2016 to the Chairman and Executive Director of the Alaska Nanuq Commission (ANC). In this letter, you inform the leadership of the ANC that the Fish and Wildlife Service (FWS) will not enter into a new funding agreement with the ANC due to repayment obligations and a requirement that the ANC demonstrate its fiscal stability. This led FWS to conclude that it sees “no path forward for the ANC to continue to function as the organization representing the interests of the Alaska Native community in implementing the provisions of the U.S.-Russia Polar Bear Treaty and as a co-management partner for managing the subsistence harvest of polar bears from the Chukchi Sea population.” The Marine Mammal Commission (the Commission) was surprised by the timing of that decision, particularly given the recent discussions among FWS, the ANC, other representatives of the Alaska Native community, and the Commission at the 1-2 June polar bear meeting in Nome, Alaska.

The primary objectives of the polar bear meeting convened by FWS, the Commission, the ANC, and others, were to discuss Alaska Native representation in the co-management of polar bears with FWS, ways to improve communication among co-management partners and the affected hunting communities, and actions needed to implement U.S. obligations under the U.S.-Russia Polar Bear Agreement (Agreement) and the Marine Mammal Protection Act (MMPA). More than half of the meeting was dedicated to a closed session in which participants from the affected Alaska Native villages, including several ANC Commissioners, decided how they wanted to have their interests represented. Among the alternatives considered was continued representation by the ANC. Alaska Native participants were made aware of the ANC’s current financial situation and in fact were provided with the report from at least one recent federal audit. Despite the identified financial difficulties, those representatives decided that they wanted to have the ANC continue to represent the polar bear hunting villages as the Alaska Native partner in co-management. That decision was relayed to you at the meeting. You cautioned that the financial situation concerning the ANC remained a potential obstacle to future FWS funding of the organization, and, you advised the ANC to seek debt forgiveness from either the Department of the Interior or the Department of Justice as a potential way forward.

It was thus surprising to us that FWS would make a seemingly final decision of the fate of the ANC before either of those processes had played out. At no time during the open sessions of the meeting did you indicate that a decision on the fate of the ANC was imminent or had already been made. Nor did you advise the Alaska Native participants to develop other options in the event the ANC's fiscal issues could not be resolved satisfactorily. Nevertheless, two weeks later, we and the other participants in the polar bear meeting were informed by FWS that the option selected by the Alaska Native representatives (i.e., continued representation by the ANC) was off the table.

We are disappointed that FWS did not communicate more clearly during the planning process for the polar bear meeting and at the meeting itself the strong likelihood that FWS would be unable or unwilling to support the ANC as the co-management partner for polar bears. Indeed, in response to our questions prior to the meeting about the future of the ANC, FWS replied that it could tell us nothing and suggested that a decision regarding the status of the ANC would not be made quickly. Furthermore, FWS insisted that the ANC be a co-convenor of the meeting, actively engaged in constructing the agenda, and recognized as FWS's co-management partner at the meeting, sending the message that, at least in the short term, continuing to work with the ANC remained a viable option. Had FWS advised the Commission that a decision on the future status of the ANC was only a matter of weeks away, we almost certainly would have recommended postponing the meeting until after that determination had been made.

We are concerned that by not being more forthcoming, FWS may have exacerbated an already difficult situation. At considerable expense and expenditure of many people's time, the Commission and others, including FWS, brought together the stakeholders and sought resolution of some of the key questions impeding implementation of the Agreement and related provisions of the MMPA. Now that Alaska Natives have spoken on the representation issue, FWS is telling them that that decision cannot be honored. We are concerned that this undercuts not only the credibility of the federal conveners of the meeting, but also progress towards improvement of co-management of polar bears in Alaska. As such, we think it is important to communicate to the Alaska Native community that the Commission was neither aware that a decision on the future of the ANC was imminent, nor what that decision would be.

During its listening sessions held in Alaska in February of this year, the Commission heard considerable concern and confusion about decisions and U.S. obligations under the Agreement and about steps being planned to implement those obligations. This prompted the Commission to propose convening a so-called "polar bear summit," an idea that grew to include other conveners (including FWS) and evolved to become the Nome polar bear meeting. The Commission has a very small staff and a very modest budget. Nevertheless, we thought that the time spent helping to organize the meeting and the funds allocated to support attendance by the affected Alaska Native communities would be well spent if it helped clear up the confusion and get implementation of U.S. responsibilities under the Agreement back on track. Although some of the discussions at the polar bear meeting may well prove valuable as Alaska Natives consider their options for identifying a new co-management partner, those discussions were not as productive as they might have been had we known a month ago what we know now. Specifically, the Alaska Native representatives could have used the meeting as an opportunity to begin identifying a successor organization to the ANC.

As indicated in your 20 June letter to the ANC leadership, FWS “will be looking for a new co-management partner to represent the interests of the Alaska Native community.” Clearly, identifying the appropriate partner, deciding how it is structured, and giving it the necessary authority to act on behalf of those it represents, are actions to be taken by Alaska Natives. The successor organization also needs to be acceptable to FWS as the federal co-management partner. As such, we strongly encourage FWS to provide guidance to representatives of polar bear hunting communities in northern and western Alaska and the Commission, as quickly as possible, concerning the necessary characteristics and capabilities it is seeking for an effective co-management partner. Although selection of a new co-management partner is not a federal action of the sort that would normally trigger tribal consultation requirements under Executive Order 13175, the Commission believes that FWS should fully engage in discussions with the affected Tribes on this important decision. It is not clear whether this is what FWS envisions. It would be unfortunate if FWS was to move forward on discussions regarding the establishment of a successor organization to the ANC without full participation by, and consultation with, all of the affected Native villages. We also encourage FWS to work closely with the affected Boroughs and other regional organizations in Alaska, such as Kawerak and Maniilaq.

The Commission therefore recommends that FWS identify and communicate to all affected Alaska Native tribal governments and regional organizations (1) what it views as the essential elements of a successful polar bear co-management organization and agreement and (2) the expected funding that would be made available to a successor organization for polar bear co-management, taking into account the activities that would be required for successful implementation of the Agreement and Title V of the MMPA. Such communications should include reference to FWS’s role and responsibilities as a co-management partner in developing and maintaining a collaborative approach to polar bear co-management that ensures full accountability and representation in decision-making by both parties.

Given the current lack of effective Alaska Native representation on polar bear co-management issues, the Commission recommends that FWS promptly apprise the members of the U.S. delegation to the bilateral Polar Bear Commission and the Russian Commissioners of the decision made regarding the future of the ANC, its intention to pursue co-management with a successor co-management partner, and the likely timeframe for the establishment of a successor organization. There also should be discussion of whether to postpone the planned November meeting of the bilateral Polar Bear Commission until the situation in the United States is further resolved.

As recognized in FWS’s 22 June 2016 e-mail to the polar bear meeting participants, “a co-management partnership with an Alaska Native Organization is essential for successful polar bear management.” The Commission agrees and believes that FWS should delay any rulemaking under Title V of the MMPA to implement the harvest limit established under the Agreement pending the establishment of a successor co-management organization, provided that there is no inordinate delay in establishing a successor organization. FWS also should communicate its intentions regarding the rulemaking to the Alaska Native community as soon as possible.

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Further, the Commission recommends that, given recent calls for better communication between FWS and Alaska Native communities regarding polar bear issues, FWS redouble its efforts to achieve full consultation with all affected Alaska Native tribal villages on any future proposals to implement management actions for polar bears.

Sincerely

A handwritten signature in blue ink that reads "Daryl J. Boness". The signature is written in a cursive style with a large initial "D" and a distinct "J".

Daryl J. Boness, Chairman