

Report of the
Marine Mammal Commission

Review of Co-management Efforts in Alaska



6–8 February 2008
Anchorage, Alaska

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Marine Mammal Commission
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Bethesda, Maryland 20814
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*Drawing by Evgenyi Kaypanu, Anadyr, Chukotka, Russia, (2003) from an earlier photograph taken by G. Carleton Ray.
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EXECUTIVE SUMMARY

The 1994 amendments to the Marine Mammal Protection Act added section 119 to enhance conservation and management of marine mammal population stocks that are taken by Alaska Natives for subsistence purposes. Section 119 allows the Secretaries of Commerce and the Interior to “enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.” To assess progress toward those goals over the past decade and to identify productive ways forward in the coming decade, the Marine Mammal Commission sponsored a co-management review in Anchorage, Alaska, on 6–8 February 2008.

Review topics

Virtually all aspects of co-management have progressed significantly since 1994, and the review provided an opportunity to recognize that progress. Since 1994 the Indigenous People’s Council for Marine Mammals (IPCoMM), the National Marine Fisheries Service, and the Fish and Wildlife Service have negotiated and revised a broad umbrella agreement setting forth a framework for co-management agreements. Various Alaska Native organizations (ANOs) and either the National Marine Fisheries Service or the Fish and Wildlife Service have entered into 14 agreements involving 12 species. The agreements vary in content by species, ANO, and agency but generally describe harvest monitoring methods, collaboration on research and education and outreach projects, required funding, conflict resolution, and procedures for terminating agreements.

Co-management efforts also have integrated the field skills and knowledge (i.e., traditional ecological knowledge [TEK]) of Alaska Native hunters with the scientific and technological expertise of agency scientists to enhance understanding of marine mammals in Alaska, including their stock structure, status, trends, movement and habitat-use patterns, responses to climate change, animal health and condition, contaminants, and disease. Sampling of Native-harvested animals for scientific purposes (often referred to as “biosampling”) has provided tissues for a variety of research studies. Education and outreach efforts have successfully trained hunters in best hunting practices and biosampling and familiarized youth with Alaska Native cultural and subsistence traditions. Such efforts contribute significantly to marine mammal conservation and the maintenance of subsistence cultures.

The review also examined the structure of co-management efforts to date and possible modifications in three areas. The first pertains to region-based versus species-based approaches to co-management and whether one approach is preferred over the other. Both have advantages and disadvantages, and neither appears to be more appropriate in all cases, given variation in the practices and needs of Alaska Native hunters and the varying life histories and movement patterns of the marine mammals taken for subsistence. Difficulties may arise and must be resolved when regional and species-based ANOs overlap and have different management goals, objectives, or methods.

The second area pertains to IPCoMM’s role as a central body representing ANOs. Here, the questions are whether and how to modify IPCoMM’s operating procedures to maintain the delicate balance between furthering the collective purposes of ANOs without usurping or undermining the authorities granted to them by various tribal governments. Important areas for further consideration by ANOs include the role of IPCoMM in promoting funding for co-management and possible revision of bylaws to consider formal mechanisms for alternating leadership (e.g., term limits). IPCoMM also may facilitate resolution of possible conflicts among ANOs, such as may occur when species-based and region-based ANOs overlap.

The third area is funding to support co-management efforts and, particularly, the capacity-building necessary for ANOs to meet their responsibilities as set forth in co-management agreements. Stable and sufficient funding is needed for basic administrative tasks (e.g., planning, maintaining, and staffing an office; preparing proposals and reports; holding meetings and communicating with hunters and co-management partners; travel to meetings) and for special projects (e.g., monitoring harvests, conducting research, carrying out education and outreach activities).

Pervasive themes

Four underlying themes pervaded the Commission's review. The first was trust. Co-management cannot function or perhaps even survive without a greater willingness by involved parties to build trusting relationships. Trust is essential and requires further development in all co-management relationships, that is, within and among hunters, ANOs, IPCoMM, and government agencies. The existing lack of trust in some relationships encumbers efforts to realize the full potential of co-management. The poor relationship between ANOs and the state of Alaska exemplifies this lack of trust and impedes the maintenance of subsistence traditions and conservation of the affected marine mammals.

The second pervasive theme was the need for ANO capacity-building. Effective co-management in the future will require that Alaska Natives and their communities develop or expand the skills needed to relate to and work with their co-management partners in the context of the complex federal bureaucracy established to conserve marine mammals. Under the best circumstances, capacity-building will take decades. Despite concerted efforts by many, that transition cannot be accomplished on a volunteer basis, and it cannot advance if it is not supported.

The third pervasive theme, closely related to capacity-building, was the need for funding and its counterpart, accountability. ANOs are not federal organizations and maintain their own distinct identity. However, they have relied heavily on support from the federal government. Federal funding is essential for promoting capacity-building by ANOs and thereby allowing them to fulfill their co-management responsibilities. At the same time, the use of federal funding by ANOs and their federal partners should result in demonstrable benefits to management. Accountability (e.g., demonstrating such benefits) may be relatively straightforward in some areas and more difficult in others but should be possible in virtually all areas (e.g., harvest monitoring, research, education, outreach). Because resources available for marine mammal research and management are limited, use of federal funds will require co-management partners to set priorities and then demonstrate progress through various performance measures.

The fourth pervasive theme was the recognition that Alaska Native subsistence cultures face enormous threats from climate change. Located thousands of miles from the activities that are driving these changes, Alaska Natives will experience some of the most severe consequences, including changes in the abundance and distribution of marine mammals and an increase in human activities in sub-Arctic and Arctic regions. To the extent that Alaska Natives might exert any influence on our society's response to climate change and management of its effects, that influence will be stronger if Alaska Natives can speak with one voice. In this regard, one of the challenges for Alaska Natives is to achieve the necessary harmony to do so.

Recommendations

The information presented at the review demonstrated that much has been done by Alaska Natives, the Fish and Wildlife Service, and the National Marine Fisheries Service to implement section 119 of the Marine Mammal Protection Act since 1994. Nonetheless, the Commission believes that further

progress is essential to satisfy the goals of section 119 specifically and the Marine Mammal Protection Act generally. To build on the achievements of the past 14 years and promote further development in the coming decade, the Marine Mammal Commission makes the following recommendations.

(1) *Joint co-management funding proposal to ensure funding stability*

(a) To provide an essential foundation for co-management, ANOs and their federal agency partners should develop a joint co-management funding proposal that promotes capacity-building, identifies and prioritizes co-management tasks, describes and justifies a budget needed to support both administrative functions and project activities, and sets forth the objectives to be accomplished and measures of accountability for both the ANOs and their federal partners. The proposal also should include funding to support IPCoMM activities; Alaska Native leaders should not be required to volunteer their time to maintain ANOs and IPCoMM.

(b) Both the Fish and Wildlife Service and the National Marine Fisheries Service should seek a funding base that is both stable and sufficient for supporting co-management, including support to build co-management capacity among ANOs and to meet their own co-management needs. The Fish and Wildlife Service provides some level of stability by including a line item in its budget for co-management; the National Marine Fisheries Service should do the same.

(2) *IPCoMM review:* To encourage greater participation and instill greater confidence of ANOs from around the state, IPCoMM should conduct a formal review of its bylaws and operating procedures. The review should focus on mechanisms to ensure that all ANOs are treated equitably and fairly, all IPCoMM activities are transparent to member ANOs, and IPCoMM leadership is alternated (e.g., term limits) to avoid any perception of bias, share the burden of leadership activities, and promote development of Alaska Native leaders from all member ANOs.

(3) *Conflict resolution:* To resolve conflicts in a more effective and timely manner, ANOs and their federal agency partners should develop detailed protocols and time lines for conflict resolution. IPCoMM may serve a useful purpose in addressing conflicts that involve multiple ANOs or multiple co-management agreements. Co-management likely will fail if it lacks effective means of resolving conflicting perspectives.

(4) *Harvest monitoring:* To instill greater confidence in the accuracy and thoroughness of harvest monitoring and put longstanding disagreements to rest regarding monitoring results, the National Marine Fisheries Service and Fish and Wildlife Service should work with their co-management partners and the Alaska Department of Fish and Game, Divisions of Subsistence and Wildlife Conservation, to (1) identify sources of potential bias in existing monitoring strategies, (2) develop scientifically based methods for quantifying the biases, and (3) implement practical methods for correcting those biases that are considered excessive.

(5) *Statutory authority for managing harvests:* To prevent depletion of subsistence species, ANOs, IPCoMM, and federal agency partners should continue to advocate for amendments to the Marine Mammal Protection Act that would authorize co-management partners to adopt enforceable harvest limits in appropriate circumstances.

(6) *Research collaboration:* To expand research collaboration, ANOs and agency partners should establish research plans describing research priorities, responsibilities of the parties and means of cooperation, and resources required to conduct the research. To promote more effective marine mammal research and management in Alaskan waters, these plans should be integrated with marine mammal studies being conducted in Alaskan waters by other research agencies and organizations (e.g., the Alaska Department of Fish and Game, the University of Alaska).

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- (7) ***Education and outreach:*** To strengthen support for and participation in co-management, ANOs and their federal agency partners should continue to develop education and outreach projects related to subsistence, TEK, and co-management. Such projects should focus on youth from grade school through college, hunters, their communities, scientists, and the general public. As part of this effort, scientists working for or conducting research on behalf of the National Marine Fisheries Service, Fish and Wildlife Service, or other federal agencies on topics and in areas covered by co-management agreements should be required to inform those communities of their results by returning to those areas and making presentations, contributing to community newsletters, or finding other suitable means of communicating with community members. Co-management committees should lead the effort to coordinate presentations by scientists and other persons knowledgeable about related matters of interest to affected communities. Education and outreach are vital to maintaining traditions while also identifying and adapting to the pending changes in the Arctic.
- (8) ***Traditional ecological knowledge:*** To enhance co-management efforts, ANOs and their federal agency partners should continue to infuse TEK into all aspects of co-management (e.g., harvest monitoring, research, education and outreach) as appropriate.
- (9) ***Climate change and other future threats:*** To prepare for future threats, ANOs and their federal agency partners should seek ways to anticipate the possible consequences of climate change on Alaska Native subsistence cultures and consider possible actions to manage those effects as possible. Doing so will require considerable adaptability on the part of Alaska Natives relative to their way of life.

INTRODUCTION

The primary objective of the Marine Mammal Protection Act of 1972 (16 U.S.C. § 1361 et. seq.) is to maintain the health and stability of marine ecosystems. It seeks to do so by maintaining marine mammals as functioning elements of those systems. To that end, the Act imposes a moratorium on the taking of marine mammals, with certain exemptions. One of those exemptions is for Alaska Natives. Consistent with their long-held traditions and cultures, they may take marine mammals for subsistence purposes or for creating and selling authentic native articles of handicrafts and clothing, providing that the taking is not accomplished in a wasteful manner.

The 1994 amendments to the Act included section 119 (Appendix A) to allow the Secretaries of Commerce and the Interior to “enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.” Implicit in section 119 is the belief that a cooperative effort to manage subsistence harvests that incorporate the knowledge, skills, and perspectives of Alaska Natives is more likely to achieve the goals of the Marine Mammal Protection Act than is management by the federal agencies alone.

The type of agreements “may include grants to Alaska Native organizations for, among other purposes—

- (1) collecting and analyzing data on marine mammal populations;
- (2) monitoring the harvest of marine mammals for subsistence use;
- (3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and
- (4) developing marine mammal co-management structures with Federal and State agencies.”

To assess progress toward implementation of section 119 over the past decade and to identify directions for the coming decade, the Marine Mammal Commission sponsored a co-management review in Anchorage, Alaska, on 6–8 February 2008 (see Appendix B for agenda). Participants in the review (Appendix C) were from 19 Alaska Native organizations (ANOs), 5 federal agencies, 2 state agencies, 3 non-governmental organizations (NGOs), an Australian agency, and the public. This report summarizes the main topics of discussion and provides the Marine Mammal Commission’s recommendations to ANOs, IPCoMM, and their federal agency partners to promote more effective co-management in the future.

AUTHORITIES

In addition to the authorities vested in the Secretaries of Commerce and the Interior by section 119, the Secretaries are authorized to enter into such agreements by the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.). Additional guidance for such agreements is provided in a Presidential Memorandum of 29 April 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951; Appendix D), Executive Order 13175 of 6 November 2000 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249; Appendix E), and Secretarial Order Number 3225 of 19 January 2001 (Endangered Species Act and Subsistence Uses in Alaska; Supplement to Secretarial Order 3206; Appendix F). Additional guidance specific to the Department of the Interior is provided in “The Native American Policy of the U.S. Fish and Wildlife Service” of 28 June 1994 (Appendix G). Additional guidance specific to the Department of Commerce is provided in its memorandum “American Indian and Alaska Native Policy of the U.S. Department of Commerce” of 30 March 1995 (Appendix H).

The Indigenous People's Council for Marine Mammals (IPCoMM) was given the authority to enter into the Memorandum of Agreement for Negotiation of Marine Mammal Protection Act Section 119 Agreements (also referred to as the umbrella agreement) by authorizing resolutions from the Alaska Federation of Natives and those tribally authorized organizations that are members of IPCoMM. ANOs are authorized to participate in specific co-management agreements by the respective tribal authorities.

ACCOMPLISHMENTS TO DATE

Since 1994 progress toward co-management has been made in four key areas: establishment of species-specific and region-specific agreements; development of harvest monitoring strategies; gathering and exchange of information based on traditional ecological knowledge (TEK), research, and biosampling; and education and outreach. Progress in each of these areas is described briefly below.

Co-management agreements

In 1997 the National Marine Fisheries Service, Fish and Wildlife Service, and IPCoMM signed the first umbrella agreement. Although several agreements were completed prior to the umbrella agreement (i.e., bowhead whale, walrus, sea otter), it was negotiated to establish guiding principles for additional section 119 agreements, describe their scope and funding, provide general guidance for resolving conflicts, and describe procedures for terminating agreements. The umbrella agreement was revised in 2006 (Appendix I).

Fourteen separate co-management agreements have been established pertaining to twelve marine mammal species (four of which are grouped as "ice seals," Table 1; see also <http://www.fakr.noaa.gov/protectedresources/comangement.htm> for agreements with the National Marine Fisheries Service and <http://alaska.fws.gov/fisheries/mmm/agreements.htm> for agreements with the Fish and Wildlife Service).

Harvest monitoring strategies

The Fish and Wildlife Service and co-management partners use marking and tagging methods to monitor subsistence harvests for walrus, polar bear, and sea otter. The National Marine Fisheries Service and co-management partners use several methods including real-time counts, annual surveys or questionnaires, and calendars to monitor subsistence harvests of the beluga whale, bowhead whale, harbor seal, ice seals, northern fur seal, and Steller sea lion (Table 1).

The key question with regard to any monitoring strategy is whether it provides the information needed (e.g., number of animals taken, age class, gender, location, season) with sufficient reliability (accuracy and precision). Each method has its strengths and weaknesses. For example, animals that are struck and lost cannot be marked and tagged, and alternative means are needed to estimate their numbers. Annual surveys and questionnaires may depend on the recollection of hunters over a long period (a year or more) and may be less accurate simply because of the difficulty of recalling the number of animals taken during an extended period. For that reason, the reliability of annual surveys for Steller sea lions, harbor seals, and, more recently, ice seals has been somewhat controversial.

The Alaska Department of Fish and Game, Subsistence Division, has conducted annual surveys to assess subsistence take of Steller sea lions and harbor seals since 1992. Since 1995 the Division has worked with the Alaska Native Harbor Seal Commission to collect harvest data. In their analyses the Division has endeavored to make harvest estimates as accurate as possible within their inherent limitations. Interviews

Table 1. Existing co-management agreements in place in 2008. The agreement between the Aleut Community of St. Paul and the National Marine Fisheries Service covers both the northern fur seal and Steller sea lion, as does the agreement with the Aleut Community of St. George. The agreement with the Aleut Marine Mammal Commission covers all marine mammal subsistence species under the jurisdiction of the National Marine Fisheries Service, with special reference to the Steller sea lion and harbor seal.

Species	Alaska Native organization (ANO)	Agency	Initial year	Harvest monitoring method
Beluga whale	Alaska Beluga Whale Committee Cook Inlet Marine Mammal Council	NMFS	1999 1999	Real-time monitoring, questionnaires, interviews
Bowhead whale	Alaska Eskimo Whaling Commission	NMFS ¹	1981	Annual counts
Harbor seal	Alaska Native Harbor Seal Commission	NMFS	1999	Annual surveys, questionnaires
Ice seals ²	Ice Seal Committee	NMFS	2006	Annual surveys, questionnaires, calendars
Northern fur seal	Aleut Community of St. Paul Aleut Community of St. George	NMFS	2000 2001	On-site counts, real-time reporting
Polar bear	Alaska Nanuuq Commission	FWS ³	1997	Marking and tagging, reporting
Sea otter	Alaska Sea Otter and Steller Sea Lion Commission	FWS ⁴	1994	Marking and tagging
Steller sea lion	Aleut Community of St. Paul Aleut Community of St. George Alaska Native Harbor Seal Commission ⁵	NMFS	2000 2001 1992	Annual surveys, questionnaires
Walrus	Eskimo Walrus Commission Qayassiq (Round Island) Walrus Commission ⁶	FWS	1987 1997	Marking and tagging
Multiple	Aleut Marine Mammal Commission	NMFS	2006	Annual surveys, sentinel program ⁷

¹ NMFS is the National Marine Fisheries Service.

² The term “ice seals” refers to ringed, ribbon, bearded, and spotted seals.

³ FWS is the Fish and Wildlife Service.

⁴ The Fish and Wildlife Service discontinued this agreement in 2008.

⁵ The Alaska Native Harbor Seal Commission collects harvest data for sea lions and harbor seals at the same time to lessen the burden on hunters that hunt both species.

⁶ Sub-agreement to the Fish and Wildlife Service agreement with the Eskimo Walrus Commission and the State of Alaska.

⁷ The sentinel program promotes stewardship and participation in conservation-related research and management (e.g., observing rookeries, monitoring harvests, reporting strandings, and monitoring various risk factors such as entanglement).

are conducted by local representatives and hunter participation has generally been high (an average of 73 percent from 2001 to 2005). A variety of information is collected (e.g., sex and age class, location), and annual reports are prepared by the Division for wide distribution, including the involved communities. The accuracy of such surveys has been evaluated but questions remain regarding their reliability. Further evaluation is possible but doing so generally requires additional funding and usually involves comparing results from multiple independent (or partially independent) assessment methods. Whether such comparisons are necessary is largely a function of the potential error in existing surveys (which itself can be difficult to assess) and whether that error is deemed significant. Significance may be determined based on the value of the information for understanding the affected stock and harvest patterns and making decisions related to stock conservation and management.

In view of the limited resources available, monitoring strategies may be inaccurate when they are first initiated if they do not cover the entire range in which a particular stock or set of stocks is taken. This is presently the case for subsistence takes of ice seals, for example. However, with suitable support, monitoring of those stocks is expected to expand and provide more accurate information regarding annual harvest levels. Standardized monitoring methods would facilitate training of surveyors and increase the opportunity for Alaska Natives to participate in the analysis of collected data. In time, effective monitoring strategies also may have application for subsistence harvesting of species that occur in foreign waters, such as the polar bear in Russia.

TEK, research, and biosampling

The gathering and sharing of knowledge has been a productive area of collaboration between agency scientists and Alaska Native hunters. TEK and “western science” have combined the field knowledge and experience of hunters with the technology and scientific expertise of agency scientists. Among other things, Alaska Natives are now helping design research projects, collecting tissue samples, carrying out tagging projects, and making valuable observations. The results have contributed to information needed for management of a number of species, including—

- stock identification (genetics), status, and trends;
- movement patterns and distribution;
- natural history, including foraging behavior;
- mortality (including harvests) and reproduction;
- habitat-use patterns;
- responses to habitat change, including climate change;
- animal health, condition, and disease; and
- contaminant levels.

The co-development of comprehensive research plans (e.g., harbor seal research plan) provides an opportunity for melding TEK and traditional science. More specifically, such planning provides an opportunity for (1) using TEK to help design research, (2) exchanging research and assessment information between co-management partners, (3) establishing joint priorities that take into account the needs of both partners, (4) dividing responsibilities, and (5) expanding collaboration.

Biosampling, the sampling of Native-harvested animals for scientific purposes, provides a particularly important opportunity for collaboration between scientists and Alaska Natives by making tissues from harvested animals available for research purposes. By doing so, it has enhanced investigation of a variety of scientific and management-related issues. Samples are being archived at the University of Alaska, Fairbanks, and have been distributed to researchers both within and outside the United

States. Those samples have been used to investigate such topics as the stock structure, health, and body condition of harbor seals, the phylogeography and phylogeny of landlocked seals, stable isotopes in the North Pacific, and historical changes in the marine environment. Such studies provide strong support for continued and enhanced collaboration between Alaska Native hunters and scientists.

Communication, education, and outreach

The transition to full co-management depends in large part on cultural exchange between subsistence communities and management and research agencies. The aim of such exchange is to provide each of the co-management partners with a fuller understanding of the beliefs, needs, social customs, and organizational behavior of their counterparts, all important for building the trust that is essential for co-management. Such familiarization has been underway informally for decades, often beginning with cooperation between individual scientists and hunters to provide information necessary for marine mammal assessments.

To date, education and outreach efforts have focused heavily on hunters (e.g., best hunting practices, biosampling) and Alaska Native youth (e.g., training in traditional harvest practices, biosampling, harvest monitoring methods, research methods; Table 2). Discussion at the Commission's review indicated that education of young Alaska Natives regarding their subsistence cultures and the value of co-management should be an especially high priority. That education should begin with children in grade school and continue through high school and college. A range of approaches and topics could further such education, including exposure to Alaska Native culture and language, best hunting practices, sampling for scientific purposes, and internships for college-age students to learn about wildlife science and management. Individuals and teams of speakers familiar with these topics are needed to participate in this education effort. Such efforts could be coordinated by a speakers bureau that would coordinate school needs with availability of Alaska Native hunters and elders, scientists, managers, and conservationists.

Scientists and managers also must be educated both in Alaska Native cultures and methods for communicating their work more effectively. Communities have long—and rightly—complained that scientists come to the villages to conduct studies important to Alaska Natives, use support services in the villages, and leave, making no effort to return and convey their results to the community. Scientists traditionally view publication of their results in scientific journals as their measure of progress. The communities often do not have ready access to such materials and require translation of the results into a form meaningful for them. Community education and feedback of relevant scientific results warrant greater emphasis by the scientists. The National Science Foundation now evaluates proposals based, in part, on meaningful communication of results to the public. The Foundation also has a formal code of conduct for Arctic research that might be implemented by other agencies. Progress is being made, but more effort along these lines should be expected from all scientists working in areas and on topics of potential interest to Alaska Native communities.

Finally, education and outreach efforts are necessary for parties outside the co-management process. Here, too, the intent of such education is to provide outside parties (e.g., the broader U.S. public) with a fuller understanding and appreciation of the co-management process and related Alaska Native beliefs; cultural, spiritual, and nutritional needs; and social customs and organizations (e.g., the JASON Project, an educational project sponsored by the University of Rhode Island which featured Alaska Native subsistence use and biosampling of harbor seals in its January 2002 episode).

Table 2. Examples of education and outreach projects related to co-management

Species	Education and/or outreach examples
Beluga whale	Harvest manual, science workshops, youth training, community meetings and newsletters, monthly reports, fact sheets, posters, Web site, and other literature
Bowhead whale	Educational efforts to inform Alaska’s North Slope schools and communities, various universities, federal and state agencies, and oil and gas industry regarding bowhead whales and Alaska Native cultures
Harbor seal	Newsletters, videos, biosampling manual, data management, Web site, posters, biosampling demonstrations in spirit camps, calendars, hunters fact sheets, and education (proposal to National Science Foundation), Youth Area Watch, JASON Project
Ice seals	Youth education book, hunter education
Northern fur seal	Wildlife/cultural education at schools and for U.S. Coast Guard, contractors, and visitors; research updates to community; Amix Education Program for youth focusing on wildlife appreciation, cultural and environmental education
Polar bear	Annotated bibliographies on polar bears in U.S. and Russia, negotiation of polar bear treaty, Native-to-Native treaty
Sea otter	Calendars, brochures, artist fact sheets, Guide to Sea Otter and Steller Sea Lion Laws and Regulations, Web site, community meetings, conference posters and presentations, sea otter tagger training
Steller sea lion	Calendars, brochures, Guide to Sea Otter and Steller Sea Lion Laws and Regulations, Web site, community meetings, Alaska Native Hunters’ Photographic Guide to Steller Sea Lion Biosampling, conference posters and presentations
Walrus	Biomonitoring reports, TEK report, Best Hunting Practices video

CONFLICT RESOLUTION

The umbrella agreement includes a single statement regarding resolution of conflicts that arise between co-management partners—

All conflicts and/or disagreements shall be resolved in a timely fashion through peaceful means, reasonably, honorably, and in good faith, by the signatories of this Agreement.

ANOs and their agency partners must be able to reconcile incompatible perspectives. Failure to do so would call into question the practicality and value of co-management efforts and would undermine the benefits to be derived from those efforts. Recent differences over the stock structure of harbor seals in Alaska illustrate the need for a mechanism to resolve disputes in a timely fashion. Research on this topic began in earnest in the mid-1990s, and by the early 2000s considerable genetic evidence indicated that harbor seals in Alaska comprise a dozen or more stocks rather than the three stocks officially recognized at that time. Several reviews of the evidence were conducted, but Alaska Natives have been reluctant to accept the scientific evidence of stock structure. The different perspectives largely involved the potential implications of recognizing more stocks; that is, certain stocks might be designated as depleted and subsistence harvesting and other activities might be curtailed, as occurred when spatial and temporal constraints were imposed to protect Steller sea lions from the effects of commercial fishing. The

disagreement involving harbor seals went so far as to call into question the use of genetic information for such purposes. These issues were discussed by the federal agencies and pertinent ANOs after the Commission's review, and it is our understanding that they have been or are being resolved.

Conflicts may arise for a variety of reasons, and mechanisms for resolving them are essential. At a minimum, such mechanisms require trust, an understanding of the perspectives and concerns of all involved parties, and effective communication. Still, additional means may be necessary to resolve difficult disputes. Co-management committees provide the most obvious initial forum for seeking resolution. Should the involved committee not be able to resolve a particular conflict, it could be elevated to higher levels of authority within each of the involved parties. If the conflict still has not been resolved, then use of an independent third party (e.g., the Marine Mammal Commission, an administrative law judge) has been suggested as a final means of finding resolution within a reasonable time frame.

Importantly, conflicts also may arise within co-management parties as well as between or among them. Differences of view may exist among ANOs, for example, or between an ANO and IPCoMM. Similarly, differences of view may exist between management and scientific programs in the involved agencies. These differences also require more effective resolution if co-management is to succeed.

STRUCTURE OF CO-MANAGEMENT EFFORTS TO DATE

The structure of co-management efforts to date is a function of political, cultural, biological, and physical factors. With regard to management agencies, the division of authority is largely political and has resulted in some added complexity inasmuch as the agencies take somewhat different approaches to co-management. One principal difference is that the Fish and Wildlife Service includes funding for co-management as a line item in its annual budget, whereas the National Marine Fisheries Service does not. This has been the source of some contention, as ANO co-management partners seek to have the National Marine Fisheries Service insert a similar line in their annual budget, thereby providing greater funding stability.

The structure of co-management efforts also is a function of the many tribes and ANOs that participate and thereby insert a cultural perspective. The U.S. Bureau of Indian Affairs recognizes nearly 230 Alaska Native Tribes. Only a portion of those take marine mammals for subsistence purposes, but those that do may participate directly in co-management (e.g., St. Paul Island, St. George Island, Sitka Marine Mammal Commission) or may authorize an ANO for that purpose (e.g., Alaska Beluga Whale Committee, Alaska Native Harbor Seal Commission, the Alaska Nanuuq Commission).

Biological and physical factors influence co-management structures depending largely on whether a species-based versus region-based approach is used by the participating ANO and its agency partner. Of the ANOs that have signed co-management agreements, the Aleut Community of St. Paul, the Aleut Community of St. George, and the Aleut Marine Mammal Commission are all regionally based, although the former two have signed separate species-specific agreements. The remaining ANOs that have signed agreements are species-based. An additional group of ANOs have not signed co-management agreements but are participating at different levels in the co-management process. Those ANOs are mixed in their orientation. Viewed from the agency perspective, the Fish and Wildlife Service is participating only in species-based agreements, whereas the National Marine Fisheries Service is participating in both types.

The strengths and weaknesses of species-based and region-based agreements have been debated at length. Region-specific approaches are more likely to be consistent with ecosystem-based management, may be more consistent with existing cultural boundaries, and may be simpler in a bureaucratic sense as the same hunters are likely to be involved in subsistence harvests for multiple species within their region.

The Alaska Native Claims Settlement Act is based on cultural and regional distinctions, and several ANOs have used those distinctions to guide membership and representation. On the other hand, species-based approaches may be more effective for monitoring harvests of migratory species (i.e., those that move between regions), although this approach may require greater cooperation among multiple ANOs, including sharing of resources and development of effective working relationships—neither of which is trivial. The Aleut Marine Mammal Commission and the Alaska Native Harbor Seal Commission, for example, coordinate efforts to monitor subsistence harvests of harbor seals and Steller sea lions in the Aleutian Islands region. Either of these approaches may be used effectively, and neither is necessarily the better in all situations.

Discussion at the co-management review highlighted these differences but also led the Commission to the conclusion that neither the species-based nor the region-based model is preferred in all cases, that the preferred approach will be best determined by the circumstances, and the existing mix of agreements is sufficient to accomplish co-management objectives. Some adaptation will be required to align these two approaches, particularly where they may overlap, but doing so should not be an insurmountable obstacle.

Finally, co-management committees established under co-management agreements differ, in some cases markedly, in the number of Alaska Native members and agency members. The approach set forth in the umbrella agreement is that an ANO and the responsible agency would each contribute an equal number of members to a co-management committee to guide co-management efforts. Deviations from equal representation would be allowed if both parties agreed to such changes. For example, Alaska Native communities that harvest beluga whales along the Arctic and Bering Sea coasts all send hunter representatives to participate in co-management deliberations, including planning for research projects. Despite this deviation, the Alaska Beluga Whale Committee has been exemplary in many respects.

IPCoMM and the role of a central body

IPCoMM has served a vital role as a central body for ANOs since the early 1990s and participated in the negotiations that led to enactment of section 119 of the Act. A central body provides a number of benefits to the ANOs it represents and their federal agency partners, including—

- the opportunity to express a united view or perspective on behalf of all ANOs (e.g., negotiation and revision of the umbrella agreement),
- unified representation to Alaska’s congressional delegation and to federal and state agencies with which they interact,
- a single conduit for passing ANO budget requests to Congress,
- a forum for exchange of information and ideas regarding development of effective co-management practices (e.g., harvest monitoring) and structures (e.g., co-management committees),
- a forum for addressing overlap in species-based and region-based co-management agreements,
- a central resource for agencies and the public seeking information about ANOs, and
- a reduction of management and administrative requirements for individual ANOs and the federal agencies.

The ANOs that choose to participate as members must determine what kinds of authority they wish to give IPCoMM to accomplish these purposes. In addition, measures are needed to ensure that all ANOs are given sufficient (i.e., equal) representation and that the representation is both fair and transparent. To that end, the participating ANOs have developed a set of bylaws that describe the operational framework for IPCoMM (Appendix J).

The Commission's co-management review focused on three issues directly related to IPCoMM. Resolution of these issues is particularly urgent, given the importance of a central body for further development of co-management.

The first was a growing emphasis on consolidating efforts and, particularly, funding requests to Congress. Growing concern about the number of funding earmarks approved by Congress has made it more difficult for the Alaska delegation to provide separate co-management funding for each ANO. Hence, a consolidated funding request seems essential for the foreseeable future. This issue is complicated by the fact that Congress may not provide the full amount requested, in which case the agencies, working with the various ANOs, must determine funding priorities and allocations.

The second issue pertained to the question of whether the bylaws and operations of IPCoMM are sufficiently well developed to ensure involvement of all participating ANOs and equitable, fair, and transparent representation. This issue was discussed in an open, frank, and honorable manner with all parties diligently seeking means to improve the operations and procedures of IPCoMM. Because co-management faces new and evolving challenges, periodic review and revision of IPCoMM bylaws, operations, and procedures seem essential (as is the case for all organizations). Key discussions in the meeting pertained to IPCoMM's packaging of ANO funding requests into a single budget, expansion of IPCoMM's procedures for addressing internal conflicts, and adjustments to its bylaws to alternate leadership and thereby encourage representatives from all ANOs to share the related challenges.

The third issue pertained to the question of whether IPCoMM should have its own budget to ensure that its functions are supported and to avoid an undue burden on its leaders, who currently volunteer much of their time and contribute personal resources to support IPCoMM and its functions. Such functions include holding meetings of participating ANOs, supporting business travel for IPCoMM representatives, preparing documents including budget submissions and education and outreach materials, and maintaining a small staff and office to provide support services related to the listed functions.

Hunter representation

Section 119 provides a mechanism for sustaining the subsistence cultures of Alaska Natives. To that end, ANOs must maintain contact with Alaska Native hunters. Doing so requires sustained communication through meetings, brochures, newsletters, and word of mouth. Once informed, hunters can choose whether to respond and participate, and many have done so willingly and constructively. Some have participated in training for biosampling and harvest monitoring and some have participated in cooperative research with scientists from the responsible federal agencies. Such participation and collaboration are to be encouraged and provide a key mechanism for inserting TEK into the co-management process. Not all hunters have been approached to participate due to insufficient time (i.e., the involved ANO is relatively new) and inadequate resources for communication and travel, particularly in remote areas. Nonetheless, co-management should provide an opportunity for all hunters to participate if they wish to do so, and it appears that more hunters are becoming involved.

Role of the state of Alaska and other entities

For many years Alaska Natives and the state of Alaska have had strongly differing perspectives on certain matters of rights, authorities, and legal status of tribes. In particular, the state does not recognize Tribal authority or Alaska Native priority with regard to subsistence rights. In this regard, the state has taken a much different approach than the federal government (Appendices D–H). As a result, ANOs are very reluctant to work with the state on matters pertaining to co-management. The Commission

did not intend for its review to include discussion of the broad disagreements between Alaska Natives and the state other than to note for the record that Alaska Natives have worked well with biologists from the Alaska Department of Fish and Game, both the Division of Subsistence and the Division of Wildlife Conservation, and those collaborations have produced important data and information about marine mammal status in Alaska and subsistence harvesting. In addition, the state of Alaska is a partner in the Round Island Walrus Cooperative Agreement. The Commission believes it is to everyone's advantage to maintain and strengthen those working relationships.

The Commission also noted that Alaska Natives face very great challenges because of climate change and its effects on the distribution and abundance (i.e., the availability) of marine mammals for subsistence harvesting. Despite historical conflicts, Alaska Natives should remain open to partnerships with the state and other entities (e.g., conservation organizations) to maximize their opportunities to maintain healthy marine mammal populations and sustain their subsistence cultures.

FUNDING AND ACCOUNTABILITY

Co-management cannot work if ANOs do not have the resources to fulfill their responsibilities as active co-management partners. The first phase of co-management must be capacity-building, which cannot occur in the absence of adequate and stable funding. Many co-management efforts to date have depended on voluntary efforts by Alaska Natives, and while those efforts are laudable, they are not a sufficient basis for building an effective co-management venture.

Funding

Funding is needed for two basic purposes. The first is to enable ANOs to carry out basic administrative tasks (i.e., maintain an office, prepare and disseminate documents, maintain computers and communication systems, travel, and hold meetings). The second is for activities directly related to section 119 responsibilities (i.e., monitoring subsistence harvests, research, education and outreach). Funding needs for these latter activities should be determined through the co-management process, should reflect objectives identified jointly with co-management partners, and should be prioritized so that the available funds are spent in the most effective manner.

The primary question is how to secure sufficient and stable funding, which is essential for capacity-building and maintaining continuity in co-management efforts. The three major sources of funding for such purposes are Congress, industry, and philanthropic or conservation foundations. The willingness of each of these sources to contribute will depend on the intended use of those funds. For example, the oil and gas industry may be willing to provide support for matters related to oil and gas development and its potential effects on marine mammals and their availability to Alaska Native hunters. Similarly, philanthropic and conservation foundations may be willing to support activities that are consistent with their conservation goals. Congress is likely to be the only source of consistent, long-term support for both basic functions and co-management activities.

In the past, the Fish and Wildlife Service has included co-management funding as a line item in its budget. Despite requests from certain ANOs that the National Marine Fisheries Service do the same, it (or the Department of Commerce, of which the Service is a part) has chosen not to do so, and funding for ANOs has depended primarily on congressional earmarks. Over time, the number of ANOs seeking support has increased. At the same time, Congress is attempting to reduce such earmarks. For those reasons, ANOs have been advised to consolidate their funding needs into a single request.

At the Commission's review, much of the discussion on funding focused on how the parties involved in co-management efforts might collectively seek needed funding. From the Commission's perspective, the major points of the discussion were that—

- co-management partners should collaborate to prepare a single funding proposal,
- the proposal should address and provide compelling justification for the co-management needs of all co-management partners,
- it should provide a coherent overview of long-term co-management directions,
- it should address both administrative (base) needs for ANOs and project-specific funding needs,
- it should seek separate allocations so that co-management activities are not competing with other marine mammal research and management needs,
- it should establish priorities to guide funding allocations,
- it should include funding for IPCoMM as a central body to coordinate ANO actions on matters involving multiple ANOs, and
- it should provide a basis for co-management partners to solicit funding from whatever sources are deemed appropriate.

Co-management partners may wish to seek the services or advice of a professional development officer with the necessary skills (e.g., grant writing) to prepare such a proposal. Such a position also might be supported by IPCoMM and used by all member ANOs.

The role of IPCoMM in allocating or distributing funds was a matter of intense discussion at the Commission's review. IPCoMM officers described their role in recent funding matters as being limited to gathering and consolidating proposals from multiple ANOs into a single budget request, consistent with guidance from Alaska's congressional delegation. They neither modified those proposals nor attempted to redirect any funds provided by Congress through co-management agencies. IPCoMM played no role in determining how any funds are to be used, those matters being left to individual ANOs and their co-management partners. Participants in the review generally supported this approach, and some suggested that it was essential if they were to participate in the preparation of a single, combined proposal. Whether all ANOs would participate in efforts to create a single, combined proposal remains to be determined.

Finally, IPCoMM itself requires funding if it is to perform its functions as a central body for ANOs. To date, the limited funding available to IPCoMM has come from the Bureau of Indian Affairs, the Alaska Federation of Natives, or has been contributed by other ANOs. Much of IPCoMM's work has been done through voluntary efforts. The volunteers deserve recognition and credit, but volunteerism does not provide a stable basis for maintaining IPCoMM and its important functions.

Accountability

Just as ANOs cannot be expected to function effectively as co-management partners unless they are provided with adequate resources, funding support cannot be reasonably expected without corresponding measures of accountability. Such measures may vary depending on the ANOs, the nature of their activities, the species, and the agency partners involved, and also may change as the co-management process matures. Newer ANOs may demonstrate their effectiveness, for example, by negotiating agreements, establishing administrative infrastructure, training hunters in biosampling, developing harvest monitoring methods, and initiating education and outreach activities. Established ANOs may demonstrate their effectiveness by participating in research activities, completing reports, establishing tissue archives and databases, and so on, according to objectives set forth in co-management agreements and plans. Activities and accomplishments may reflect the needs of both ANOs and their co-management agency

partner. In all cases, however, activities undertaken with co-management funds should be consistent with the goals of section 119 of the Marine Mammal Protection Act and the agreements established under that provision.

Accountability is particularly important for three principal reasons. First, resources to support such efforts are limited and if they are not being used effectively for co-management purposes, they should be redirected to other worthy purposes. This is a particular concern with regard to research that, as is evident from stock assessment reports, is generally underfunded for many species in U.S. waters, including the waters off the state of Alaska. Second, co-management is a relatively new endeavor that itself requires periodic assessment to identify problems, develop and test solutions, and make revisions as necessary to accomplish identified goals. This type of learning process is not likely to succeed without careful development of measures of success and means for holding all partners accountable for co-management progress. Third, as most funding to support co-management is derived from public sources, the public has a right to know how they were spent and whether such expenditures achieved their desired purpose. In essence, accountability should be viewed as both a part of the capacity-building process and as a means of assuring that established co-management efforts continue to achieve their objectives.

CLIMATE CHANGE AND OTHER CURRENT AND FUTURE THREATS

Climate change poses a grave risk to Arctic marine mammals and to the Alaska Native cultures that depend on them. Those changes are already occurring and can be expected to continue through the foreseeable future. Although the human contribution to climate change occurs primarily at lower latitudes, many of the effects are displaced to the Arctic by atmospheric and oceanic currents that transport heat energy poleward. Climate change will cause physical and chemical effects (e.g., loss of sea ice, increasing temperature, increasing frequency and severity of storms, ocean acidification) as well as ecological consequences (e.g., changes in ecological communities, changes in distribution and abundance of species, interbreeding and mixing of population stocks, extirpation of some populations and possibly extinction of some species). In addition, the reduction in sea ice, in particular, will lead to increased human activities in the Arctic, including fishing, commercial shipping, oil and gas development and extraction, and coastal development.

The rapidity and severity of those anticipated changes raise questions as to whether our current approach to marine mammal research, management, and conservation will work. It is not clear that all marine mammal populations will remain as functioning elements of their ecosystems, that they will be available in sufficient numbers and in the right locations to support their continued use for subsistence purposes, or that the current management regime will provide the necessary tools to achieve conservation in the face of such changes. Even under current conditions, our understanding of Arctic marine mammals and ability to manage human impacts on them are sorely limited. As is the case with fisheries, direct effects (e.g., bycatch) are only one aspect of management; addressing indirect or ecological effects also is important but may prove to be far more difficult.

Climate change and mechanisms to address those changes were beyond the scope of the Commission's review but not far from the minds of the review participants. The specter of those changes underscores the difficulties that lay ahead, the importance of co-management to give Alaska Natives an effective voice on climate change and related matters, and the importance of bringing greater order and efficiency to co-management efforts to maintain healthy marine mammal populations and sustain Alaska Native cultures. Review participants expressed a range of views about climate change, and recognized the need for further deliberation on the topic. The Marine Mammal Commission anticipates a number of future actions to provide opportunity for such discussions.

PERVADING THEMES

Four themes have pervaded co-management efforts to date and were omnipresent in the Commission's review. They get to the heart of the co-management challenge and, unless they are addressed in a forthright manner, the future of co-management will be tenuous, at best.

Trust and a willingness to participate

Perhaps the single most important challenge in co-management is the building of trust between the various parties involved, including IPCoMM, the ANOs, Alaska Native hunters, and the federal agencies. The need for further building of trust within and among these groups was evident in multiple ways through the meeting. That trust will be built upon respect for the perspectives of others, a concerted effort to communicate and thereby promote better understanding, a willingness to share and accept additional responsibilities, and a determination to be accountable for the collective co-management endeavor. The Commission believes that trust and a willingness to participate and contribute are at the core of the co-management process.

The need to build capacity

Alaska Natives and the various ANOs and IPCoMM that represent them are in the process of developing certain skills and capacities that are necessary to function as effective co-management partners. They do not have the benefit of inheriting existing bureaucratic structures comparable to the federal agencies and, in many respects, are designing their operational framework from the ground up. Doing so will require flexibility, trial and error, and—most of all—persistent support during the building phase. For several decades, Alaska Natives have volunteered much of their efforts to participate in co-management based on the value they place in their subsistence cultures and traditions, a sense of responsibility with regard to harvest management, and a desire to exert a measure of control over the conditions that influence their livelihoods and cultures. To operate effectively, they need the opportunity to learn the skills required for co-management (e.g., monitoring harvest levels, biosampling); participate in harvest management (e.g., conduct marking and tagging or surveys); collect, distribute, consider, and act on information pertinent to marine mammal resources (e.g., participate in research and sharing TEK); and interact with their co-management partners by sharing information and decision-making.

The federal agencies also need to learn the skills of co-management. Despite numerous high-minded goals and objectives declared by previous administrations, the Departments of Commerce and the Interior (Appendices D-H), and the Marine Mammal Commission, it is not clear that federal agencies have wholeheartedly embraced and championed the co-management approach. The ambivalence has been expressed in many cases but particularly with respect to funding.

The need for adequate, stable levels of funding and accountability

Alaska Natives and ANOs cannot function as effective co-management partners unless they have adequate funding support that includes assurances that funding is sufficiently stable or reliable to build co-management capacity. Funding needs were described previously and include basic administrative costs plus the costs associated with specific tasks or objectives to be determined with their co-management partner agency. Funding must be sufficiently secure over time that ANOs can invest responsibly in development of co-management structure and function without disruption during this capacity-building phase.

Funding must be accompanied by accountability to ensure that capacity-building is effective and making a growing contribution to co-management. Such accountability is essential to demonstrate that funds are being used effectively and that further investment in co-management is warranted. The joint nature of this effort suggests that accountability should be expected from ANOs and the agencies, both separately and collectively.

The need to anticipate and prepare for future challenges

As described above, climate change and associated changes in human activities can reasonably be expected to have profound effects on the abundance, distribution, and persistence of Arctic marine mammals. Whether those marine mammals will be available in numbers sufficient to sustain subsistence cultures is not clear. The existing framework for marine mammal conservation (e.g., the Marine Mammal Protection Act, Endangered Species Act, National Environmental Policy Act, and Magnuson-Stevens Fishery Conservation and Management Act) may not be sufficient to sustain marine mammal populations and ensure their availability for subsistence purposes. Much will depend on interpretations of those statutes and corresponding actions by the regulatory agencies, Congress, the courts, and U.S. society. Efforts to anticipate and respond to the full consequences of climate change will be confounded by many factors, including the lag between causal factors and environmental consequences, and the lag between identification of important problems and implementation of effective responses. In both cases, time delays or lags will exacerbate the challenge of effective management. Furthermore, efforts to address climate change and other pressing problems in the Arctic may be diminished by competing crises involving national security, the economy, energy supplies, food supplies, and transportation. All of these are likely to be exacerbated by steady human population growth that, irrespective of demographic distribution, will continue to drive greenhouse gas emissions and lead to a host of other competing concerns and crises.

Despite the fact that Arctic inhabitants are largely removed from the processes causing climate change, they likely will be among those peoples most affected by it. Addressing the consequences of climate change will require sweeping transformations by virtually all human societies. To the extent that Alaska Natives can speak with one voice on this matter, they will bring a moral authority to the discussion of solutions that others do not have and cannot invoke. Thus, one of the themes pervading the review was whether Alaska Natives, through their respective ANOs, IPCoMM, or other organizations, can mobilize and coordinate themselves to speak with unity and harmony on their own behalf and that of the marine environment upon which they depend.

RECOMMENDATIONS

Since 1994 Alaska Natives, the Fish and Wildlife Service, and the National Marine Fisheries Service have accomplished a great deal in their efforts to implement section 119 of the Marine Mammal Protection Act. Nonetheless, further progress is essential to satisfy the goals of section 119 specifically and the Marine Mammal Protection Act generally.

Trusting relationships are central to further progress in co-management. Trust, however, cannot be simply recommended—it must be built and earned through responsible action, mutual respect, and shared confidence. The fulfillment of each of the recommendations below will depend on a number of factors, but the establishment and strengthening of trusting relationships will be essential. To build on the co-management achievements of the past 14 years and promote further development in the coming decade, the Marine Mammal Commission makes the following recommendations.

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- (1) ***Joint co-management funding proposal to ensure funding stability***
- (a) To provide an essential foundation for co-management, ANOs and their federal agency partners should develop a joint co-management funding proposal that promotes capacity-building, identifies and prioritizes co-management tasks, describes and justifies a budget needed to support both administrative functions and project activities, and sets forth the objectives to be accomplished and measures of accountability for both the ANOs and their federal partners. The proposal also should include funding to support IPCoMM activities; Alaska Native leaders should not be required to volunteer their time to maintain ANOs and IPCoMM.
- (b) Both the Fish and Wildlife Service and the National Marine Fisheries Service should seek a funding base that is both stable and sufficient for supporting co-management, including support to build co-management capacity among ANOs and to meet their own co-management needs. The Fish and Wildlife Service provides some level of stability by including a line item in its budget for co-management; the National Marine Fisheries Service should do the same.
- (2) ***IPCoMM review:*** To encourage greater participation and instill greater confidence of ANOs from around the state, IPCoMM should conduct a formal review of its bylaws and operating procedures. The review should focus on mechanisms to ensure that all ANOs are treated equitably and fairly, all IPCoMM activities are transparent to member ANOs, and IPCoMM leadership is alternated (e.g., term limits) to avoid any perception of bias, share the burden of leadership activities, and promote development of Alaska Native leaders from all member ANOs.
- (3) ***Conflict resolution:*** To resolve conflicts in a more effective and timely manner, ANOs and their federal agency partners should develop detailed protocols and timelines for conflict resolution. IPCoMM may serve a useful purpose in addressing conflicts that involve multiple ANOs or multiple co-management agreements. Co-management likely will fail if it lacks effective means of resolving conflicting perspectives.
- (4) ***Harvest monitoring:*** To instill greater confidence in the accuracy and thoroughness of harvest monitoring and put longstanding disagreements to rest regarding monitoring results, the National Marine Fisheries Service and Fish and Wildlife Service should work with their co-management partners and the Alaska Department of Fish and Game Divisions of Subsistence and Wildlife Conservation to (1) identify sources of potential bias in existing monitoring strategies, (2) develop scientifically-based methods for quantifying the biases and (3) implement practical methods for correcting those biases that are considered excessive.
- (5) ***Statutory authority for managing harvests:*** To prevent depletion of subsistence species, ANOs, IPCoMM, and federal agency partners should continue to advocate for amendments to the Marine Mammal Protection Act that would authorize co-management partners to adopt enforceable harvest limits in appropriate circumstances.
- (6) ***Research collaboration:*** To expand research collaboration, ANOs and agency partners should establish research plans describing research priorities, responsibilities of the parties and means of cooperation, and resources required to conduct the research. To promote more effective marine mammal research and management in Alaskan waters, these plans should be integrated with marine mammal studies being conducted in Alaskan waters by other research agencies and organizations (e.g., the Alaska Department of Fish and Game, the University of Alaska).
- (7) ***Education and outreach:*** To strengthen support for and participation in co-management, ANOs and their federal agency partners should continue to develop education and outreach projects related to subsistence, TEK, and co-management. Such projects should focus on youth from

grade school through college, hunters, their communities, scientists, and the general public. As part of this effort, scientists working for or conducting research on behalf of the National Marine Fisheries Service, Fish and Wildlife Service, or other federal agencies on topics and in areas covered by co-management agreements should be required to inform those communities of their results by returning to those areas and making presentations, contributing to community newsletters, or finding other suitable means of communicating with community members. Co-management committees should lead the effort to coordinate presentations by scientists and other persons knowledgeable about related matters of interest to affected communities. Education and outreach are vital to maintaining traditions while also identifying and adapting to the pending changes in the Arctic.

- (8) ***Traditional ecological knowledge:*** To enhance co-management efforts, ANOs and their federal agency partners should continue to infuse TEK into all aspects of co-management (e.g., harvest monitoring, research, education and outreach) as appropriate.
- (9) ***Climate change and other future threats:*** To prepare for future threats, ANOs and their federal agency partners should seek ways to anticipate the possible consequences of climate change on Alaska Native subsistence cultures and consider possible actions to manage those effects as possible. Doing so will require considerable adaptability of Alaska Natives and their way of life.

ACKNOWLEDGMENTS

The Marine Mammal Commission gratefully acknowledges those who contributed their time and energy toward preparation for and participation in this review. The Steering Committee included Kaja Brix, Charlie Brower, Doug Burn, Mike Gosliner, Taqulik Hepa, Charlie Johnson, Lauren McChesney, Rosa Meehan, Tim Ragen, Monica Riedel, Ross Schaeffer, Mike Simpkins, and Margaret Williams. Speakers at the meeting included Sylvia Brunner, Helen Chythlook, Carol Daniel, Jim Fall, John Goodwin, Mike Gosliner, Charlie Johnson, Brendan Kelly, Mike Miller, Monica Riedel, and Ross Schaeffer. Mike Simpkins and Lauren McChesney took notes of the meeting. Lauren McChesney, Suzanne Montgomery, and Carol Torsen made logistical arrangements. Cathy Jones and Darel Jordan made all travel arrangements. The Commission also wishes to thank all the participants who gave of their valuable time, discussed difficult topics with interest, integrity, and wisdom, and reaffirmed the value of co-management for maintaining healthy marine mammal populations and sustaining the subsistence culture of Alaska Natives.

Appendix A. Section 119 of the Marine Mammal Protection Act

**Marine Mammal Cooperative Agreements in Alaska
16 U.S.C. 1388**

Sec. 119. (a) IN GENERAL. — The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

(b) GRANTS. — Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

- (1) collecting and analyzing data on marine mammal populations;
- (2) monitoring the harvest of marine mammals for subsistence use;
- (3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and
- (4) developing marine mammal co-management structures with Federal and State agencies.

(c) EFFECT OF JURISDICTION. — Nothing in this section is intended or shall be construed—

- (1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or
- (2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(d) AUTHORIZATION OF APPROPRIATIONS. — There are authorized to be appropriated for the purposes of carrying out this section—

- (1) \$1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and
- (2) \$1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999. The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 116.

Appendix B. Final Agenda

A Review of Co-management

The Marine Mammal Commission
6-8 February 2008
Hilton Anchorage
500 West Third Avenue
Anchorage, Alaska, 99501
Tel: 1-907-272-7411 Fax: 1-907-265-7044

6 February 2008

9:00-9:30 Welcome and introduction

9:30-9:45 Authorities

9:45-10:30 Accomplishments to date

10:30-10:50 Break

Function of Co-management

10:50-12:00 Harvest monitoring and enforcement

12:00-1:15 Lunch

1:15-2:15 TEK, research, biosampling, and permits

2:15-2:40 Education and outreach

2:40-3:00 Break

3:00-4:30 Addressing alternative or conflicting views regarding stocks or other matters

4:30-5:00 General discussion and public comment

5:00 Adjourn for the day

7 February 2008

Structure of co-management

9:00-10:20 Structure of co-management efforts to date

10:20-10:40 Break

10:40-12:00 Role of IPCoMM

12:00-1:15 Lunch

1:15-2:30 Hunter representation

2:30-3:00 Role of the state of Alaska and other entities

3:00-3:20 Break

3:20-4:30 General discussion

4:30-5:00 Public comment

5:00 Adjourn for the day

8 February 2008

9:00-10:30 Funding and capacity-building

10:30-10:50 Break

10:50-12:00 Funding and capacity-building (cont.)

12:00-1:15 Lunch

1:15-3:00 Accountability

3:00-3:20 Break

3:20-4:00 Dealing with climate change and other current and future threats

4:00-5:00 General discussion and public comment

5:00 Adjourn the meeting

Appendix C. List of Participants

A Review of Co-Management The Marine Mammal Commission 6-8 February 2008 Anchorage, Alaska

List of Participants

Vera Alexander, Ph.D. Commissioner Marine Mammal Commission	Carol Daniel, Esq. General Counsel Alaska Federation of Natives
Elizabeth Andrews Director, Division of Subsistence, Juneau Alaska Department of Fish and Game	Paul Dayton, Ph.D. Commissioner Marine Mammal Commission
Hazel Apok Natural Resources Coordinator Maniilaq Association	Anthony DeGange, Ph.D. Chief, Biology Office U.S. Geological Survey
John L. Bengtson, Ph.D. Director National Marine Mammal Laboratory	Karla Dutton Director of Alaska Field Office Defenders of Wildlife
Peter Boveng, Ph.D. Leader, Polar Ecosystems Program National Marine Mammal Laboratory	James Fall, Ph.D. Division of Subsistence Alaska Department of Fish and Game
Kaja Brix Assistant Regional Administrator, Protected Resources Alaska Region, National Marine Fisheries Service	Kathryn J. Frost Wildlife Biologist University of Alaska Alaska Beluga Whale Committee
Charles D.N. Brower Chairman Ukpeagvik Inupiat Corporation	John Goodwin Chairman Ice Seal Committee
Sylvia Brunner, Ph.D. Museum of the North University of Alaska	Willie Goodwin, Jr. Chairman Alaska Beluga Whale Committee
Douglas Burn Wildlife Biologist, Marine Mammals Management Fish and Wildlife Service	Michael L. Gosliner, Esq. General Counsel Marine Mammal Commission
Molly B. Chythlook Natural Resource Director Bristol Bay Native Association	Jennifer Hooper Executive Director Association of Village Council Presidents-IUM
Helen M. Chythlook Marine Mammal Coordinator and Executive Director Qayassiq Walrus Commission & Bristol Bay Marine Mammal Council	Charles Johnson Executive Director Alaska Nanuuq Commission
Vicki Cornish, Vice President Marine Wildlife Conservation Ocean Conservancy	Brendan Kelly, Ph.D. Program Director, Arctic Biology National Science Foundation

Patrick Kosbruk
Executive Board Member
Bristol Bay Native Association

Donna Kwan, Ph.D.
Assistant Director, Migratory and Marine Biology
Australia Dept of Environment, Water, Heritage and Arts

Lauren McChesney
Knauss Fellow
Marine Mammal Commission

Rosa Meehan, Ph.D.
Chief, Marine Mammals Management
Alaska Region, Fish and Wildlife Service

Peter Merryman
Chairman
Cook Inlet Marine Mammal Council

Mike Miller
Executive Director
Sitka Marine Mammal Commission

Patrick Norman
Vice Chair
The Alaska Sea Otter and Steller Sea Lion Commission

Peggy Osterback
Executive Director
Aleut Marine Mammal Commission

George Pletnikoff
Alaska Oceans Campaigner
Greenpeace

Timothy J. Ragen, Ph.D. (Chair)
Executive Director
Marine Mammal Commission

John E. Reynolds, III, Ph.D.
Commission Chair
Marine Mammal Commission

Monica Riedel
Executive Director
Alaska Native Harbor Seal Commission

Martin Robards
Representative
Eskimo Walrus Commission

Roswell Schaeffer, Sr.
Northwest Arctic Borough
Marine Mammal Commission Special Advisor

Raymond Sensmeier
Representative
Southeast Alaska Inter-Tribal Fish and Wildlife
Commission

James Simon, Ph.D.
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Joel Blatchford
Don Bremmer
Jessica Mata Bukovishnikoff
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Charlie Hamilton
Lianna Jack
George Kingik
Harry Lord
Barbara Mahoney
Chanda Meek
Mark Nelson
Nikos Pastos
Stan Pruzensa
Caleb Pungowiyi
Lori Quakenbush
Gay Sheffield
Jonathan Snyder
Sandy Tahbone
Carol Torsen
John Trent
Carl Wassile
Mike Williams

Appendix D. Presidential Memorandum
29 April 1994
59 Federal Register 22951

THE WHITE HOUSE

Office of the Press Secretary

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statues, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a govern-to-government relationship with federally-recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally-recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact o f relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 (“Enhancing the Intergovernmental Partnership”) and 12866 (“Regulatory Planning and Review”) to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency’s bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The director of the office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William . lintJnC

Washington, April 29, 1994

Appendix E. Executive Order 13175
6 November 2000

Consultation and Coordination with Indian Tribal Governments
(65 Federal Register 67249)

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) “Policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “Tribal officials” means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

- (1) encourage Indian tribes to develop their own policies to achieve program objectives;
- (2) where possible, defer to Indian tribes to establish standards; and
- (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,
(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

- (1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

THE WHITE HOUSE
November 17, 2006

Appendix F. Secretarial Order Number 3225
19 January 2001

Endangered Species Act and Subsistence Uses in Alaska
Supplement to Secretarial Order 3206

Subject: Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)

Sec. 1 Purpose. The purpose of this Order is to supplement Secretarial Order No. 3206 by:

- a. Defining the application of Secretarial Order No. 3206 in Alaska.
- b. Establishing a consultation framework relative to the subsistence exemption in Sec. 10(e) of the Endangered Species Act (ESA).
- c. Reiterating the government-to-government consultation requirements relative to overall implementation of the ESA in Alaska.

Sec. 2 Application of Secretarial Order 3206 in Alaska. The Annette Island Reserve of the Metlakatla Indian Community is a formally designated Indian reservation that was exempted from the Alaska Native Claims Settlement Act and, as such, is appropriately covered by Secretarial Order 3206.

Sec. 3 Consultation Framework for the Subsistence Exemption from the ESA. At the earliest stage after information arises indicating conservation concerns relative to a species that is listed as endangered or threatened under the ESA and also used for subsistence, the Departments will promptly provide such information to affected Alaska Natives, tribes and other Native organizations, and will seek their full and meaningful participation in evaluating and addressing the conservation concerns. The Departments will seek input from, and will collaborate with, Alaska Natives when gathering information upon which to base findings relative to whether a subsistence take is materially and negatively affecting listed species. When a species is negatively impacted by a subsistence take, the goal of the Departments will be to work collaboratively with Alaska Natives to craft cooperative agreements that will conserve the species, fulfill the subsistence needs, and preclude the need for regulations. The Departments will seek to enter into cooperative agreements for the conservation of such species and the co-management of subsistence uses. The Departments will provide such technical, financial, and other assistance as may be appropriate and possible given available resources to assist Alaska Natives in developing and implementing such agreements. The participation of affected Alaska Natives will be ensured to the maximum extent practicable in all aspects of the management of subsistence species that are candidate, proposed or listed species under the ESA and their habitat including but not limited to:

- a. forming recommendations for management actions, plans, or regulations;
- b. population and harvest monitoring projects;

-
- c. law enforcement activities;
 - d. education programs;
 - e. research design, data collection and use of traditional knowledge;
 - f. habitat protection programs; and
 - g. recovery projects.

When regulations are needed, full consultation with the affected Alaska Natives will occur during the development and implementation of such regulations.

Sec. 4 Government-to-Government Consultation under ESA in Alaska. The Department of the Interior will ensure that consultation with Alaska Natives continues on a government-to-government basis as it has to date. It will comply with all relevant Executive Orders, policy directives, and FWS operating procedures.

The Department of Commerce will follow the American Indian and Alaska Native Policy of the U.S. Department of Commerce, dated March 30, 1995, which outlines principles to be followed in all Department of Commerce interactions with American Indian and Alaska Native tribal governments. In compliance with the relevant Presidential Orders and Departmental policies, appropriate consultation with, and assistance to, Alaska Natives will be ensured.

Sec. 5 Scope and Limitations

a. This Order will not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor will this Order be construed to alter, amend, repeal, interpret or modify tribal sovereignty or the other rights of any Indian tribe, or to preempt, modify or limit the exercise of such rights.

b. This Order does not preempt or modify the Departments' statutory authorities or the authorities of Indian tribes or the State of Alaska.

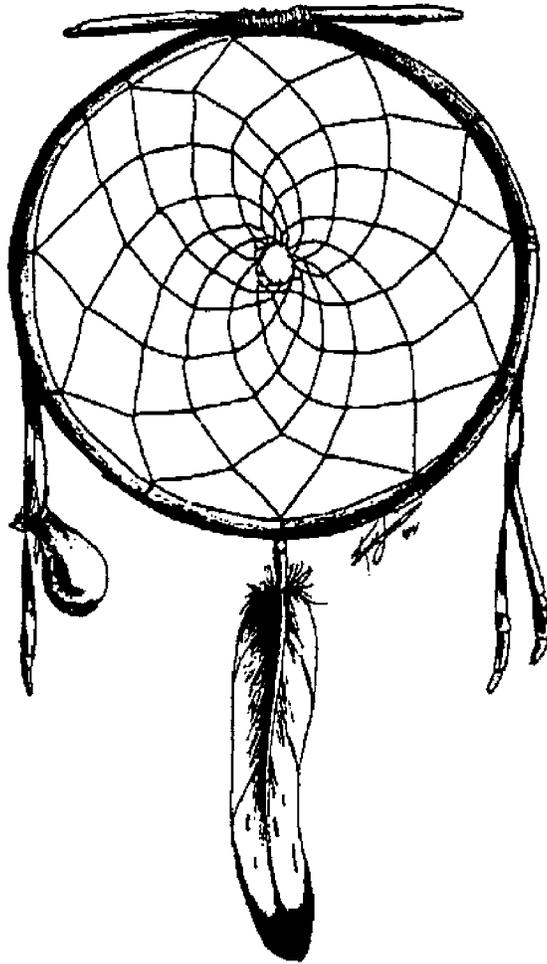
c. Nothing in this Order will be implied to authorize direct takes of listed species not otherwise authorized by law or regulation, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

Sec. 6 Effective Date. This order shall be effective immediately.

Bruce Babbitt
Secretary of the Interior

Norman Y. Mineta
Secretary of Commerce

Appendix G. The Native American Policy
of the U.S. Fish and Wildlife Service



FROM THE DIRECTOR

Just as the “Dreamcatcher” catches the good dreams and allows the bad dreams to pass through the net, the Native American Policy of the Fish and Wildlife Service that follows is intended to capture only good government-to government relationships. As our relationship with the Native American people continues to evolve, we will continue to capture the good visions and add them to this Policy.

A handwritten signature in black ink that reads "Mollie Brattie". The signature is fluid and cursive, with the first name "Mollie" written in a larger, more prominent script than the last name "Brattie".

June 28, 1994

Cover: The “Dreamcatcher”—During sleep is often when the most powerful visions occur. A dreamcatcher should be hung freely in the air above the head of the dreamer. Good dreams become caught in the net and directed back to the dreamer by way of the feather. Bad dreams go through the hold and beyond.

Cover Art is a pen and ink drawing by Keith C. Smith of a dreamcatcher created by Ken Poynter. Keith, a graduate of the University of Colorado is Navajo and is currently employed by the University of Colorado-Boulder. Ken, a Passamaquody, is currently the Executive Director of the Native American Fish and Wildlife Society.

INTRODUCTION

The U.S. Fish and Wildlife Service (Service), to accomplish its objectives with greater effectiveness, is seeking partnerships with Native American governments, foreign nations, States, other governmental agencies, conservation groups, and individual citizens. Such partnerships will provide opportunities to better address ecological systems as a whole and do so with maximum assistance and support.

The express purpose of this Native American Policy (Policy) is to articulate the general principles that will guide the Service's government-to-government relationship to Native American governments in the conservation of fish and wildlife resources. The Service envisions developing other Native American policy statements on more specific topics.

The Service has developed and adopted this Policy to help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and the Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets. This Policy is consistent with Federal policy supporting Native American government self-determination.

The Service has a long history of working with Native American governments in managing fish and wildlife resources. These relationships will be expanded, within the Service's available resources, by improving communication and cooperation, providing fish and wildlife management expertise, training and assistance, and respecting and utilizing the traditional knowledge, experience, and perspectives of Native Americans in managing fish and wildlife resources.

This Policy is intended to be flexible and dynamic to provide for evolution of the partnerships between the Service and Native American governments. Working relationships between the Service and Native American governments will be generally consistent nationwide, however, they will vary according to the legal basis and management requirements of each relationship. For example, the Service's interaction with Alaska Natives is largely directed by the provisions of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. Outside of Alaska, the Service's involvement with Native Americans is guided primarily by reserved right doctrines, Executive Orders, judicial mandates, and specific treaties between the Federal Government and Native American governments. This Policy applies to all Service employees in discharging official duties that affect Native American governmental interests.

This Policy is adopted pursuant to and consistent with existing law and does not preempt or modify the fish and wildlife management authorities of the Service, other Federal agencies, Native American governments, or States. The Policy does not suggest recognition of tribal authority that does not currently exist, however, the Service need not wait for judicial recognition of tribal authority over fish and wildlife when such authority is already supported by law. The policy will not be used to arbitrate differences in opinion between government agencies or to interpret any authorities, laws or judicial findings. Unless specific judicial rulings or Acts of Congress indicate otherwise, this Policy should not be construed as validating the authority of any Native American government in Alaska over lands, fish and wildlife, or non-tribal members.

This Policy does not negate or supersede the diverse mandates and priorities of the Service. Accomplishing the intent of this Policy is contingent upon prevailing legal, procedural, workforce, and monetary constraints.

POLICY PRINCIPLES

The following policy statements provide the framework within which the Service will cooperate with Native American governments to conserve fish and wildlife resources.

I. SOVEREIGNTY

Native American governments are recognized as governmental sovereigns and have been referred to as quasi-sovereign domestic dependent nations by the courts. The Service recognizes the sovereign status of Native American Governments.

II. CONSERVATION

While the major components of this Policy are aimed at cultivating and maintaining effective partnerships between the Service and Native American governments, the ultimate goal is to effect long-term conservation of fish and wildlife resources. This goal is eloquently expressed in the following statement:

“We did not inherit this Earth or its natural resources from our ancestors, we are only borrowing them from our children’s children and their children. Therefore, we are duty-bound and obligated to protect them and use them wisely until such time that they get here, and then they will have the same obligations.”

Anonymous

III. GOVERNMENT TO GOVERNMENT RELATIONS

General Statement

There is a unique and distinctive political relationship between the United States and Native American governments, as defined by treaties, statutes, court decisions and the United States Constitution, that differentiates Native American governments from other interests and constituencies, and that extends to all Federal agencies. The Service will maintain government-to-government relationships with Native American governments. The Service will work directly with Native American governments and observe legislative mandates, trust responsibilities, and respect Native American cultural values when planning and implementing programs. Successful implementation of this Policy will be accomplished through working relationships and mutual partnerships with Native American governments. The Service will rely on Native American governments to identify formal and informal contacts to represent them when coordinating with the Service. Working relationships, in many cases, will be with Native American fish and wildlife departments. For major joint initiatives, the Service will offer to enter into formal agreements, developed by both parties, that clearly identify the roles, responsibilities, and obligations of the Service and each involved Native American government.

Reservation Lands

The Service recognizes the authority that Native American governments have for making fish and wildlife resource management policy and for managing fish and wildlife resources on trust lands within their Native American reservations. Under certain circumstances, a Native American government may have fish and wildlife authority affecting nonmember reservation lands. In such cases, the Service will give proper recognition to the relative rights of both the Native American government and the affected State(s), according to the specific nature of the case.

Non-Reservation Lands

The Service recognizes and supports the rights of Native Americans to utilize fish and wildlife resources on non-reservation lands where there is a legal basis for such use. The Service recognizes that as a result of treaties, statutes, and judicial decrees, certain Native American governments, along with State governments, may have shared responsibilities to co-manage fish and wildlife resources. In such cases, the Service will cooperate with Native American governments and affected resources management agencies to help meet objectives of all parties. While the Service retains primary authority to manage Service lands, affected Native American governments will be afforded opportunities to participate in the Service's decision-making processes for those lands.

IV. SELF-DETERMINATION

Support for Self-Determination

The Service favors empowering Native American governments and supporting their missions and objectives in assuming program management roles and responsibilities through contracting and other mechanisms. Therefore, the Service supports the rights of Native Americans to be self-governing, and further supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources, and to protect their Federally recognized authorities.

Indian Self Determination and Education Assistance Act

(Public Law 93-638, as amended)

The Service is committed to entering into contracts, cooperative agreements, or grants with Native American governments at their request for the administration of fish and wildlife conservation programs under the terms, conditions, and to the extent provided by the Indian Self Determination and Education Assistance Act (Act). The Service will work with Native American governments in developing effective policies, plans, and operating standards that are consistent with the Service's obligation under the Department of the Interior's rules and regulations for implementing the provisions of the Act.

V. COMMUNICATION

Consultation

The Service will consult with Native American governments on fish and wildlife resource matters of mutual interest and concern to the extent allowed by law. The goal is to keep Native American governments involved in such matters from initiation to completion of related Service activities.

Communication with other Agencies

Upon the request of a tribe, the Service will encourage and facilitate communication and cooperation among Native American governments, States, Federal agencies and others to identify and delineate respective roles and responsibilities and to ensure that issues of common interest and concern are discussed. This may include such activities as taking the initiative to provide the biological or managerial expertise necessary for resolution of conflicts about fish and wildlife resource issues.

VI. FUNDING

Funding Sources

The Service will assist Native American governments in identifying Federal and non-Federal funding sources that are available to them for fish and wildlife resource management activities.

VII. CULTURE/RELIGION

Consultation

The Service will involve Native American governments in all Service actions that may affect their cultural or religious interests, including archaeological sites. The Service will be guided in this respect by such legislation as the American Indian Religious Freedom Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act. The Service will take appropriate precautions to ensure that locations of protected sites remain confidential.

Reasonable Access

The Service will provide Native Americans reasonable access to Service managed or controlled lands and waters for exercising ceremonial, medicinal, and traditional activities recognized by the Service and by Native American governments. The Service will permit these uses if the activities are consistent with treaties, judicial mandates, or Federal and tribal law and are compatible with the purposes for which the lands are managed.

Animal Parts

The Service will expedite processing and distributing certain animal parts, such as eagle feathers, for recognized religious, ceremonial, and cultural purposes in accordance with Federal laws. Timeliness of processing and distributing animal parts will be contingent upon animal part availability and on the needs of the Service to conduct required scientific and law enforcement investigations. The Service will strive to ensure the dignity of its custodial process in recognition of the solemn nature of Native American uses of such animal parts.

VIII. LAW ENFORCEMENT

Cooperation

Service law enforcement agents will assist with the cooperative enforcement of Federal wildlife laws. The Service will encourage the use of cooperative law enforcement as an integral component of Native American, Federal, and State agreements relating to fish and wildlife resources. The Service will assist in the formulation of the law enforcement elements of those agreements. Upon request, the Service will evaluate Native American law enforcement capabilities and, if warranted, provide recommendations for improving such capabilities.

Coordination

The Service will coordinate with law enforcement officers of Native American governments regarding Service law enforcement operations on or adjacent to Native American lands, as appropriate. The Service will assist Native American governments in the coordination of appropriate fish and wildlife law enforcement investigations that require the use of the Federal court system. If requested, the Service will also provide liaison between Native American governments and the U.S. Department of the Interior Solicitor on fish and wildlife matters.

Development of Fish and Wildlife Codes

The Service will assist Native American governments with the development of comprehensive fish and wildlife conservation codes.

IX. TECHNICAL ASSISTANCE

Technical Expertise and Assistance

The Service will make available technical expertise from all Service program areas to assist Native American governments in the management of fish and wildlife resources, and to assist the Native American governments in developing their own technical expertise in fish and wildlife conservation and management where requested. The Service will advise Native American governments about the kinds of technical assistance that it can provide. Technical assistance priorities will be developed with input from affected Native American governments.

Agreements

The Service will develop partnership agreements with Native American governments to work together and to exchange technical expertise regarding matters of mutual interest, such as the conservation and recovery of threatened and endangered species, migratory birds, and anadromous fish.

Information Transfer

The Service will provide access to technical information from such sources as technical assistance offices, other field offices, and fish health laboratories. As requested, the Service identifying other agencies that might provide technical assistance. Information obtained by the Service from Native American governments will not be shared or released without their consent or as required by law. Information generated by the Service through technical assistance to Native American governments will be released only with their consent or as required by law.

X. TRAINING AND EDUCATION

Cultural Awareness Training

The Service will work with Native American governments to help Service employees improve their understanding of Native American traditional, cultural, and religious values and practices, natural resource values, treaty and other Federally reserved rights, and appropriate law enforcement policy issues.

Native American Access to Service Training

The Service will provide Native American governments the same access to fish and wildlife resource training programs as provided to other government agencies.

Law Enforcement Training

The Service, as resources permit, will make its law enforcement expertise and capabilities available to Native American governments. The Service will provide guidance and assistance in developing, maintaining, or improving Native American fish and wildlife law enforcement programs. The Service's basic and refresher fish and wildlife law enforcement training courses that are provided to other governmental agencies will also be available to Native Americans.

Professional Development

The Service will facilitate the education and development of Native American fish and wildlife professionals by providing innovative educational programs and on-the-job training opportunities. The Service will establish partnerships and cooperative relationships with Native American educational institutions to assist in such areas as developing natural resources curricula or implementing cooperative education programs. The Service will also ensure that Native American schools and children are included in its environmental education outreach programs.

Work Force Diversification

The Service will develop active, innovative, and aggressive recruitment programs to attract qualified personnel to the Service so that its workforce can be representative of the cultural diversity of the nation. Qualified Native Americans will be actively encouraged to apply for jobs with the Service. These recruitment efforts will be focused especially where the Service is involved in managing fish and wildlife resources for which Native Americans have management authority or where they have cultural or religious interests.

Education of the General Public

The Service will work with Native American governments to inform and educate the public about Native American treaty and Federally reserved rights, laws, regulations, and programs, and programs related to fish and wildlife.

DEFINITIONS

The following definitions help to clarify the guidance encompassed by this Policy:

Agreements—Documents approved by two or more parties that identify their roles and responsibilities in achieving mutual objectives (e.g., Memoranda of Agreement, Memoranda of Understanding, Cooperative Agreements, Grants, and Contracts).

Co-Management—Two or more entities, each having legally established management responsibility, working together to actively protect, conserve, enhance, or restore fish and wildlife resources.

Cooperative Management—Two or more entities working together to actively protect, conserve, enhance, or restore fish and wildlife resources.

Fish and Wildlife Resources—All fish and wildlife (including invertebrates), plants and their habitats.

Fish and Wildlife Resource Management—All activities that are intended to contribute directly or indirectly to the preservation, utilization, maintenance, mitigation and enhancement of fish and wildlife resources.

Lands—Includes all uplands, wetlands, and open waters such as streams, lakes, estuaries, and bays.

Native American Law Enforcement Officers—Enforcement personnel of Native American governments specifically empowered primarily or secondarily to enforce fish and wildlife laws (e.g. rangers, conservation officers, game wardens, fire chiefs, and police officers).

Native Americans—American Indians in the conterminous United States and Alaska Natives (including Aleuts, Eskimos and Indians) who are members of Federally recognized tribes.

Native American Governments—Governing bodies, including executive and legislative branches, of Federally recognized tribes as regarded by Federal law and formally identified by the Department of the Interior. Does not include other entities representing Native interests such as corporations, societies, commissions, committees, associations or other groups not officially designated by the Secretary of the Interior as a “Government.”

Reservations—Generally, reservations are “trust assets” that were set aside for Native American use, pursuant to treaties, statutes and executive orders. Properties located outside the contiguous boundaries of reservations, as well as lands conveyed under the Alaska Native Claims Settlement Act, that are held in fee title by Native Americans as private property generally are not considered to be reservations.

Trust Responsibility—The fiduciary obligations that attach to the United States as trustee of the assets and resources that the United States holds in trust for Native American governments and their members, the treaty and statutory obligations of the United States toward Native American governments and their members, and other legal obligations that attach to the United States by virtue of the special relationship between the Federal Government and Native American governments. The identification and quantification of assets is recognized as an ongoing and evolving process.



U.S. Department of the Interior
Fish and Wildlife Service

Appendix H. American Indian and Alaska Native Policy
of the U.S. Department of Commerce

30 March 1995

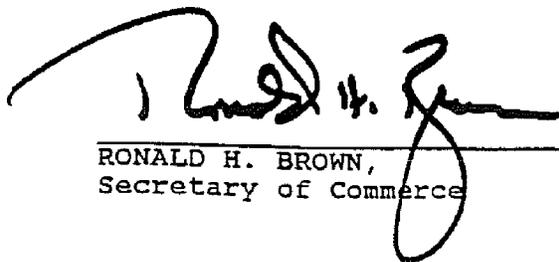
AMERICAN INDIAN AND ALASKA NATIVE POLICY
OF THE
U.S. DEPARTMENT OF COMMERCE

“All men were made by the Great Spirit chief. They are all brothers. The earth is the mother of all people, and all people should have equal rights upon it....Let me be a free man-free to travel, free to stop, free to work, free to trade, where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think and talk and act for myself and I will obey every law, or submit to the penalty.”

Chief Joseph, Nez Perce Nation

From the Secretary of Commerce:

In the great mosaic of our country, we all know it takes work, cooperation, and knowledge to make our dreams reality. This policy offers cooperation, access to information, which is knowledge, and my pledge to create an environment that will foster dreams, free will, and productivity. It is time for our nations to realize that we are interdependent. With that wisdom, we must work together to build a strong future for all of us.


RONALD H. BROWN,
Secretary of Commerce

Date: March 30, 1995

AMERICAN INDIAN AND ALASKA NATIVE POLICY
of the
U.S. DEPARTMENT OF COMMERCE

INTRODUCTION

In recognition of the unique status of American Indian and Alaska Native tribal governments, the Department of Commerce hereby proclaims its American Indian and Alaska Native Policy. This policy outlines the principles to be followed in all Department of Commerce interactions with American Indian and Alaska Native tribal governments. This policy is based on the United States Constitution, Federal treaties, policy, law, court decisions, and the ongoing political relationship among the tribes and the Federal government.

Acknowledging the government wide fiduciary obligations to American Indian and Alaska Native tribes but also supporting tribal autonomy, the Department of Commerce espouses a government-to-government relationship between the Federal government and American Indian and Alaska Native tribes.

This policy pertains to Federally recognized tribes and provides guidance to Commerce personnel for issues affecting American Indians and Alaska Natives. This policy does not apply to Commerce interactions with state recognized tribes, Indians, or Alaska Natives who are not members of tribes with respect to matters provided for by statute or regulation.

This policy is for internal management only and shall not be construed to grant or vest any right to any party in respect to any federal action not otherwise granted or vested by existing law or regulations.

DEFINITIONS

Indian tribe (or tribe). Any Indian tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native village (as defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is acknowledged by the Federal government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for Indians because of their status as Indians and tribes.

Tribal government. The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that has been determined eligible for specific services by Congress or officially recognized by inclusion in 25 CFR part 83, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," as printed in the Federal Register.

POLICY PRINCIPLES

The following policy statements provide general guidance to U.S. Department of Commerce employees for actions dealing with American Indian and Alaska Native governments.

1. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH AMERICAN INDIAN AND ALASKA NATIVE TRIBAL GOVERNMENTS.

Commerce recognizes that the tribal right of self-government flows from the inherent sovereignty of tribes and nations and that Federally recognized tribes have a unique and direct relationship with the Federal government. Commerce further recognizes the rights of each tribal government to set its own priorities and goals for the welfare of its membership and that Commerce will deal with each tribal government, when appropriate, to meet that tribe's needs.

2. THE DEPARTMENT ACKNOWLEDGES THE POLICY COMMITMENTS OF THE U.S. CONGRESS AND THE CHIEF EXECUTIVE AS PRECEDENCE.

Commerce recognizes the U.S. Congress passed House Concurrent Resolution #331, in 1988, declaring the Policy "To Acknowledge the Contribution of the Iroquois Confederacy of Nations to Reaffirm the Continuing Government-to-Government Relationship between Indian Tribes and the United States Established in the Constitution." And, additionally, incorporates the Policy Memorandum of the White House, issued April 29, herein, as so much guides the Executive Departments and Agencies in the Government-to-Government relations with native American tribal Governments."

3. THE DEPARTMENT ACKNOWLEDGES THE TRUST RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND AMERICAN INDIAN AND ALASKA NATIVE TRIBES AS ESTABLISHED BY SPECIFIC STATUTES, TREATIES, COURT DECISIONS, EXECUTIVE ORDERS, REGULATIONS, AND POLICIES.

Commerce, in keeping with the fiduciary relationship, recognizes its trust responsibility and will consult and work with tribal governments prior to implementing any action when developing legislation, regulations, and/or policies that will affect tribal governments, their development efforts, and their lands and resources.

4. THE DEPARTMENT ACKNOWLEDGES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION IS ALSO KNOWN AS THE "INDIAN COMMERCE CLAUSE."

Commerce recognizes the "Commerce Clause" of the United States Constitution (Article I, Section 8, Clause 3) is also known as the "Indian Commerce Clause" and states: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian

Tribes.” Commerce understands that trade and commerce were the original building blocks that established government-to-government relationships with the Indian Tribes. Commerce pledges to honor the constitutional protections secured to Indian Commerce.

5. THE DEPARTMENT WILL CONSULT AND WORK WITH TRIBAL GOVERNMENTS BEFORE MAKING DECISIONS OR IMPLEMENTING POLICY, RULES OR PROGRAMS THAT MAY AFFECT TRIBES TO ENSURE THAT TRIBAL RIGHTS AND CONCERNS ARE ADDRESSED.

Commerce recognizes that as a sovereign government, the tribe is responsible for the welfare and rights of its membership and has the right to regulate commerce within its tribal boundaries. Therefore, Commerce will involve tribes and seek tribal input at the appropriate level on policies, rules, programs, and issues that may affect a tribe.

6. THE DEPARTMENT WILL IDENTIFY AND TAKE APPROPRIATE STEPS TO REMOVE ANY IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS.

Commerce recognizes there may be legal, procedural, organizational, and other impediments that affect its working relationship with tribes. Commerce will apply the requirements of Executive Orders Nos. 12875 (“Enhancing the Intergovernmental Partnership”) and 12866 (“Regulatory Planning and Review”) and the “Regulatory Flexibility Act” to design solutions and tailor Federal programs, when appropriate, to address specific or unique needs of tribal communities. Commerce will use the National Performance Review and government reorganization to implement effective means for direct cooperation with tribal governments.

7. THE DEPARTMENT WILL WORK COOPERATIVELY WITH OTHER FEDERAL DEPARTMENTS AND AGENCIES, WHERE APPROPRIATE, TO FURTHER THE GOALS OF THIS POLICY.

Commerce recognizes the importance of interagency cooperation. Therefore, Commerce will encourage and strive for communication, coordination, and cooperation among all governmental agencies to ensure that the rights of tribal governments are fully recognized and upheld.

8. THE DEPARTMENT WILL WORK WITH TRIBES TO ACHIEVE THEIR GOAL OF ECONOMIC SELF-SUFFICIENCY.

Commerce recognizes the importance of economic independence to tribal self-determination and tribal self-sufficiency and pledges to assist tribes with developing strong and stable economies to participate in today’s national and global marketplace. Therefore, Commerce will make every effort to ensure that eligible tribes have access to Commerce programs that will help them meet their economic goals.

9. THE DEPARTMENT WILL INTERNALIZE THIS POLICY TO THE EXTENT THAT IT WILL BE INCORPORATED INTO ONGOING AND LONG-TERM PLANNING AND MANAGEMENT PROCESSES, AS WELL AS DAY-TO-DAY OPERATIONS.

Commerce recognizes that policies are not relevant or successful unless they are acted upon and properly implemented. Commerce will effectively and fully incorporate all of the principles of this policy into all operations and basic tenets of its mission. Commerce will identify the office or individual to coordinate this policy and act as liaison with American Indian and Alaska Native tribes in implementing and working with the policy and principles.

10. THE EFFECTIVE DATE OF THIS DEPARTMENTAL POLICY IS UPON SIGNING BY THE DEPARTMENT OF COMMERCE AFTER CONSULTATION WITH TRIBAL GOVERNMENTS.

Therefore, the Secretary of the Department of Commerce hereby directs all Commerce agencies, bureaus, and their components to implement this policy by incorporating all the above principles in their planning and management activities, their legislative and regulatory initiatives, as well as their policy development.

Appendix I. The 2006 umbrella agreement

**MEMORANDUM OF AGREEMENT
FOR
NEGOTIATION OF MARINE MAMMAL
PROTECTION ACT
SECTION 119 AGREEMENTS**

among

**U.S. Department of Commerce
National Marine Fisheries Service,**

**U.S. Department of Interior
Fish and Wildlife Service**

and

**Indigenous People's Council for Marine
Mammals**

October 30, 2006

Definitions

ANO(s)	Alaska Native Organizations, including but not limited to Alaska Native Tribes, and tribally authorized comanagement bodies.
FWS or Service	U.S. Fish and Wildlife Service
Local Knowledge:	Knowledge held by Non-Indigenous individuals in a community such as non-indigenous hunter, fishers, and others.
MMPA:	Marine Mammal Protection Act of 1972, as amended
NMFS:	National Marine Fisheries Service
TKW:	Traditional Knowledge and Wisdom: knowledge held by Indigenous peoples such as Alaska Natives
Authorized Negotiators	The personnel at the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the members of IPCoMM who are signatories to the agreement and/or have the authority from their respective Organization/Agency to negotiate changes to the agreement.

MEMORANDUM OF AGREEMENT

FOR

**NEGOTIATION OF MARINE MAMMAL PROTECTION ACT
SECTION 119 AGREEMENTS**

among

U.S. Department of Commerce, National Marine Fisheries Service,

U.S. Department of Interior, Fish and Wildlife Service

and

Indigenous People's Council for Marine Mammals

- I. PURPOSES: The purposes of this Memorandum of Agreement are to:
- A. Provide a foundation and direction for developing agreements as provided under Section 119 of the Marine Mammal Protection Act (MMPA) among Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). This Agreement is not intended to limit in any way Tribal governments, Tribal organizations, or Alaska Native Organizations including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, from negotiating individual and specific details of their own agreements to conserve marine mammals and provide co-management of subsistence use.
 - B. Promote the sustained health of marine mammal species.
 - C. The scope of this Agreement, as it pertains to Federal management and research activities of marine mammals in Alaska, is limited to only those activities that are specified in individual agreements under Section 119 of the MMPA.

II. GUIDING PRINCIPLES

- A. Alaska Natives have a long history of self-regulation, based on their need to ensure a sustainable take of marine mammals for food and handicrafts. The best way to conserve marine mammal populations in Alaska is to provide full and equal participation by Alaska Natives in decisions affecting the subsistence management of marine mammals, to the maximum extent allowed by law.
- B. Under Section 119 agreements, stocks should not be permitted to diminish beyond the point at which they cease to fulfill their role in their ecosystem or to levels that do not allow for a sustainable subsistence harvest.
- C. Except as governed by the provisions of Section 101(b) of the MMPA and implementing regulations or as may be allowed in any individual agreements, subsistence harvest of marine mammals under Section 101(b) of the MMPA shall not be affected.
- D. Individual agreements shall incorporate the spirit and intent of co-management through close cooperation and communication between Federal agencies and the Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, and hunters and subsistence users.
- E. It is the intent of the Parties that Section 119 Agreements be entered into only with Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies.
- F. Nothing in this Agreement is intended or shall be construed to authorize any expansion or change in the respective jurisdiction of Federal, State, or Tribal governments over fish and wildlife resources, or alter in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.
- G. The best available scientific information, and traditional and contemporary Alaska Native knowledge and wisdom (TKW), will be used for all decisions regarding Alaska marine mammal co-management, to the extent allowed by law. Existing ethical principles for the conduct of research shall be applied.
- H. The goal of shared decision-making for individual agreements shall be through consensus, based on mutual respect. Opportunity will be provided for all issues of concern to be heard. Any decision-making structures created as a result of this agreement for co-management shall have an equal representation of Alaska Native/ Federal agency representatives unless otherwise mutually agreed upon by the Parties.
- I. The Parties shall encourage the exchange of information between Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, and the U.S. Government, as well as with other nations, regarding the conservation, management, and utilization of marine mammals where the activities and initiatives of other nations may affect the sound conservation of marine mammals in U.S. waters in and off Alaska.

III. AUTHORITIES

- A. The U.S. Department of Commerce, National Marine Fisheries Service has the authority to enter into this agreement with the Indigenous People’s Council for Marine Mammals under Section 119 (16 U.S.C. §1388) of the Marine Mammal Protection Act of 1972, as amended (MMPA), the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. § 1531 et seq.), as guided by Secretarial Order Number 3225 “Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)” of January 19, 2001. Guidance is provided by Executive Order #13175 of November 6, 2000 (“Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249), Presidential Memorandum of April 29, 1994 (“Government-to-Government Relations with Native American Tribal Governments,” 59 FR 22951); and the U.S. Department of Commerce Memorandum “American Indian and Alaska Native Policy of the U.S. Department of Commerce” of March 30, 1995.
- B. The U.S. Department of Interior, Fish and Wildlife Service (Service) has the authority to enter into this agreement with the Indigenous People’s Council for Marine Mammals under Section 119 (16 U.S.C. § 1388) of the Marine Mammal Protection Act of 1972, as amended, the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. § 1531 et seq.), and as guided by Secretarial Order Number 3225 “Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)” of January 19, 2001; Presidential Memorandum of April 29, 1994 (“Government-to-Government Relations with Native American Tribal Governments,” 59 FR 22951), Presidential Executive Order #13175 of November 6, 2000 (“Consultation and Coordination With Indian Tribal Governments,” 65 FR 67249) and “The Native American Policy of the U.S. Fish and Wildlife Service” of June 28, 1994.
- C. The Indigenous People’s Council for Marine Mammals has the authority to enter into this Agreement under authorizing resolutions from the Alaska Federation of Natives and those tribally authorized organizations which make up the membership of IPCoMM.

IV. PROVISIONS FOR IMPLEMENTATION OF SECTION 119

- A. Upon signature, the Parties shall each designate an individual and an alternate, with contact information for the respective organization, who will serve as the principal contact and liaison for implementation of this Agreement and individual agreements.

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- B. There shall be held on an annual basis a jointly-developed statewide summit between authorized negotiators for the specific purposes of:
1. Reviewing and assessing progress toward implementation of agreements to conserve marine mammals and provide co-management of subsistence use;
 2. Identifying challenges to achieving the goals of such agreements;
 3. Recommending solutions to any identified challenges;
 4. Identifying future courses of action; and,
 5. Providing written and oral reports of current activities and issues regarding marine mammal management.
- C. This Agreement shall be reviewed and, if agreed necessary by the Parties, updated within one year of the reauthorization of the MMPA.
- D. Amendments may be made to this Agreement upon mutual agreement of all the parties.

V. SCOPE FOR INDIVIDUAL AGREEMENTS

- A. Individual agreements should, at a minimum:
1. Identify the Parties to the agreement.
 2. Identify the subject or topic of the agreement (e.g., species, stocks).
 3. Define the geographic area to be covered.
 4. Define the term or time frame of agreement.
 5. Identify proposed actions (see topics under V.B.).
 6. Provide justification for actions (see topics under V.B.)
 7. Define performance requirements.
 8. Define the mechanism which will be used for review and oversight.
- B. Individual agreements may consider, but are not limited to, the following:
1. Collecting and analyzing population data.
 2. Developing infrastructure.
 - (a) Personnel costs
 - (b) Travel costs
 - (c) Operational costs
 - (d) Other costs deemed appropriate by the Parties

-
3. Enforcement. Effective enforcement of the MMPA and provisions of individual agreements to conserve marine mammals and provide comanagement of subsistence use requires cooperation between local Native communities and Federal agencies. Participation by Alaska Native Organizations including but not limited to Alaska Native Tribes and tribally authorized co-management bodies in joint activities with Federal agency personnel to ensure compliance should be developed to the maximum extent possible.
 4. Harvest practices
 - (a) Guidelines for setting harvest levels (notwithstanding MMPA §101(b))
 - (b) analyzing efficiency of take
 - (c) Monitoring and reporting
 - (d) Information and education activities
 5. Management plans
 6. Research and Ecosystem Monitoring. Understanding of marine mammals requires incorporation of scientific knowledge, local knowledge and TKW as well as information about the environment in which they live. The gathering of scientific knowledge requires cooperation and should be conducted using existing ethical principles. Research results should be returned to participating communities in a culturally appropriate manner (e.g. returning to communities of origin to provide an in person presentation of research results, where appropriate).
 7. Training
 - (a) Cross-cultural and cultural sensitivity relevant to the conservation and/or subsistence use of marine mammals
 - (b) Technical (e.g., Potential Biological Removal workshop)

VI. SECTION 119 FUNDING

- A. All Parties agree that long-term funding for sustained co-management programs is important for the health of the resource. Consistent with the provisions of the MMPA, as amended, Federal agencies will implement this paragraph through the regular agency budget process. No financial commitment on the part of any party is required by this Agreement. Funding for individual agreements will be obligated under agreements executed under section 119 of the Marine Mammal Protection Act. Any requirement of this Agreement for the obligation or expenditure of funds by the Federal agency parties, or for the use of staff or agency resources that are provided by specific appropriations, shall be subject to the availability of appropriated funds.

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- B. Disbursal to Alaska Native Organizations. Programs will be funded in a timely manner to the extent that funds are available for disbursal. Alaska Native Organizations will submit reports in a timely manner.

VII. CONFLICT/DISPUTE RESOLUTION

All conflicts and/or disagreements shall be resolved in a timely fashion through peaceful means, reasonably, honorably, and in good faith, by the signatories of this Agreement.

VIII. TERMINATION OF AGREEMENT

- A. This Agreement may be terminated by any Party within 45 days of receipt of a written Notice of Termination by the Parties receiving notice. Such notice shall be addressed to the principal contact for the receiving party.
- B. Individual agreements between Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, and the Federal agency developed under the provisions of this Agreement shall remain in force until terminated according to provisions in such agreements.

IX. SIGNATORIES

In Witness Whereof the Parties hereto have executed this Agreement as of the last written date below:

Robert D. Macum

Regional Administrator (Acting)
National Marine Fisheries Service
U.S. Department of Commerce
Juneau, Alaska

10/24/06

Date

Thomas O. Melus

Regional Director
Fish and Wildlife Service
U.S. Department of Interior
Anchorage, Alaska

10/30/2006

Date

Charles D. Brower

Ataneq
Indigenous Peoples Council for Marine Mammals
Anchorage, Alaska

10/30/06

Date

Attachments:

Appendix A: MMPA Section 119

Appendix B: The White House Executive Order of April 29, 1994

Appendix C: The Native American Policy of the US. Fish and Wildlife Service

Appendix D: The Native American Policy of the Department of Commerce

Appendix E: Secretarial ORDER NO. 3225 Endangered Species Act and Subsistence Uses in Alaska
(Supplement to Secretarial Order 3206)

Appendix J. BYLAWS

BYLAWS

INDIGENOUS PEOPLE’S COUNCIL FOR MARINE MAMMALS

ARTICLE ONE

Name

The name of this Council shall be Indigenous People’s Council for Marine Mammals.

ARTICLE TWO

Purpose

The Indigenous People’s Council for Marine Mammals is a coalition of Tribal marine mammal commissions/councils and other Native organizations formed for the purpose of identifying and addressing marine mammal issues of common concern. The Council’s activities include, but are not limited to:

1. Working to protect and maintain the traditional and subsistence uses of marine life in Alaska;
2. Working to ensure the retention of Section 101(b) of the Marine Mammal Protection Act;
3. Promoting the sustained health of marine mammals;
4. Promoting cooperation among the commissions/councils and other Native organizations within the State and internationally on existing and proposed legislation, regulations;
5. Promoting the mutual exchange of information among the commissions/council and other Native organizations within the State and internationally;
6. Creating a data bank of indigenous knowledge regarding marine mammals and the ecosystems in which they live;
7. Promoting scientific, biological and other research on marine mammals;
8. Promoting and strengthening co-management of marine mammals between tribally authorized Native organizations and federal and state management agencies; and
9. Promoting and encouraging young Alaska Natives to become involved in management, research and education on marine mammals.
10. Working to ensure no loss of the rights of Alaska Natives under the MMPA.

ARTICLE THREE

Policy Statement

On issues on which the Council has reached unanimous consensus, the chairperson or chairperson's designees may make public policy statements as long as the content of those statements are consistent with the policy calls of the Council. No Public Statement may be released without the prior approval of the chairperson. If the chairperson is not available, the vice-chairperson may approve the statements. If the vice-chairperson is not available, the secretary may approve the statement.

ARTICLE FOUR

Principal Office

The principal offices of the Indigenous People's Council for Marine Mammals shall be at the Alaska Native Harbor Seal Commission, 800 E Dimond, Suite 3-625, Anchorage, AK 99515, 907-644-1047 phone, 907-345-0566 fax. The Council may have such other offices as may from time to time be designated by its members.

ARTICLE FIVE

Membership

Section 1 - Current Membership:

The current membership of the Indigenous People's Council for Marine Mammals consists of the following marine mammal commissions, councils, other Alaska Native organizations and local governments:

ALASKA BELUGA WHALE COMMITTEE
ALASKA NANUUQ COMMISSION
ALASKA NATIVE HARBOR SEAL COMMISSION
ALASKA SEA OTTER & STELLER SEA LION COMMISSION
ALEUT MARINE MAMMAL COMMISSION
AVCP - IMARPIGMIUT UNGUNSIIT MURILLKESTIIT
BRISTOL BAY NATIVE ASSOCIATION - BBMMC
COOK INLET MARINE MAMMAL COMMISSION
ESKIMO WALRUS COMMISSION
ICE SEAL COMMITTEE
INUIT CIRCUMPOLAR CONFERENCE - ALASKA
MANIILAQ ASSOCIATION
NSB DEPARTMENT OF WILDLIFE MANAGEMENT
SITKA MARINE MAMMAL COMMISSION
SOUTHEAST INTER-TRIBAL FISH & WILDLIFE COMMISSION
TRADITIONAL COUNCIL OF ST. GEORGE ISLAND

Section 2 –Membership Criteria:

Membership in the Indigenous People’s Council for Marine Mammals is open to any Tribal marine mammal commission or council, other Alaska Native organization or local government whose citizens are predominately Alaska Native. Any such commission, organization or local government interested in joining the Indigenous People’s Council for Marine Mammals must meet the following criteria:

1. Be working on marine mammal issues;
2. Have approval of the governing body of the commission, organization or local government, and provide a copy of the approval to the Council, along with a statement that marine mammal issues are of importance to the commission, organization or local government;
3. Designate an individual to sit on the Council who:
 - (a) has the authority to represent the commission, organization or local government;
 - (b) is an Alaska Native who possesses traditional ecological knowledge of marine mammals and their habitat.

Section 3. Associate Members

Individuals or other organizations may become Associate Members upon the affirmative vote of Council members. IPCoMM may, from time to time, and as it may deem advisable, name individuals or other organizations as Associate Members. Such members may participate in all meetings of IPCoMM and its Committees; provided, however, that parliamentary rights are not extended to Associate Members, nor shall the Council incur any costs for the services of such members. Individuals accepted into the Council’s student intern program will automatically receive Associate Membership status for the duration of their internship.

Section 4 – Voting

Each member shall be entitled to one vote in the affairs of the Council. Actions and positions of the Council shall be by super majority vote of the Council (2/3 of members present).

Section 5 - Suspension and Expulsion

If, in a written and signed communication addressed to the membership, any member of the Council shall be charged with conduct detrimental to the objectives or interests of the Council or shall have been charged with a violation of the Council’s Bylaws, the Council’s membership shall consider the matter. If the Council decides by a super majority vote (2/3 of members present) to take further action, the secretary shall send a copy of the charges to the accused member, who shall be given adequate time to reply, whereupon the membership shall take such further actions as it may deem proper.

Section 6 - Duration of Membership

Membership in the Council may terminate by voluntary withdrawal as herein provided or otherwise as provided in these Bylaws. All rights, privileges, and interests of a member to the Council shall

cease on termination of membership. Membership shall be non-transferable. Any member may, by giving written notice of such intention, withdraw from membership. Withdrawals shall be effective upon fulfillment of all obligations to the date of withdrawal.

ARTICLE SIX

Meetings

Section 1 - Regular Meetings:

Regular meetings of the Council shall be held no fewer than two (2) times each year, with such meetings to take place during the spring and fall. The fall meeting shall be the annual meeting.

Section 2 - Special Meetings:

The Chairperson may call special meetings of the Council at any time. A special meeting must be called by the Chairperson or in his/her absence by the Vice-Chair, or the Secretary, on the written request of the majority of the members of the Council.

Section 3 - Place of Meeting:

The Council may designate any place within the State of Alaska as the place of meeting for any regular or special meeting.

Section 4 - Notice of Meetings:

- A. Regular meetings: Notice of a regular meeting, issued by the Secretary, shall be mailed to the last recorded address of each member at least fifteen (15) days before the time appointed for the regular meeting.
- B. Special Meetings: Notice of special meetings, issued by the Secretary, shall be delivered to each member entitled to notice either personally, by FAX or by mail, not less than three (3) days prior to the time appointed for any special meeting. The Notice must state the purpose of the meeting.
- C. Notices: Written Notices will state the place, day and hour of any meeting and shall be delivered, either personally or by FAX or by mail, to each member entitled to vote at such meetings. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the membership, with postage prepaid.

Section 5 - Quorum:

Quorum. A majority of the members of this Council, when present at any meeting, shall constitute a quorum, and in case there is less than this number, the presiding officer may adjourn from time to time until a quorum is present.

Section 6 - Order of Business:

The order of business of the Council Meetings may be as follows:

1. Call to Order
2. Roll Call
3. Reading of minutes of previous meeting
4. Approval of agenda
5. Staff reports
6. Unfinished business
7. New Business
8. Adjournment

The order of business may be altered or suspended at any meeting by a majority vote of the members present. The usual parliamentary laws as laid down in Robert's Rules of Order shall govern, when not in conflict with these Bylaws.

Section 7 – Minutes:

Minutes of meetings are confidential and shall not be distributed to the public prior to Board approval unless the Council, at the request of a regular member of IPCoMM, agrees otherwise.

ARTICLE SEVEN

Officers

Section 1 - Officers:

The elective officers of IPCoMM shall be the Chairperson, the Vice-Chairperson and the Secretary/Treasurer. Other offices or officers may be established and appointed by the membership of the Council.

- A. *Chairperson:* The Chairperson shall be the chief officer of the Council and shall be present at meetings of the Council. He/she shall be a member ex-officio of all committees. He/she shall communicate to the Council such matters and make such suggestions as may in his/her opinion tend to promote the welfare and increase the usefulness of the Council, and shall perform such other duties as are necessarily incident to the office.
- B. *Vice-Chairperson:* The Vice-Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson or in the event of his or her inability or refusal to act; and, when so acting, the Vice-Chair shall have all the powers of and be subject to all restrictions placed upon the Chair. He or she shall perform all other duties, which the Chair or the Council may, from time to time and as it deems advisable, prescribe.
- C. *Secretary/Treasurer:* The Secretary/Treasurer shall perform all duties, which the Chairperson or the Council members may, from time to time and as they deem advisable, prescribe. It shall be his/her duty:

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1. To give notice of and attend all meetings of the Council and all committees and to make provisions for the keeping of a record of proceedings;
 2. To conduct correspondence and to carry into execution all order, votes, and resolutions not otherwise committed;
 3. To keep a list of the members of the Council; and
 4. To maintain financial records and report to IPCoMM on the financial status.

Section 2 - Terms/selection of officers:

- A. *Selection.* The chairperson, vice-chairperson, and secretary shall be elected bi- annually at the annual meeting by the affirmative vote of a majority of the members present at the meeting. If the election of officers is not held at such meeting, such meeting shall be held as soon thereafter.
- B. *Two-year annual terms.* The chairperson, vice-chairperson, and secretary shall take office immediately upon their election, and shall serve for a term of two (2) years or until the successors are duly elected. Officers are eligible for re-election. Vacancies in any office may be filled for the balance of the term thereof by the membership.

ARTICLE EIGHT

Executive Committee

The Council shall designate an Executive Committee on a bi-annual basis at the annual meeting. The Executive Committee shall transact the routine and ordinary business of IPCoMM between regular meetings of the Council. Except for powers specifically reserved to the full membership of IPCoMM, the Executive Committee shall possess all powers of IPCoMM.

- A. *Composition:* The Executive Committee shall consist of the Chairperson, Vice-Chairperson, Secretary and two members elected by the full membership of IPCoMM.
- B. *Meetings:* The Executive Committee shall meet as needed.
- C. *Reporting:* All actions of the Executive Committee shall be reported to the full membership of IPCoMM by the distribution of minutes of each Executive Committee meeting.

ARTICLE NINE

Committee

The Council may form committee(s) to be appointed by the Chairperson at the directive of the membership, as needed.

ARTICLE TEN

Poll Vote

Action of this organization may be taken by teleconference in accordance with State Law. When, in the judgment of the Chairperson, any questions shall arise that should be put to a vote of the membership, and when he/she deems it inexpedient to call a special meeting for that purpose, he/she may, unless otherwise required by these Bylaws, submit the matter to the membership by phone for vote and decision, and the question thus presented shall be determined according to a majority or unanimity of the votes received as required by these Bylaws by phone within three (3) days after such submission to the membership, provided that, in each case, votes of at least three-fourth (3/4) of the total membership shall be received. Action taken in this manner shall be as effective as action taken at a duly called meeting, and shall be ratified at the next meeting.

ARTICLE ELEVEN

Amendments

These Bylaws may be altered, amended or repealed by a two-thirds (2/3)-majority vote of the membership at any duly organized meeting of the Council. Written notice of intent to amend, alter or repeal the Bylaws shall be provided to all members at least thirty (30) days prior to such meeting. Written Notice shall be subject to Section 4(C) of Article Six.

ARTICLE TWELVE

Liabilities

Nothing herein shall constitute members of the Council as partners for any purpose. No member, officer, agent, or employees shall be liable for the acts or failure to act of any agent member, officer, agent, or employee of the Council. Nor shall any member, officer, agent or employee be liable for his/her acts or failure to act under these Bylaws, excepting only acts or omissions arising out of his/her willful malfeasance.

ARTICLE THIRTEEN

Dissolution

The Council may be dissolved by unanimous vote of its members. After paying and discharging all liabilities and obligations of the Council, and returning any assets held by the Council upon condition requiring their return, transfer or conveyance, assets received and held by the Council subject to limitations permitting their use only for charitable or similar purposes, shall be transferred to one or more organizations engaged in co-management activities under Section 119 of the MMPA, under a plan of distribution adopted by IPCoMM at the time of its dissolution. Any remaining assets may be distributed to persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted by IPCoMM at the time of dissolution.

AMENDED September 23rd, 2003
AS AMENDED September 27, 2004
AS AMENDED January 24, 2008

Chair, IPCoMM

Date

ATTEST:

Secretary/Treasurer, IPCoMM

Date



Marine Mammal Commission

4340 East-West Highway, Room 700

Bethesda, Maryland 20814

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