

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

Testimony of
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Anchorage, Alaska
On the
Marine Mammal Protection Act of 1972, as amended
Before the
Committee on Resources
Subcommittee on Fisheries Conservation, Wildlife and Oceans
U.S. House of Representatives
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Mr. Chairman and members of the Subcommittee, my name is Daniel Alex. I am a tribal member of the Native Village of Eklutna, located within the greater Anchorage area. I have been working for Cook Inlet Marine Mammal Council (CIMMC) since the Fall of 1997. I am testifying in my capacity as the Executive Director of the Cook Inlet Marine Mammal Council (CIMMC). CIMMC is an Alaska Native Organization, chartered by the federally recognized tribes in the Cook Inlet region of Alaska to co-manage marine mammals in Cook Inlet. CIMMC is concurrently chartered as a non-profit corporation under the laws of the State of Alaska, and as a 501(c)(3) educational corporation under the IRS code. CIMMC also represents Alaska Natives who hunt marine mammals in the Cook Inlet area who have registered with CIMMC. CIMMC was formed as a means of strengthening and increasing the role of Alaska Natives in the management and conservation of marine mammals in Alaska, while preserving traditional subsistence hunting activities in the Cook Inlet area. CIMMC is a member of the Indigenous Peoples Council on Marine Mammals (IPCoMM) and holds a seat on the Alaska Native Harbor Seal Commission (ANHSC).

Background

In 1989, Cook Inlet beluga whales were evaluated by National Marine Fisheries Service (NMFS) as a candidate species for listing under the Endangered Species Act. At that time, the Alaska Beluga Whale Committee (ABWC) urged NMFS to delay a listing until more research could be conducted. ABWC identified the need for better subsistence harvest data and recommended aerial surveys to assess the population status. Since then, beginning in 1993, NMFS has conducted annual aerial surveys of Cook Inlet beluga and began to work with beluga hunters in Cook Inlet to obtain better harvest information. In 1994, a Cook Inlet marine mammal hunter group began to form, which later became the Cook Inlet Marine Mammal Council. Since its formation in 1994, CIMMC has been engaged in efforts to assess the health of the Cook Inlet beluga whale population, to monitor the Native subsistence harvest, and to maintain traditional hunting practices and uses of the beluga whale by local hunters. CIMMC has also created a model sea otter ordinance for the tribes, which establishes harvest and preservation management of sea otter

in Cook Inlet.

After several years of surveys and better harvest data, it became apparent that the harvest of Cook Inlet beluga was high relative to the best population estimates. In November 1995, NMFS estimated that the harvest was at least twice what the population could likely sustain. Part of the problem was that muktuk was being widely sold in Anchorage by some hunters in Cook Inlet, and Cook Inlet beluga were being hunted not only by the local Cook Inlet hunters, but also by hunters from other parts of the State. It was felt that non-local hunters had higher hunting losses because they were not familiar with local conditions. Despite efforts by both ABWC and CIMMC to stem the sale of muktuk and to enforce a non commercial use policy for Cook Inlet beluga, CIMMC could not enforce its policy against non-tribal members. It also lacked the funding to effectively address the issue. NMFS took the position that it could not prevent the sale of muktuk in Anchorage or prohibit the taking of Cook Inlet beluga for sale by Alaska Natives, unless beluga were listed as depleted under the MMPA or threatened/endangered under the Endangered Species Act.

During this time, and despite the lack of adequate funding, CIMMC accelerated its work with the hunters in the Cook Inlet area to develop a co-management process, to do everything possible to eliminate commercial hunting and to reduce or eliminate the harvest of Cook Inlet beluga whales by non-local hunters. ABWC assisted in this effort by requesting resolutions from its member villages that would support a co-management process, asking non-local hunters to restrict their hunting of Cook Inlet beluga and supporting CIMMC in enforcing its hunting ordinances. ABWC also provided limited funding for a Cook Inlet traditional knowledge study, and to hold a Cook Inlet Science and Traditional Knowledge Conference. Part of the problem in implementing many of the conservation measures adopted by CIMMC was the lack of funding to allow CIMMC to effectively communicate with hunters, produce educational materials, meet regularly, and to be meaningfully involved in harvest monitoring, regulation or scientific research. It was hoped that through co-management, funding would be provided and NMFS and CIMMC could work cooperatively to accomplish their mutual goal of halting the decline of the Cook Inlet beluga population.

CIMMC's Efforts to Negotiate a Co-management Agreement with NMFS

In 1994, Congress added Section 119 to the Marine Mammal Protection Act in order to authorize cooperative agreements between the federal agencies with authority over marine mammals (NMFS and FWS) and Alaska Native Organizations to conserve marine mammals and to co-manage subsistence uses by Alaska Natives. Shortly after the amendments went into effect, the Indigenous Peoples Council on Marine Mammals (IPCoMM), formed a Native co-management committee to work with the two federal agencies to establish policies and procedures for the implementation of Section 119 agreements. That process was slow, but eventually resulted in an agreement between NMFS, the U.S. Fish and Wildlife Service, U.S. Geological Survey Biological Resources Division and IPCoMM which was signed in August 1997.

Before the signing of this "umbrella" agreement, NMFS declined to discuss a co-management agreement with CIMMC, or any other Alaska Native Organization. This was true even though in May, 1997, NMFS had written to the Alaska Regional Scientific Review Group (AKSRG), which had been pressing NMFS to enter into a co-management agreement with CIMMC, that development of a co-management agreement for Cook Inlet has been our highest MMPA Section 119 priority (Letter from NMFS to AKSRG, May 26, 1997)). Despite the concerns of NMFS and the AKSRG, and the best efforts of both ABWC and CIMMC, a co-management agreement never materialized.

Instead, in November 1998, NMFS initiated a status review of the Cook Inlet beluga whale to determine whether a change in status under the MMPA or a listing under the ESA was warranted. When it became

apparent that action had to be taken prior to the 1999-hunting season, to reduce the Native harvest, CIMMC stepped up its efforts to obtain a co-management agreement with NMFS. It was about this same time that the Center for Marine Conservation and several other environmental groups and individuals filed a petition to designate the Cook Inlet beluga population as endangered under the ESA. In conjunction with the NMFS's status review hearing in Anchorage on March 8 and 9, 1999, CIMMC, ABWC and the Rural Community Action Program (RurAL CAP) sponsored a symposium forum on the Conservation and Sustainable Use of Cook Inlet beluga on March 10-11, 1999. All members of the public were invited and did participate in the Symposium.

During that meeting, the Alaska Native participants which consisted of representatives from the local tribes, ABWC, CIMMC and Cook Inlet beluga whale hunters reviewed and approved a draft interim co-management agreement. That draft agreement provided, among other things, for harvest restrictions and other conservation measures for the 1999 hunting season, and a specific allocation for the Native Village of Tyonek. Tyonek is the only Cook Inlet Tribe with an ongoing, present-day practice of hunting beluga. The group also selected a negotiation team to meet with NMFS to hammer out the details of an interim agreement. The draft agreement crafted during that meeting formed the basis for negotiations with NMFS later that same day, and at subsequent meetings later that month. The negotiations were proceeding on schedule with the goal of having an agreement in place by April 15, in advance of the hunting season. The agreement contemplated a legislative provision that would prohibit hunting of beluga whales unless it was pursuant to a co-management agreement. CIMMC and ABWC sought and supported the legislative change, but CIMMC's support was always with the understanding that there would be a co-management agreement in place for the 1999 season that would allow a limited subsistence harvest, assuming the population could sustain such a harvest.

As it turns out, a small group of non-local hunters interjected themselves into the process and brought the negotiations with NMFS to a halt. This group of hunters had no tribal authorization whatsoever, yet it claimed the right to negotiate its own co-management agreement. A series of meetings were held in an effort to resolve the differences between CIMMC and this group, and to get the negotiations on a co-management agreement back on track. Finally, in a meeting on April 22, 1999, the hunters agreed to stand down and not hunt during the 1999 season. They also voiced their support for a harvest by Tyonek during the 1999 season of two whales. Shortly after that meeting, the group disbanded and most of the hunters returned to the ranks of CIMMC. NMFS nevertheless declined to resume negotiations on a co-management agreement with CIMMC, citing the fact that CIMMC did not represent every hunter who had ever hunted a Cook Inlet beluga as a member of its organizations. This was despite the fact that CIMMC represented every tribe and every tribal member and tribal hunter throughout the range of the Cook Inlet beluga population, who had ever traditionally hunted in the area. As a result, final efforts in August and September to allow the harvest of one beluga by the Native Village of Tyonek failed -- despite the fact that NMFS had conceded that the harvest of one animal would not have a significant effect on the recovery of the population. We believe the failure of this co-management process was due largely to the fact that the MMPA was not clear in terms of directing NMFS to enter into co-management agreements only with tribes or tribally authorized organizations in the effected area.

Since there was no co-management agreement for 1999, Tyonek was forced to forego its long-standing, traditional and continuing practice of harvesting Cook Inlet beluga for nutritional and cultural subsistence uses. There was strong support from the hunters and the tribes alike for a co-management agreement that would permit the harvest of at least one beluga whale by Tyonek. CIMMC, with the support of IPCoMM and the Native community in general advocated strongly that the Native Village of Tyonek's subsistence use

of Cook Inlet beluga should be the priority use for that marine mammal population. Tyonek is a federally recognized Alaska Tribe, and has harvested Cook Inlet beluga in its traditional territory for hundreds of years, to meet essential nutritional and cultural needs. Unfortunately, because of the opposition of this splinter group, and the lack of clear statutory language requiring NMFS to work with organizations that have the authorization of the local tribes, Tyonek was denied the opportunity to harvest a beluga during 1999.

Interim Agreement for 2000

The good news is that CIMMC and the Alaska Region NMFS personnel have made significant progress toward an interim agreement for 2000. The agreement allows a Native harvest of one strike, to be allocated to the Native Village of Tyonek. The purposes of the agreement are to promote the recovery of the CI beluga, to provide an opportunity for the continuation of the customs, traditions and culture of Alaska Natives by providing a limited harvest of CI beluga whales by the Native Village of Tyonek to meet their subsistence needs, and to promote scientific research on CI beluga whales and their habitat. The agreement puts in place a number of harvest practice regulations proposed by CIMMC hunters which are designed to help insure against the loss of the whale, and to minimize the possibility of taking a pregnant female. The agreement also makes the sale of edible beluga parts illegal. In the event there is a loss of beluga whales through strandings or other causes, NMFS, CIMMC and the Native Village of Tyonek will meet and determine whether to proceed with the hunt permitted by the agreement. The decision will be based on the best available information and consistent with the primary goals of the agreement.

Before the interim agreement can go into effect, it must be approved by NMFS's Washington, D.C. office. Even then, it cannot be implemented until after the completion of an Environmental Impact Statement that is currently under development to assess federal activities necessary to halt the observed decline and promote the recovery of the Cook Inlet stock of beluga whale. See 64 Fed. Reg. 66901. In light of the congressional moratorium in place with regard to Cook Inlet beluga whales, the approval of a co-management agreement that allows a harvest of a Cook Inlet beluga is viewed as a federal action that must be analyzed under the applicable provisions of the National Environmental Policy Act.

In the meantime, CIMMC has made little progress toward reaching agreement with NMFS on a comprehensive and on-going co-management agreement. Its most recent draft of a comprehensive co-management plan was submitted to NMFS during the Symposium Forum on the Conservation and Sustainable use of Cook Inlet Beluga Whales in Anchorage on March 10-11, 1999. Because of the intervening events chronicled above, no discussions have occurred between CIMMC and NMFS on the proposed co-management plan. We are hopeful that once the interim agreement is in place, the parties can resume discussions on a long-term co-management agreement. We view co-management of this stock as an effective means of conserving and recovering the Cook Inlet beluga while also protecting the traditional subsistence uses of Alaska Natives. We also believe that co-management will provide for regulation of this stock at sustainable levels.

Recommendations for Improvements in the MMPA based on the Cook Inlet Beluga Experience

We strongly believe that self-regulation and co-management should have been the way to avoid the situation we find ourselves in with regard to Cook Inlet beluga. To better facilitate co-management in the future, we believe the provisions of Section 119 need to be strengthened to reflect true co-management. Primary among our suggestions are the following:

- 1. The definition of Alaska Native Organization (ANO) contained in 16 U.S.C. 1362 (23) should be amended to mean an Alaska Native Tribe or tribally authorized group. This would ensure that all ANOs have the support of the local tribes, and will have an effective means of enforcing regulations governing the harvest of marine mammals through tribal ordinances. It would also address the problem posed by disgruntled hunters who do not wish to abide by tribal regulations. They would be foreclosed from asserting the right to negotiate a separate agreement unless they have the support of the local tribes.
- 2. Co-management agreements authorized in Section 119 should be strengthened to authorize the parties to a Section 119 co-management agreement to enforce the provisions of the agreement. At the same time we strongly oppose any changes to Section 101(b), the Native Exemption provisions of the Act. We do not think it necessary to change the existing authorities of the agencies prior to depletion except as negotiated by the parties in the context of a co-management agreement.
- 3. Funding for co-management needs to be increased so that Alaska Native organizations can be meaningfully involved in co-management.
- 4. Traditional knowledge gives excellent information about beluga population trends, habits, habitats, migration patterns, harvest levels, subsistence uses, and much other valuable information. There needs to be adequate funding for CIMMC to collect traditional knowledge and it needs to be integrated into the scientific research in a way that managers are able to benefit from both sources of information. While it is essential to document important traditional knowledge of hunters who have the most knowledge about marine mammals, Alaska Native Organizations need to be given a meaningful role in scientific research as well.
- 5. Finally, the agencies should be required to move more quickly on requests from ANOs for co-management agreements. We firmly believe that self-regulation and co-management could have averted last year's crisis in Cook Inlet. However, without adequate funding and support from NMFS on co-management, ANOs will continue to be strapped in terms of effectively communicating with hunters, producing educational materials, meeting regularly, or being meaningfully involved in harvest monitoring, research, regulation of the harvest or enforcement of those regulations.

Conclusion

Section 119 of the MMPA has proved to be an important tool in terms of marine mammal conservation. It is an effective way to conserve marine mammals and provide for traditional subsistence uses of Alaska's Native people. We believe the co-management provisions can be strengthened in a way that will benefit not only Alaska's tribes, but also the federal agencies, and further their mutual efforts to conserve and wisely manage the Cook Inlet beluga population.

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