

Testimony of Mike Miller
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Hearing Before the
House Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

Regarding H.R. 2714, A Bill to Amend the Marine Mammal Protection Act of 1972

October 25, 2011

Chairman Fleming, Ranking Member Sablan, Congressman Young, and Members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. My name is Mike Miller, and I am here on behalf of the Indigenous People's Council for Marine Mammals (IPCoMM). I am also Chairman of the Sitka Marine Mammal Commission and on the Tribal Council for the Sitka Tribe of Alaska. I have been involved in marine mammal management issues for many years. Thank you for the opportunity to testify before the Subcommittee on an important issue for Alaska Native coastal communities, the harvest of sea otter for subsistence and the use of sea otter pelts to make handicrafts, which are impacted by H.R. 2714, a bill to amend the Marine Mammal Protection Act of 1972 (MMPA).

First of all, let me explain what IPCoMM is all about. IPCoMM is a coalition of Alaska Native Tribes and Tribally authorized Alaska Native Organizations (ANOs), formed to address marine mammal issues of concern. We were formed in 1992 to ensure reauthorization of the MMPA and to address cooperative management between Tribes or ANOs and the Federal government for the management of marine mammals. One marine mammal that is highly problematic for coastal Native communities right now is the sea otter. The significant increase in the sea otter population in areas of the State of Alaska over recent years has severely impacted the availability of important subsistence shellfish for Native and rural subsistence users. At the same time, its abundance provides an opportunity for economic development in rural communities through the sale of Native handicrafts made from sea otter pelts.

Alaska Natives do have an exemption from the MMPA that allows the harvest of sea otter pelts to create "traditional handicraft". Unfortunately, the definition of "traditional handicraft" and the enforcement of the regulations related to sea otter pelts are overly restrictive, overzealous and confusing for all involved. H.R. 2714 attempts to address some of the issues related to the use of sea otter pelts by Alaska Natives, and we greatly appreciate the effort by Congressman Young to take on this issue. We do support the legislation, but we also have some concerns and recommendations that I must raise with the Subcommittee.

We do support the provisions of H.R. 2714 that assist us in meeting our goals of creating long term economic opportunities for our Tribal members, protect our subsistence resources, and support village economies by protecting commercially viable species to be harvested sustainably. We agree that the laws and regulations as they stand now are overly burdensome and limit the

opportunity for traditional, economic use of sea otter pelts. This, in turn, is the main reason for a limited harvest of sea otters. We would like to work with the Congressman Young and the Subcommittee to move forward with provisions that help in meeting these long term goals.

We do have a concern, however, that the language in H.R. 2714 that allows for the sale of unaltered pelts would only be a 'short term fix' with a significant potential for unintended consequences. One such potential consequence would be the overharvest of sea otters, which could ultimately result in further restrictions on subsistence and commercial economies for our Alaska coastal population. We do not want the end result to be a shut down of activities related to sea otter harvest, or further restrictions down the road that hinder Alaska Native use and production of Native handicrafts, or restrictions on subsistence or commercial fisheries. The U.S. Fish & Wildlife Service cannot regulate the harvest in a way that addresses any concern about overpopulations of species in any area, but we are all aware that they can (and do) regulate the harvest and other activities related to populations that become depleted.

We also have a recommendation. H.R. 2714 as currently drafted does not fully address a major contributor to the existing problems and the limited harvest of sea otters; that being, aggressive, overzealous, inconsistent and possibly illegal law enforcement actions on the part of the Department of the Interior, U.S. Fish and Wildlife Service Office of Law Enforcement (O.L.E.). Their actions have made Alaska Natives nervous about exercising their legal right to harvest sea otter and to make and sell handicrafts made from the pelts, despite Congress' intent in the MMPA to provide that subsistence and economic opportunity. Furthermore, the actions on the part of U.S. Fish and Wildlife Service O.L.E. can be disturbing, as there are many stories and allegations about 'entrapment' and 'harassment'. I hope that we can work together to develop some language that will address this issue to enhance, not hinder, the Alaska Native use of the MMPA exemption.

As you are aware, the definition of "Native handicraft" is a large source of the ongoing problems related to the harvest of sea otter, and also with other marine mammals. This is further exacerbated by the lack of consistency between federal agencies (DOI/U.S. Fish and Wildlife Service for sea otters, polar bears and walrus vs. Department of Commerce's National Marine Fisheries Service with regard to seal, sea lion, and whales). These agencies are enforcing the same language in the MMPA regarding definition of "handicraft", but interpreting them differently. There should be some consistency regardless of the marine mammal involved, which raises another concern - that H.R. 2714 only addresses one marine mammal. This could further the inconsistent application of the rules and regulations related to marine mammal harvest. It is our hope that you will consider amending this legislation to cover all marine mammals under the MMPA.

We also want to raise another major concern, which likely cannot be addressed by your legislation, but that I believe is worth noting. This concern is that the U.S. Fish and Wildlife Service is using individual Tribal consultation as a means to eliminate, ignore or diminish recommendations, or consultation, with larger Multi-Tribal Co-Management Organizations. These are inter-tribal organizations working together to solve issues related to marine mammal use and regulation. While it is important to talk to Tribes on an individual basis, it should not be

used to weaken our ability to speak in a unified voice on issues with these multi-tribal organizations formed specifically to target this or other issues. Our effectiveness overall is damaged. Furthermore, the agencies have very limited budgets for tribal consultation. Consultation with a few tribes could quickly use up that entire budget, leaving many out. In sum, it is our strong recommendation that the agencies utilize these existing organizations to ensure meaningful consultation on the issues.

In terms of management of U.S. Fish and Wildlife Service, Office of Law Enforcement, one additional point we must make is that they do not answer to anyone in our Region. For policy guidance, they only go to the Washington, D.C. offices, which are so far removed from the on-the-ground management of marine mammals. I would like to see a strong regional office in Alaska to oversee policy issues related to the enforcement of regulations for the MMPA, which might ensure more consistent application of the laws and regulations.

Additionally, the Fish and Wildlife Service O.L.E does not share anything about its annual budget with the subsistence users. I would like to recommend that until these troubling issues are resolved, a significant portion of that budget be shifted to Marine Mammals Management, specifically Co-management, which has been funded at less than \$30,000 annually in recent years for Statewide Co-Management for Sea Otters. This is not enough to allow for meaningful co-management of this resource.

In closing, we do support the legislation, but would ask that any provision for the sale of unfinished pelts only be considered as part of local Harvest Management Plans as allowed in the MMPA, and be consistent with the existing exemptions of the MMPA related to Alaska Natives. This approach could eliminate the need for geographical divisions as contemplated in H.R. 2714, which addresses only Southeast and South Central Alaska, and the related potential of further confusing enforcement actions. Additionally, we would request that any unaltered pelts that could be sold under this amendment be restricted and prohibited from being made into commercial products by persons who are not exempt under Section 101b of the MMPA.

We would also like to recommend that the Subcommittee consider language changes to address the need for fair and consistent enforcement of the laws and regulations related to marine mammal harvest.

One thing that most parties affected by this issue seem to agree on is that things, as they stand, are not working well at all, if at all. With that in mind, I would like to remind the Subcommittee that unless some vehicle for change is provided, the frustrating, confusing regulatory and enforcement regime will remain the same.

Thank you for the opportunity to testify today, and I look forward to working further with the Subcommittee to amend the bill to address our concerns.