

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

**Testimony of
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Kotzebue, 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
April 6, 2000**

Good morning Mr. Chairman, and members of the Subcommittee. My name is Caleb Pungowiyi. I currently serve as a Special Advisor on Alaska Native Affairs, to the Committee of Scientific Advisors for the Marine Mammal Commission and am a former member of the

Alaska Scientific Review Group . I am also a member of the Indigenous Peoples Council for Marine Mammals (IPCoMM), and a life-long subsistence user of marine mammals. I am testifying today in my capacity as Chair of IPCoMM's Marine Mammal Protection Act (MMPA) Reauthorization Committee, and as a Consultant and former Executive Director of the Eskimo Walrus Commission.

The Indigenous People's Council for Marine Mammals (IPCoMM) is a consortium of fifteen (15) Alaska Native commissions, tribes and organizations working to conserve and protect marine mammal populations and Alaska Native uses of those marine mammals for subsistence and the making of handicrafts and clothing. The Council's members include the following:

1. Alaska Beluga Whale Committee
2. Alaska Eskimo Whaling Commission
3. Alaska Sea Otter and Sea Lion Commission
4. Alaska Native Harbor Seal Commission
5. Alaska Nanuuq Commission
6. Association of Village Council Presidents - IUM

7. Bristol Bay Native Association Marine Mammal Commission
8. Cook Inlet Marine Mammal Commission
9. Eskimo Walrus Commission
10. Inuit Circumpolar Conference
11. Maniilaq Association
12. North Slope Borough Department of Wildlife Management
13. Pribilof Aleut Fur Seal Commission
14. Southeast Native Subsistence Commission
15. Sitka Marine Mammal Council

Together, these organizations cover most of the marine mammal populations found in the coastal waters of Alaska, and represent those Alaska Native villages who are dependent upon marine mammals for their nutrition and culture. The Council is authorized to speak for the Alaska Native community, including the Alaska Federation of Natives, on marine mammal issues and reauthorization of the Marine Mammal Protection Act.

IPCoMM's MMPA Reauthorization Committee was formed to work with the federal agencies, environmental and other special interest groups, and the Congress (1) to ensure that the MMPA's Native exemption is maintained and (2) to advocate for a strengthening of the co-management provisions of Section 119 to give Alaska Natives a more meaningful and effective role in the conservation and management of subsistence uses of marine mammals. Until December of last year, I sat on IPCoMM as the Executive Director of the Eskimo Walrus Commission (EWC). The EWC was formed in 1978 by villages throughout western, northwestern and northern Alaska for a variety of purposes related to the conservation of walrus and the protection of subsistence uses of walrus by Alaska Natives.

Summary of Comments

Alaska Natives have relied on marine mammals for their food, handicrafts, and culture for centuries. They have successfully managed their use of marine mammals, assuring that no more is taken than is needed. Working with their governing tribes, Alaska Natives have created marine mammal commissions and organizations to protect these uses, and to formalize Native management.

The Native take exemption in section 101(b) of the MMPA recognizes these factors by allowing Native take to be regulated only by Alaska Natives unless a species is found to be depleted. For the most part, the exemption has worked well over the past 28 years, and should not be amended. In 1994, the MMPA was amended to add Section 119 which authorizes the Department of the Interior and the Department of Commerce to enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide for the co-management of subsistence use by Alaska Natives. This provision has resulted in a number of effective partnerships between the federal agencies and Alaska Native Organizations to achieve their common goals of conservation and sustainable subsistence uses of marine mammal populations by Alaska Natives. There are, however, several ways in which the co-management provisions of

the Act need to be improved:

1. The work of Native communities and commissions has been increasingly constrained by the lack of funding. I recommend that Congress authorize at least the same levels as authorized in 1994, and that the appropriations be made directly to the Native Commissions so they may extend and expand their work on data collection, self-regulation, enforcement and development of co-management mechanisms.
2. Section 119 should be strengthened to authorize the parties to a Section 119 co-management agreement to enforce the provisions of the agreement. While Native villages should continue to have the principal responsibility for enforcement of harvest conservation and regulatory measures agreed upon and incorporated into a Section 119 agreement, the federal agencies should be empowered, as negotiated by the parties through co-management, to provide a backup role if requested to do so by its co-management partner. IPCoMM members strongly oppose amendments to Section 101(b) to accomplish this goal. We believe any necessary legislative changes can be made in the context of Section 119.
3. The potential threats to marine mammals from pollution, commercial fishing, vessel traffic and other impacts to their ecosystems continue to be of great concern. Additional funding is needed to study these threats - with the full and equal involvement of Alaska Natives - and mechanisms should be retained which protect marine mammal habitat.
4. The definition of "Alaska Native Organization" contained in 16 U.S.C. 1362(23) should be amended to require the organizations entering into co-management agreements to be either tribal governments or organizations authorized by tribal governments to speak and act on behalf of their citizens. This clarification will ensure that an Alaska Native Organization entering into a co-management agreement has the cooperation and support of the local tribal governments in the range of the particular marine mammals at issue, and the means by which to implement and enforce regulations agreed upon in Section 119 agreements.

I will divide my testimony into the following parts: the importance of uses of marine mammals to Native nutrition and culture; the development of co-management agreements between Alaska Native Organizations and the federal agencies; the effective steps being taken by the Native community to ensure conservation of marine mammal species through Section 119 agreements; and suggestions for amendments to the MMPA that would strengthen Section 119, especially as they relate to implementation and enforcement of Section 119 co-management agreements.

The importance of marine mammals to Alaska Natives

As the Congress has consistently recognized over the past 28 years, the use of marine mammals by Alaska Natives is an integral part of their way of life. Marine mammals of all kinds, including walrus, polar bear, sea otter, beluga whales, bowhead whales, fur seals, sea lions and a variety of species of seals, are a key source of food for Alaska Natives living throughout Alaska. Marine mammals supply a preferred fresh food for Alaska Natives throughout the year, as well as a source of barter and trade with inland Natives in exchange for land mammals that may not be available to those who live on the coast. Marine mammals also figure prominently in Native stories, art, traditions, and cultural activities.

Alaska Natives also make a wide variety of handicrafts and clothing from the marine mammals they

harvest. They sew parkas, hats, gloves, and footgear to keep them warm. They make carvings and decorations for their homes and for gifts to their friends and relatives. They barter these items for other items through traditional trading networks throughout Alaska. And they sell what they make to Natives and non-Natives alike.

The sale of handicrafts made of marine mammal by-products has become a crucial source of income in many remote Native villages. Jobs are scarce there, and many have limited ways to make money other than government assistance and the occasional seasonal job. The limited cash that carvers and sewers can make from their handmade clothing and handicrafts therefore is vital in providing at least some cash in the villages to sustain the subsistence hunting and fishing way of life.

They take marine mammals for subsistence purposes and for the use of the non-edible parts for clothing and handicrafts. Fundamentally, the production of handicrafts is not a commercial activity, but a continuation and adaptation to a market economy of an ancient Native tradition of making and then bartering handicrafts and clothing for other needed items.

In short, the taking and use of marine mammals is a fundamental part of Native culture, whether done by a Yupik, Inupiaq, Indian or Aleut. For Natives engaged in subsistence uses, the very acts of hunting, fishing and gathering, coupled with the seasonal cycle of these activities and the sharing and celebrations which accompany them are intricately woven into the fabric of their social, psychological and religious life. The taking and use of marine mammals is so fundamental that Alaska Natives are committed to doing whatever it takes to preserve and protect their rights to harvest these animals.

Section 119 of the MMPA and Self-regulation of marine mammals by Native peoples

Section 119 of the MMPA authorizes the Secretary of Interior and the Secretary of Commerce to enter into marine mammal co-management agreements with Alaska Native organizations and authorizes funds for such agreements. By including Section 119 in the 1994 amendments, Congress acknowledged the fact that 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 Committee Report from the House Committee on Merchant Marine and Fisheries expressed the view that "the best way to conserve marine mammal populations in Alaska is to allow full and *equal participation* by Alaska Natives in decisions affecting the management of marine mammals taken for subsistence." The Committee also noted the success of the co-management agreement between the Secretary of Commerce and the Alaska Eskimo Whaling Commission, and expressed the view that this agreement set an excellent example of the sort of co-management structure envisioned by Section 119. It is clear that Congress intended the Secretaries to extend full cooperation as partners to Alaska Native organizations in the development and implementation of marine mammal management plans.

We could not agree more with those goals. The use by Alaska Natives of marine mammals for literally thousands of years has made Native peoples wise stewards of marine mammal populations. Native cultures throughout Alaska and other countries have developed a comprehensive set of rules, largely unwritten, governing the use of marine mammals. These rules are premised on conservation, the avoidance of waste, and respect for the fish and animals that are used. For the most part, they have worked quite well in regulating Native uses. Unfortunately, most of what is heard or known about Native take tends to be focused on a few Native hunters who behave wastefully.

Because success in hunting requires a good understanding of the behavior of marine mammals and the

environment in which they live, Alaska Natives have also developed a comprehensive body of knowledge about these animals and their habitat. That knowledge is holistic in nature, looking at particular species in the context of their inter-relationships with other species and the environment in which they live. It also is based primarily on experience and the teaching of elders. Relatively little comes from books or university courses.

Taken together, these rules and the indigenous knowledge on which they are based have protected all of the species on which Natives rely for subsistence purposes. So far, no species of marine mammals has been placed in a depleted, threatened or endangered status because of the Native subsistence harvest. It is true that NMFS is now considering whether to list the Cook Inlet beluga whale population as depleted under the MMPA, and one of the primary reasons cited for the proposed listing is the Native harvest. We submit that the Cook Inlet beluga situation is a unique one because of its proximity to the city of Anchorage. Even so, we believe that effective co-management could have averted the crisis that has developed over the Cook Inlet beluga and would have avoided a depleted listing under the MMPA. The Cook Inlet beluga situation does highlight some of the current weaknesses in Section 119, which I will discuss later in my comments.

Suffice it to say, Alaska Natives believe strongly that their traditions, practices and culturally taught rules are sufficient to protect and conserve all marine mammal species used by Native people. But they also understand that they live in a very different setting than that in existence prior to western contact.

Native uses also must now contend with federal and state law, and the agencies which implement and enforce those laws, as well as with the expectations of interest groups, especially the animal rights groups who, to put it charitably, are very concerned with and often opposed to *any* Native uses of marine mammals. While they profess an understanding of Native cultural institutions, many of these agencies and organizations demand from Alaska Natives that they show in concrete terms how Alaska Natives in fact work to conserve marine mammal species.

Faced with the dual demands of protecting and preserving Native cultural practices and of satisfying the desires of others to show concrete examples of Native self-regulation, Alaska Natives have formed a number of marine mammal commissions whose propose is to provide institutional mechanisms for the protection of both Native culture and marine mammal species. You will hear from many of those organizations today, and will receive written testimony from still more. Before highlighting some of the accomplishments of some of the Commissions and some of the co-management efforts under way in some of the Villages, I would like to briefly address from our prospective the progress that has been made in terms of implementing Section 119. I will also address some of the questions the Committee has raised in terms of the length of time it has taken to reach agreement in some cases, and problems that have been encountered in finalizing some of the agreements.

Development of co-management agreements under Section 119

Following the 1994 amendments, and over the course of the next year and a half, Native organizations, including the Alaska Federation of Natives, Alaska Inter-Tribal Conference and IPCoMM, held a series of meetings, facilitated by the Native American Fish and Wildlife Society, RurAL CAP and AFN to discuss co-management principles, policies and protocols, and the implementation of Section 119. Representatives from these organizations reviewed co-management and cooperative agreements from Alaska, lower 48 states, Canada and Russia, and developed a process and a co-management framework for discussion with the National Marine Fisheries Service and Fish and Wildlife Service. From these meetings, we concluded that the best way to approach implementation of Section 119 was for the federal agencies and Alaska Native

representatives to agree to a co-management framework agreement that would guide future co-management agreements between specific Native tribes or tribal organizations and the federal agencies.

A draft proposed framework agreement was submitted to both agencies on April 9, 1996. Representatives from IPCoMM, AITC and AFN traveled to Washington, D.C. in May, 1996 to meet with NMFS and FWS officials about the proposed approach. Both agencies agreed that the "umbrella" agreement provided a good starting point upon which to base future efforts for completion of a final document. Although the negotiations proceeded slowly, they 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.

A. U.S. Fish and Wildlife Service

Section 119 of the MMPA authorized the appropriation of funds to the Secretary of Interior (\$1,000,000) and the Secretary of Commerce (\$1,500,000) to implement co-management activities in Alaska. It was not until fiscal year 1997 that funds were actually appropriated to the Department of Interior -- and then only in the amount of \$250,000 to support co-management activities on sea otters, polar bears and walrus. No funds were appropriated to the National Marine Fisheries Service to support co-management efforts.

Despite the fact that the Umbrella agreement had not been finalized, FWS signed a cooperative agreement with the Alaska Sea Otter Commission on March 5, 1997, and the Alaska Nanuuq Commission and the Eskimo Walrus Commission on February 19, 1997. Those agreements funded a wide variety of management issues including: (1) commission co-management operations, (2) biological sampling programs, (3) harvest monitoring, (4) collection of Native knowledge in management of marine mammals, (5) international coordination on management issues, (6) cooperative enforcement of the MMPA and (7) development of local conservation plans.

In the spring of 1997, FWS and its three co-management partners also held a workshop to discuss future expectations and to outline a shared vision of co-management. During this workshop, we discussed activities that are important to the conservation of sea otters, walrus and polar bear and the co-management of subsistence use by Alaska Natives. We also explored ways in which we could share resources and responsibilities to accomplish the work. We developed a three-year plan for co-management activities. Specific objectives for each species were identified to accomplish the agreed upon co-management goals.

Since 1997, FWS has renewed the cooperative agreements with the Alaska Sea Otter and Sea Lion Commission, the Eskimo Walrus Commission and the Alaska Nanuuq Commission on an annual basis. Unfortunately, however, the funding for co-management activities has remained at the 1997 level of only \$250,000, making it difficult to realize many of the agreed upon co-management goals.

B. National Marine Fisheries Service

In the case of the endangered bowhead whale, quotas for their subsistence take, which are set by the International Whaling Commission, have been successfully implemented for decades through a cooperative agreement between the National Oceanic and Atmospheric Administration in the Department of Commerce and the Alaska Eskimo Whaling Commission, under the authority of the Whaling Convention Act. The AEW and the Inupiat people of the North Slope of Alaska also play a crucial role in the on-going collection of population and harvest data, which enables the IWC to set the annual subsistence harvest levels. The AEWC enforces both the quota and its own harvest regulations. Research is conducted both independently

and in partnership with whale biologists from other organizations; regulation and allocation is almost entirely the responsibility of the AEWC and its member tribes; and the AEWC has principal responsibility for enforcement, with the federal government providing only a backup role. The AEWC has addressed management issues ranging from harvest levels, equipment and safety, to humane and nonwasteful hunting practices. The Commission has acted decisively to discipline the rare hunter who does not comply with all of the harvest regulations adopted through co-management.

In terms of Section 119 Agreements, unlike FWS, NMFS declined to begin negotiations on individual co-management agreements with Alaska Native Organizations until the "umbrella" agreement was signed in August 1997. The first agreement finalized pursuant to Section 119 was between NMFS and the Alaska Native Harbor Seal Commission. The ANHSC submitted a proposed draft co-management agreement to NMFS in December 1997. Negotiations on the agreement did not begin in earnest until the spring of 1998, and were not completed until April 28, 1999. The Agreement calls for the creation of a co-management body, composed of three representatives from NMFS and three from ANHSC. The co-management body will develop an annual action plan to guide joint and separate management actions by both ANHSC and NMFS related to the conservation and management of subsistence uses of harbor seals. The Action Plan is expected to include population monitoring, harvest management provisions, including a bio-sampling program, and measures to encourage the development of local and regional harvest management plans that incorporate local harvest practices and ensure that harbor seals are used for subsistence in a sustainable and non-wasteful manner. The co-management body has been created and is now working toward the development of its first annual Action Plan.

The Alaska Beluga Whale Committee has also completed its negotiations with NMFS on a co-management agreement. Its agreement was not finalized until December, 1999. The ABWC began its negotiations in early 1997. The latest draft was presented and discussed in a March 1999 Science Workshop with ABWC members. The parties met in September to finalize the draft agreement. The final draft was reviewed by NOAA's General Council and ABWC members prior to final signing in December. Although the negotiations took several years, ABWC had been operating in the co-management mode for almost 10 years. It felt the need to move slowly on a co-management agreement to make sure all of their member Villages were informed and agreed with its provisions. The Agreement provides that ABWC, which includes representatives from NMFS and the ADF&G as well as representatives from member Villages, to prepare a Management Plan setting forth principles governing conservation, subsistence harvesting, reporting and monitoring, research, public involvement and enforcement. ABWC, through management regions and in cooperation with NMFS, will manage subsistence hunting by all member villages in Alaska who hunt from the Western Alaska population of beluga whales. Any necessary enforcement will be accomplished in accordance with the provisions of the local or regional management plans, which must be in accordance with the ABWC management plan and the Agreement between ABWC and NMFS.

The NMFS regional staff and the Cook Inlet Marine Mammal Council (CIMMC) have concluded an "interim" 2000 co-management agreement for Cook Inlet beluga. That agreement has yet to be approved by NMFS Washington, DC office. Although CIMMC has been actively pursuing a long-term co-management agreement with NMFS since 1994, its attempts have yet to result in an agreement. Initially, NMFS deferred discussion of an agreement until after the "umbrella" agreement between NMFS, USFWS and IPCoMM was completed. This was true even though in May 1997, NMFS had written to the Alaska Regional Scientific Review Group, which was pressing NMFS to enter into co-management discussions 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 long-term co-management agreement has yet to be negotiated. We believe that had a co-management agreement been put in place, CIMMC and ABWC would have been in a better position to enforce conservation measures adopted by both organizations to curtail the growing Native harvest of Cook Inlet beluga whales. For a complete description of the efforts of CIMMC to negotiate a co-management agreement with NMFS, I refer you to the written comments of Daniel Alex, Executive Director of CIMMC.

Finally, the NMFS is currently negotiating with the Tribal Government of St. Paul toward an agreement for the co-management of Stellar Sea Lions on St. Paul Island. It is also preparing to begin negotiations with the Alaska Sea Otter and Sea Lion Commission on Stellar Sea Lions.

Co-management Activities and Village Initiatives

I would like to briefly highlight some of the co-management activities of the Eskimo Walrus Commission, and the efforts underway in some of its member Villages. The Committee will hear later today from representatives of other Marine Mammal Commissions, all of which will provide a description of their accomplishments and experiences with Section 119 co-management.

The Eskimo Walrus Commission was formed in 1978 by villages throughout western, northeastern and northern Alaska. One of its purposes is to encourage self-regulation of walrus hunting and management of walrus by the Alaska Natives who use and need walrus to survive. It also seeks to assure full utilization of walrus; to involve users in the decision-making process, and scientific, biological and research programs; to encourage the United States government to cooperate with other nations in studies, enforcement, and other involvement in the well-being of marine mammals. The EWC has 19 commissioners who act on behalf of the walrus hunting communities. It functions under the auspices of Kawarak, Inc., a non-profit arm of the Bering Straits Native Association.

In 1997, the EWC and the U.S. Fish and Wildlife Service entered into a co-management agreement under Section 119 of the MMPA. EWC received \$80,000 in FY 1998, and the same amount in FY 1999. It received a slight increase to \$83,000 in FY 2000. Under its agreements, with FWS, EWC has monitored the subsistence harvest of walrus in the villages of Gambell, Savoonga, Wales and Diomed. The lack of funding has prevented monitoring the walrus harvest in other communities. There is also a recognized need to monitor the level of harvest by Russian hunters. EWC has been involved in discussions with Russian Natives about the need for a joint bilateral native-to-native and government-to-government agreement on the management of Pacific walrus, similar to the efforts now underway between the U.S. and Russian with regard to Polar Bears. Much information is needed to accurately assess the population size, life history, composition of the subsistence harvest, and the health of the walrus. The EWC has also been quite active in promoting non-wasteful uses of walrus; and in pursuit of this goal, it has cooperated with FWS in the prosecution of the few hunters who behave wastefully.

In September 1995, EWC entered into a cooperative agreement with ADF&G, the Qayassiq (Round Island) Walrus Commission and FWS to establish a co-management plan for a limited subsistence hunt on Round Island. Under the agreement, Native hunters honor a self-imposed harvest limit and season. EWC, QWC, FWS and ADF&G monitor the hunt activities to assess the impact of the harvest of walrus abundance and behavior.

The Villages of Gambell and Savoonga on St. Lawrence Island have come to realize the value of formally promulgated ordinances regulating the take of marine mammals. The village of Gambell, for example, has a

comprehensive marine mammal-hunting ordinance. Savoonga is in the process of finalizing a similar ordinance. The ordinances set up a mechanism for monitoring take, setting harvest limits, and contain specific enforcement policies and proceedings. The villages are now working cooperatively on a joint regulatory approach for the take of walrus, by which the villages will agree on harvest guidelines and then enter into a cooperative agreement to recognize the ordinances with respect to the uses of walrus by the members of the other village. This will enable both villages to enforce the ordinances of the other village.

The Value of the Native Commissions and Co-management

The description of the formation and work of the Alaska Native Organizations demonstrates the important role the Commissions have played in the conservation and management of marine mammals in Alaska. First, they operate to provide information to and advocacy on behalf of Native marine mammal users. Second, they work to develop regulatory structures that govern and control the subsistence harvest with the villages. Because the ANO's work hand in hand with the federal agencies on issues of conservation and co-management of the subsistence harvest, there are fewer conflicts between the agencies and subsistence users. Adequate and stable funding can enhance the effectiveness of the ANO's, by ensuring that each Marine Mammal Commission has the base funding needed to at least enable them to retain staff and operate a functioning organization.

There is wide spread support for co-management as an effective conservation tool. Marine Mammal Commissions have been helpful in providing researchers with measurements and had-to-obtain tissue samples from animals harvested for subsistence purposes. Their work in providing accurate harvest data has been critical to documentation of population trends. Much of this work can be done locally, by subsistence users, at a fraction of the cost that would be involved if the federal agencies had to rely solely on their own resources for this work.

Perhaps one of the shortcomings of all of the co-management agreements, with the exception of the one between NOAA and the Alaska Eskimo Whaling Commission, is the fact that the decisions reached through the co-management process are not always enforceable against all hunters. Under the existing provisions of Section 119 and existing law, the agency and a Marine Mammal Commission, through co-management may decide on action that should be taken in terms of conservation and the subsistence harvest. However, if a hunter who is not a tribal member decides not to comply, the agency takes the position that it cannot help with the enforcement unless the stock is depleted. If the problem hunter is not a member of one of the local tribes, there is currently no way to enforce tribal regulations adopted in accordance with a co-management plan. Ideally, harvest management measures adopted through co-management would be enforceable by both parties to the agreement.

The enforcement problem surfaced most notably in the case of Cook Inlet beluga whales. The Cook Inlet Marine Mammal Council, tribally authorized by all of the tribes in the range of the Cook Inlet beluga, adopted regulations designed to curb the Native harvest of Cook Inlet beluga in the mid-1990's. They imposed a hunter registration program, harvest restrictions, a ban on the commercial sale of beluga and on non-local hunting. When hunters from other parts of the State refused to abide by the local tribes' regulations, CIMMC turned to NMFS for assistance. NMFS took the position that it could do nothing prior to a determination that the population was depleted. While we believe the agency could have halted the commercial hunt under existing authorities, the clearest way to address this issue and to prevent its reoccurrence is to enable both parties to a co-management agreement to enforce its provisions.

While Section 119 was a step in the right direction, it fell short in terms of giving Native Organizations a

substantial and authoritative role. Tribal regulations, adopted through co-management should be adopted and enforced as tribal and federal law. Just as is the case in the AWEC agreement, federal enforcement should only come into play when requested by the co-management partner, in support of actions jointly agreed upon in the co-management context.

Suggested Amendments to Section 119 that will Strengthen Co-Management

Before making suggestions to the Committee with respect to changes to the MMPA, I want to state strongly that IPCoMM does not support any amendments that will or that could weaken the current Native take exemption in section 101(b) of the Act. That exemption has worked very well to date; it purposefully and properly gives Alaska Natives the sole responsibility for regulating their own take so long as it is not wasteful, provided the species is not found to be depleted; and it helps preserve Native customs and traditions by allowing Natives to follow their traditional practices free of intrusive and often inappropriate federal regulation.

I do have several suggestions that I think would improve Section 119 of the MMPA from the standpoint of Alaska Natives. First, as I have previously discussed, the Native community is hard at work collecting data on marine mammal populations and health, participating in federal, state and private research, monitoring take, developing ordinances, and enforcing both the ordinances and their traditional rules. These efforts have been stymied to a large extent by a lack of adequate funding. I accordingly suggest that the Congress again authorize the appropriation of funds for the purpose of further building and sustaining Native institutional capacities for self-regulation of Native take of marine mammals. In particular, such funding would enable greater research and harvest monitoring and the development of formal codes and ordinances and of databases, and would also support the work of Native Marine Mammal Commissions as they work for both self-regulation and stronger co-management relationships with the federal and state governments. The Native Commissions cannot be equal partners in the co-management process without adequate funding.

Second, Section 119 could be strengthened to authorize the parties to a Section 119 agreement to enforce the conservation and regulatory measures agreed upon and incorporated into a Section 119 co-management agreement. At the same time, as I've previously noted, we do not support any changes to section 101(b). We do not think it is 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. Obviously, the Native Marine Mammal Commissions though their authorizing tribal governments should have the principal responsibility for enforcement of all such regulations, but the federal agencies should be empowered as negotiated by the parties through co-management, to provide a backup role if the parties agree to such a role through co-management. In a like vein, we believe the Secretaries should try, to the maximum extent possible, to work with the affected Alaska Native Organization in crafting and implementing regulations adopted after a finding of depletion. Those regulations should be implemented through co-management.

Third, the definition of "Alaska Native Organization" contained in 16 U.S.C. 1362(23) should be amended to require the organizations entering into co-management agreements to be either tribal governments or organizations authorized by tribal governments to speak and act on behalf of their citizens. This clarification will ensure that Alaska Native Organizations entering into co-management agreements have the cooperation and support of the local tribal govern-ments, as well as the legal means to implement and enforce regulations agreed upon.

Fourth, co-management bodies created pursuant to Section 119 should be expressly exempted from the Federal Advisory Committee Act (FACA). While a co-management body composed of Federal and Tribal

officials is not subject to FACA, the Act has prevented these co-management bodies from utilizing technical committees as part of their overall co-management plan. The Scientific Review Groups established under Section 117 of the MMPA are not subject to FACA. We believe co-management bodies created under Section 119 should likewise be exempted. There is general agreement between NMFS, FWS and IPCoMM on this issue.

Fifth, traditional knowledge gives excellent information about marine mammal population trends, habits, habitats, migration patterns, harvest levels, subsistence uses and much other valuable information. There needs to be adequate funding for ANO's to collect traditional knowledge and it needs to be integrated into 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, ANO's need to be given a meaningful role in scientific research as well.

In 1994 Congress added Section 110(d) to the MMPA. That section directed the federal government to undertake ecosystem based research and monitoring programs for the Bering Sea. The purpose of this research program was to identify the cause of the ecosystem decline and to ensure Natives were given a prominent role in the development and implementation of that program. Since enactment, several steps have been taken to carry forward the requirement. Unfortunately, however, not enough has been done and the intent behind the 1994 Bering Sea ecosystem directive in the MMPA has gone largely unfulfilled. For that reason, IPCoMM recommends to the Committee that it reauthorize Section 110(d) of the MMPA.

Finally, the agencies should be required to move more quickly on requests from ANO's for co-management agreements.

Thank you for the opportunity to testify. I will be happy to answer any questions that the Committee may have.

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