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**Testimony on H.R. 2714 to amend the Marine Mammal Protection Act of 1972
to allow the transport, purchase, and sale of pelts of, and handicrafts, garments,
and art produced from, Southcentral and Southeast Alaska northern sea otters
that are taken for subsistence purposes**

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Chairman Fleming and members of the House of Representatives Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, thank you for inviting me to testify before you on H.R. 2714, a bill to amend the Marine Mammal Protection Act of 1972 to allow the transport, purchase, and sale of pelts of, and handicrafts, garments, and art produced from, Southcentral and Southeast Alaska northern sea otters that are taken for subsistence purposes. I am Timothy Ragen, Executive Director of the Marine Mammal Commission.

The Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 has been an effective tool in protecting and conserving marine mammals and restoring the ecosystems of which they are a part. The heart of the Act is a moratorium on the taking and importation of marine mammals and marine mammal products, as set forth in sections 101 to 103 of the Act. The Act provides certain exceptions to the moratorium, one of them being an exemption allowing the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes; or
- (2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and
- (3) in each case, is not accomplished in a wasteful manner.

The legislative history behind the exemption for Alaska Natives recognizes the value of maintaining Alaska Native cultures that are based, to a significant degree, on subsistence uses of marine mammals. However, the legislative history and the statutory provisions themselves also draw a clear line between subsistence harvesting and maintenance of cottage industries based on creating

and selling traditional handicrafts on the one hand, and commercial use of marine mammals on the other. The amendments included in H.R. 2714 would blur this longstanding distinction. For that and other reasons, the Marine Mammal Commission opposes H.R. 2714. Among our major concerns with the bill are the following—

Commercial harvest: In effect, H.R. 2714 would open the door to commercial harvesting of sea otters by allowing the sale of unaltered pelts and the export of non-traditional handicrafts, garments, and art objects using pelts that have not been significantly altered. Although the initial taking would be limited to Alaska Natives, there is nothing in the bill that prevents sales to or subsequent creation of handicrafts, garments or art objects by non-Natives. Once items have been exported, there is nothing that would prevent the recipient from using the pelts to fashion coats or other marketable items. Opportunities for foreign manufacturers to rely on items from Alaska as the source for sea otter pelts currently is very limited due to the requirement that marine parts be significantly altered from their natural form in the course of creating traditional handicrafts and articles of clothing for sale. As discussed below, the Marine Mammal Protection Act already includes provisions under which commercial uses of non-depleted marine mammals, including sea otters, can be authorized. Those provisions offer a preferable means for authorizing the activities that would be encompassed under H.R. 2714.

Enforcement: H.R. 2714 would confound enforcement of the Marine Mammal Protection Act in at least two ways. First, enforcement officers would have no readily available basis for distinguishing sea otters from the threatened Southwest Alaska population from otters from the Southcentral and Southeast populations. Second, the bill would create two classes of handicrafts—those made from sea otters taken initially for subsistence purposes under section 101(b)(1) of the Act and those taken specifically for purposes of creating and selling handicrafts under section 101(b)(2); the latter would remain subject to the limitations in that provision on what items could be made and sold. The bill does not provide a good way of distinguishing between these two categories of handicrafts. The Cook Inlet beluga whale case has taught us that even small economic incentives can lead to over-harvest of a subsistence resource with potentially significant impacts on the affected stock(s).

Cultural and economic impacts: The sale of unaltered sea otter pelts within and outside the United States, coupled with allowing non-Natives to obtain unaltered pelts and fashion and sell handicrafts, garments, and art objects made from those pelts has a significant potential to undermine those Alaska Native cottage industries that currently produce and sell authentic native articles of handicrafts and clothing. By opening up the scope of items that could be manufactured and sold, the bill also may encourage some Natives to abandon the cultural traditions that motivate and shape the items that they create.

Precedence: The commercial sale of sea otter pelts from the United States would undermine U.S. policy and diplomacy in a number of international fora established to regulate commercial uses of marine mammals and would open the United States to claims that it was exercising preferential treatment to domestic products. Historically, the United States has told other countries interested in exporting similar products to the United States (e.g., seal skins and products from Canada) that they must avail themselves of the waiver provisions of the Marine Mammal Protection Act to secure the necessary authorizations.

Relaxing the requirements with respect to sea otters also may lead to claims of unfairness by Alaska Natives who rely on and utilize other marine mammal species. The precedent that the bill would set may lead to a broader call to relax the standards governing the subsistence and handicraft use of other species.

Fishery management: The Commission's understanding is that the impetus behind this bill may have been an interest to address a fishery management issue. If that is the case, the issue warrants full description and review before measures as significant as those proposed in H.R. 2714 are enacted. Among other things, any such review should consider not only potential ecological interactions between sea otters and fisheries, but also the valuable role that sea otters play in the ecology of nearshore ecosystems. Furthermore, proponents of the bill should explain why other statutory provisions (e.g., section 118 of the Marine Mammal Protection Act) designed to address marine mammal-fishery conflicts are not adequate mechanisms for addressing those concerns.

The waiver option: Section 101(a)(3) (A) of the Marine Mammal Protection Act allows the Secretary of the Interior (in this case) to waive the moratorium on taking marine mammals provided that such taking is in accord with sound principles of resource protection and conservation and is consistent with the purposes and policies of the Act. Section 103 (b) sets forth the basic factors that must be considered in prescribing regulations related to a waiver. Those factors are aimed at determining the effect of such regulations on—

- (1) existing and future levels of marine mammal species and population stocks;
- (2) existing international treaty and agreement obligations of the United States;
- (3) the marine ecosystem and related environmental considerations;
- (4) the conservation, development, and utilization of fishery resources; and
- (5) the economic and technological feasibility of implementation.

Because the Marine Mammal Protection Act already contains a provision for waiving its requirements and that provision sets forth specific factors to be considered, the Marine Mammal Commission believes that the waiver process provides a better mechanism for reviewing, considering, and resolving the factors that have led to the proposal of H.R. 2714.

Thank you, Mr. Chairman and members of this Subcommittee. I will do my best to address your questions.