

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 Peoples Council for Marine
Mammals

October 30, 2006

Definitions

ANO(s)	Alaska Native Organizations, including but not limited to Alaska Native Tribes, and tribally authorized co-management 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.

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Indigenous Peoples 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 Peoples 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 Peoples 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 Peoples 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 (MMPA Section 119 is attached as Appendix A.)

- 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.

- 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 co-management 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) Managing 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.

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

10/30/2006
Date

Charles D.N. 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)