

Aleut Marine Mammal Commission
P.O. Box 920045
Dutch Harbor, Alaska 99692

1514-10-11-03
AMMC
11-9-06
13pp

November 9, 2006

Kaja Brix
Regional Director
U. S. Department of Commerce
National Oceanic Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Ref. AMMC/NMFS Co-Management Agreement

Dear Ms. Brix:

Enclosed is the National Marine Fisheries Service signed copy of the AMMC/NMFS Co-Management Agreement. The Aleut Marine Mammal Commission has retained one of the original signed copies of the agreement for our records.

Prior to signing the agreement it was noted the "foot note" contained an error and the correction has been penned in to reflect this agreement is the "AMMC/NMFS Co-management Agreement". Additionally the agreement we received only contained eleven (11) pages of the twelve page document, as noted on the bottom right corner of the agreement. We assumed page 12 contains a list of the attachments (AMMC/ANHS Native to Native Agreement, tribal resolutions, authorities) we agreed would be included in the agreement. Would you please verify this and send a copy of page 12 and copies of the attachments for our records?

In closing, I would like to express our gratitude to you and your staff for the cooperative working relationship you have helped to establish between our agencies, and look forward to working with you in the upcoming year ahead.

Sincerely,



Peggy N. Osterback
Executive Director

Enclosures

AGREEMENT BETWEEN
THE ALEUT MARINE MAMMAL COMMISSION
AND
THE NATIONAL MARINE FISHERIES SERVICE

I. PURPOSES

- A. This Agreement is by and between the Aleut Marine Mammal Commission (“AMMC”) and the National Marine Fisheries Service (“NMFS”) (collectively “Parties”) to set forth an operational structure for the conservation and management of all marine mammal subsistence species under NMFS jurisdiction in the AMMC Region as further described in this Agreement, with particular focus on the species *Eumetopias jubatus* and *Phoca vitulina* referred to respectively, as the Steller sea lion and harbor seal (both collectively herein “Species”) and in order to achieve the following goals:
1. To promote the sustained health of the Species in order to protect the culture and way of life of Aleut and other Alaska Natives who rely on the harvest of the Species for subsistence uses in the AMMC Region
 2. To promote scientific research and the collection of data, including the traditional knowledge of Aleut and other Alaska Natives, in order to facilitate management decisions concerning the Species in the AMMC Region and elsewhere as appropriate;
 3. To develop an Action Plan for the conservation of the Species and the co-management of subsistence uses of the Species in the AMMC Region;
 4. To identify and resolve, as early as possible, through a consultative process, any management conflicts that may arise associated with the Species; and
 5. To provide information to subsistence hunters and the public at large, as a means of increasing the understanding of the sustainable use, management and conservation of the Species.

II. GUIDING PRINCIPLES

- A. The primary consumptive users of the Species are the Aleut and other Alaska Natives in the AMMC Region who are committed to a long-term, sustainable harvest of the Species for food and handicrafts. Their long history of self regulation coupled with their rich oral tradition and day-to-day contact with the Species gives them special insights into and knowledge of the Species.

- B. NMFS has expertise in biological, ecological and resource management science. Under the Marine Mammal Protection Act, as amended, NMFS is mandated to prevent marine mammal population stocks from diminishing beyond the point at which they cease to be a significant functioning element in the ecosystem, to prevent population stocks from being diminished below their optimum sustainable population and to maintain population levels that will allow sustainable subsistence harvests by Aleut and other Alaska Natives.
- C. The best way to conserve and provide stewardship of marine mammal populations that are critical to the subsistence lifestyle of Aleut and other Alaska Natives in the AMMC Region is through a partnership between the federal agency with management authority and AMMC, and by providing for full and equal participation by Aleut tribes in decisions affecting the subsistence management of marine mammals to the maximum extent allowed by law. This project is essential to the agency's mission to conserve and manage marine resources.
- D. A key to the success of this partnership is to incorporate the spirit and intent of co-management by building trust and by establishing close cooperation and communication between the two Parties and their constituents. Shared decision-making shall be through consensus, based on mutual respect and understanding of each Party's cultural perspective. This project could not be accomplished at all or as well without participation of the AMMC because subsistence marine mammal harvests and observations are highly variable and distributed across large spatial and temporal scales.

III. AUTHORITIES

- A. NMFS has authority to enter into this Agreement with AMMC under Section 119 (16 U.S.C. §1388) of the Marine Mammal Protection Act of October 21, 1972, as amended (“MMPA”); and the Endangered Species Act of December 28, 1973, as amended (“ESA”) (16 U.S.C. §1531 et seq.). 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 85); U.S. Department of Commerce Memorandum “American Indian and Alaska Native Policy of the U.S. Department of Commerce” of March 30, 1995; Secretarial Order No. 3225 of January 19, 2001 (“Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)”) and the “Memorandum of Agreement for Negotiation of Marine Mammal Protection Act, Section 119 Agreements” of August 27, 1997.
- B. AMMC has the authority to enter into this Agreement under its corporate charter, bylaws and authorizing resolutions from the federally recognized Aleut tribes, which resolutions are attached as Appendix A and incorporated herein by reference. Further, AMMC is an “Alaska Native organization” under the MMPA

and, as such, may enter into this Agreement to co-manage the subsistence use of marine mammals.

IV. SCOPE

- A. Excluding lands and waters encompassed by co-management agreements between NMFS and St. George Island, the Aleut Community of St. Paul Island or the Pribilof Islands Aleut Communities of St. Paul and St. George Islands, this Agreement encompasses all the lands and waters of the Aleut Region as described in and established under the Alaska Native Claims Settlement Act (“AMMC Region”). This may generally be described as the area west of approximately west longitude 158, including the lands and waters of the Alaska Peninsula, the Shumagin Islands and other islands off shore of the Alaska Peninsula, along with the lands and waters of the Aleutian Islands, to east longitude 172 degrees in the vicinity of Attu Island.
- B. This Agreement encompasses the AMMC Region as described above. However, specific actions taken or recommendations made pursuant to this Agreement may be limited to certain regions or sub-areas, as deemed appropriate.

V. OPERATIONAL STRUCTURE

- A. Co-Management Committee. Recognizing the need for a joint effort to conserve the Species in the AMMC Region and to maintain a sustainable harvest for subsistence uses, the Parties agree to establish a Co-management Committee (“Co-management Committee” or “Committee”).
 - 1. Composition. The AMMC and NMFS shall each appoint 3 members to the Co-management Committee upon the signing of this Agreement. The Committee shall be comprised solely of Federal and Tribal government representatives acting in their official capacities. The members of the Committee shall serve at the pleasure of the Party by which they were appointed. The Committee shall select its Chair(s) by consensus.
 - 2. Meetings. The Committee shall hold an annual meeting and may hold other meetings, as necessary, at the request of either Party. The Chair(s) shall circulate a draft agenda for comment in advance of each meeting. A quorum of four members is required for a meeting to be held. Decisions of the Committee shall be through consensus, based on mutual respect. Meetings of the Committee shall be open to the public. The Committee may also hold executive sessions.
 - 3. Actions. The Co-management Committee shall develop a management action plan for the Species in the AMMC Region as set forth in Section VI below (“Action Plan”).

VI. ACTION PLAN

- A. The Action Plan will be the guiding document for joint and separate management actions by the AMMC and NMFS related to the conservation and management of subsistence uses of the Species. In developing and revising the Action Plan, the Committee shall consider technical information, and such non-technical information including cultural, ethical, policy and legal concerns, as it deems appropriate. The Committee will evaluate its Action Plan annually and update it periodically as necessary.
- B. The Co-management Committee shall prepare and/or update the Action Plan describing relevant information, specifying mutually agreed upon actions to be implemented by NMFS and the AMMC, and setting forth recommendations for additional activities that would promote Species conservation. The Action Plan will be composed of the following five sections:
1. Population monitoring;
 2. Harvest management;
 3. Education;
 4. Research recommendations; and
 5. Other recommendations.
- C. Under each of these sections, the Action Plan will summarize past activities and describe anticipated activities, including the following:
1. Summary of recent progress and new information; and
 2. Outline of future goals and activities.
- D. The Action Plan will be developed in a step-wise fashion along the following lines:
1. Recent progress and new information pertaining to population monitoring, harvest management, and education activities will be reviewed;
 2. The Co-management Committee, through an integrative discussion of the aforementioned three items will identify information and conservation needs (e.g., information gaps, threats to healthy populations, and potential conservation measures);
 3. Identified needs will be prioritized and considered on a case-by-case basis for sharing responsibility between NMFS and the AMMC by implementing them as action items; and

4. These needs can be transformed to action items in one of three ways as part of the Action Plan:
 - a) If either Party is prepared to voluntarily commit its resources to implement an action item (e.g., conduct a survey, develop a monitoring plan, initiate an educational program), then the Parties will agree on which Party is to be responsible for undertaking that work during the forthcoming year (and the action item will be incorporated into the population monitoring, harvest management, and education sections of the Action Plan);
 - b) If the action item pertains to gathering information, and neither Party is in a position to commit sufficient resources at that time to undertake the needed research, then the action item will be incorporated into the Action Plan under “Research Recommendations”; and
 - c) If the action item pertains to something other than gathering information, and neither Party is in a position to commit sufficient resources to it, then the action item will be incorporated into the Action Plan under “Other Recommendations”.
5. While developing the Action Plan, the Co-management Committee shall review the contents of the latest version of the Annual Action Plan developed pursuant to the “Agreement between the Alaska Native Harbor Seal Commission (“ANHSC”) and the National Marine Fisheries Service” dated as of April 28, 1999 (“ANHSC/NMFS Agreement”), and shall strive to maintain consistency with the contents of that plan

E. Population Monitoring

1. To achieve its conservation goals, it is fundamentally important that the Co-management Committee have access to accurate information on Species populations throughout the AMMC Region and as necessary in adjacent areas. There are several sources for such information, including scientific information as well as local and traditional knowledge.
2. Effective population monitoring involves evaluating the best available information on the following topics:
 - a) Population abundance and trends by stock and, as possible, by sub-areas within those stocks;
 - b) Habitat use and seasonal movements (including information on preferred haul-out sites, foraging areas, and prey composition);

- c) Sources of mortality to the Species (including the nature, extent, timing, and location of such mortality); and
- d) Population status by stock and, as possible, by sub-areas within those stocks (including aspects such as age structure, vital rates, and indices of physical condition).

F. Harvest Management

1. To ensure that the Species are conserved for subsistence and other uses, the Action Plan will include means for accurately monitoring the number of the Species harvested each year, the age and sex composition of those harvests, and the condition of animals taken in the harvest. The Action Plan also will include an assessment of local and/or regional harvest levels, composition of harvest, and harvest practices and their influence on population health.
2. The Action Plan shall also make provisions for a bio-sampling program.
3. Effective harvest management will also include measures to encourage the development of local and/or regional harvest management plans that incorporate local harvest practices and to ensure that the Species are used for subsistence in a sustainable and non-wasteful manner.

G. Education

1. NMFS and the AMMC will mutually develop ways to educate and promote understanding about Species issues among users, resource managers, and other groups. This effort will include:
 - a) providing education on ways to improve hunting and harvest methods, resource utilization and harvest reporting;
 - b) developing a training and internship program to directly involve local people in harvest monitoring, sample collecting, and research;
 - c) involving hunters and subsistence users in planning, prioritizing, and conducting research, and in making regulations and management decisions;
 - d) improving public understanding of Native cultural uses of the Species and MMPA provisions regarding subsistence harvest and conservation of the Species; and
 - e) serving as a contact for exchange of information about the Species.

H. Training: cross-cultural/technical

1. The Action Plan shall include provisions for orientation workshops and other programs for the exchange of cross-cultural information and perspectives. The perspectives may include Alaska Native ways of life, traditional ways of knowing, local concerns, and issues regarding the Species and their use by Aleut and other Alaska Natives (i.e., medicinal, handicraft and spiritual uses) as well as agency policies, legal and administrative constraints, and scientific approaches.
2. Research Ethics. The Parties agree to encourage all scientists who plan to conduct research that will occur in AMMC Region villages to advise Native People who are to be affected by the study of the purpose, goals, and time-frame of the research, the data gathering techniques, and possible impacts of the research, and to obtain the informed consent of the appropriate governing body. The Co-management Committee shall assist researchers in identifying appropriate governing bodies.

I. Research Recommendations

1. For conservation and management efforts to succeed, it is vitally important that accurate, reliable, and timely information about the Species be available for consideration. Having access to such information is central to whether the Parties will succeed or fail in meeting this Agreement's objectives. Therefore, under this Agreement, the term "research" is used in reference to all relevant forms of information gathering, and includes both conducting scientific studies as well as making local and traditional knowledge available for consideration.
2. The Action Plan will identify relevant information gaps that need to be filled to help achieve the Agreement's goals. These information gaps will consequently describe research needs that the Co-management Committee recommends be addressed as a matter of priority. The purpose of outlining research recommendations in the Action Plan is to help raise the profile of particular information gaps, and thereby to assist researchers in securing and allocating the funds necessary to undertake such work.

J. Other Recommendations

1. Under the Action Plan's sections on population monitoring, harvest management, and education, it is expected that the Parties to this Agreement will identify a variety of future activities that they can commit to implementing uni- or bi-laterally (e.g., by NMFS and/or the AMMC). However, given the wide range of other marine mammal species, fish, habitats, other environmental features and human activities in the AMMC Region that may affect conservation of the Species, it is likely that the

Co-management Committee may identify additional actions that are relevant to the Species or the interests of NMFS or AMMC but that are outside the scope of this Agreement.

2. Therefore, a list of “other recommendations” will be included in the Action Plan. The purpose of these recommendations will be to highlight various conservation and management needs, and, to the extent it is not feasible for the Parties to do so themselves, to encourage the appropriate persons or entities to take action as recommended in order to assist in the long-term conservation of the Species and to promote sustainable subsistence harvest of the Species.

VII. CONSULTATIONS

- A. AMMC/NMFS Consultation. In addition to the Co-management Committee meetings, NMFS representatives and the AMMC commissioners shall consult in person at least once per calendar year during an AMMC board or annual meeting. Additionally, NMFS shall advise AMMC of any NMFS or state research projects being conducted on the Species in the AMMC Region.
- B. Routine Communications. NMFS and the AMMC shall consult on a routine basis as set forth in this Agreement. In addition, the AMMC Executive Director and the appropriate NMFS Program Coordinator shall communicate on an as-needed basis concerning matters related to the Species which either Party believes are suitable for such consultation.
- C. Regulation and Enforcement. NMFS recognizes the existing tribal authority to regulate their members during the conduct of the subsistence harvest of the Species. The AMMC recognizes the Secretary of Commerce's authority to enforce the existing provisions of the MMPA applicable to the Native harvest of the Species.
- D. When concern about the harbor seal arises in the AMMC Region that might lead to listing as depleted or a strategic stock under the MMPA or as threatened or endangered under the ESA, the Parties agree that the Co-management Committee shall propose to meet jointly with the Co-Management Committee established between NMFS and the ANHSC under the ANHSC/NMFS Agreement to:
 1. Consult and recommend about a possible need to list;
 2. Consult and recommend about management strategies to avoid a possible listing;
 3. After listing, consult and recommend about possible regulations affecting subsistence use; and

4. After listing, consult and recommend about possible arrangements for ensuring compliance and enforcement of regulations affecting subsistence use.
- E. The Parties acknowledge that the western distinct population segment of Steller sea lions located in the AMMC Region has been listed as endangered under the ESA and therefore also is considered depleted and a strategic stock under the MMPA. The Parties agree that with respect to the western distinct population segment of Steller sea lions, the AMMC/NMFS Co-management Committee established under this Agreement shall:
1. Consult and recommend about any possible future change in status under the MMPA or ESA;
 2. Consult and recommend about management strategies to promote a positive change in status under the MMPA or ESA;
 3. Consult and recommend about possible regulations affecting subsistence use; and
 4. Consult and recommend about possible arrangements for ensuring compliance and enforcement of regulations affecting subsistence use.
- F. Media Contacts. Both Parties shall strive to support a policy of “no surprises” concerning contact with the media on potentially sensitive issues pertaining to the Species in the AMMC Region. Each Party shall endeavor to consult with the other prior to initiating contact with the media on topics contained within this Agreement. Under circumstances in which the media initiate contact with one Party, the contacted Party shall inform the other Party and provide details on the nature of the information communicated. In addition, when a Party is contacted by the media concerning issues relevant to this Agreement, that Party shall provide the other Party’s contact information to the media representative, and encourage them to contact the other Party.

VIII. FUNDING

- A. Both Parties agree that long-term funding for sustained co-management and conservation programs is important for the health of the Species in Alaska. No financial commitment on the part of any Party is authorized or required by this Agreement.
- B. This Agreement does not replace the need for a financial assistance award in accordance with 16 U.S.C. §1388. Until those funds become available, each party

shall bear its own costs in participating in this Agreement (e.g., for travel, consultations, training sessions, and population and harvest monitoring).

C. Any activities under this Agreement are subject to the availability of funds.

IX. OTHER PROVISIONS

- A. 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 Native entities.
- B. Nothing herein is intended to conflict with current National Oceanic and Atmospheric Administration or NMFS directives. If the terms of this Agreement are inconsistent with existing laws, regulations, or directives of either of the Parties entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by a new Agreement, whichever is deemed expedient to the interest of both Parties.
- C. The Parties acknowledge that AMMC and ANHSC have negotiated the "Agreement between AMMC and ANHSC regarding Cooperation in the Conservation and Use of the Harbor Seal (species *Phoca vitulina*)" dated as of October 14, 2005 ("ANHSC/AMMC Agreement"), which defines the relationship between AMMC and ANHSC in the AMMC Region. Among other things, the ANHSC/AMMC agreement: (1) affords a mechanism for cooperation in harbor seal research and other projects between AMMC and ANHSC; (2) provides that no harvest management plans or other regulations shall be imposed within the AMMC Region without AMMC's consultation and approval; and (3) does not preclude AMMC from unilaterally introducing additional conservation practices within the AMMC Region. A copy of the ANHSC/AMMC Agreement is attached hereto as Appendix B.
- D. By entering into this Agreement, the Parties do not intend to create any obligations on the part of NMFS that are inconsistent with the ANHSC/NMFS Agreement and any performance pursuant to that agreement. To the extent that any such inconsistency should arise, the Parties shall work cooperatively to informally address the issue. If an informal resolution does not resolve the issue, the Parties shall follow the procedure outlined in section IX.E. below.
- E. Should disagreements arise over the provisions of this Agreement, or any amendments, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other

Party for consideration. If agreement on interpretation is not reached within thirty days, the disagreement will be referred to the Co-management Committee for appropriate resolution. If disagreement remains unresolved after thirty days, and absent a mutual agreement to extend the period, each Party may refer the matter to higher levels of NMFS and AMMC for appropriate action.

X. ADOPTION, DURATION, AND MODIFICATION

- A. This Agreement shall take effect upon the date of signature of the respective Parties and shall remain in effect until terminated by either of the Parties in accordance with the termination provisions of this Agreement.
- B. Although this Agreement extends indefinitely, the parties will review it not less than every three years to ensure that it continues to meet their needs.
- C. Modifications of this Agreement may be proposed at any time by either Party and shall become effective upon written approval by both Parties.
- D. Termination. Either Party may terminate this Agreement by giving 45 days prior written Notice of Termination to the other Party. Such Notice shall be addressed to the signatory for the receiving Party or their successor.

XI. SIGNATURES

In Witness Whereof, the Parties hereto have executed this Agreement as of the last written date below:



Alvin D. Osterback,
Chairman
Aleut Marine Mammal Commission
P.O. Box 920045
Dutch Harbor, Alaska 99692

Date: 11/09/2006



Robert D. Mecum,
Acting Administrator
Alaska Region
National Marine Fisheries Service
U.S. Department of Commerce
P.O. Box 21668
Juneau, Alaska, 99802
Date: 11/2/06