HEARING ON THE MARINE MAMMAL PROTECTION ACT (SECTIONS 118 AND 119)

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

APRIL 6, 2000, WASHINGTON, DC.

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HEARING ON: SECTION 118 OF THE MARINE MAMMAL PROTECTION ACT

House of Representatives,

SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS
COMMITTEE ON RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 1334, Longworth House Office Building, Hon. Jim Saxton (chairman of the subcommittee) presiding.

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. The Subcommittee on Fisheries Conservation, Wildlife and Oceans will come to order. Today we are discussing Section 118 of the Mammal Protection Act. The Secretary of Commerce is required to use take reduction teams when developing Take Reduction Plans. The Plans are supposed to reduce the take of marine mammals to insignificant levels. To date, five teams have been convened, the Gulf of Maine Harbor Porpoise Team, the Mid-Atlantic Coastal Gillnet Team, the Atlantic Offshore Cetacean Team, the Atlantic Large Whale Team, and the Pacific Offshore Cetacean Team.

Members of the Take Teams are required to be knowledgeable of fisheries and they have included fishermen, environmental representatives, State fish and game personnel, Regional Council members, Scientists and NMFS personnel. I am interested in hearing from our witnesses today on the take reduction team process and whether NMFS implementation of the appropriate Plans have been successful in reducing the take of marine mammals. I would now ask unanimous consent that all subcommittee members be permitted to include their opening statements in the record without objection.

I would now like to introduce our first panel of witnesses. On panel one we have Dr. Andrew Rosenberg, Deputy Assistant Administrator for Fisheries, NMFS, and Dr. John E. Reynolds, Chairman of the Marine Mammal Commission. If you gentlemen would like to take your place and let me remind you that our committee rules, please limit your opening statements to 5 minutes and your entire statement will be recorded in the record. Andy Rosenberg, you may begin as you see fit.

[Prepared statement of Mr. Saxton follows:]

STATEMENT BY THE HONORABLE JIM SAXTON, CHAIRMAN, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS, AT THE OVERSIGHT HEARING ON SECTION 118 OF THE MARINE MAMMAL PROTECTION ACT: APRIL 6, 2000.

Good morning. Today we will be discussing Section 118 of the Marine Mammal Protection Act. Section 118 regulates the taking of marine mammals incidental to commercial fishing activities.

The Secretary of Commerce is required to use Take Reduction Teams when developing Take Reduction Plans. The Plans are supposed to reduce the take of marine mammals to insignificant levels. To date five teams have been convened: the Gulf of Maine Harbor Porpoise Team; the Mid-Atlantic Coastal Gillnet Team; the Atlantic Offshore Cetacean Team; the Atlantic Large Whale Team; and the Pacific Offshore Cetacean Team.

Members of the Take Reduction Teams are required to be knowledgeable of fisheries and they have included fishermen, environmental representatives, State fish and game personnel, Regional Council members, Scientists and NMFS personnel.

I am interested in hearing from our witnesses today on the Take Reduction Team process and whether NMFS implementation of the appropriate Plans have been successful in reducing the take of marine mammals.

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MEMORANDUM

TO: Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

FROM: Subcommittee Majority Staff

RE: Oversight hearing on the Marine Mammal Protection Act

At 10:00 a.m. on Thursday, April 6, 2000, the Subcommittee on Fisheries Conservation, Wildlife and Oceans will meet in Room 1334 Longworth House Office Building to conduct an oversight hearing on Section 118 of the Marine Mammal Protection Act. Those invited to testify include: Ms. Penelope Dalton, Assistant Administrator of Fisheries, National Marine Fisheries Service; Mr. John Reynolds, Chairman, Marine Mammal Commission; Mr. Pat White, Maine Lobstermen's Association; Mr. Bill Foster, Mid-Atlantic Coastal Gillnet Industry; Ms. Nina Young, Center for Marine Conservation; Ms. Sharon Young, Human Society of the United States; and Mr. John Calambokidis, Cascadia Research Collective.

BACKGROUND

The Marine Mammal Protection Act:

The Marine Mammal Protection Act (MMPA) was enacted in 1972 for the purpose of ensuring that marine mammals are maintained at, or in some cases restored to, healthy population levels. The original Act established a moratorium on the taking (under the MMPA a "take" is defined as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal") or importing of marine mammals and marine mammal products except for certain activities which are regulated and permitted.

Under the MMPA, jurisdiction over marine mammals in the wild is split between two agencies, the U.S. Fish and Wildlife Service (USFWS) (under the Department of the Interior) and the National Marine Fisheries Service (NMFS) (under the National Oceanic and Atmospheric Administration within the Department of Commerce). The USFWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus, while the NMFS has jurisdiction over all other marine mammals. The 1994 amendments

transferred authority of captive marine mammals to the Animal and Plant Health Inspection Service (APHIS) (under the Department of Agriculture).

Due to a lawsuit, which effectively prevented the issuance of permits to incidentally take marine mammals in the course of commercial fishing operations, the Congress amended the MMPA in 1988 to establish a five-year interim exemption for commercial fishing operations and marine mammals. That exemption expired on October 1, 1993, but has twice been extended by temporary measures.

During the interim exemption period, NMFS developed a three-tiered fishery classification system based on each fishery's level of interaction with marine mammals. Category I fisheries were defined as those in which it is highly likely that one marine mammal will be taken by a randomly selected vessel during a 20-day period. A Category II fishery is one in which there is some likelihood of taking one marine mammal during a 20-day period, and a Category III fishery is one in which it is highly unlikely that any marine mammal will be taken during a 20-day period.

The proposal required fishing vessel owners to register their vessels operating in either Category I or II fisheries and to follow certain recording and reporting requirements during fishing operations and in some cases, carry observers. The Proposed Regime to Govern Interactions between Marine Mammals and Commercial Fishing Operations was transmitted to Congress in December 1992 following public comment. Following the submittal of the proposed regime to Congress, debate continued as to whether the proposal met the goals of the Act.

In 1994, in an effort to end this continuing debate, Congress reauthorized the MMPA (P.L. 103-238) and made a number of changes to the Act. Section 117 requires that marine mammal stock assessments be prepared to provide the necessary scientific basis for the new incidental take regime. This section also requires that the assessments include information on the sources and levels of human-caused mortality and serious injury, and identify strategic stocks for which Take Reduction Plans are needed.

Section 118 establishes the requirements for the new incidental take regime for commercial fisheries. This section requires that the NMFS publish a list of commercial fisheries classified according to the frequency in which the fishery causes mortality or serious injuries to marine mammals. This differs from the 1992 NMFS proposal for classification in that it is based on mortality or serious injury rather than interaction or take of the marine mammal. The new regime also includes a mechanism for authorizing a limited incidental take of marine mammals which are listed as endangered or threatened.

Section 118 also authorized NMFS to use Take Reduction Teams (TRT) when developing Take Reduction Plans. The take reduction team process is a multi-year process which relies on approximately 2-3 years of observer coverage, followed by up to a year of negotiations, several months to develop regulations, and ongoing monitoring, enforcement, and research. The MMPA requires that the teams be convened within 30 days of the issuance of final stock assessment reports for stocks interacting with a category I or II fishery and must submit their plans within six months for strategic stocks and within eleven months for non-strategic stocks. Members of the TRT were to have expertise regarding the conservation

or biology of the marine mammal species which the Plan will address, or the fishing practices that result in the incidental mortality and serious injury of such species. Each TRT is required to develop a draft Plan, by consensus, and submit it to the Secretary. After the Plan is adopted, the team meets at least annually to monitor the progress of the goals established in the Plan.

The immediate goal of the Take Reduction Plan is to reduce, within six months of its implementation, the incidental take of marine mammals below each marine mammal stocks's Potential Biological Removal (PBR) level. PBR is the maximum number of marine mammals that may be removed from the stock and allow the stock to reach or maintain optimum sustainable populations levels. The long term goal of the Take Reduction Plan is to reduce, within five years of its implementation, the incidental take of marine mammals to insignificant levels approaching a zero mortality and serious injury rate.

Five Teams have been convened under this section: the Gulf of Maine Harbor Porpoise TRT; the Mid-Atlantic Coastal Gillnet TRT; the Atlantic Offshore Cetacean TRT; the Atlantic Large Whale TRT; and the Pacific Offshore Cetacean TRT.

Gulf of Maine Harbor Porpoise TRT

The team was formed to reduce the incidental take of harbor porpoise in the Gulf of Maine groundfish sink gillnet fishery. In August 1996, the team submitted its draft plan to NMFS. The draft plan contained restrictions which expanded closures included in Amendment 7 of the Multispecies Fishery Management Plan, developed by the New England Fishery Management Council. It also required the use of acoustic deterrent devices (pingers) on gillnets to further reduce harbor porpoise bycatch. NMFS published the proposed rule on August 13, 1997, with public comment extending to January 14, 1998. In December 1997, the team reconvened and expressed concerns about the bycatch measures contained in the plan as published and implemented by NMFS. NMFS published a revised proposed rule on September 11, 1998 and combined it with a proposed rule for reducing takes of harbor porpoises in the Mid-Atlantic. The final Harbor Porpoise TRT which combined management measures from both the Gulf of Maine and Mid-Atlantic, was published December 1998 and was effective January 1,1999. The management measures included time/area closures and pingers. The team last met in December 1999.

Mid-Atlantic Coastal Gillnet TRT

The team was convened on February 25, 1997, to address the incidental take of harbor porpoise in the ocean gillnet fisheries in the Mid-Atlantic region. New England gillnet fishermen and Mid-Atlantic gillnet fishermen fish in the region and observer data showed a higher rate of bycatch from the fishermen from New England. The different bycatch rates were thought to be due to differences in gear characteristics, such as twine diameter, mesh size, and the number and length of sets. To reduce the bycatch of harbor porpoise the team recommended a combination of area closures and gear modifications. The recommendations were implemented by NMFS in December 1998. The team met in February 2000 to discuss the implementation of the plan and revisions to further reduce the bycatch of harbor porpoises.

Atlantic Offshore Cetacean TRT

The team was convened in 1996 to reduce the incidental take of right whales, humpback whales, sperm whales, beaked whales, pilot whales, common dolphins, bottlenose dolphins, and spotted dolphins in the Atlantic pelagic driftnet, longline and pair trawl fisheries. The team submitted its draft plan in November 1996, which contained recommendations for seasonal closures, increased observer coverage, limits on capacity expansion into the fishery, and allocation of catch limits over a longer season. Before finalizing the plan, NMFS published a final rule prohibiting the use of driftnet gear in the swordfish fishery. In addition, the pair trawl gear is not currently authorized for fishing in the Atlantic tuna or swordfish fishery. A final plan was not published since many of the recommendations are being implemented in the Highly Migratory Fishery Management Plan which was developed at the same time as the Take Reduction Plan. For the recommendations not implemented in the HMS Plan NMFS is preparing a proposed take reduction plan for the non-regulatory aspects of the TRT Plan pertaining to the longline fishery. NMFS plans on reconvening the team in 2000 to discuss the need for further reduction measures.

Atlantic Large Whale TRT

The team was established in 1996 to address takes of right whales, humpback whales, fin whales, minke whales in the South Atlantic shark gillnet fishery, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery. The team submitted its report on February 1, 1997. The team did not reach consensus on all aspects of the plan. The interim rule was published in July 1997, and after extensive public comment the final rule was published February, 1999 with an April 1, 1999 effective date. The final regulations have minimal impacts on fisheries, while reducing the incidental take of large whales. On April 9, 1999, the NMFS published a final rule with partial stay concerning the final rule's gear marking regulations until November 1999, in order for the TRT to consider improvements. The team is scheduled to meet in April 2000 to review the plan.

Pacific Offshore Cetacean TRT

The team was established in 1996 and submitted its draft plan to reduce the incidental take of beaked whales, pilot whales, pygmy sperm whales, sperm whales, and humpback whales in the California/Oregon swordfish drift gillnet fishery in August 1996. Recommendations included in the plan were: minimum depth of 36 feet below the water surface for the top of the net; pingers on all nets; reduction of inactive permits in California and Oregon; and that vessel operators be required to attend educational workshops. The final plan and implementing regulations were published October 1997, with an effective date of October 30, 1997. The six month review of the plan and the data regarding marine mammal takes showed the takes to be below PBR. The team met again in 1999 to review the bycatch estimates, which showed the regulations were successful in reducing the incidental take of small cetaceans. The team recommended additional measures dealing with observer coverage, the use of observer data for enforcement, and to expand the use of pingers. The team is scheduled to meet this month.

ISSUES

1. Take Reduction Teams were authorized in the 1994 amendments and the Secretary of Commerce has used a TRT in five instances. There has been some concern that while NMFS worked with the TRTs, much of what the TRTs recommended was ignored. Many of those involved in the TRT process have felt that their time was wasted because NMFS unilaterally changed the recommendations of the TRT without explanation. What is the Agency's response to this concern?

2. Concerns have been raised regarding the length of time it has taken NMFS to publish the draft plan and proposed regulations. In some cases it has taken a year or more to publish the draft plan and proposed regulations. Why has it taken so long? What steps can be taken to minimize the time between the submittal of the draft plan and publishing it with the proposed regulations?

3. There is some concern that recreational fishing activities adversely affect marine mammal populations and cannot be addressed within take reduction plans. Do changes need to be made to the Act to allow recreational fishermen to participate in the TRT process and minimize the impacts recreational fishing may have on marine mammals?

4. There is a great deal of concern being raised by constituents from Maine to North Carolina over the general lack of marine mammal stock data and subsequent use of the precautionary approach in the TRT process. How will the Agency rectify the 'lack of scientific data' issue for future Take Reduction Teams? Will the convening of teams be delayed until accurate data is collected?

5. We have heard that the next Take Reduction Team proposed is for Atlantic bottlenose dolphins. What is the Agency's schedule to convene a team for bottlenose dolphins? What other marine mammal populations will the Agency convene a take reduction team for after bottlenose dolphins?

6. The Agency has been using observers in some fisheries. What is the percentage of observers used in each of the fisheries that have had take reduction plans developed? What is the percentage in fisheries without take reductions plans, but with interactions with marine mammals?

STATEMENTS OF ANDREW ROSENBERG, PH.D., DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE; JOHN E. REYNOLDS, PH.D., CHAIRMAN, MARINE MAMMAL COMMISSION

STATEMENT OF ANDREW ROSENBERG

Mr. ROSENBERG. Thank you very much, Mr. Chairman and members of the subcommittee, and thank you for inviting me to testify on Section 118 of the Marine Mammal Protection Act on reducing takes of marine mammals incidental to commercial fisheries. As you requested, I am here to discuss with you the merits of the marine mammal take reduction process as well as the positive impacts those take reduction plans and teams have had on marine mammal conservation and management. My written testimony, which is more extensive, of course, than my oral remarks, will be submitted for the record with your permission.

To date, five take reduction teams have been established, as you noted, Mr. Chairman, focusing on nine fisheries and 22 so-called strategic stocks of marine mammals, those stocks that we view are in urgent need of attention. I will go through each of the take reduction team plans in some detail. Again, more detail is in the written testimony. The Harbor Porpoise Take Reduction Plan combines recommendations developed by the Gulf of Maine and Mid-Atlantic Take Reduction Teams in order to reduce the take of harbor porpoise in fisheries to below the stock's PBR level or potential biological removal level of 483 animals.

And in December 1998, NMFS published a final rule which included some modification, minor modifications, of the team's recommendations for closures in the Gulf of Maine and the use of acoustic deterrent devices usually known as pingers to warn the animals off from the nets. The Mid-Atlantic Harbor Porpoise Take Reduction Team was formed a year later in 1997 to develop a plan for reducing incidental take of Harbor Porpoise in Mid-Atlantic coastal gillnet fisheries.

Although that team did not reach consensus, they did reach agreement on several key measures which were submitted in a report to NMFS and those measures have been included in the overall take reduction plan that I mentioned was implemented as a final rule. Those measures are specific to predominant coastal gillnet fisheries for monkfish and dogfish in the Mid-Atlantic. In 1998, the final rule implementing gear modifications and net caps for large and small mesh gillnet fisheries and short-term closures for large mesh gillnet fisheries in the Mid-Atlantic were included then.

We convened both teams around the beginning of this year to review progress and consider improvements in the Harbor Porpoise take reduction plan and recommendations included changes to fishing operations, pinger use, observer protocols and information exchange as well as communication with the team. The combined efforts of the Mid-Atlantic and Gulf of Maine Harbor Porpoise take reduction team recommendations and our implementation of those recommendations have led to reductions in the Harbor Porpoise bycatch in the Northeast gillnet fishery that is in the Gulf of Maine

from approximately 1,400 animals taken in 1995 to less than 400 animals in 1998.

However, the total combined Harbor Porpoise bycatch for the entire region, including the Gulf of Maine down through the Mid-Atlantic is still greater than the PBR level because we estimate that 450 animals approximately were taken in the Mid-Atlantic region 1998 so we still have some work to do in both regions to reduce Harbor Porpoise takes further throughout its range. The Pacific Offshore Cetacean Take Reduction Plan was prepared by a team that was formed in February 1996 to address incidental takes of several whale and dolphin stocks in California and Oregon, thresher shark/swordfish drift gillnet fishery.

The final rule was implemented in October 1997 to address the bycatch reduction recommendations. We reconvened the team in 1998 and 1999 to examine additional data and see how well the plan was working. The plan overall has reduced the take of marine mammals by an order of magnitude from approximately 500 a year in the early 1990's to about 50 in 1998. However, we still have concerns about a sperm whale because a sperm whale was caught in a drift net in this region fairly recently and we are reconvening the team to consider whether we need to take additional measures. There will be another meeting of that team in May of 2000.

The Atlantic Large Whale Take Reduction Team was established in 1996 for developing a plan to reduce incidental take of large whales in the South Atlantic shark gillnet fishery, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery. That team did not reach a consensus on a recommendation, however, did report to NMFS and NMFS developed a final plan in implementing regulations. Based on a range of recommendations and considerable public input the interim final rule was published in 1997 and a final rule was published in 1999 after additional public comment.

There were several whale species addressed in that plan. Of greatest concern is the critically endangered Northern right whale. Currently the potential biological removal level for right whales is less than one animal per year. However, the stock is at such a low level and in such critical circumstances of course we don't want to take any right whales. We have established an extensive series of disentanglement programs, education programs, as well as gear modifications and are still doing additional gear modification research to try to reduce the take of right whales.

We have had some success with disentanglement efforts. However, we have in fact still had some entanglements and have additional work to do. The team reconvened in February of this year and we will have another meeting in April to try to address those concerns. Mr. Chairman, I have nearly come to the end of my time. The last team, however, was the Atlantic Offshore Cetacean Team. That plan was not implemented as a take reduction plan but was implemented in the course of fishery management regulations throughout the Northeast and Mid-Atlantic with regard to offshore fisheries in that region.

Overall, we found that the take reduction process is very complex and very controversial but the results have been very positive. This is a very difficult area both for the agency, the industry and the

public to work through solutions to complex problems. We feel that that has been very positive. However, it has required a very significant amount of financial and staff resources and a lot of time for the teams as well as for the agency to develop workable solutions to some of these problems.

We feel it has been successful although rather slower than I think anyone would have wished. For us to expand the take reduction team process, we would have to greatly expand our resources available to provide information to the teams that is probably the biggest stumbling block. Finally, we are convening additional teams as possible including a team for Atlantic bottlenose dolphins that we intend to convene this fall. We will apply the lessons learned from the other teams to any new teams we convene, of course, as well as the teams that are ongoing. Thank you, Mr. Chairman, and I apologize for going over my time.

[Prepared statement of Mr. Rosenberg follows:]

TESTIMONY OF
DR. ANDREW ROSENBERG
DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

ON
SECTION 118 OF THE MARINE MAMMAL PROTECTION ACT OF 1972

BEFORE THE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES

APRIL 6, 2000

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today on reducing takes of marine mammals under the Marine Mammal Protection Act (MMPA). I am Andrew Rosenberg, Deputy Assistant Administrator for Fisheries.

The National Marine Fisheries Service (NMFS), along with the U.S. Fish and Wildlife Service (FWS), administers the MMPA, which is the principal Federal legislation that guides marine mammal protection and conservation policy in U.S. waters. Under the provisions of the MMPA, NMFS is responsible for the management and conservation of over 140 stocks of whales, dolphins and porpoises, as well as seals, sea lions and fur seals, 40 of which are classified as strategic, and 29 of which are listed under the Endangered Species Act. The remaining marine mammal species (polar bear, walrus, sea otter, and manatee) are under the jurisdiction of the FWS.

The MMPA was enacted in 1972 due, in part, to public concern over the high levels of marine mammal deaths in fisheries such as the eastern tropical Pacific tuna purse seine fishery. Since then, marine mammal mortality incidental to commercial fishing operations has continued to be an issue of concern to Congress and the public. While there have been numerous amendments to the MMPA to address the problem of incidental take, the amendments of 1994 were, by far, the most comprehensive, particularly the addition of section 118. Among other things, section 118 requires the Secretary of Commerce to develop take reduction plans to assist in the recovery or prevent the depletion of

strategic stocks of marine mammals which interact with commercial fisheries.

I welcome the opportunity to discuss with you the merits of the marine mammal take reduction process, as well as the positive impacts that take reduction plans and teams have had on marine mammal conservation and management. My testimony will specifically address major elements of the take reduction process, including: 1) NMFS' implementation of the MMPA Amendments of 1994 with respect to the marine mammal take reduction process; 2) the goals and objectives of take reduction plans and teams; and 3) the current status of existing take reduction plans and teams, including successes and lessons learned. Finally, I will discuss those areas of the take reduction team process that could be addressed to improve NMFS' ability to fulfill its responsibilities to reduce marine mammal takes in commercial fisheries as we make plans for convening future take reduction teams.

Background of the Take Reduction Team Process

From 1988 to 1994, the MMPA contained an interim program that granted fishermen an exemption for taking marine mammals if their vessels were registered with NMFS, and they recorded marine mammal interactions in logbooks. The interim exemption also included an observer program, which enabled NMFS to collect information on fishery-specific levels of marine mammal incidental take. These data were ultimately used to guide development of the current long-term fisheries management regime established by the MMPA Amendments of 1994 in section 118.

Section 118 has a two-step goal. The first is to reduce the mortality and serious injury of marine mammals incidental to commercial fisheries below their potential biological removal (PBR) level, or the maximum number of marine mammals that may be removed from the stock and still allow the stock to reach or maintain optimum sustainable population levels. The second is to further reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching zero (zero mortality rate goal or ZMRG).

To achieve these goals, NMFS conducts research to provide scientific information on the status of marine mammal stocks and reports this information in annual stock assessment reports (SARs). NMFS built upon the existing observer program to monitor incidental mortality and serious injury of marine mammals in the course of commercial fishing operations and revised the registration and reporting program. NMFS also classifies fisheries according to their degree of mortality and serious

injury of marine mammals, based on monitoring and other information. Finally, NMFS develops take reduction plans to reduce the incidental mortality and serious injury of marine mammals in commercial fisheries.

Stock Assessment Reports. NMFS reviews the stock assessment reports annually for strategic stocks of marine mammals and at least every three years for stocks determined to be non-strategic. NMFS revises those reports for which significant new information is available. Stock assessments include definitions of stocks and their geographic ranges, population estimates, productivity rates, estimates of PBR levels and annual human-caused mortality and serious injury for each stock, identification of the commercial fisheries that interact with each stock, and a determination as to whether a stock is strategic. Since 1995, NMFS has reviewed 181 stock assessment reports and revised them when appropriate. In 1999, NMFS updated stock assessment reports for 57 stocks of marine mammals, including all 40 strategic stocks.

List of Fisheries. The annual List of Fisheries places all U.S. commercial fisheries into Category I, II, or III based on their frequency of incidental mortality or serious injury of marine mammals, with Category I having frequent, Category II having occasional, and Category III having a remote likelihood of incidental mortality or serious injury of marine mammals. For example, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery was classified as a Category I fishery based on examination of stranding and entanglement records of large whales, including the endangered northern right whale. Due to the critically endangered state of the northern right whale population, even relatively low levels of impact are considered significant.

The information to make these determinations is gathered mainly through observer programs and fisher registration and reporting and is essential in the take reduction process to evaluate the progress of each fishery towards achieving the goals of the MMPA, and to determine which fisheries should be the focus of the take reduction process. The 1999 List of Fisheries identifies a total of 186 fisheries: six Category I fisheries, 26 Category II fisheries, and 155 Category III fisheries. The List of Fisheries for 2000 is expected to be published in mid-April of this year.

Registration, Reporting, and Monitoring of Fisheries. All fisheries must report marine mammal injury and mortality. Fishermen participating in Category I and II fisheries must

register under the Marine Mammal Authorization Program in order to engage in the lawful incidental take of marine mammals, and are required to carry an observer if requested by NMFS.

The purpose of fishery monitoring (observer) programs is to obtain statistically reliable estimates of incidental mortality and serious injury of marine mammals in commercial fisheries. NMFS currently operates 15 observer programs, eight of which are dedicated to collecting marine mammal data (all but one of the Category I fisheries are currently being observed). NMFS observes 15 percent (four out of 26) of the Category II fisheries. Due to resource constraints, the average observer coverage for each fishery is between 1 percent and 5 percent, although some fisheries are observed at 100 percent.

As a result of these programs, NMFS has collected detailed information on protected species interactions with commercial fisheries, including the geographic range of the fisheries, the seasons of operation, gear types used, fishing techniques used, the number of participants in each fishery, what species of fish are targeted in each fishery, and what type of management program exists for each fishery. These data help NMFS identify and develop gear modifications and technologies to more cost-effectively manage fisheries with respect to reducing marine mammal takes.

Take Reduction Teams and Plans

Pursuant to section 118 of the MMPA, NMFS convenes take reduction teams to develop take reduction plans for strategic marine mammal stocks that interact with Category I and II fisheries, and to assist in the recovery or prevention of depletion of the stocks. The take reduction teams consist of a wide range of stakeholders from the fishing industry, fishery management councils, interstate commissions, academic and scientific organizations, state officials, environmental groups, Native Alaskans or other Native American interests if appropriate, and NMFS representatives.

Take reduction teams may focus on a single marine mammal stock in a specific region or fishery, a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery. Recognizing that insufficient resources exist to develop and implement a take reduction plan for all strategic stocks that interact with Category I and II fisheries, NMFS follows the guidance in section 118 to prioritize establishing take reduction teams to address stocks of greatest concern.

The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the incidental mortality and serious injury of marine mammals below each marine mammal stock's PBR level (PBR is a biologically based number without adjustments for socio-economic considerations). The long-term goal of a take reduction plan is to reduce, within five years of its implementation, the incidental take of marine mammals to insignificant levels approaching zero mortality and serious injury rates, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.

The take reduction teams and NMFS are on a tight, MMPA-mandated deadline to develop and implement the regulatory framework for each plan. Once a team is convened for a stock where human-caused mortality and serious injury exceeds PBR, it has six months to submit a draft take reduction plan to NMFS. As directed by section 118, the teams are strongly encouraged to reach consensus on their draft plan. However, if consensus cannot be reached, the team is directed to advise NMFS of the range of possibilities considered by the team and the views of both the majority and minority. Once NMFS receives the draft plan from the team, we evaluate the plan to determine if it will meet the MMPA-mandated goals, and we publish team recommendations in the Federal Register, with any changes proposed by NMFS with an explanation of the changes, and NMFS' proposed regulations. Then, NMFS has approximately five months to implement a final plan, including opportunity for public comment. Final plans normally result in additional fishery regulations such as gear type restrictions or fishing area closures which are enforced by the Coast Guard. After each plan is finalized, the take reduction team and NMFS will meet every six months, or at other intervals as NMFS determines are necessary, to monitor progress toward achieving the plan's goals.

NMFS relies on information from the previously described programs to guide the entire take reduction process. Without this information, the teams would have an extremely difficult task in achieving the goals set for them in the MMPA.

NMFS implements the recommendations of the take reduction teams to the maximum extent feasible, given NMFS' authority, resources, and budget. As a result, some of the plans have taken longer than expected for NMFS to finalize and implement. Other challenges to meeting the deadlines include changes in fishery composition or management as a result of other statutory mandates (e.g., Fishery Management Plan amendments); difficulty in

developing implementing regulations from complex team recommendations; and incorporating new data and information.

The Status and Implementation of Current Take Reduction Teams

To date, five take reduction teams have been established. They are the Pacific Offshore Cetacean, the Atlantic Offshore Cetacean, the Mid-Atlantic Harbor Porpoise, the Gulf of Maine Harbor Porpoise and the Atlantic Large Whale Take Reduction Teams. Table 1 lists the marine mammal stocks and fisheries addressed by each team.

Take reduction plans have been completed and implemented by final regulations for Pacific offshore cetaceans, Atlantic large whales, and for harbor porpoise in the Mid-Atlantic and the Gulf of Maine. NMFS combined the two draft harbor porpoise plans into one final Harbor Porpoise Take Reduction Plan, and the Atlantic Offshore Cetacean Plan has been partially implemented by final regulation through the Atlantic Highly Migratory Species Fishery Management Plan. Table 2 shows a timeline of the take reduction process for the four existing plans. Following is a summary of each of the take reduction plans and their current status.

Harbor Porpoise Take Reduction Plan. This plan is a combination of plans developed by the Gulf of Maine Harbor Porpoise and the Mid-Atlantic Take Reduction Teams. The goal of these two take reduction teams is to reduce the take of harbor porpoise to below 483 animals, the stock's PBR level. The Gulf of Maine Harbor Porpoise Take Reduction Team was established in February 1996 to develop a plan for reducing the incidental take of harbor porpoise in the Northeast sink gillnet fishery.

On December 2, 1998, NMFS published a final rule which included minor modifications to the team's recommendation for closures and the use of acoustic deterrent devices (pingers) (63 FR 66464). The final plan closed six areas in the Gulf of Maine to gillnetting; however, during the majority of the closures, gillnetters could fish in those closed areas if they used pingers.

NMFS re-convened the Gulf of Maine team in December 1999 to review the success of the plan. The team recommended improvements to the plan through changes in fishing operations, modifications to pingers and their use, additional observer protocols, and improved and expanded data analysis. NMFS will consider the team's recommendations in any future modifications or improvements to the elements of the plan.

Similarly, the Mid-Atlantic Harbor Porpoise Take Reduction Team was formed in February 1996 to develop a plan for reducing incidental takes of harbor porpoise in the Mid-Atlantic coastal gillnet fishery. Although the team did not reach consensus, they did reach agreement on several key measures, which were submitted in a report to NMFS in August 1997. The team recommended management measures specific to the two predominant coastal gillnet fisheries, i.e., the monkfish and the dogfish fisheries, because certain gear characteristics of those fisheries could be related to higher incidences of harbor porpoise bycatch.

In the proposed and final rules, NMFS modified the team's recommendations by proposing management measures specific to large and small mesh size fisheries consistent with the characteristics of the monkfish and dogfish fisheries, respectively. NMFS also revised the team's plan and based regulatory measures on the relationship between gear characteristics and harbor porpoise bycatch, regardless of which fishery employs such gear characteristics. NMFS published a final rule, consistent with the overall intent of the team's consensus measures on December 2, 1998 (63 FR 66464).

The final rule for the Mid-Atlantic plan implemented gear modifications and net caps for the large and small mesh gillnet fisheries and short-term closures for the large mesh gillnet fisheries. Since the Mid-Atlantic bycatch reduction measures are based primarily on gear modification, the implementation of this plan requires high levels of observer coverage to monitor compliance.

NMFS re-convened the Mid-Atlantic team in January 2000 and reached consensus on a number of additional recommendations, including issues regarding observer coverage, improving communication between NMFS and the team, adjusting the fisheries' boundaries, and redefining the "small mesh" fishery to more accurately address marine mammal bycatch.

The combined efforts of the Mid-Atlantic and Gulf of Maine Harbor Porpoise Take Reduction Teams resulted in the Harbor Porpoise Take Reduction Plan, which, in combination with groundfish closures in the Gulf of Maine under the Magnuson-Stevens Fishery Conservation and Management Act, led to reductions in the bycatch of harbor porpoise in the Gulf of Maine. The most recent stock assessment data indicate that harbor porpoise bycatch in the Northeast sink gillnet fishery has been reduced from approximately 1400 in 1995 to less than 400 animals in 1998. However, the total combined harbor porpoise bycatch, (including bycatch in the Mid-Atlantic region estimated

at approximately 450 for 1998), is still greater than the PBR level. NMFS will continue to work with the Gulf of Maine and Mid-Atlantic teams to further reduce harbor porpoise takes throughout its range.

The Pacific Offshore Cetacean Take Reduction Plan. The Pacific Offshore Cetacean Take Reduction Team was convened in February 1996 to address incidental takes of beaked whales, pilot whales, pygmy sperm whales, sperm whales, and humpback whales in the California/Oregon thresher shark/swordfish drift gillnet fishery. The final consensus rule implementing the team's plan was published on October 3, 1997 (62 FR 51805), implementing the team's four main bycatch reduction recommendations that: 1) the top of fishing nets be set at a minimum depth of 36 feet below the water surface; 2) pingers be required on all nets; 3) the states of California and Oregon reduce the potential for a future increase in fishing effort by not re-issuing permits to inactive fishermen; and 4) vessel operators be required to attend educational workshops.

In May 1999, NMFS re-convened the team to review bycatch estimates from the 1998/1999 fishing season and other data, which indicated that the Pacific Offshore Cetacean Take Reduction Plan has reduced marine mammal entanglements by an order of magnitude in only two years of implementation. Specifically, commercial fishermen have reduced mortalities and serious injuries from approximately 500 per year in the early 1990s to about 50 in 1998. However, the report of a sperm whale caught in a net that was not in compliance with NMFS regulations prompted the team to recommend that NMFS pursue more aggressive enforcement measures to monitor compliance with the plan. The next meeting of the team is scheduled for May 2000.

The Atlantic Large Whale Take Reduction Plan. The Atlantic Large Whale Take Reduction Team was established in August 1996 to develop a plan for reducing the incidental take of right whales, humpback whales, fin whales, and minke whales in the South Atlantic shark gillnet fishery, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery. Because the team did not reach consensus, NMFS developed a final plan and implementing regulations based on the range of team recommendations and considerable public input. Interim final regulations were published on July 22, 1997 (62 FR 39157), and the final rule was published February 16, 1999 (64 FR 7529).

Although there are several large whale species addressed within the scope of the plan, efforts are primarily focused on

the critically endangered northern right whale. Currently, the PBR level for right whales is 0.4 animals per year, however, preliminary data from 1998 indicate that the population is in decline, and that the PBR level should be set at zero.

The Atlantic Large Whale Take Reduction Plan closes some critical habitat areas to certain gear types when right whales are present, prohibits certain fishing practices, identifies gear modification options for fishermen, creates a network to respond to entangled whales, funds gear research to develop technological solutions to reduce entanglements, and improves outreach efforts to inform fishermen about the problems of right whale entanglements and seeks their input on technical solutions.

For example, NMFS has established a disentanglement program that involves: (a) a multi-agency and institution network to locate, monitor, and safely disentangle marine mammals; (b) maintenance of a database for entanglements, providing data access and periodic reports to users; and (c) development of regional protocols and plans, including outreach to the general public. The U.S. Coast Guard provides critical support in monitoring initial entanglement reports and transporting disentanglement personnel to events. Although the disentanglement team attempts to respond to all documented entanglement reports, the priority for response is for any immediately life-threatening event of endangered right and humpback whales. Depending on the situation, and with consideration for human safety, all reasonable efforts are made to get to and free each entangled whale.

In 1998, NMFS expanded the disentanglement network, particularly by increasing fishermen involvement. Commercial fishermen, in many ways, are ideal participants in the disentanglement network because of their vast experience on the water, knowledge of local fishing gear and practices, familiarity with hazardous working conditions at sea, and because they are likely to be operating vessels in areas where entanglements occur. The program has also been expanded to include the Mid-Atlantic states and the Southeast United States, and now includes a cache of equipment that can be quickly deployed to the site of an entangled whale.

Experience has shown that disentanglement is best undertaken by trained and experienced personnel, with appropriate protocols for the procedure as well as the associated data collection. Because of this, NMFS contracted with the Center for Coastal Studies in 1998 to develop a program for large whale disentanglement training for commercial fishermen in the state of

Maine. With the cooperation of NMFS, the Atlantic Large Whale Take Reduction Team, lobster zone council representatives, other fishermen, and Maine outreach contacts, training began in spring 1998 and has been ongoing to the present time.

However, the recent entanglements and deaths of right whales has heightened the need for NMFS and the team to develop recommendations for ways to reduce takes of right whales associated with fisheries, specifically through gear modification research. Given that the population may be in decline and that the take of any whale is significant, the outcome of the next team meeting will be critical to the success of the Atlantic Large Whale Plan.

Based on best available data, mortalities and serious injuries from stocks of humpback, fin, and minke whales do not exceed their calculated PBR levels. However, due to the critical status of northern right whales, NMFS re-convened the team in February 2000 to discuss options for gear modifications to further reduce mortality and serious injury of right whales. The team will meet again in April 2000 to discuss additional management measures needed to further reduce take.

The Atlantic Offshore Cetacean Take Reduction Team. The Atlantic Offshore Cetacean Take Reduction Team was convened to reduce the incidental take of right whales, humpback whales, sperm whales, beaked whales, pilot whales, common dolphins, bottlenose dolphins, and spotted dolphins in the Atlantic pelagic driftnet, longline and pair trawl fisheries. The team reached consensus on several strategies to reduce takes in each fishery and provided a draft plan to NMFS in November 1996. Pair trawl gear is not currently authorized for fishing in the Atlantic tuna or swordfish fishery, therefore the team's recommendations regarding pair trawl gear were not implemented. Much of the whale and dolphin interactions were known to occur within the driftnet fishery, and after completing a comprehensive assessment of the swordfish and tuna driftnet fisheries, NMFS published a final rule prohibiting the use of driftnet gear in the North Atlantic swordfish fishery (January 27, 1999; 64 FR 4055). Additionally, many of the recommended measures for reducing takes in the longline fishery are being implemented as part of the Highly Migratory Species Fishery Management Plan, published May 28, 1999 (64 FR 29090). Regulations applicable to all longliners include a limited entry system and call for voluntary educational workshops. Regulations focusing on the Mid-Atlantic area (the area with the highest potential for marine mammal bycatch), include limiting the length of line to 24 nautical miles from August through November, closing an area in the Mid-Atlantic

Bight during June to longliners targeting tuna, and requiring vessels to move after one marine mammal entanglement and to alert other vessels of the presence of marine mammals in the area.

At this time, Atlantic offshore cetacean mortalities appear to have been reduced to below the PBR level for most stocks covered by this plan. However, NMFS is concerned that the fishery is responsible for high levels of serious injury to offshore cetaceans. NMFS plans to reconvene the team to review updated data on mortality and serious injury estimates, specifically of pilot whales, and to determine whether any additional regulations or other bycatch reduction measures for the longline fishery are necessary.

The Merits of Using the Take Reduction Process to Reduce the Take of Marine Mammals

Take reduction plans are complex and often controversial, since they attempt to meet both marine mammal conservation requirements and the needs and concerns of the fishing industry. Implementation of the take reduction plans has taken a significant amount of financial and staff resources and has taken longer than anticipated to complete. However, through the dedication of participants from a wide-range of stakeholder groups, we are seeing some real successes in the preliminary stages of implementation.

NMFS believes that the take reduction team approach is generally successful in identifying ways to reduce marine mammal bycatch, while maintaining economically sustainable fisheries. NMFS conducted a survey of all take reduction team members in the fall of 1998 in an effort to identify ways to improve the take reduction process. The majority of survey respondents believed that: 1) the process was an effective resource management tool; 2) enough time was allocated for negotiations; 3) team member viewpoints were heard and incorporated into the plan; and 4) the process was fair. However, respondents had concerns regarding the implementation of the final plans and regulations.

For example, a consistent concern voiced by take reduction team members was the need for more detailed information on marine mammal stocks and the fisheries with which they interact to aid their deliberations. The more information available to the take reduction teams on fisheries and marine mammal stocks, the more options the team has to achieve its goals in the most appropriate and cost-effective way. To address this and other concerns, we are developing an action plan to improve communication, speed up the implementation of the plans, provide more focus on enforcement and monitoring and expand data sharing and analysis.

We are also working with stakeholders to expand and improve communication between NMFS and stakeholders regarding the take reduction process through workshops, web pages, public hearings, letters to fishermen, fisherman forums, dockside outreach, the *MMPA Bulletin*, and other means.

Issues for Consideration During MMPA Reauthorization

In general, NMFS believes the take reduction process and other requirements of section 118 work well. The process has been effective at bringing stakeholders together to jointly address the difficult issues involved in reducing the mortality and serious injury of marine mammal stocks incidental to commercial fisheries. However, because this process has been constantly evolving and must be tailored somewhat to adequately meet the needs of the individual situations, we are learning many lessons and believe that there are specific areas within section 118 that could be addressed to improve NMFS' ability to reduce the take of marine mammals incidental to commercial fisheries.

Zero Mortality Rate Goal (ZMRG). Section 118 sets two deadlines for achieving the ZMRG. First, ZMRG must be met within the context of each take reduction plan within five years of its establishment, and second, all commercial fisheries must achieve ZMRG by April 30, 2001. Unfortunately, efforts to achieve the first deadline of reaching ZMRG for each take reduction plan have been delayed due to difficulties in achieving PBR levels within six months of each take reduction plan's implementation. We have also concluded that reaching ZMRG will require extensive research, gear technology development, and testing to identify ways to further reduce takes. Therefore, given that it has been difficult to meet PBR levels for most plans, and given that it is unlikely that fisheries will be able to meet either ZMRG deadline, we would welcome any suggestions that the Subcommittee may have to assist us in addressing this issue.

Recreational Fisheries. The impacts of certain recreational fisheries on marine mammal stocks has been an area of increasing concern for NMFS, and section 118 of the MMPA does not currently provide for the take of marine mammals incidental to the operation of recreational fisheries. Although recreational fishermen can serve on take reduction teams, they are not covered by the long-term regime which authorizes the incidental take of marine mammals, and are therefore subject to the general moratorium on taking marine mammals. Because many recreational fisheries utilize gear types similar to those used in commercial fisheries, such as beach gillnets and lobster and crab pots, NMFS is concerned that they may impact marine mammals, particularly coastal stocks of bottlenose dolphins. We would welcome any

suggestions that the Subcommittee might have to better provide for reporting and monitoring of recreational fisheries and to help NMFS quantify and clarify recreational fishery impacts and achieve better representation of those fisheries in the take reduction process.

Streamlined Take Reduction Process. The take reduction process, while inherently sound, takes considerable time, staff resources, and expense. This multi-year process consists of approximately two to three years of observer coverage, abundance surveys, and research into stock structure and fishery characteristics, at an estimated annual cost of $2 million. Convening teams for negotiations, including assembling the team and contracting a facilitator, can take approximately two years and cost approximately $500K per team. Additionally, time is required for NMFS to develop the regulations, followed by three to five years of monitoring and follow-up with the team, at an approximate cost of $100K per meeting and $800K per year of observer coverage.

Finally, significant staff effort is also spent during this process, conducting analyses, and both during and following negotiations.

NMFS has followed the statutory guidance for prioritizing the development of take reduction plans for marine mammal stocks by first addressing the fisheries and marine mammal stocks of greatest concern. However, there are additional marine mammal stocks that could benefit from the take reduction process. We are currently considering ways to streamline the take reduction process administratively to provide flexibility for NMFS and team members to address additional marine mammals stocks that interact with commercial fisheries. We welcome suggestions from the Subcommittee on ways to achieve this, including providing funds requested in the President's Budget.

Conclusion

The MMPA has had a significant impact on marine mammal conservation. NMFS has worked hard to implement the sweeping changes brought about in 1994, particularly those in section 118. Over the last six years, NMFS has gathered vital information on stock abundance and human-caused mortality in the annual stock assessment reports; implemented a fishery classification system to prioritize and focus on fisheries of greatest impact to marine mammals; developed an at-sea observer program to gather important detailed information essential to take reduction analysis; and convened five take reduction teams and finalized four take reduction plans to reduce the take of strategic marine mammals.

However, NMFS recognizes that the implementation of section 118 can be improved, and we have taken steps to address problems and areas of concern identified by team members.

As we make plans to convene the next take reduction team to address incidental mortality and serious injury of Atlantic bottlenose dolphins in Mid-Atlantic fisheries in the fall of 2000, we have applied these lessons learned and have dedicated significant funding and time to develop abundance estimates, identify and distinguish the bottlenose dolphin's complex stock structure, and monitor interactions with commercial fisheries through at-sea observer programs and stranding response efforts.

We have found the take reduction team process to be arduous, time-intensive, and always changing, but NMFS is proud of its efforts and especially the efforts of a wide range of stakeholders to make the process work. We are beginning to see the results of those efforts, and we are hopeful that the success we have experienced in reducing marine mammal takes in the early stages of implementation will continue in existing and future plans.

I welcome the opportunity to discuss improving the take reduction process with you and to work toward effective resolution to these and other important marine mammal conservation issues.

Table 1 Take Reduction Teams		
Take Reduction Team	**Marine Mammal Stocks**	**Fisheries**
Pacific Offshore Cetacean	Beaked whales, pilot whales, pygmy sperm whales, sperm whales, humpback whales	California/Oregon thresher shark/swordfish drift gillnet
Atlantic Offshore Cetacean	Right whales, humpback whales, beaked whales, pilot whales, common dolphins, bottlenose dolphins, spotted dolphins	Atlantic large pelagics longline, driftnet, and pair trawl
Mid-Atlantic Harbor Porpoise	Harbor porpoise	Mid-Atlantic coastal gillnet
Gulf of Maine Harbor Porpoise	Harbor porpoise	Northeast sink gillnet
Atlantic Large Whale	Right whales, humpback whales, fin whales, minke whales	Northeast sink gillnet, Mid-Atlantic coastal gillnet, Gulf of Maine/Mid-Atlantic lobster trap/pot fishery, southeastern U.S. Atlantic shark gillnet fishery.

Table 2
Take Reduction Plan Timeline

	Pacific Offshore Cetacean	Atlantic Offshore Cetacean	Harbor Porpoise [Gulf of Maine]	Harbor Porpoise [Mid-Atlantic]	Atlantic Large Whale
Date convened	Feb. 15, 1996 (61 FR 5385)	May 23, 1996 (61 FR 25846)	Feb. 12, 1996 (61 FR 5384)	Feb. 25, 1997 (62 FR 8428)	Aug 6, 1996 (61 FR 40819)
First meeting	Feb. 13-14, 1996 (61 FR 5385)	May 29-30, 1996 (61 FR 25846)	Feb. 14-15, 1996 (61 FR 5384)	Mar. 4-5, 1997 (62 FR 8428)	Sept. 16-17, 1996 (61 FR 48131)
Draft plan submitted to NMFS	Aug. 15, 1996	Nov. 25, 1996	Aug. 8, 1996	Aug. 25, 1997	Feb. 5, 1997
Draft plan and proposed rule published	Feb. 14, 1997 (62 FR 6931)	Draft plan and proposed rule not published due to fishery management decisions	Aug. 13, 1997 (62 FR 43302) Comment period reopened and extended to Jan. 14, 1998 (62 FR 65402). Revised proposed rule Sept. 11, 1998 (63 FR 48670)	Sept. 11, 1998 (63 FR 48670)	Apr. 7, 1997 (62 FR 16519)
Final plan and final rule published	Oct. 3, 1997 (62 FR 51805) Technical amendment May. 21, 1998 (63 FR 27860) Interim final rule Jan. 22, 1999 (64 FR 3431)	Partially implemented under Highly Migratory Species FMP May 28, 1999 (64 FR 29090)	Dec. 2, 1998 (63 FR 66464)	Dec. 2, 1998 (63 FR 66464)	Interim final rule Jul. 22, 1997 (62 FR 39157) Final rule Feb. 16, 1999 (64 FR 7529) Partial stay Apr. 9, 1999 (64 FR 17292) Partial stay Dec. 20, 1999 (64 FR 73434)
Follow-up	2/97, 6/98, 5/99	Reconvene in 2000	12/97, 12/99 - Plan revisions in progress	1/00 - Plan revisions in progress	2/99, 2/00, 4/00 - Plan revisions in progress

Mr. SAXTON. Thank you, Dr. Rosenberg. Dr. Reynolds, please.

STATEMENT OF JOHN E. REYNOLDS

Mr. REYNOLDS. Mr. Chairman, thank you for inviting the Marine Mammal Commission to provide its views on the effectiveness of Section 118 of the Marine Mammal Protection Act in reducing mortality and serious injury of marine mammals incidental to commercial fishing operations. To date the National Marine Fisheries Service has, as has been noted, established five take reduction teams, their establishment, their recommendations, actions to implement take reduction plans, and problems encountered are discussed in the detailed statement I have submitted for the record.

Today I will confine my remarks to just some general observations. The Commission believes that the provisions pertaining to take reduction plans are fundamentally sound. First, Section 118 appropriately places the highest priority on developing plans for those stocks that are most affected by commercial fisheries and for those fisheries with the highest frequency of takes.

Second, it establishes biologically based goals for reducing incident mortality and serious injury within specific timeframes. Third, it involves all stakeholders and applied a cooperative approach to developing take reduction plans thereby ensuring consideration of all views and building support for recommended remedial measures. Section 118 set an ambitious schedule for developing and implementing take reduction plans. Had all timing requirements been strictly adhered to mortality and serious injury of marine mammals incidental to commercial fisheries would have been reduced to below each stock's PBR level by September, 1996, or in the case of Gulf of Main Harbor Porpoises by April 1997.

By now we would be well on our way to meeting the 0 mortality rate goal. While there has been substantial progress incidental mortality and serious injury still exceeds some stock's PBR level and take reduction teams have yet to be established for some strategic stocks. There appear to be several reasons that it has taken longer to achieve the goals of Section 118 than originally anticipated. First, the service has finite resources to directive resolving marine mammal fishery interaction problems.

Second, the issues are often complex and can affect the livelihood of many fishermen. For instance, the Atlantic large whale take reduction plan is to devise a way to eliminate essentially all mortality and serious injury of Northern right whales incident to the fisheries that use more than 3 million lobster traps and make tens of thousands of gillnet sets within the species range each year. For Gulf of Maine Harbor Porpoises, the take reduction team has had to contend with frequently shifting fishery closures implemented to protect fish stocks as it tries to design effective marine mammal base closures and gear requirements.

Third, efforts to develop and implement effective plans are sometimes slowed by a need to conduct research and to understand the nature of the interactions and to design and test take reduction measures. For bottlenose dolphins research has been aimed at even more rudimentary questions to resolve uncertainties about stock structure. Although the service and others involved in the process have made considerable progress more remains to be done.

We are particularly concerned about the urgent need to reduce incidental mortality of Northern right whales further. For this stock, any mortality may significantly affect prospects for recovery. We have urged the service to use its emergency rulemaking authority to implement fishery closures to eliminate hazardous fishing gear from critical habitat areas during those times when right whales are most likely to be present. There is also a pressing need to move forward with a take reduction team for bottlenose dolphins.

I note one change to Section 118 that the commission believes is warranted. Currently the Act requires take reduction plans for all strategic stocks that interact with categories one or two fisheries. But some stocks are considered strategic solely because they are listed under the ESA or depleted under the MMPA, not because of a significant level of fishery-related mortality or serious injury. Where there is a very low level of taking incident to fisheries the stocks would benefit little from take reduction plans.

To ensure wise use of limited agency resources the commission recommends that the Act be amended to specify that plans need not be prepared for those strategic stocks for which mortality and serious injury from fisheries are inconsequential. As we begin to reduce fisheries-related mortality and serious injury to biologically significant levels, we should not lose sight of other significant threats to marine mammals. For example, on average one Florida manatee is hit and killed by a motorboat every four or 5 days.

Similarly, vessel strikes involving right whales present a serious conservation problem, and we are also becoming increasingly aware of the potentially significant adverse effects of point and non-point source pollution which may affect not only marine mammals but other important components of marine ecosystems so solving the fisheries questions won't necessarily protect all marine mammal stocks. Finally, most research and conservation actions under the Marine Mammal Protection Act are designed at present to respond to acute often controversial conservation issues.

I believe we need to consider other approaches that respond not only to critical current situations but to recognize the need for broad-based interdisciplinary anticipatory research that will enable us to address potential conservation problems before they become serious. I would be pleased to explore these issues with you and to respond to any questions you may have. Thank you.

[Prepared statement of Mr. Reynolds follows:]

Statement of John E. Reynolds, III, Ph.D.
Chairman, Marine Mammal Commission
before the
Subcommittee on Fisheries Conservation, Wildlife and Oceans
House Resources Committee
6 April 2000

Thank you, Mr. Chairman and Members of the Committee. The Marine Mammal Commission is grateful for the opportunity to provide information and share its views on the status of efforts to develop and implement take reduction plans to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations as prescribed by the 1994 Marine Mammal Protection Act amendments. The Commission has been represented on two of the five take reduction teams established to date and has closely followed the development of the other take reduction plans. My comments today will focus principally on the effectiveness of the Atlantic Large Whale Take Reduction Plan and the Gulf of Maine Harbor Porpoise Take Reduction Plan, the plans developed by the take reduction teams on which a member of the Commission staff participates.

Current Requirements

The requirements pertaining to take reduction plans are set forth in section 118(f) of the Marine Mammal Protection Act. That provision requires the Secretary of Commerce to develop and implement take reduction plans to reduce the incidental taking of marine mammals from "strategic" marine mammal stocks by commercial fisheries. Such plans are required for all fisheries classified as frequently (Category I) or occasionally (Category II) killing or seriously injuring marine mammals from strategic stocks. Strategic stocks are defined in the Act as those (1) for which the level of human-caused mortality from fisheries and/or other causes exceeds the stock's potential biological removal level, (2) that are designated as depleted under the Marine Mammal Protection Act, or (3) that are listed or likely to be listed as endangered or threatened under the Endangered Species Act. The National Marine Fisheries Service has classified 6 U.S. fisheries as Category I fisheries and 26 as Category II fisheries. The immediate goal of each take reduction plan, as specified in section 118(f)(2), is to reduce incidental fishing-related mortality and serious injury to levels below the potential biological removal levels of the affected stocks within six months of plan implementation. The long-term goal is to reduce incidental fishery-related mortality and serious injury to levels approaching zero within five years of the plan's implementation.

To assist in the preparation of a take reduction plan, section 118(f)(6) requires that the Secretary of Commerce establish a take reduction team to develop a draft plan. Take reduction teams are to be composed of members representing all fisheries groups and gear types that incidentally take marine mammals from the stocks of concern, relevant federal and state agencies, regional fishery management councils, environmental groups, academic and scientific organizations, and, when applicable, interstate fishery commissions and Alaska Native organizations. The time frame for developing a take reduction plan depends on the magnitude of fishery-related mortality and serious injury from the affected stocks.

For strategic stocks with fishery-related mortality and serious injury that exceed the stock's potential biological removal level, section 118(f)(7) requires that a take reduction team, once established, submit a draft take reduction plan to the Secretary within six months. The draft plan is to include recommended regulatory and voluntary measures for reducing fishery-related mortality and serious injury to less than the stock's potential biological removal level within six months of its implementation. Within 60 days of receiving a team's draft plan, the Secretary is required to publish it for public comment in the *Federal Register*, along with proposed implementing regulations and an explanation for any changes to the draft plan proposed by the Secretary. The comment period is not to exceed 90 days and, within 60 days of the close of the comment period, a final plan and accompanying regulations are to be adopted. After a plan is adopted, the take reduction team is to meet every six months, or at such other intervals as the Secretary deems necessary, to monitor plan implementation until its objectives have been met. For stocks with fishery-related mortality and serious injury that are less than the potential biological removal level, section 118(f)(8) allows a somewhat longer time frame for developing take reduction plans.

Section 118(f)(9) identifies the types of measures that may be adopted to implement take reduction plans. It authorizes regulatory measures to (1) limit incidental taking of marine mammals in fisheries by time or area, (2) require the use or encourage the development of alternative fishing gear or techniques less likely to take marine mammals, (3) educate fishermen on the importance of reducing marine mammal bycatch, and (4) monitor the effectiveness of take reduction actions. Section 118(g) directs the Secretary of Commerce to issue emergency regulations when necessary to reduce mortality and serious injury of marine mammals incidental to commercial fisheries that are having immediate and significant adverse effects on a marine mammal stock.

Efforts to Develop and Implement Take Reduction Plans

In furtherance of these requirements, the National Marine Fisheries Service has, to date, established five take reduction teams. They are (1) the Atlantic Large Whale Take Reduction Team, (2) the Gulf of Maine Harbor Porpoise Take Reduction Team, (3) the Mid-Atlantic Coastal Gillnet Take Reduction Team, (4) the Pacific Offshore Cetacean Take Reduction Team, and (5) the Atlantic Offshore Cetacean Take Reduction Team. To organize and support team activities, the Service contracted with professional facilitators to lead meeting discussions and prepare team reports. A representative of the Marine Mammal Commission has participated as a member of the Atlantic Large Whale and Gulf of Maine Harbor Porpoise Take Reduction Teams.

The facilitators used by the Service to help structure and lead discussions of the take reduction teams have served the teams well and have been a great help in preparing reports that accurately reflect the members' discussions and views. While each of the teams has submitted a draft plan to the Service consistent with the requirements of Section 118, adoption and implementation of final plans have not always been accomplished within the mandated time frames and, in some cases, have not satisfied the objective of reducing mortality and serious injury to below a stock's potential biological removal level. The problems that have been

encountered appear to be due to a combination of factors related to the complexity of the issues involved, concern about the economic impact of possible mitigation measures, and an inability to meet tightly drawn statutory deadlines.

Pacific Offshore Cetacean Take Reduction Plan: A team to develop a draft plan to reduce the incidental take of several whale species in the California/Oregon shark drift gillnet fishery was established in February 1996. The team submitted a draft plan to the Service in August 1996 at the end of the six-month development period. The Service responded promptly and, early in 1997, published implementing regulations requiring (1) the use of pingers on all nets, (2) the setting of nets at a minimum depth below the surface, (3) fishing boat operators to attend educational workshops, and (4) steps to limit entry into the fishery. As we understand it, the measures are working well and have significantly reduced marine mammal incidental take.

Atlantic Offshore Cetacean Take Reduction Plan: This plan addresses the incidental taking of northern right whales, humpback whales, and sperm whales, as well as the taking of several species of small cetaceans, in pair trawl, longline, and drift gillnet fisheries for swordfish, sharks, and tuna in U.S. waters off the Atlantic coast. A take reduction team was established on 23 May 1996 and submitted its draft plan on 22 November 1996, within the established six-month development period. However, before the plan was finalized, the Service initiated steps in 1997 to permanently close the swordfish gillnet fishery and, early in 1998, to close large segments of other drift gillnet fisheries. These closures were expected to substantially reduce the incidental take of marine mammals and, in light of the changed circumstances, the Service indicated its intention to reconstitute and reconvene the team to address remaining issues. To our knowledge, however, no such action has yet been taken.

Atlantic Large Whale Take Reduction Plan: This plan was developed to reduce the incidental take of several large whale species, including northern right whales, in gillnet and lobster trap fisheries along the East Coast. On 6 August 1996, the Service established a take reduction team to develop a draft plan. Because of the critically endangered status of northern right whales, almost all of the team's attention has been devoted to reducing incidental take of that species.

The potential biological removal level for the western North Atlantic right whale population, the stock affected by these fisheries, was calculated in the original stock assessment to be 0.4 whale per year. It is expected that the potential biological removal level for this stock will be reduced to zero in the next update of the stock assessment. Despite the urgent need to reduce right whale mortality and serious injury, efforts to identify and implement measures to reduce incidental take below the stock's potential biological removal level have been unsuccessful.

With a population of about 300 whales ranging seasonally from Florida to Maine, the team's challenge has been enormous — identifying measures that will prevent perhaps 5 to 10 serious or fatal right whale entanglements per year in more than three million lobster traps and tens of thousands of gillnet sets along the entire U.S. East Coast. Although the team was unable to reach consensus on all needed measures, it submitted its findings and recommendations to the

Service on 3 February 1997, within the statutory time frame. The team recommended (1) requiring gear modifications that could possibly reduce entanglement risks, although their effectiveness was untested and unknown, (2) further gear modification research, (3) efforts to locate and free entangled whales, and (4) seasonal fishery closures in those parts of designated right whale critical habitat that would least affect commercial fishing.

Based on the team's recommendations, the Service published a proposed take reduction plan and implementing regulations on 7 April 1997, within the statutory time frame. The Service's proposal relied heavily on the effectiveness of untested gear modifications and elicited thousands of letters of opposition, primarily from participants in the Maine lobster fishery, who objected to the expense associated with proposed fishing gear modifications. The Marine Mammal Commission also believed that it was premature to propose extensive gear modifications without first determining their likely costs and effectiveness. In a 5 June 1997 letter commenting on the proposed plan, the Commission recommended that the Service (1) defer imposing most gear modification requirements until more is known about their likely effectiveness, (2) reduce entanglement risks by expanding fishery closures in right whale critical habitat to better cover those times and areas in which right whales are likely to occur, and (3) implement an aggressive gear research program.

The Service published an interim final rule on 22 July 1997, relaxing the proposed gear requirements to a point where few modifications would be required. However, the Service incorporated no offsetting changes to the proposed fishery closures in right whale critical habitats to reduce the potential for whale entanglements. Although the Service made commitments to support further gear research and to increase whale disentanglement efforts, implementation of the plan did little to reduce entanglement risks. Instead, the Service relied on efforts to disentangle whales and on further gear research that it hoped would identify a long-term solution.

To date , the Service has not been able to undertake all of the gear research recommended by the take reduction team and its subsidiary gear advisory group. In 1998 and 1999, agency resources were focused on addressing other pressing right whale recovery efforts and enlisting the assistance of fishermen in reporting and releasing whales entangled in fishing gear. Although some important gear research and testing has been done, much remains to be accomplished.

Despite implementation of the take reduction plan, whale entanglements continue to occur. In 1999 at least six right whales (as well as other whale species) were observed to have been entangled. Three of these whales were initially sighted last spring in the Great South Channel critical habitat area. However, they may have become entangled elsewhere. While funding for disentanglement operations has at times been uncertain, these operations appear to have been adequately funded during both 1998 and 1999. Despite full funding, whale disentanglement efforts have proven to be difficult. Although several right whales and other whales have been successfully disentangled, and some whales have been able to free themselves, others have been hard to relocate, compromising the Service's ability to monitor their status or undertake disentanglement efforts. Last October, after several unsuccessful attempts to remove entangling gear from one right whale, it was found dead.

Disentangling large whales is expensive, risky to the human rescuers, and not an entirely effective means for saving the whales. Thus, at present, the only proven way to reduce right whale entanglement risks is to reduce the presence of potentially hazardous fishing gear at times and in areas where the whales are most likely to occur. Because of the high number of entanglements that occurred in 1999, the Marine Mammal Commission recommended on 1 October, and again on 23 November 1999, that the Service use its emergency rulemaking authority to close the entire area in the Great South Channel designated as right whale critical habitat to gillnet fishing by the spring of 2000 when right whales concentrations in that area would next reach their peak. Although the Service reconvened the Atlantic Large Whale Take Reduction Team on 22-24 February 2000, it has taken no further steps to implement either the Commission's recommendations or other measures to reduce entanglement risks. Inasmuch as the Atlantic Large Whale Take Reduction Team was unable to address the issue of further closures at its February 2000 meeting, it remains uncertain whether and, if so, when the Service will act to strengthen its take reduction plan. In the interim, one right whale entangled in fishing gear died off Rhode Island in mid-January 2000, and another, badly entangled whale seen alive in February in Cape Cod Bay has not been relocated.

The Commission appreciates that reducing incidental taking of northern right whales in fishing gear presents an extraordinarily difficult challenge. Nevertheless, it seems that more must be done to meet the challenge presented by the 1994 Marine Mammal Protection Act amendments. In particular, we believe that the Service should use its emergency regulatory authority under section 118 to augment its implementation of the existing take reduction plan.

Gulf of Maine Harbor Porpoise Take Reduction Plan: This plan is designed to reduce the incidental take of harbor porpoises in the sink gillnet fisheries for groundfish and other species off New England. To help develop the plan, the Service established a take reduction team on 12 February 1996. At that time, an estimated 1,500 harbor porpoises were being killed annually in gillnet fisheries in New England, mid-Atlantic, and Canadian waters. This far exceeded the potential biological removal level for the affected stock, then calculated to be 403 porpoises per year. The vast majority of the porpoise mortality, estimated at 1,200 animals per year, was occurring off New England.

Because of the urgent need to reduce this take, the 1994 amendments to the Marine Mammal Protection Act authorized the Service to expedite the process for publishing a stock assessment and developing a take reduction plan for the Gulf of Maine harbor porpoise. The amendments also recognized that reducing the take of harbor porpoises in these fisheries could prove particularly difficult and gave the Service flexibility to extend the time by which mortality and serious injury were to be reduced below the stock's potential biological removal level. Nevertheless, the amendments directed the Service to develop and implement a take reduction plan for harbor porpoises by 1 April 1997. While progress has been made in reducing harbor porpoise bycatch, it remains unclear whether efforts to date will prove successful in bringing the number of mortalities and serious injuries to less than the potential biological removal level of the stock.

The take reduction team submitted a consensus draft plan to the Service on 7 August 1996, within the statutory six-month time frame. As core measures, the draft plan recommended regulations to establish two types of management zones. For some zones, all fishing was to be prohibited on a seasonal basis. For others, fishing was to be allowed, but only if fishermen used nets fitted with newly developed acoustic deterrent devices (*i.e.*, pingers) intended to keep harbor porpoises away from nets. The management zones recommended by the take reduction team expanded on fishery closures previously established by the Service under the Magnuson-Stevens Fishery Conservation and Management Act to protect groundfish stocks and other closures established specifically to reduce harbor porpoise bycatch. The draft plan also recommended (1) studies to further test the effectiveness of pingers, (2) a census of the gillnet fleet, (3) a mandatory training and certification program for fishermen on the use of pingers, (4) actions to ensure enforcement of management measures, (5) more timely analysis of data on harbor porpoise bycatch levels, and (6) studies to determine the effects of pingers on harbor porpoises and other organisms in the marine environment.

The team's work was complicated by uncertainty concerning the New England Fishery Management Council's plans for recommending new closures to protect depleted groundfish stocks. The team recognized that the closures recommended by the Council to conserve groundfish would correspondingly reduce harbor porpoise bycatch, but, absent information as to where and when they were likely to occur, the team was unable to predict the extent to which they would do so. Further complicating the matter, the Council was unwilling to consider harbor porpoise take reduction needs specifically as it designed its system of closures.

Shortly after the team submitted its draft plan, the Council recommended, and the Service adopted, a system of gillnet fishery closures that included most, but not all, of the management zone measures recommended in the team's draft plan. Apparently in light of this action, the Service deferred action on the team's recommended plan for one year, thereby missing the statutorily mandated deadline for developing the take reduction plan. During this period, the Service did take action to implement some of the team's other recommendations, such as conducting research on habituation of harbor porpoises to pinger sounds, but did not address other recommendations, such as establishing a mandatory pinger certification program, developing mechanisms for enforcing take reduction measures, and assessing the effect of pingers on the distribution of harbor porpoises.

By the spring of 1998 it was clear that the measures that had been initiated were insufficient, as harbor porpoise bycatch continued to exceed the stock's potential biological removal level by more than a factor of two. The Service therefore published a proposed take reduction plan that adopted most, but not all, of the measures included in the draft plan submitted by the team a year earlier. By then, however, it was apparent that even if all of the team's recommendations were implemented, they would be insufficient to reduce harbor porpoise mortality and serious injury to the required level. The Service therefore decided to defer action again, opting to reconvene the team in December 1997. Frustrated by the closures implemented in response to the Fishery Management Council's recommendations and the likely adoption of further restrictions to protect harbor porpoises, several fishing industry representatives chose not to attend the meeting. While participating members considered alternative time/area closures at

that meeting, no recommendations were put forward. The Service therefore continued to defer action on the proposed plan throughout the first half of 1998 while it considered alternative measures. In the interim, the New England Fishery Management Council recommended a new system of fishery closures to protect groundfish stocks that further reduced fishing effort in areas of high harbor porpoise bycatch.

Dissatisfied with the Service's progress in adopting a take reduction plan that fully met the Act's take reduction goals within the statutorily mandated time frame, environmental groups filed a lawsuit on 21 August 1998. As part of a settlement agreement reached in the case, the Service agreed to publish a new plan promptly and to develop harbor porpoise bycatch estimates on a more timely basis to help assess progress towards reducing incidental mortality and serious injury. On 13 September 1998 the Service published a new proposed harbor porpoise take reduction plan that included measures applicable to waters off both New England and the U.S. mid-Atlantic states (see Mid-Atlantic Coastal Gillnet Take Reduction Plan below).

The plan, adopted on 2 December 1998, significantly expanded the fishing areas subject to pinger requirements. These requirements were established under the authority of the Marine Mammal Protection Act. However, to reach the initial goal of reducing harbor porpoise bycatch to less than the stock's potential biological removal level, the plan also relied on fishery closures recommended by the New England Fishery Management Council to protect depleted groundfish stocks and adopted by the Service under the Magnuson-Stevens Fishery Conservation and Management Act. The adopted take reduction plan also included a mandatory training program for fishermen on the use and maintenance of pingers, a program to randomly test the functioning of deployed pingers, efforts to develop hydrophones that could be used to enforce the pinger requirements, a commitment to provide bycatch estimates in a more timely manner, and further research on the habituation of harbor porpoises to pinger sounds and the effects of those sounds on other components of the ecosystem.

To review progress in implementing the plan, the Service sought to reconvene the team in the summer and fall of 1999. However, several fishery representatives, dissatisfied with the adopted plan, resigned from the team. To enable the Service to identify and appoint new representatives and resolve scheduling conflicts, the team did not meet until 14-15 December 1999. By that time, recently collected data suggested that bycatch had been substantially reduced during the first three-quarters of 1999 and was approaching the harbor porpoises' potential biological removal level. At about the same time, however, the New England Fishery Management Council was again considering changes to the fishery closures instituted to protect groundfish, and the Service did not yet have data to evaluate how much of the estimated bycatch reduction was attributable to fishery closures and how much was attributable to mandatory pinger use under the harbor porpoise take reduction plan. As a result, the team was unable to provide advice on whether or how to alter the management zones established by the regulations implementing the take reduction plan. It remains uncertain whether or when the Service plans to make any adjustments to the plan.

During the December meeting, the Service advised the team that, although it had purchased hydrophones to help enforce pinger requirements at certain times and in certain areas,

the Coast Guard was reluctant to use them based on its concerns regarding the enforceability of the applicable regulations, questions concerning the reliability of the hydrophones, lack of training in hydrophone use, and the value of hydrophone recordings as evidence in enforcement proceedings. Because of these concerns, the Coast Guard requested that a Service enforcement agent or the affected fishermen be present at the time the hydrophones were used to ensure that they were deployed properly. Because the Service does not have enforcement agents available to assign to the task, apparently no efforts have been made to conduct checks to ensure that pingers are in fact being used on deployed nets. The Service also advised the team that it had been unable to randomly collect deployed pingers and replace those determined to be faulty because fishermen believed the replacement pingers to be inferior models and were unwilling to accept them in exchange. As a result, little was done in 1999 to check the durability of pingers under routine industry use.

While significant steps had been taken to reduce harbor porpoise mortality and serious injury, it is unclear whether actions taken to date have successfully achieved the Act's initial objective of reducing these types of takings to below the stock's potential biological removal level. In part, the delay in meeting the statutory goal is attributable to a delay in publishing a take reduction plan. Despite a specific statutory deadline, a plan was not adopted until December 1998, approximately 16 months late.

Much remains to be accomplished to implement the harbor porpoise take reduction plan fully and greater efforts need to be directed at developing bycatch estimates on a timely basis, monitoring and enforcing applicable pinger requirements, testing pinger reliability under operational conditions, and conducting research to assess the effects of pinger sounds on the distribution of harbor porpoises and other species. The slow pace of implementation has frustrated team members, apparently contributing to some resignations from the team, and has resulted in a lawsuit being filed. In addition, data have yet to be developed that would enable the Service to differentiate the extent to which bycatch levels have been reduced as a result of measures in the harbor porpoise take reduction plan as compared to those measures implemented for fishery management purposes, which are subject to change.

Mid-Atlantic Coastal Gillnet Take Reduction Plan: The Service originally planned to convene a take reduction team to address the incidental take of harbor porpoises from the Gulf of Maine stock and bottlenose dolphins in coastal gillnet fisheries for dogfish, monkfish, shad, and other species off the U.S. mid-Atlantic coastal states. Because information on bycatch rates in these fisheries was limited, however, the Service delayed establishment of a take reduction team until 25 February 1997 to enable it to collect and analyze additional observer data. Those data provided a sufficient basis to begin addressing the regional bycatch of harbor porpoises, but not bottlenose dolphins. The Service therefore decided to defer development of a take reduction plan for bottlenose dolphins pending collection of additional data on bycatch rates and better delineation of bottlenose dolphin stock structure along the mid-Atlantic coast.

The take reduction team submitted its draft plan for harbor porpoises to the Service on 25 August 1997, within the statutorily mandated time frame. The plan, reflecting a consensus of team members on most measures, did not recommend mandatory pinger use. Rather, it relied on

seasonal gear requirements (*e.g.*, net twine diameters, net numbers and length, and mesh size) that observer data suggested were less likely to catch harbor porpoises. Apparently in the interest of combining harbor porpoise take reduction measures for the New England and the mid-Atlantic regions into a single plan, the Service deferred action to adopt the recommended measures until 25 September 1998, when it published a proposed plan covering both areas. That plan was adopted on 2 December 1998, as noted above.

Although required by the Marine Mammal Protection Act to carry observers to monitor marine mammal bycatch when requested by the Service, some fishermen have refused to do so. Nevertheless, the observer data that have been collected are believed to reflect bycatch rates for most regional gillnet fishing operations. Based on those data, the Service has estimated harbor porpoise bycatch levels in the mid-Atlantic region at 572 and 446 porpoises for 1997 and 1998, respectively. Bycatch for 1999 appears to have declined to well below 100 animals although a final estimate is not yet available.

Although take reduction measures for harbor porpoises off the mid-Atlantic states, deferred for a year after submission of the take reduction team's draft plan, are now in place and appear to have significantly reduced regional bycatch levels, the Commission is concerned that the refusal of some fishermen to carry observers might be skewing bycatch estimates. Despite the apparent success in reducing harbor porpoise bycatch in the mid-Atlantic region, we are concerned that steps to address the bycatch of bottlenose dolphins have not yet been taken and that it remains unclear when a take reduction team for this species will be established. In this regard, the Commission believes that current incidental take levels may be high enough to be causing population declines and that development of a take reduction plan cannot wait until the uncertainties concerning stock structure are resolved.

Conclusions

The requirements for developing and implementing take reduction plans and convening take reduction teams set forth in section 118 of the Marine Mammal Protection Act appear to be appropriate and fundamentally sound. Among other things, the Commission believes that involving all stakeholders in the development of plans ensures that all views are identified and considered in the process of plan development and that plans consequently are more likely to be successfully implemented.

As noted in the Commission's 29 June 1999 testimony before this Committee on implementation of the 1994 amendments, one change that may be warranted concerns the requirement to prepare plans for all strategic stocks taken in Category I or Category II fisheries. Some stocks are considered strategic solely by virtue of being listed as endangered or threatened under the Endangered Species Act or designated as depleted under the Marine Mammal Protection Act, not because of a significant level of fishery-related mortality or serious injury. In cases where there is a very low level of taking incidental to commercial fisheries, the stocks would benefit little from the preparation of take reduction plans. To ensure the best use of limited agency resources, the Commission recommends that the Act be amended to specify that

plans need not be prepared for those strategic stocks for which mortality and serious injury resulting from commercial fishing are inconsequential.

Although the requirements for preparing take reduction plans seem conceptually sound, implementation has been inconsistent and there has been difficulty in meeting the requirements of section 118 in a timely manner. These difficulties seem to be undermining the confidence of some team members in the process and, in certain cases, their willingness to participate. Unless these deficiencies are corrected, progress in adopting and implementing plans is likely to continue at a slower-than-expected pace and may expose the Service to litigation risks. In the case of the northern right whale, delay in initiating an effective take reduction plan may be significantly affecting the species' prospects for recovery.

With regard to regulatory measures needed to implement the Atlantic Large Whale Take Reduction Plan, Congress should call on the Service to take all necessary steps to implement fishery closures designed to eliminate hazardous fishing gear from designated right whale critical habitat during those times when right whales are most likely to be present. The Service also should be encouraged to develop adaptive regulatory procedures that enable it to institute temporary restrictions in other areas during periods when concentrations of right whales are detected. Preventing hazardous fishing gear from being deployed in areas where right whales are most likely to occur currently is the only way to ensure that entanglement risks for this species are reduced. Based on the fact that right whales continue to get entangled in fishing gear and that some of these entangled whales do not survive, the Commission believes that further remedial actions are essential.

With regard to the Gulf of Maine Harbor Porpoise Take Reduction Plan, the Service needs to ensure that all measures necessary to achieve take reduction goals are reflected in the plan and are addressed in its implementing regulations. Due to constantly changing fishery closures recommended by the New England Fishery Management Council to conserve fish stocks, which affect harbor porpoise bycatch levels, the ability of take reduction teams to provide timely advice on regulatory measures needed to achieve take reduction goals has been impaired.

As we begin to get a handle on reducing fisheries-related mortality and serious injury to biologically insignificant levels, we should not lose sight of other, sometimes more significant, threats to marine mammals. For example, an average of one manatee is hit and killed by a boat in Florida every four or five days. Further, the size of the human population in Florida is increasing and, as this occurs, both the number of boats and the level of risks to manatees continue to increase. Also, as the human population grows, human-related destruction and degradation of essential manatee habitats are likely to increase. Thus, the survival of the species will depend on effective use of the Endangered Species Act and the Marine Mammal Protection Act to reduce human-caused mortalities and to prevent destruction and degradation of critical habitats and habitat components.

Another problem that is becoming increasingly apparent is point and non-point source pollution, which may be having significant adverse effects on marine mammals and other components of marine ecosystems. Both the consequences and uncertainties concerning the

sources and effects of ocean contaminants on marine mammals were pointed out by participants in the October 1998 *Workshop on Marine Mammals and Persistent Ocean Contaminants,* sponsored jointly by the Commission, the Biological Resources Division of the U.S. Geological Survey, the National Marine Fisheries Service, the Environmental Protection Agency, and the National Fish and Wildlife Foundation. More recently, I learned that due to the presence of chemical contaminants, people have been warned to limit their consumption of fish caught in Galveston Bay, Texas, to two per month to avoid possible health consequences. In Sarasota Bay, Florida, a presumably much less polluted area, older bottlenose dolphin males — the individuals that in normal populations appear to sire the most calves — are showing signs of immune system dysfunction, possibly as a consequence of local pollution. How pollution may be affecting bottlenose dolphins in the Galveston area and other parts of their range in coastal U.S. waters can only be guessed at present.

Apparent contaminant-related problems also are surfacing elsewhere. In California, for example, it has been suggested that the ongoing decline of the southern sea otter, designated as threatened under the Endangered Species Act, may be a direct consequence of environmental contaminants or due to increased susceptibility to disease because of contaminant-related suppression of their immune systems. It also is possible that the apparent decline in reproductive success among right whales in the western North Atlantic is due, at least in part, to direct contaminant effects or to the effects of contaminants on key prey species.

In this regard, the Commission notes that most research and conservation actions are undertaken in response to acute, often controversial conservation issues. Agency mandates, budgets, and programs largely reflect this reactive approach. The Commission recommends that Congress consider the need to provide direction for development and implementation of more effective recovery and conservation plans for endangered, threatened and depleted marine mammals, as well as take reduction plans for stocks being significantly affected by commercial fisheries. The Commission further believes that there is a need for broad-based, interdisciplinary, anticipatory research that will allow the government to take action to address potential conservation problems before they become serious and controversial. If you would like, we would be happy to discuss the possibilities with committee members and staff at your convenience.

Mr. SAXTON. Thank you very much. Thank you both. I have one question which has troubled some people who have been involved in the process. Take reduction teams assemble themselves and examine biological sciences and other factors that are involved in a fishery and then make recommendations based upon some significant amount of time and effort and with all good intentions and submit their recommendations to NMFS, higher up NMFS officials who apparently were not part of the take reduction teams who don't have the ability and take advantage of the opportunity to change recommendations without having been part of the process. At least that is what is said to me.

Is that the case and do you think that that part of the changes and the recommendations serve to encourage take reduction teams to continue to do serious work? Dr. Rosenberg.

Mr. ROSENBERG. Thank you, Mr. Chairman. First of all, I think that is not entirely the case although it is true that senior managers within the agency are not members of the take reduction team. Of course, we have quite a lot of staff who attend the team and participate in providing information to the team and so senior policymakers are fully briefed on the team's discussions and the issues that arise. Second, in several cases, for example, the large whale take reduction team, the team did not come to consensus.

And so NMFS still must implement a take reduction plan to meet the responsibilities under the law so in many cases we have to make a decision on the actual implementation of the plan even if we don't have full consensus on the team. And, third, because the agency is accountable under the law and certainly in court and in many of these plans we may have been sued by one or more parties on various sides we have to determine whether the actual recommendations are in comport with the law and that is not something that generally the team analyzes so we need to evaluate the plan as submitted or recommendations if they don't come to full consensus for its overall comport with the law, which we do.

We only make those changes that we feel are necessary in order to ensure that we are meeting the legal responsibilities and can defend it in court.

Mr. SAXTON. Dr. Reynolds, could you respond to the same question, please?

Mr. REYNOLDS. Sure. Dr. Rosenberg's agency is most intimately involved with the process and I agree with his response. I guess coming at it from a somewhat different direction, as you indicated, Mr. Saxton, the process is a slow and painstaking one in which the various entities that are involved need to build trust and need to communicate well with one another. And I think to the greatest extent possible it is important that the appropriate players stay in touch with one another and that the communication be as open as possible on all the issues.

I think that if outside opinions are being superimposed that I understand as Dr. Rosenberg said that on occasion there are legal questions and all that come up that simply cause differences but I think it is important that you build an esprit de corps within the team and that they be able to move forward as much as possible as a unit to address some of these really complex problems.

Mr. SAXTON. Well, obviously there is a need for final take reduction plans to be workable and to have as much thought put into the development and implementation of them as possible. I guess my question is do you think that an interaction with higher level NMFS personnel and perhaps legal counsel from NMFS whether the process would be better served if those interactions took place at an earlier time, perhaps during the time the take reduction team is studying and formulating recommendations. Dr. Rosenberg.

Mr. ROSENBERG. I think that that is a very important point and something that we have begun to address and probably need to focus some more attention on. I have attended large whale take reduction team meetings and Harbor Porpoise take reduction team meetings and we certainly to the extent possible having legal counsel available during the team meetings although that is not possible in every case. But we have heard back from the teams in our survey of team members that the two things they want more of, I would have to say, is they all want more information on which to base their recommendations, and we do the best we can in terms of providing such information and trying to do a better job of it and they want more communication with the agency back and forth preferably as high a level as they can so we will try to work toward those goals.

Mr. SAXTON. Now you say that an effort is going to be made or is being made to implement a process where these decisionmakers would be part of the early on process where possible. Where it is not possible, is it also an alternative you have looked at to have some kind of a review on an ongoing basis if it is not possible for them to actually be part of the meeting and the discussion. At least it seems to me difficulties which may arise along the way ought to be pointed out to the team during its deliberations rather than to wait until their recommendations have been made and then just arbitrarily change them.

Mr. ROSENBERG. I think we invariably do point out issues of concern during the process and sometimes the teams take those on board and sometimes they do not. That is their prerogative, of course. That is why we have both policy staff and scientific staff attending the team meetings and legal staff when we can. With regard to senior managers attending, the regional administrators often attend for a portion of the meeting and as I have noted I have attended some and I believe Ms. Dalton has attended possibly one of the meetings in the past year.

But again we have heard from the team members. They want to have more interactive feedback along the way and I think we will try to build on that in the future and improve that process.

Mr. SAXTON. Dr. Reynolds, do you have anything to add?

Mr. REYNOLDS. Yes. I am sorry. I misunderstood what you were asking at first. I agree that it would be very useful to bring as many people into the mix within reason as possible. I think that to keep things on the floor at the meetings is a very useful exercise. I would add that one of the constraints on development and maintaining momentum with the take reduction teams that both Dr. Rosenberg and I mentioned is the lack of available agency resources and so I think that—I think what you are suggesting

makes all the sense in the world but it will stretch something that is already in finite supply. I think that needs to be looked at.

Mr. SAXTON. Thank you very much. Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman. I guess following up on the line of questions from the Chairman and just so it is clear in my mind, how many take reduction teams are there?

Mr. ROSENBERG. There have been five.

Mr. GILCHREST. There are five take reduction teams. How many on each team, how many people?

Mr. ROSENBERG. I would have to look it up.

Mr. GILCHREST. Are there five people, ten people?

Mr. ROSENBERG. No, it is quite a bit larger than that.

Mr. GILCHREST. Twenty people?

Mr. ROSENBERG. Between 10 and 20.

Mr. REYNOLDS. 20 to 40.

Mr. GILCHREST. 20 to 40 people. Who are they? Who makes up these teams?

Mr. ROSENBERG. The teams are drawn from interested members of industry, sometimes academia conservation groups from the region, usually from the region that is affected by the fishery. Almost invariably say in the Northeast they will be people within that area, fairly balanced between conservation organizations and public interest groups and industry groups directly.

Mr. GILCHREST. And so these five teams represent how many fisheries?

Mr. ROSENBERG. There are nine fisheries that are included under the five teams and 22 stocks of marine mammal.

Mr. GILCHREST. And how many fisheries have plans now?

Mr. ROSENBERG. Well, one of the take reduction teams, the Atlantic Offshore Cetacean Team, we didn't implement a specific take reduction plan but the elements were addressed in other portions of fisheries management so you could say in a form all nine fisheries have—actions have been taken to reduce take in all of those nine fisheries. I believe that is correct. And we will move forward with additional fisheries as we can.

Mr. GILCHREST. And so there is some implementation in each of the nine fisheries?

Mr. ROSENBERG. Yes.

Mr. GILCHREST. Where are the nine fisheries?

Mr. ROSENBERG. There is one set of fisheries——

Mr. GILCHREST. Are they all on the East Coast?

Mr. ROSENBERG. No. One is on the Pacific Coast. The Pacific Offshore Cetacean Team addressed the Oregon and California gillnet fisheries and the rest are on the Atlantic Coast from Maine to Florida but primarily in the Northeast states down through the Mid-Atlantic.

Mr. GILCHREST. So when the implementation of those plans—when those plans have been implemented, is there a move to the Gulf of Mexico, are there any problems with marine mammals in the Gulf of Mexico?

Mr. ROSENBERG. There are and we are in the process of trying to convene a team on bottlenose dolphins. It is rather difficult because the information is quite slim. That would include both the South Atlantic coast as well as the Gulf Coast in that team and

there are some scientific questions on how the stocks of bottlenose dolphins relate in different areas.

Mr. GILCHREST. Now when the teams get together and do their studying and collect data and come up with a consensus I guess at least for a plan. What is the interaction with the fisheries management council for that particular region with the take reduction teams? Is there much dialog between the management council?

Mr. ROSENBERG. There is dialog although it is up to each individual council to decide and the team to decide the form of that. For example, in New England for the Gulf of Maine gillnet fishery there was a marine mammal committee on the council that specifically asked for reports on both the gillnet fishery for Harbor Porpoise as well as the large whale take reduction plan. There were regular reports to the council from the take reduction team and at the point of implementation of the Harbor Porpoise plan there was substantial discussion over the closures that were being implemented for fish protection in the Gulf of Maine or Northeast areas that would need it for Harbor Porpoise protection.

Mr. GILCHREST. I would imagine that you would encourage a dialog between the take reduction team and the management council because I guess inevitably there is going to be an effect on the fish stock because of the plan.

Mr. ROSENBERG. That is certainly the case and in fact we would like—we have implemented measures under not only the Marine Mammal Protection Act itself but also under the Magnuson-Stevens Act measures that serve to protect marine mammals specifically. Harbor Porpoise measures were implemented under Magnuson-Stevens which specifically includes the council process. For some of the other fisheries the same thing so there is an intimate relationship. However, it varies a little bit from council to council depending on their operating desires.

Mr. GILCHREST. I see. Thank you. Dr. Reynolds, let me see if I can find the question. You made a comment that there has not been take reduction teams appointed for several fisheries. Is that Alaska or the Gulf of Mexico or other areas?

Mr. REYNOLDS. I believe what I said was that there are—there was a need for a take reduction team for some strategic stocks referring to the marine mammals that needed to be looked at and specifically the one——

Mr. GILCHREST. What would they be and where would——

Mr. REYNOLDS. The one for which I think the most urgent need exists, and again Dr. Rosenberg referred to this as something that is moving forward for bottlenose dolphins in the southeastern United States.

Mr. GILCHREST. I guess my time is up. Thank you, Mr. Chairman.

Mr. SAXTON. Thank you, Mr. Gilchrest.

Mr. POMBO. No questions.

Mr. SAXTON. We have no further questions at this time. I thank both of you for being with us today. This is an extremely interesting and serious subject and we appreciate very much your attention——

Mr. GILCHREST. Mr. Chairman, could I just ask one more question since the gentleman from California yielded his time?

Mr. SAXTON. Sure.

Mr. GILCHREST. Thank you. Dr. Reynolds, you made a comment about the full range of issues that affect marine mammals from big steam ship vessels coming from Europe for the right whales, recreational boaters for the manatee, point and non-point source pollution for a number of these species. Is it your feeling—I don't know whose area of responsibility this would be. If you look at—since we are discussing take reduction teams, is it your recommendation that these teams given the full big picture of marine mammals should also include these things into their plans?

Mr. REYNOLDS. Not necessarily. If you included all the possible factors that were affecting certain stocks and brought in all the appropriate stakeholders, you would probably have an unmanageably large group that would probably not make much progress. What the intent of my statement was to keep before you the thought that yes, progress is being made in terms of incidental take of marine mammals associated with commercial fisheries but incidental to other human activities marine mammals get taken and some stocks get taken in far larger numbers.

Even endangered species like manatees and right whales get taken more by non-commercial fishery-related activities than they do by the commercial fisheries. And so even though we are making nice progress perhaps with certain of the stocks and certain of the issues there is a long way to go still to insure the safety of many of the stocks and species of marine mammals. I think that with the boating in Florida, for example, that there is a recovery plan in place. A new iteration of it is being developed right now but that recovery plan deals with a gamut of issues.

I think that conceivably for manatees in Florida a process similar to a take reduction process for boats might be very effective. It is a very tough question though.

Mr. GILCHREST. Thank you. Dr. Rosenberg.

Mr. ROSENBERG. Thank you, Congressman. I just wanted to add that some of the other factors affecting marine mammal stocks that we do have other teams or working groups, for example, to deal with the ship strike issue on large whales there is a recovery plan that is—a recovery team that is working toward developing measures to reduce ship strikes. There is a notification system that has been developed and we have implemented so shipping knows where the whales are located.

Similarly for other kinds of threats to marine mammals, we do have other programs. We do not include them in the take reduction process because we want to focus that on fishing effects according to Section 118. On pollution we have the marine mammal health and stranding program in cooperation with National Ocean Service that tries to at least investigate sources of mortality of animals that appear that on the beaches, stranded on the beaches and so on.

Mr. GILCHREST. Thank you. I was just curious about—Dr. Rosenberg, I think it was you that mentioned warning devices. Is that a loud horn? What are warning devices?

Mr. ROSENBERG. I am sorry. Acoustic deterrent devices that are used on gillnets. Essentially what they are is a sealed tube that has a little device that make a click at a certain frequency and

sound level. It is battery operated and it is attached to the nets and apparently marine mammals because they locate by sound, echo locate, they serve as a warning device and have reduced the take in some fisheries for some kinds of marine mammals successfully because it enables the animals to actually see the net better.

Some people have—the information is a little bit equivocal. Some people have claimed that other mammals, those same devices seem to serve as a dinner bell, here is a net with fish in it, come and get it, and that has had a negative impact but overall the impact has been very positive on helping marine mammals avoid the fishing gear and we have seen reductions in take.

Mr. GILCHREST. Thank you very much. Thank you, Mr. Chairman.

Mr. SAXTON. The gentlemen, thank you again for being with us. We appreciate it very much. We will now move on to our second panel. On panel two we have Pat White of the Maine Lobstermen's Association, Nina Young from the Center for Marine Conservation, Bill Foster of the Mid-Atlantic Coastal Gillnet Industry, Sharon Young of the Humane Society of the U.S., and John Calambokidis of the Cascadia Research Collective.

I would just like to point out that we have a 5-minute rule that we try to go by and your written testimony in its entirety will be included in the record. Mr. White, you may begin as you find yourself ready.

STATEMENTS OF PAT WHITE, MAINE LOBSTERMEN'S ASSOCIATION; NINA YOUNG, CENTER FOR MARINE CONSERVATION; BILL FOSTER, MID-ATLANTIC COASTAL GILLNET INDUSTRY; SHARON YOUNG, HUMANE SOCIETY OF THE UNITED STATES; JOHN CALAMBOKIDIS, CASCADIA RESEARCH COLLECTIVE

STATEMENT OF PAT WHITE

Mr. WHITE. Good morning, Mr. Chairman, and members of the subcommittee. I address you today as a member of the Large Whale Take Reduction Team initiated by the National Marine Fisheries Service Office of Protected Resources under the authority of the Marine Mammal Protection Act, Section 118. In addition, I am Executive Director of The Maine Lobstermen's Association, as well as a commercial lobsterman.

I strongly support the concept and intent of the TRT as established in the 1994 reauthorization of the MMPA. In the case of the Large Whale Take Reduction Team, however, the process has been flawed and the results ineffective, both in preventing entanglements of large whales in fishing gear and giving the fishing industry the tools, techniques and support necessary to meet the goals of the take reduction plan.

It is the clear intent of the MMPA that the goal of a TRP is both to protect the marine mammals and to give fishermen the skills and technologies needed to continue their chosen professions. This intent is spelled out in Section 118. To date, this necessary action and support has not been sufficiently forthcoming from NMFS. Their inability to effectively implement the key provisions of MMPA has placed both large whales and the fixed-gear fishing industry of the Atlantic states at an unacceptable risk.

More specifically, NMFS has repeatedly failed to meet the deadlines for action as mandated in 118. The failure to implement the measures proposed in the interim final rule has placed the fishing industry at risk of arbitrary and insupportable court-ordered actions. Funding essential for the effective implementation of the suite of measures agreed upon and recommended by the TRT has been either inadequate or entirely absent.

These measures include research and development of alternative fishing gears, the establishment and operation of a coast-wide network to monitor the movements of large whales and to alert fishermen when they are present on their fishing grounds, the training of large numbers of volunteer fishermen in the proper methods of reporting and responding to entanglements and to assist in disentanglements, the establishment and equipment of a greater number of specialized entanglement teams, the research by scientists into those aspects of the whale behavior that lead to entanglements, and finally the technology and techniques necessary to track entangled whales until they can be successfully disentangled.

This lack of essential and meaningful support from NMFS is in violation of 118 which clearly directs that funding priority be given to those stocks of marine mammals most at risk. Unfortunately, the stock of north Atlantic right whale is the most endangered of all marine mammals and, by law, the development and implementation of an effective TRP should not be compromised by a lack of funding, especially when one notes that appropriation to NMFS by Congress for implementation of MMPA was over $34 million for fiscal year 1999.

Also troubling is the apparent inability of NMFS staff assigned to the Large Whale Take Reduction Team to follow through on requests by the team for specific information, data sets or analyses. This inevitably leads me to question the standing and credibility of the TRT process within the agency. It would not be hard to come to a conclusion, as some observers have, that NMFS is simply going through the motions to minimally comply with Section 118 of the MMPA and to place a thin veneer of objectivity over decisions already made within the Office of Protected Resources.

I regret that it has become necessary to deliver this critical and negative assessment of the Large Whale Take Reduction Team and NMFS' failure to act in an effective manner to both protect whales and support the fishing industry. In closing, I repeat my strong support for the concept and the intent of Section 118 of the Marine Mammal Protection Act and urge the committee to take whatever steps are necessary to ensure that NMFS also gives its full and open support. I thank you for this opportunity and would be happy to answer any questions.

[Prepared statement of Mr. White follows:]

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TESTIMONY OF
PATTEN D. WHITE
EXECUTIVE DIRECTOR OF THE MAINE LOBSTERMEN'S ASSOCIATION
Before the
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS

THURSDAY, APRIL 6, 2000

I address you today as a member of the Large Whale Take Reduction Team (LWTRT) initiated by the National Marine Fisheries Service Office of Protected Resources under the authority of the Marine Mammal Protection Act (MMPA), Section 118. In addition, I am Executive Director of The Maine Lobstermen's Association, as well as a commercial lobsterman.

I strongly support the concept and intent of the TRT as established in the 1994 reauthorization of the MMPA. In the case of the LWTRT, however, the process has been flawed and the results ineffective - both in preventing entanglements of large whales in fishing gear and giving the fishing industry the tools, techniques and support necessary to meet the goals of the Take Reduction Plan (TRP).

It is the clear intent of the MMPA that the goal of a TRP is both to protect marine mammals and to give fishermen the skills and technologies needed to continue their chosen professions. This intent is spelled out in 118 (f) 9(B,C and D) and 118 (i).

To date, this necessary action and support has not been sufficiently forthcoming from NMFS. Their inability to effectively implement the key provisions of the MMPA has placed both large whales and the fixed-gear fishing industry of the Atlantic states at unacceptable risk.

More specifically, NMFS has repeatedly failed to meet the deadlines for action as mandated in 118 (f) 7. The failure to implement the measures proposed in the interim final rule has placed the fishing industry at risk of arbitrary and insupportable court-ordered actions. Funding essential for the effective implementation of the suite of measures agreed upon and recommended by the TRT has been either inadequate or entirely absent.

These measures include:

*research and development of alternative fishing gears

*the establishment and operation of a coast-wide network to monitor the movements of large whales and to alert fishermen when they are present on their fishing grounds

*the training of large numbers of volunteer fishermen in the proper methods for reporting and responding to entanglements and to assist in disentanglements

*the establishment and equipment of a greater number of specialized disentanglement teams

*the research by scientists into those aspects of whale behavior that lead to entanglements

*the technology and techniques necessary to track entangled whales until they can be successfully disentangled

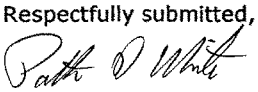
This lack of essential and meaningful support from NMFS is a violation of 118 (f) 3 which clearly directs that funding priority be given to those stocks of marine mammals most at risk. Unfortunately, the stock of north Atlantic right whales is the most endangered of all marine mammals and, by law, the development and implementation of an effective TRP should not be compromised by a lack of funding ... especially when one notes that appropriation to NMFS by Congress for implementation of the MMPA was $34,768,000 for fiscal year 1999.

Also troubling is the apparent inability of NMFS staff assigned to the LWTRT to follow through on requests by the Team for specific information, data sets and/or analyses. This inevitably leads me to question the standing and credibility of the TRT process within the agency. It would not be hard to come to the conclusion, as some observers have, that NMFS is simply going through the motions to minimally comply with Sec. 118 of the MMPA and to place a thin veneer of objectivity over decisions already made within the Office of Protected Resources.

I regret that it has become necessary to deliver this critical and negative assessment of the LWTRT and NMFS' failure to act in an effective manner to both protect whales and support the fishing industry. In closing, I repeat my strong support for both the concept and intent of Sec. 118 of the MMPA and urge the Committee to take whatever steps are necessary to ensure that NMFS also gives its full and open support.

I thank you for this opportunity to speak and would be happy to answer any questions.

Respectfully submitted,



Patten D. White
Executive Director

Mr. SAXTON. Thank you very much. Ms. Young.

STATEMENT OF NINA YOUNG

Ms. NINA YOUNG. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present our views on the take reduction team process under the Marine Mammal Protection Act. My name is Nina Young. I am the Director of Marine Wildlife Conservation for the Center for Marine Conservation. CMC has participated on all five take reduction teams and in 1993 we also participated in negotiations with the fishing industry to develop the proposal that ultimately became the 1994 amendments to the Act.

The take reduction team process was a direct outgrowth of those negotiations primarily because the fishing industry and the environmental community firmly believed that they needed a multiparty negotiation process to devise strategies to eliminate the entanglement of marine mammals in commercial fishing gear while maintaining viable fisheries. Today I will focus my remarks on the positive points of the take reduction teams and my concerns about the NMFS implementation of the take reduction plans.

My detailed written testimony, which I have submitted for the record, reviews each of the take reduction teams. Despite the difficulties in balancing the need to reduce marine mammal kills and minimize economic impacts to fishermen, I firmly believe that the take reduction team process works. It has successfully produced three consensus plans while establishing greater trust and working relationship among the various interest groups that have participated in the process.

Each take reduction team has its own dynamic but in every case the facilitators were critical in moving the team from conflicts toward consensus. While there was significant debate about the quality of the population and by catch estimates the teams that were most successful were those that moved quickly through their concerns about the science and into the analysis and development of take reduction strategies. The size of the team, having sufficient time to negotiate, the number of meetings, providing participants with the ability to express their points of view, adequate scientific support are all important factors to the team's success.

To improve the process CMC recommends that there be two additional meetings, one to review the final plan before it is submitted to NMFS and another during the comment period to provide feedback to NMFS. Still the process produced creative research recommendations and strategies to reduce marine mammal take in fishing gear. In terms of implementation, NMFS is still struggling with the deadlines for the implementation, how to translate the team's recommendations into regulations, the role of the take reduction teams, coordination between the teams and the fishery management councils, and its own level of commitment to the process.

NMFS has yet to realize that consensus is hard won and from the perspective of the individuals that engage in this process the take reduction teams are critically important to their livelihood and to the conservation of the species. Therefore, NMFS must view this process as a priority partnership that includes NMFS and all the

various stakeholders. The ground rules require that all participants have the authority to commit their organizations to the consensus.

NMFS must also meet this requirement as well. NMFS representatives must be active participants that are able to legally evaluate the take reduction strategies and commit NMFS to the consensus. They must also be able to advise the team as to whether the consensus strategies will meet the Act's targets, are easily implemented and enforced and whether the research recommendations are achievable. It undermines the process when team members conclude the negotiations with the false expectations that their recommendations will be implemented.

CMC recommends that a regional administrator, a representative from NOAA general counsel, and NMFS enforcement officers be present during the negotiation when the consensus is being formed. In further meeting its commitments, NMFS must do the following. They must implement the take reduction plans within the statutory timeframes, improve coordination between the take reduction plans and the fishery management plans, provide the necessary resources to achieve much needed observer coverage, improve the quality of the scientific data, and carry out the plan's research recommendation.

To accomplish this, NMFS needs to dedicate greater resources to the plan's implementation and greater commitment to the process. Some take reduction teams appear to be successful. However, overall it is premature to assess the effectiveness of these plans since most have only been implemented for a year. Nevertheless, the participants generally view the take reduction team as a favorable alternative to the adversarial notice and comment rulemaking.

The downfall in the process is NMFS' implementation. If take reduction teams are truly to be successful, NMFS must heighten its level of commitment and restore the participants' faith in this partnership. Thank you for your attention and I will be happy to answer any questions.

[Prepared statement of Ms. Nina Young follows:]

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STATEMENT OF NINA M. YOUNG, DIRECTOR OF MARINE WILDLIFE CONSERVATION, CENTER FOR MARINE CONSERVATION
Before the
Subcommittee on Fisheries, Wildlife, and Oceans
House of Representatives Committee on Resources
April 6, 2000

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present our views on the Marine Mammal Protection Act, specifically the take reduction teams. My name is Nina M. Young; I am the Director of Marine Wildlife Conservation for the Center for Marine Conservation.

SUMMARY

In 1993, the Center for Marine Conservation was one of the conservation groups that negotiated with the fishing industry to develop a proposal that became the basis for the 1994 amendments to the Marine Mammal Protection Act. The take reduction team process is a direct outgrowth of that negotiation. Both the fishing industry and the conservation community that had engaged in this negotiation, believed that is was important to create a multi-party negotiation process to devise strategies to eliminate the entanglement of marine mammals in commercial fishing gear while maintaining the viability of those commercial fisheries. Despite difficulties in balancing the need to reduce marine mammal kills and minimize economic impacts on fishermen, the mediated take reduction team process has successfully produced three consensus take reduction plans and succeeded in establishing better working relationships among the different interest groups.

In every take reduction team there were obstacles of familiarity, acceptance and trust that had to be overcome. Each take reduction team was unique--it had its own complexion and dynamic, for example, the Gulf of Maine Take Reduction Team had a lengthy history together in its previous incarnation as the Harbor Porpoise Working Group and its actions were intimately tied to the New England Fishery Management Council's action to recover groundfish. In contrast, the Atlantic Offshore Take Reduction Team had several participants from competing fisheries who were suspicious and sometimes less willing to accept the basic premises, let alone the outcome. Moreover, the debate was colored by closures of the various fisheries represented on the team and by pre-existing gear conflicts among the commercial fishing groups that have little to do with the marine mammal conflicts. The Atlantic Large Whale Take Reduction Team, who did not reach consensus, had the added pressure of an ongoing lawsuit and a stringent timeframe. Yet, throughout all of this the system worked. The facilitators have been essential in helping players get past these issues and move through posturing to substance. Those teams that moved quickly through their concerns about the quality of the science--the population and bycatch estimates and the calculation of PBR—and into the development of take reduction strategies have faired the best in this process. Issues of team size and time available to negotiate were also critical. Smaller teams facilitated greater discussion and a sense that all participants could freely express their opinions. While the MMPA's six month deadline pushed the teams to

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achieve consensus, in two cases it did not allow sufficient time for consensus to be reached. The process would benefit from two additional meetings—one to review the final plan before it is submitted to NMFS and another during the comment period so the team can provide feedback to NMFS. In all situations the process provided a framework for dialogue among disparate groups—a dialogue that often resulted in creative research recommendations and strategies to reduce marine mammal entanglement in fishing gear.

However, the take reduction team process is a new way of doing business for the National Marine Fisheries Service (NMFS), fishermen, and conservation groups. The shift from adversarial advocacy to a participatory planning process is foreign to some of the players. NMFS is still struggling with the implementation schedule, how to implement the take reduction plans in regulations, either under the MMPA or through fishery management plans developed by the regional councils, the role of the take reduction team, and its level of commitment to this process. NMFS has yet to realize, at all levels, that consensus is hard-won. In addition, NMFS also fails to recognize that for the individuals that engage in this process it has the same importance as the fishery management council process. Consequently, if the take reduction team process is to be successful, NMFS must view this process as a priority partnership among itself and all of the various stakeholders. It must expect no less from itself than any of the other active participants. NMFS representatives to the take reduction team must have the ability to both evaluate the consensus from a legal perspective and commit the agency to that consensus. The NMFS representative cannot be passive, but instead must advise the team as to whether the consensus recommendation can be easily implemented and enforced, and if the research recommendation are achievable. It is unfair and undermines the process when the take reduction team members leave the process with false or unrealistic expectations. This means that the Regional Administrator, a representative from NOAA general counsel, and a NMFS enforcement officer must be present at the crucial times in the negotiations process when the consensus is being formed.

In further meeting its commitments, NMFS must also implement the take reduction plan within the statutory timeframes set out in the MMPA, provide the necessary resources to achieve adequate levels of observer coverage and carry out the research recommendations essential to informing the take reduction strategies. These concerns encompass the need for greater resources to implement the take reduction plans but also a greater commitment on the part of NMFS to the process and the plans.

Although some take reduction plans are showing signs of success, it is too soon to assess the effectiveness of the incidental take reduction teams, as many of the take reduction plans have only been implemented for approximately one year. Furthermore, when comparing the timetables for implementation of the take reduction plans to the timing of assessment of progress toward reducing takes to below PBR and achieving progress toward the zero mortality rate goal, it is clear that NMFS may not be able to fully evaluate progress under this regime at that time. Nevertheless, where the participants have been successful in developing a consensus document, most look favorably upon the take reduction team vehicle as a favorable alternative to the traditional adversarial notice and comment rulemaking process.

I. INTRODUCTION

The Marine Mammal Protection Act (MMPA) is the cornerstone of the United State's efforts to conserve and recover marine mammals.[1] Since its enactment, the MMPA has prohibited the take of marine mammals incidental to commercial fishing unless authorized by an incidental take permit or a small take exemption. However, more than twenty-five years after the MMPA's enactment, marine mammals are still incidentally drown in commercial fishing gear and the regulation of such operations to protect marine mammals has become a critical, and often volatile, issue.[2]

In 1988, the problem of the incidental take of marine mammals in commercial fishing operations reached its climax when it became apparent that National Marine Fisheries Service (NMFS) was unable to undertake the necessary determinations to authorize takes for affected marine mammal stocks. The resulting *Kokechik Fishermen's Association v. the Secretary of Commerce*[3] court decision uncovered that the permit system was inherently flawed because there was insufficient information to be certain that incidental takes would not harm marine mammal stocks. Consequently, diminishing marine resources, insufficient federal funds, and inadequate information on marine mammal/commercial fisheries interaction forced fishermen and conservationists to develop creative initiatives to conserve marine mammals, marine habitats and species diversity, while still promoting economically viable fisheries. This prompted the first negotiation between representatives of the environmental community and the fishing industry to develop a proposal that would enable fishermen to go fishing, yet minimize the impact of that activity on marine mammals. This proposal became the basis for the MMPA Amendments adopted by Congress in 1988, which established an information-gathering program and an Interim Exemption Program for Commercial Fisheries.

Again, after analysis of the Interim Exemption Program and NMFS proposed long-term regime to authorize incidental takes in commercial fisheries, in 1993, the environmental community and the fishing industry held a second series of negotiations. They jointly developed a series of amendments that resulted in sweeping changes to the MMPA's provisions to govern the incidental take of marine mammals in commercial fisheries. Congress adopted these amendments in 1994. The amendments codified this negotiation process in the form of take reduction teams; consequently nearly six years into the implementation of these amendments, representatives of the fishing industry, conservation community, and federal and state agencies continue to work through these teams to develop measures to reduce the incidental mortality and serious injury of marine mammals in commercial fisheries.

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[1] Marine Mammal Protection Act, 16 U.S.C. § 1361 (1994).

[2] *See* Nina M. Young and Suzanne Iudicello, *Blueprint for Whale Conservation: Implementing the Marine Mammal Protection Act*, 3 Ocean and Coastal L.J. 149, at 175-182 (1997) (discussing the history of the implementation of the MMPA's incidental take provisions).

[3] *Kokechik Fishermen's Association v. the Secretary of Commerce*, 839 F.2d 795 (D.C. Cir 1988), cert denied, 488 U.S. 1004 (1989).

In this paper we will evaluate the effectiveness of the take reduction team process and whether this type of cooperative approach can effectively develop management strategies that will reduce marine mammal incidental mortality and serious injury.

II. BACKGROUND ON THE MARINE MAMMAL PROTECTION ACT

A. Purpose and Objective of the MMPA

The Marine Mammal Protection Act (MMPA)[4] is perhaps the most comprehensive marine mammal conservation and management legislation in the world.[5] Passed to rectify the consequences of "man's impact upon marine mammals, which has ranged from what might be termed malign neglect to virtual genocide"[6], the Act, enforced by the U.S. Departments of Commerce and Interior, governs every interaction within U.S. jurisdiction between an individual and a marine mammal.[7] Its purpose is to protect marine mammal species of "great international significance, aesthetic and recreational as well as economic."[8] The species included under the Act are whales, dolphins, porpoises, seals, sea lions, walruses, sea otters, manatees, dugongs, and polar bears.[9]

B. The MMPA's Moratorium on Taking

The goal of the MMPA is that these marine mammal species "should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management."[10] Another purposes is to "maintain the health and stability of the marine ecosystem."[11] Congress also mandated that whenever consistent with these goals, marine mammals are to be protected and managed so that they do not "cease to be a significant functioning element of the ecosystem of which they are a part"[12] or "diminish below their

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[4] Marine Mammal Protection Act of 1972, 16 U.S.C. §1361 (1994).

[5] Natasha Atkins, Summary of National Laws and International Agreements Affecting River Dolphins. in Biology and Conservation of the River Dolphins, 3 occasional papers of the IUCN Species Survival Commission (SSC) 168, 173 (1987). See also N.M. Young, Is the Marine Mammal Protection Act a Marketable Commodity to Resolve the Over-exploitation of Marine Mammals in Commercial Fisheries? Proceedings International Association for Aquatic Animal Medicine Vol. 23 72 (1992).

[6] *See* H.R. REP. NO. 707, 92d Cong., 1st Sess. 11 (1971) (reporting on H.R. 10420, proposed legislation for marine mammal protection).

[7] *Id.*

[8] 16 U.S.C. § 1361 (6) (1994).

[9] "The term "marine mammal" means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin." 16 U.S.C. § 1362(6) (1994).

[10] 16 U.S.C. §1361 (6) (1994).

[11] *Id.*

[12] 16 U.S.C. § 1361(2) (1994).

Optimum Sustainable Population (OSP)."[13] A species or population stock that is determined to be below its OSP level, or is listed as endangered or threatened under the ESA, is designated as "depleted" under the MMPA.[14]

Through the MMPA, Congress sought to achieve broad protection for marine mammals by establishing a moratorium on importation and taking.[15] The MMPA also states that the "incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate."[16]

III. IMPLEMENTATION OF THE 1994 AMENDMENTS TO THE MMPA--TAKE REDUCTION TEAMS AND TAKE REDUCTION PLANS

The 1994 Amendments to the MMPA set out a new regime to govern incidental takes of marine mammals during commercial fishing operations. The underlying premise of these amendments was: decisions on allowable takes should be based on assessments of the status of the marine mammal stock, and conducted within biological limits that protect the marine mammal stocks. The major elements of the 1994 amendments added three new sections to the MMPA: one requiring stock assessments, status determinations and calculation of the stock's potential biological removal level (PBR)[17]; a new section 118 setting out the requirements for fishermen,

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[13] *Id.* " 'Optimum sustainable population' means, with respect to any population stock, the number of animals that will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." 16 U.S.C. §1362(9) *See also* 50 C.F.R. §216.3 (1994) (Stating that, Optimum Sustainable Population is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.).

[14] 16 U.S.C. §1362(1) (1994). (Stating that "The term "depletion" or "depleted" means any case in which- (A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that a species or population stock is below its optimum sustainable population; (B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109, determines that such species or stock is below its optimum sustainable population; or (C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.").

[15] 16 U.S.C. §1371 (1994). "The term "take" means harass, hunt, capture, or kill or attempt to harass, hunt, capture or kill any marine mammal." 16 U.S.C. §1362(13) (1994).

[16] 16 U.S.C. §1371 (a)(2) (1994). *See also* Mary M. Sauer, *Balancing Marine Mammal Protection Against Commercial Fishing: The Zero Mortality Goal, Quotas, and the Gulf of Maine Harbor Porpoise*, 45 Me. L. Rev. 419 (1993) (Presenting a more detailed review of the legislative history of the zero mortality rate goal.).

[17] Potential Biological Removal (PBR) level is calculated by: $(N_{min})(R_{mnpl})(F_r)$ where N_{min} is the minimum stock abundance, R_{mnpl} is the rate of increase at the maximum net productivity level, and F_r is a recovery factor. Default values for unknown, R_{mnpl} are 6% for pinnipeds and sea otters and 2% for cetaceans and manatees. F_r are 1.0 for stocks at OSP, 0.5 for depleted and threatened stocks and stocks of unknown status, and 0.1 for endangered stocks. Recovery factors are in relation to current carrying capacity. The PBR value is the maximum number of marine mammals that can be removed (killed or injured) from a stock by all forms of take (exclusive of natural mortalities)

modeled largely after the Interim Exemption; and a new section 120,[18] which provides a process whereby states and the National Marine Fisheries Service can address interactions between pinnipeds and fishery resources.[19] We will focus on Section 118--the incidental take provisions--which includes vessel registration, observer coverage, emergency regulatory authority, attainment of the zero mortality rate goal, convening of incidental take reduction teams and preparation of take reduction plans, and prohibits intentional killing of marine mammals by fishermen.[20]

Under the MMPA a take reduction plan is to be developed for each strategic stock[21] that interacts with a fishery that frequently or occasionally kills or seriously injures marine mammals.[22] Take reduction plans, among other things, are to include recommended regulatory and voluntary measures designed to reduce incidental mortality and serious injury, and recommended dates for achieving specific objectives.[23] The immediate goal of a take reduction plan for a strategic stock is to reduce, within six months of implementation, incidental mortality and serious injury to levels less than the PBR calculated in the stock assessment.[24] The long-term goal of the plan is to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality rate within 5 years, taking into account the economics of the fishery, existing technology, and applicable State or regional fishery management plans.[25] The plans are to be developed by teams drawn from federal agencies, coastal states, regional fishery management councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, commercial and recreational fisheries groups, Alaska Native or Indian tribal organizations, and others.[26] Take reduction plans for stocks listed as endangered are to be consistent with ESA recovery plans.[27]

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while still ensuring the recovery of the stock to allow it to reach its optimum sustainable population level. 16 U.S.C. § 1362(20).

[18] *See* Nina M. Young, Stephanie Mairs, and Suzanne Iudicello Martley, *At Point Blank Range: The Genesis and Implementation of the Lethal Removal Provisions Under the Marine Mammal Protection Act*, 5 Ocean and Coastal L.J., at 1-22 (2000) (discussing the history of the implementation of the MMPA's Section 120 lethal take provisions).

[19] *See* Nina M. Young and Suzanne Iudicello, *Blueprint for Whale Conservation: Implementing the Marine Mammal Protection Act*, 3 Ocean and Coastal L.J. 149, at 175-182 (1997) (discussing the history of the implementation of the MMPA's incidental take provisions and a section by section discussion of the 1994 amendments to the MMPA).

[20] 16 U.S.C. §1387 (1994).

[21] 16 U.S.C. §1362(19) (1994) (A strategic stock is one for which the level of direct human-caused mortality exceeds the PBR, which is declining and likely to be listed as a threatened species under the ESA within the foreseeable future, or which is already listed as threatened or endangered under the ESA or designated as depleted under the MMPA.)

[22] Subsection (f) sets out requirements for the development of take reduction plans to "assist in the recovery or prevent the depletion of each strategic stock which interacts with a [listed] commercial fishery..." 16 U.S.C. §1387(f)(1) (1994).

[23] 16 U.S.C. §1387(f)(4) (1994).

[24] 16 U.S.C §1386(f)(2) (1994).

[25] 16 U.S.C. §1387(f)(2) (1994).

[26] 16 U.S.C. §1387(f)(6)(C) (1994).

[27] 16 U.S.C. §1387(f)(11) (1994).

To date NMFS has convened five Take Reduction Teams: (1) Gulf of Maine harbor porpoise take reduction team; (2) Mid-Atlantic harbor porpoise take reduction team; (3) Pacific offshore cetacean take reduction team; (4) Atlantic offshore cetacean take reduction team; and (5) the Atlantic large baleen whale take reduction team.

All of these teams have completed and submitted to NMFS draft take reduction plans we will review the contents of these plans, NMFS implementation of the plans, and evaluate both the negotiated process and NMFS implementation of the agreement.

A. Gulf of Maine Harbor Porpoise Take Reduction Team

1. Background on Harbor Porpoise Take in the Gulf of Maine

The incidental catch of harbor porpoise in the Gulf of Maine multispecies sink gillnet fishery has been documented for nearly ten years. Pursuant to both the 1988 and 1994 MMPA amendments, NMFS classified the Gulf of Maine sink gillnet fishery as Category I, which denotes "frequent incidental takes of marine mammals."[28] Fishers in Category I are obliged, when requested by NMFS, to take observers on fishing trips. Observers in this fishery documented historical catch of harbor porpoise incidental to the Gulf of Maine sink gillnet fishery[29] of 2,900 in 1990, 2,000 in 1991, 1,200 in 1992, 1,400 in 1993, 2,100 in 1994, 1,400 in 1995, 1,200 in 1996, and 782 in 1997.[30] In the harbor porpoise stock assessment, NMFS estimated the mean stock size at 54,000 animals and established a potential biological removal (PBR) level for this stock of 483[31] harbor porpoise[32] Therefore, harbor porpoise are a strategic stock because the level of mortality in the fishery greatly exceeds PBR.[33]

2. The Harbor Porpoise Take Reduction Team and Plan.

Because mortality exceeded PBR, NMFS established a take reduction team pursuant to

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[28] 54 Fed. Reg. 16072. *See also,* 60 Fed. Reg. 67063

[29] See Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at 9. For a description of the Gulf of Maine sink gillnet fishery.

[30] 1998 Marine Mammal Stock Assessments (U.S. Pacific, Atlantic and Gulf of Mexico) NOAA Tech. Memor. National Marine Fisheries Service, Silver Spring, MD, (1998). *See also,* MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 37 (2000).

[31] The 1994 stock assessment estimated the mean stock size at 47,500 and established a PBR of 403 animals. 1995 Marine Mammal Stock Assessments (U.S. Pacific, Atlantic and Gulf of Mexico) NOAA Tech. Memor. National Marine Fisheries Service, Silver Spring, MD, (1995).

[32] 62 Fed. Reg. 3005. The original PBR for this stock was 403 animals according to the 1995 stock assessment, it was later revised to 483 animals.

[33] 60 Fed. Reg. 52008 *See also* 58 Fed. Reg. 3108, January 7, 1993. A strategic stock is a stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level (the maximum number of animals, not including natural mortalities, that may be annually removed from a marine mammal stock without compromising the ability of that stock to reach or maintain its optimum population level); (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened species under the ESA.

section 118(f) of the MMPA.[34] The harbor porpoise take reduction team was unique, in that it had a history of group efforts to define the level of incidental take and reduce that take. Both the Harbor Porpoise Working Group[35] and the New England Fishery Management Council under the Multispecies Fishery Management Plan had attempted this task, but failed as evidenced by the bycatch estimates, which remained over 1,400 animals at the time the take reduction team was convened.[36]

NMFS convened the Gulf of Maine Take Reduction Team (GOMTRT) in February 1996.[37] The goal of the GOMTRT was to develop a consensus take reduction plan that contained measures the team felt were likely to reduce the incidental mortality of harbor porpoise in sink gillnets to PBR within six months of the plan's implementation.[38] The GOMTRT met five times between February and July 1996 and submitted a consensus draft plan on August 8, 1996, within the six-month timeline stipulated in the MMPA.[39] The core management plan focused on bycatch from Maine to Rhode Island and proposed reducing harbor porpoise bycatch by requiring a combination of pinger use--acoustic devices that are meant to warn cetaceans of the presence of a net--and the application of two types of time/area closures—one in which fishing is prohibited altogether and the other in which fishing is permitted only if nets are equipped with pingers.[40] To the extent possible, the plan incorporated the NEFMC harbor porpoise and groundfish closures so as to limit the additional regulatory burden placed on the gillnet fishery.[41] The agreement was also contingent on a rolling 6-month evaluation of the plan; a spring 1997 pinger experiment in the Mid-Coast area, modeled after the 1994 experiment[42], with a bycatch cap of 70 harbor porpoise; and research on pingers to investigate habituation and displacement of harbor porpoise, and evaluate the effects on other marine life.[43] Finally, the plan prescribes other measures that

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[34] 16 U.S.C. §1387(f).

[35] In 1989, fishers, environmentalists, and scientists formed the "Harbor Porpoise Working Group." The purpose of the Group was to define the extent of the harbor porpoise/gillnet interaction problem and to identify solutions that would adequately protect harbor porpoise with minimal impacts on the fishery.

[36] Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at 6,7 *See also,* Sonja V. Fordham, *New England Groundfish: From Glory to Grief, A Portrait of America's Most Devastated Fishery* Center for Marine Conservation (1996) (Discussing the history of harbor porpoise take reduction efforts). *See also,* 59 Fed. Reg. 26972; 58 Fed. Reg. 3108. (The NEFMC's harbor porpoise bycatch mitigation measures adopted under the framework adjustment to Amendment 5 to the Multispecies Fishery Management Plan); 59 Fed. Reg. 26972 (NMFS final rule instituting time and area closures contained in Framework Adjustment 4 to the Multispecies Fishery Management Plan for sink gillnet gear.); 60 Fed. Reg. 55207 (the NEFMC expanded the Framework 4 closures.)

[37] The GOMTRT included representatives of the NE multispecies sink gillnet fishery, NMFS, state marine resource managers, the New England Fishery Management Council (NEFMC), environmental organizations, and academic and scientific organizations. 63 Fed. Reg. 66464

[38] 116 U.S.C. §1387(f)(5)(A).

[39] 63 Fed. Reg. 66464 *See also,* 16 U.S.C. §1387 (f)(7)(A)(i).

[40] Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at 4.

[41] Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at 11.

[42] Kraus, S., A. Read, E. Anderson, A. Solow, T. Spradlin, and J. Williamson. 1997. Acoustic alarms reduce porpoise mortality. Nature. Vol 388: p. 525.

[43] Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at

include: cooperation between fishermen and researchers in estimating gillnet fleet effort; outreach, training, and certification activities; enforcement; cooperation with Canada; and other mechanisms to strengthen the potential for successfully meeting the plans goals and objectives.[44]

Although the MMPA requires that NMFS publish the plan within 60 days (October 7, 1996) the agency failed to do so for over one year (August 13, 1997).[45] When NMFS did publish the plan as a proposed rule for public comment, it modified the consensus plan to be consistent with the NEFMC Framework Adjustment 19[46] to the New England Multispecies Fishery Management Plan—this resulted in modifications to plan's groundfish and harbor porpoise closures.[47]

Meanwhile, during 1996 the NEFMC implemented a plan similar to the proposed harbor porpoise take reduction plan, including area closures and requirements for pinger use on gillnets. The GOMTRT, in December 1997, met and reviewed the bycatch data presented by NMFS,[48] and agreed that the proposed plan, as published in the Federal Register in August 1997, would not reduce mortality below PBR.[49] NMFS's data clearly showed under the NEFMC plan the overall bycatch levels remained unchanged, because as mortality dropped in some areas, effort shifts offshore caused bycatch to increase in those areas. The GOMTRT agreed on a number of additional measures to reduce bycatch in a report that it sent to NMFS on January 14, 1998.[50] In devising these measures the GOMTRT considered potential changes, being considered by the NEFMC, to Framework 25 of the New England Multispecies Fishery Management Plan that included additional closures to protect severely depleted groundfish that partially overlapped existing marine mammal closures. The GOMTRT ultimately recommended expanded closures and pinger requirements.[51]

By 1998, NMFS had violated every statutory deadline for developing the harbor porpoise take reduction plan and implementing regulations; moreover, NMFS also failed to comply with the MMPA's extended, statutorily-mandated date of April 1, 1997 by which time NMFS was to have established a plan that would reduce the take level to less than PBR.[52] Because of NMFS's

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[44] Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at 11-28.

[45] 63 Fed. Reg. 66464 *See also,* 16 U.S.C. §1387 (f)(7)(B)(i).

[46] 61 Fed. Reg. 55774 (1996)

[47] 62 Fed. Reg. 43302 (1997)

[48] 63 Fed. Reg. 66464

[49] 63 Fed. Reg. 66464

[50] 63 Fed. Reg. 66465

[51] The closures were: (1) Northeast Closure, August 15 through September 13; (2) Cape Cod South, March 1 through March 31; (3) Massachusetts Bay, March 1 through March 31; (4) Mid-Coast Area, March 24 through April 26; (5) Mid-Coast Area, pingers required from September 15 through March 24 and April 26 through May 31; (6) Cape Cod South, require pingers from September through May; (7) Massachusetts Bay, require pingers February and April; (8) Offshore Area, require pingers September 1 through May 31. 63 Fed. Reg. 66465

[52] 16 U.S.C. §1387 (f)(5)(A) and §1389 (j)(2).

internal delays in implementing the plan combined with frequent changes to the New England Multispecies Fishery Management Plan closures to protect depleted groundfish stocks--which affected harbor porpoise bycatch--a situation emerged, in mid-1998, where there was still no adequate take reduction plan being implemented to reduce the harbor porpoise mortality—mortality that still numbered over three times the permissible level. Therefore, on August 21, 1998, two years after the original draft take reduction plan was submitted, the Center for Marine Conservation, the Humane Society of the United States, and the International Wildlife Coalition filed suit in U.S. district court to compel NMFS to adopt a final rule to implement a take reduction plan to protect harbor porpoises.[53] The lawsuit's main points were that NMFS had violated the MMPA by failing to publish a take reduction plan to reduce the incidental mortality and serious injury of harbor porpoise below the PBR and that NMFS had violated the ESA by failing to take final action on its proposed rule to list harbor porpoise as threatened within the prescribed time frame.[54]

NMFS had no defense under either statute and so a settlement was reached. In the settlement agreement between the plaintiffs and NMFS, the agency agreed to publish a final take reduction plan for the Gulf of Maine harbor porpoise by December 1, 1998,[55] provide an update on the status of the research required by the take reduction plan, and provide information on harbor porpoise incidental take levels on a quarterly basis through December 2001. In addition, the settlement agreement called for a phase-in of pingers in the Gulf of Maine and a biological status review of harbor porpoise by March 31, 2000 to determine whether the listing decision should be revisited.

The final rule was published on December 2, 1998 and included the following requirements for the Gulf of Maine: (1) Northeast Area, closed August 15 through September 13; (2) Cape Cod South Area, closed March 1 through March 31; (3) Massachusetts Bay Area, closed March 1 through March 31; (4) Mid-Coast Area, pingers required September 15 through May 31; (5) Cape Cod South, require pingers from December 1 through February 28/29 and April 1 through May 31; (6) Massachusetts Bay, require pingers December 1 through February 28/29 and April 1 through May 31; (7) Offshore Area, require pingers November 1 through May 31; (8) Cashes Ledge Area, closed February 1 through 28/29.[56]

3. Evaluation of the GOMTRT Process and Plan.

In December 1999, the GOMTRT met to evaluate the progress on take reduction plan. NMFS indicated that the bycatch for the first eight months of 1999 was 227 harbor porpoises (174 porpoises off New England and 53 porpoises off mid-Atlantic coastal states).[57] However, several takes of harbor porpoise during the fall in the Mid-Coast area will increase the estimate for

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[53] Center for Marine Conservation v. Daley
[54] Center for Marine Conservation v. Daley
[55] This final rule was to implement both the Gulf of Maine and the Mid-Atlantic take reduction plans.
[56] 63 Fed. Reg. 66466 (1998)
[57] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 41 (2000).

the Gulf of Maine and may drive the bycatch over PBR. Therefore, while there have been significant reductions, it is still uncertain whether harbor porpoise bycatch will be below PBR; moreover, NMFS cannot say with certainty whether these reductions are due to the success of the plan or to extensive closures to conserve groundfish stocks, which likely contributed substantially to the reduction in harbor porpoise bycatch. The GOMTRT plans to: monitor progress toward PBR, continue the research called for in the initial take reduction plan, conduct experiments that will evaluate the effectiveness of pingers at a various frequencies, and investigate other mechanisms to reduce bycatch to ZMRG.[58]

During the initial negotiations, there was lengthy debate over the adequacy of the bycatch and population abundance estimates. As noted, the GOMTRT recommended several research recommendations to address this concern. Once the fishing industry adopted a general acceptance of the available data, one of the critical elements that helped the GOMTRT achieve consensus was the use of a spreadsheet analysis. The analysis allowed the team to estimate bycatch reduction based on a formula that assigned pinger effectiveness levels to different times and areas where bycatch occurred, based on previous pinger experiments and bycatch estimates. The GOMTRT then closed areas with peak bycatch and bracketed the closure by requiring pinger use during the months on either side of the closure. This mechanism provided a clear means to evaluate the expected results of closures and pinger use.

NMFS failure to implementation the consensus plan was perhaps the greatest downfall in the process. While team members questioned every aspect of the science—the PBR estimate, the population, bycatch, and effort estimates, the GOMTRT eventually overcame these concerns to move forward to achieve consensus on a plan. NMFS violated the team's faith in the process by failing to implement the plan within the statutory timeframes. Consequently, the consensus take reduction plan was overtaken by the actions of the NEFMC to conserve harbor porpoise and depleted groundfish stocks. This resulted in several changes to the original consensus plan--one generated by the GOMTRT to the original proposed rule in 1997 and the other adopted at NMFS's discretion to the 1998 proposed rule. Additionally, even though the NEFMC has several representatives on the GOMTRT, there is generally a lack of co-ordination between these two bodies, so much so, that actions taken under various FMPs threaten the conservation efforts of the GOMTRT and its plan.

Finally, the process was further marred by the lawsuit. Because of NMFS's failure to comply with the statutory timeframes of the MMPA, the conservation groups that had participated on the GOMTRT were forced to sue NMFS to implement the plan. Even though the lawsuit contested only NMFS's failure to meet the MMPA deadlines for implementation and not the adequacy of the plan itself, the suit created a air of divisiveness between members of the GOMTRT who objected to the suit and the plaintiffs. This was due, in part, to the belief by some members of the GOMTRT that the lawsuit resulted in changes to the plan, and therefore, the plaintiffs had violated the consensus agreement.

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[58] RESOLVE, Meeting Summary of the Gulf of Maine Take Reduction Team, December 1999

B. Mid-Atlantic Take Reduction Team

1. Background on Harbor Porpoise Takes in the Mid-Atlantic

The GOMTRT allocated approximately 100 harbor porpoise to the Mid-Atlantic and Canada for their portion of PBR.[59] In the early 1990s stranded harbor porpoise began washing ashore in the spring along the Mid-Atlantic coast with net marks and other signs of fishery interactions.[60] Beginning in 1995, NMFS placed observers on Mid-Atlantic gillnet fisheries and estimated the harbor porpoise bycatch at approximately 103 animals. However, between 1996 and 1998 harbor porpoise bycatch increased to 310 in 1996, 572 in 1997, and 446 in 1998, likely due to a combination of increased fishing effort and better observer coverage.[61]

2. The Harbor Porpoise Take Reduction Team and Plan.

In February 1997, NMFS convened the Mid-Atlantic Take Reduction Team (MATRT) to address the incidental bycatch of harbor porpoise in Mid-Atlantic gillnet fisheries (from New York through North Carolina).[62] The MATRT included representatives of the Mid-Atlantic coastal gillnet fisheries, NMFS, state marine resource managers, the Mid-Atlantic Fishery Management Council (MAFMC), the NEFMC, the Atlantic States Marine Fisheries Commission (ASMFC), environmental organizations, and academic and scientific organizations.[63] The MATRT adopted as its objective to determine when and where harbor porpoise were becoming entangled along the Mid-Atlantic and to develop recommendations for reducing bycatch below PBR in conjunction with the GOMTRT.[64] Another objective of the MATRT was to develop recommendations for the collection and analysis of abundance, stock structure, and bycatch data for coastal bottlenose dolphins.[65] The MATRT submitted a report to NMFS on August 25, 1997, which included both consensus and non-consensus recommendations.[66]

The MATRT recommended management measures specific to the two predominant coastal gillnet fisheries--the monkfish and dogfish fisheries.[67] It recommended that the timeframe for effectiveness be from January through April off New Jersey and from February through April

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[59] Draft Gulf of Maine/Bay of Fundy Harbor Porpoise Take Reduction Team Take Reduction Plan. Aug 7, 1996. at 11,12.
[60] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 36 (2000).
[61] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 36 (2000).
[62] 63 Fed. Reg. 66465 (1998)
[63] *Id.*
[64] RESOLVE, 1997. The Mid-Atlantic Take Reduction Team Report. Submitted to Mr. Rollie Schmitten, NMFS. Prepared by RESOLVE Center for Environmental Dispute Resolution, Washington, DC at 3.
[65] *Id.*
[66] *Id.*
[67] RESOLVE, 1997. The Mid-Atlantic Take Reduction Team Report. Consensus Agreement. Submitted to Mr. Rollie Schmitten, NMFS. Prepared by RESOLVE Center for Environmental Dispute Resolution, Washington, DC at 1.

off the southern Mid-Atlantic (Delaware, Maryland, Virginia and North Carolina).[68] The MATRT's management measures were designed to achieve a 79% reduction in bycatch through a combination of gear characteristics that, through scientific analyses and modeling, demonstrated the greatest potential for bycatch reduction.[69] For the monkfish fishery, these measures included reduced floatline length (<3,900 ft. or <4,800 ft. depending on the location), larger twine size (>90 mm), mesh size, (>12 in.) tie downs, and a limit of 80 nets.[70]

For the dogfish fishery, the measures included reduced floatline length (<3,000 ft or < 2,118 ft depending on the location), larger twine size, (>.81mm) mesh size, (<6.5 mm) and a 45-net limit.[71] Additionally, the MATRT recommended time/area closures for the monkfish fishery in New Jersey waters (February 15-March 15) and in the southern Mid-Atlantic (20 day block between February and April, chosen by the fishermen) but no time/area closures for the dogfish fishery.[72]

The MATRT also made recommendations for education and outreach programs to fishermen; measures to improve bycatch estimates; the need for increased observer coverage; and an evaluation of the observer program to ensure that observer coverage is random and representative.[73]

The MATRT recommended five research areas for the Mid-Atlantic coastal bottlenose dolphin: (1) identify functionally discrete stocks of coastal bottlenose dolphins; (2) generate reliable population estimates for coastal bottlenose dolphins; (3) generate reliable estimates of fishery-related mortality and injury; (4) continue and improve regional stranding networks; and (5) characterize fisheries that may interact with bottlenose dolphins.[74]

During the deliberations, the MATRT determined that a substantial portion of the harbor porpoise bycatch was from New England vessels who were fishing with lighter twine, longer nets, and with longer soak times.[75] This fishing strategy resulted in a higher level of harbor porpoise bycatch than the gear used by the local fishermen;[76] consequently, the MATRT based its bycatch reduction strategies on fishing practices used by local fishermen.[77] Recognizing that the gear modifications proposed by the team would require New England vessels to make a sizable

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[68] *Id.* at 1-2
[69] Palka, D. 1997. Effects of Gear Characteristics on the Mid-Atlantic Harbor Porpoise Bycatch. Report to the Mid-Atlantic Take Reduction Team. Unpublished.
[70] RESOLVE, 1997. The Mid-Atlantic Take Reduction Team Report. Consensus Agreement. Submitted to Mr. Rollie Schmitten, NMFS. Prepared by RESOLVE Center for Environmental Dispute Resolution, Washington, DC at 1.
[71] *Id.* at 2-3
[72] *Id.*
[73] *Id.* at 4-5
[74] *Id.* at 6-8
[75] 63 Fed. Reg. 48678 (1998)
[76] *Id.*
[77] *Id.*

financial investment in new gear if they were to fish in this area, the fishing industry proposed a federally funded pinger experiment.[78] However, the MATRT did not achieve consensus on whether a scientifically valid pinger experiment should be part of the management regime due to unresolved concerns about funding, target fishery, diversion of observers to the experiment, and concerns about statistical design for a fishery with limited bycatch.[79]

Again, NMFS failed to publish the plan within 60 days (October 25, 1997) and it was not until more than one year after the MATRT submitted its plan that NMFS, on September 11, 1998, published a proposed rule that combined the Mid-Atlantic and the Gulf of Maine take reduction plans.[80] Therefore, since NMFS failed to meet its statutory deadlines for implementation of the Mid-Atlantic take reduction plan and thus was in violation of the MMPA, Center for Marine Conservation, the Humane Society of the United States and the International Wildlife Coalition included the Mid-Atlantic take reduction plan in the lawsuit against NMFS (Daley).[81] The settlement agreement, noted above, also required NMFS to include the MATRT's plan in the final rule, which was published on December 2, 1998.[82]

Generally, the final rule for the Mid-Atlantic component of the harbor porpoise take reduction plan was consistent with that proposed by the team with a few exceptions. The gear modifications remain the same as in the proposed plan, as does the effective period: January 1 through April 30 for New Jersey waters, and February 1 through April 30 for southern Mid-Atlantic waters. Tables 1 and 2 summarize the final rule's gear modifications requirements for the large mesh (includes gillnet with mesh size of greater than 7 inches (17.78cm) to 18 inches (45.72cm)) and small mesh (includes gillnet with mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78cm)) gillnet fisheries in the Mid-Atlantic.[83]

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[78] RESOLVE, 1997. The Mid-Atlantic Take Reduction Team Report. Pinger Experiment. Submitted to Mr. Rollie Schmitten, NMFS. Prepared by RESOLVE Center for Environmental Dispute Resolution, Washington, DC
[79] *Id*
[80] 63 Fed. Reg. 48670 (1998)
[81] Center for Marine Conservation v Daley
[82] 63 Fed. Reg. 66465 (1998)
[83] 63 Fed. Reg. 66468 (1998)

Table 1. Gear Modifications for the Large mesh Gillnet Fishery (Gillnet With Mesh Size Greater Than 7 Inches (17.78cm) to 18 Inches (45.72cm)).

Floatline Length:	
New Jersey Mudhole	Less than or equal to 3,900 ft (1188.7 m).
New Jersey Waters (excluding the Mudhole)	Less than or equal to 4,800 ft (1463.0 m).
Southern Mid-Atlantic waters	Less than or equal to 3,900 feet (1188.7 m).
Twine Size	
All Mid-Atlantic Waters	Greater than or equal to .90 mm (.035 inches).
Tie Downs	
All Mid-Atlantic Waters	Required.
Net Cap	
All Mid-Atlantic Waters	80 nets.
Net Size	A net must be no longer than 300 feet (91.4m) long.
Net Tagging	Requires all nets to be tagged by January 01, 2000.
Time/Area Closures:	
New Jersey waters to 72 deg.30' W. longitude (including the Mudhole).	Closed from April 1-April 20.
New Jersey Mudhole	Closed from February 15-March 15.
Southern Mid-Atlantic waters (MD, DE, VA, NC) to 72 deg.30' W longitude.	Closed from February 15-March 15.

Table 2. Gear Modifications for the Small Mesh Gillnet Fishery (Includes Gillnet with Mesh Size of Greater Than 5 Inches (12.7 cm) to Less Than 7 Inches (17.78cm))

Floatline Length:	
New Jersey waters	Less than or equal to 3,000 feet (914.4 m).
Southern Mid-Atlantic waters	Less than or equal to 2,118 feet (645.6 m).
Twine Size:	
All Mid-Atlantic waters	Greater than or equal to .81 mm (.031 inches).
Net Cap:	
All Mid-Atlantic waters	45 nets.
Net Size	A net must be no longer than 300 feet (91.4m) long.
Net Tagging	Requires all nets to be tagged by January 1, 2000.
Time/Area Closures:	
New Jersey Mudhole.	Closed from February 15-March 15.

The most significant change from the MATRT's plan is the application of modifications to all gillnet fisheries that use a mesh size of less than 7 inches (17.78 cm) but greater than 5 inches (12.7 cm) and the change in the stratification of gear modifications from fishery or subfishery to

gear modifications based on mesh size.[84] NMFS concluded that the regulatory measures should not be based on subfisheries but on the characteristics that appear most related to harbor porpoise bycatch.[85] Moreover, NMFS claimed that basing the regulatory measures on the subfisheries would be difficult to administer and enforce, especially since no fishery management plan or permit system was in place under the Magnuson-Stevens Act for either fishery.[86] While NMFS's argument for managing the fishery by mesh size rather than by subfishery is sound, it had the unintended consequences of including other fisheries that do not have a demonstrated take of harbor porpoise, such as the striped bass fishery. If NMFS had raised this concern within the negotiations, the MATRT could, no doubt, have proposed management measures that would have included gear types that have the potential to catch harbor porpoise rather than those that do not.

In terms of closures, the final take reduction plan differs from the MATRT's recommendations with regard to the timing of area closures. For the large mesh fishery (the monkfish fishery), the MATRT recommended a closure for New Jersey waters, including the Mudhole, from February 15 through March 15.[87] Based on bycatch data, NMFS created two closures—one from February 15 through March 15 at the Mudhole and another from April 1 through April 20 for the rest of New Jersey.[88]

The MATRT also recommended that the southern Mid-Atlantic be closed for a block of 20 days between February and April, the timing of the closure to be determined by the individual fishers. Again, because NMFS concluded that such a closure would be difficult to enforce, so NMFS mandated a set closure, consistent with the timing of high harbor porpoise bycatch, from February 15 through March 15 in the southern Mid-Atlantic.

For the dogfish fishery--small mesh fishery--the MATRT recommended no time and area closures; however, NMFS concerned about the high level of takes the area around the Mudhole in northern New Jersey during February through April mandated a one month closure from February 15 through March 15 in the Mudhole—to coincide with high fishing effort and the majority of the takes.[89]

3. Evaluation of the MATRT Process and Plan.

In January 2000, the MATRT met to evaluate the take reduction plan. During the first eight months of 1999, 53 harbor porpoises were taken off the mid-Atlantic coastal states. As previously stated, NMFS has not completed analyses of the bycatch and effort data for 1999 to determine whether the takes exceeded PBR. NMFS's preliminary data indicate that the

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[84] 63 Fed. Reg. 66468 (1998)
[85] 63 Fed. Reg. 48678 (1998)
[86] 63 Fed. Reg. 48678 (1998)
[87] 63 Fed. Reg. 48678 (1998) *See also*, 63 Fed. Reg. 66468 (1998)
[88] 63 Fed. Reg. 48678 (1998) *See also*, 63 Fed. Reg. 66468 (1998)
[89] 63 Fed. Reg. 48678 (1998) *See also*, 63 Fed. Reg. 66468 (1998)

reductions are due to a combination of the plan and fishery management restrictions.[90] In addition, the MATRT expressed concern about insufficient observer coverage to encompass all of the fisheries in this area, a lack of enforcement and compliance with the plan and the requirements of the MMPA (specifically those that require fishermen to register and take observers), and the continuing need for an improved estimate of effort.

While the plan itself has been fairly successful, MATRT member expressed frustration with NMFS's delay in the implementation of the plan and more importantly the changes that were made to the plan without consulting the MATRT.[91] Many MATRT members felt that NMFS had severely undermined the integrity of the take reduction team process by modifying the plan to focus on gear and mesh size rather than fishery.[92] In doing so, NMFS has included small mesh fisheries such as shad and striped bass and some internal waters such as the Delaware Bay that the MATRT had not envisioned including during their negotiations or in their recommendations.[93] Many of the members believed that these problems could be averted if NMFS had consulted with and discussed these changes with the MATRT during the comment period on the proposed rule or if NMFS had raised these issues during the negotiations.[94]

Finally, while many members were both disenchanted with the process and disheartened by the MATRT's failure to achieve consensus on all aspects of the take reduction plan (pinger experiment), the team was able to recommend, at their January meeting, that the fishing industry pursue mitigation strategies for harbor porpoise and bottlenose dolphins, including acoustic deterrent devices and reflective gillnets, and NMFS provide technical advice for such efforts. The MATRT recommended that NMFS work cooperatively with industry to pursue funding. Given this outcome, if there had been more time, the MATRT may have reached consensus on this issue. Because they did not, individuals, on both sides, questioned the other's motives and in one unfortunate instance this led to the industry attacking the motives of one of the scientists. It is regrettable that in those cases where consensus is not achieved, there appears to be a tendency for one group to lash out at another.

C. Atlantic Offshore Cetacean Take Reduction Team

1. Background on Marine Mammal Takes in the Atlantic Offshore Fisheries

The U.S. Atlantic, Caribbean, Gulf of Mexico pelagic drift gillnet fishery for swordfish, tuna, and shark interacts with six to nine strategic marine mammal stocks, including long-finned and short-finned pilot whales, common dolphins, Atlantic spotted dolphins, the offshore stock of

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[90] RESOLVE, 2000. Meeting Summary of the Mid-Atlantic Take Reduction Team, January 13-14, 2000.
[91] RESOLVE, 2000. Meeting Summary of the Mid-Atlantic Take Reduction Team, January 13-14, 2000.
[92] RESOLVE, 2000. Meeting Summary of the Mid-Atlantic Take Reduction Team, January 13-14, 2000.
[93] RESOLVE, 2000. Meeting Summary of the Mid-Atlantic Take Reduction Team, January 13-14, 2000.
[94] RESOLVE, 2000. Meeting Summary of the Mid-Atlantic Take Reduction Team, January 13-14, 2000.

bottlenose dolphin, humpback whales, northern right whales, and sperm whales.[95] The U.S. Atlantic, Caribbean, Gulf of Mexico pelagic longline fishery for swordfish, tuna, and shark interacts with two strategic marine mammal stocks: Pilot whales and Atlantic spotted dolphins.[96] Table 1 summarizes the level of take for these strategic stocks.[97]

Table 1. 1995/19966 Marine Mammal Stock Assessment—Strategic Stocks with Fishery Interactions.

SPECIES/STOCK	PBR	ANN. FISHERY MORTALITY	FISHERY SOURCES OF MORTALITY
Northern Right Whale/ W. North Atlantic	0.4	1.1	Lobster, Gillnet, and Driftnet Gear
Common dolphin/W. North Atlantic	32	449	Atlantic Drift Gillnet Fishery
Atlantic spotted dolphin/ W. North Atlantic	16	31	Atlantic Drift Gillnet Fishery/Atlantic pelagic longline fishery
Pantropical spotted dolphin/ W. North Atlantic	16	31	Atlantic Drift Gillnet Fishery
Cuvier's beaked whale/ W. North Atlantic	8.9	34	Atlantic Drift Gillnet Fishery
Mesoplodont beaked whale/ W. North Atlantic	8.9	34	Atlantic Drift Gillnet Fishery
Pilot whale, short-finned/ W. North Atlantic	3.7	109	Atlantic Drift Gillnet Fishery; Atlantic pelagic longline fishery
Bottlenose dolphin/ W. North Atlantic, offshore	92	128	Atlantic Drift Gillnet Fishery; Pair trawl fishery
Atl. White-sided dolphin/ W. North Atlantic	125	127	Atlantic Drift Gillnet Fishery
Pilot whale, long-finned/ W. North Atlantic	28	109	Atlantic Drift Gillnet Fishery, Atlantic pelagic longline fishery
Sperm whale/ W. North Atlantic	0.5	1.6	Atlantic Drift Gillnet Fishery

2. Atlantic Offshore Cetacean Take Reduction Team

NMFS established the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) on May 23, 1996 to prepare a take reduction plan aimed at reducing bycatch of the strategic marine mammals--right whales, humpback whales, sperm whales, beaked whales, pilot whales, common dolphins, bottlenose dolphins, and spotted dolphins in the U.S. Atlantic pelagic drift gillnet, longline and pair trawl fisheries[98] The AOCTRT reached consensus on several strategies to reduce takes in each fishery and submitted a draft Atlantic Offshore Cetacean Take Reduction Plan to

[95] 1995 Marine Mammal Stock Assessments (U.S. Pacific, Atlantic and Gulf of Mexico) NOAA Tech. Memor. National Marine Fisheries Service, Silver Spring, MD, (1995).
[96] 1995 Marine Mammal Stock Assessments (U.S. Pacific, Atlantic and Gulf of Mexico) NOAA Tech. Memor. National Marine Fisheries Service, Silver Spring, MD, (1995). *See also*, 62 FR 3005, January 21, 1997.
[97] *Id. See also*, Atlantic Offshore Cetacean Take Reduction Plan (1996) Susan Podziba & Associates at 11 for a discussion of the population estimates, PBR, and the bycatch estimates.
[98] 61 Fed. Reg. 25846 (1996)

NMFS on November 25, 1996.[99] For each fishery, the AOCTRT recommended that education and outreach materials be prepared and workshops be held. The AOCTRT also recommended that NMFS develop criteria for assessing marine mammal injuries and that a workshop should be convened to review all existing injury information and develop (1) guidelines for determining and recording serious injury; (2) recommendations for changes and/or additions to observer logs or reporting forms; (3) recommendations for further research including how to monitor fate of entangled animals; and (4) recommendations to the fleet on operating procedures when interactions occur to minimize injury and maximize survivorship.[100] In addition, the AOCTRT also recommended that a technical advisory group be formed to assist in the implementation of the plan and that research on cetacean behavior and abundance be made a priority. In both the drift gillnet and longline fisheries the plan prohibited fishing in right whale critical habitat areas to reduce the risk of entanglement of right whale.

In the drift gillnet fishery the strategies were as follows: (1) 100 percent marine mammal observer coverage; (2) limited entry for the swordfish drift gillnet fishery; (3) prohibition of drift gillnet gear south of Hudson Canyon from December 1 through May 31; (4) a set allocation system designed to reduce the derby nature of the fishery; (5) pinger experiment during the 1997 fishing season requiring 100% participation by all vessels; (6) real time monitoring and evaluation of bycatch; (7) information clearinghouse to share information among fishermen regarding marine mammal "hot spots" or areas with high concentrations of marine mammals; (8) research on standardized gear modifications; (9) a buy-out program to reduce effort in the fishery by allowing fishermen to sell their allocation of sets to other driftnetters or non-fishers.[101]

In the longline fishery, the strategies would be as follows: (1) length-of-gear limit on pelagic longline gear to 24 nautical miles from August to November in the Mid-Atlantic Bight; (2) reduction in maximum soak time in the Mid-Atlantic Bight during August-November by hauling gear in the order it was set; (3) a requirement that longliners move after one entanglement with a marine mammal; (4) research on modification of gear and/or operating practices, cetacean behavior, and acoustical systems to devise ways to reduce entanglement; (5) increase observer coverage in the longline fishery to 10% in the Mid-Atlantic and Northeast Coastal areas from August through November, and at least 5% in the rest of the fishery; (6) develop a stratified random sampling scheme for the longline fishery to increase precision of bycatch estimates and insure optimal allocation of observer coverage.[102]

The pair trawl fishery recommended a strategy that included the following: (1) operator qualifications and certification; (2) certification of nets; (3) research on cetacean behavior and target species; and (4) industry performance standards and review.[103] In September 1996, prior to

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[99] 62 Fed. Reg. 59657 (1997)
[100] Atlantic Offshore Cetacean Take Reduction Plan (1996) Susan Podziba & Associates at 37-38.
[101] 62 Fed. Reg. 59657 (1997) *See also*, Atlantic Offshore Cetacean Take Reduction Plan (1996) Susan Podziba & Associates at 45-49.
[102] Atlantic Offshore Cetacean Take Reduction Plan (1996) Susan Podziba & Associates at 50-53.
[103] Atlantic Offshore Cetacean Take Reduction Plan (1996) Susan Podziba & Associates at 42-44.

the completion and submission of the plan, NMFS denied the pair trawl fishery's petition for rulemaking to authorize the fishery in the Atlantic tuna fishery. However, the pair trawl gear is not currently authorized for fishing in the Atlantic tuna or swordfish fishery; therefore, the team's recommendations regarding pair trawl gear are not being implemented.

3. Evaluation of the AOCTRT.

The AOCTRT submitted to NMFS the Atlantic Offshore Cetacean Take Reduction Plan on November 25, 1996.[104] According to the MMPA, NMFS should have published a proposed rule and implementing regulations by January 25, 1997.[105] On June 5, 1997, NMFS's failure to meet this deadline resulted in the extension of the December 1, 1996 through May 29, 1997, emergency closure of the northern portion of the Atlantic driftnet fishery for swordfish under an emergency rule issued under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act until November 26,1997.[106] In November of 1997, NMFS published a draft Environmental Assessment for the Atlantic Offshore Cetacean Take Reduction Plan.[107] This Environmental Assessment called into question whether the AOCTRT's consensus plan would provide sufficient protection for right whales or other cetaceans.[108] In accordance with the MMPA, NMFS proposed another alternative that had been discussed during the course of the take reduction team's negotiation as a possible modification to the plan to achieve the goals of the MMPA and the ESA. CMC provided comments that supported the NMFS alternative. However, if NMFS had these concerns, it should have voiced them and proposed the alternative take reduction strategy during the negotiations for consideration by the AOCTRT. NMFS did neither, and instead undermined the entire take reduction process while at the same time its delays allowed the fishery to operate and kill hundreds of marine mammals without the benefit of a take reduction plan.

Finally, after conducting a comprehensive review of the swordfish fishery, NMFS published a final rule prohibiting the use of driftnet gear in the North Atlantic swordfish fishery.[109] Moreover, as of 1999, many of the recommended measures for reducing takes in the longline fishery are being implemented as part of the Highly Migratory Species Fishery Management Plan under the Office of Sustainable Fisheries rather than under the MMPA and the Office of Protected Resource. This violates the intent of the MMPA and has resulted in a further failure on the part of NMFS, who, to date, has not proposed take reduction plan for the non-regulatory aspects of the plan, as they pertain to the longline fishery nor has NMFS convened the AOCTRT since it submitted its take reduction plan.

The AOCTRT, even though it reached consensus, was a failure, solely because NMFS

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[104] 62 Fed. Reg. 59657 (1997)
[105] 16 U.S.C. §1387 (f)(5)(A)
[106] 62 Fed. Reg. 30775 (1997)
[107] 62 Fed. Reg. 59657 (1997)
[108] 62 Fed. Reg. 59657 (1997)
[109] 63 Fed. Reg. 55998 (1998)

severely undermined the good faith efforts of the AOCTRT at every turn by: (1) closing the pair trawl fishery during the course of the negotiations; (2) failing raise concerns about the ability of the consensus plan to achieve PBR within the negotiation process rather than after the process was completed; (3) raising the issue of the need to address rare instances of incidental takes of endangered whales late in the process, when there was insufficient time to address the issue; (4) failing to implement a take reduction plan within the MMPA's timeframes and violating the MMPA by allowing continued takes of marine mammals; (5) ignoring the recommendations of the plan and using the MMPA to close the drift gillnet fishery rather than the provisions of the Magnuson-Stevens Act; and (6) failing to implement fully the take reduction plan or reconvene the AOCTRT in accordance with the MMPA. With two fisheries having been closed, the fate of the AOCTRT is uncertain, equally uncertain is whether the plan has achieved the goal of reducing takes to PBR. By closing these fisheries, the Office of Sustainable Fisheries, demolished the very foundation of the take reduction team negotiations process. Their actions gave the appearance that there was no interest or intent in effectively implementing these provisions of the MMPA, instead they merely used it as a tool to arbitrarily close fisheries—the very action that this process is designed to avoid. If the AOCTRT has any hope of being revived implementation authority must be restored under the MMPA and the Office of Protected Resources.

D. Atlantic Large Whale Take Reduction Team

1. Background on Large Whale Takes in the Atlantic.

Based on data from 1991 through 1995, U.S. fishing gear was likely responsible for approximately 35 percent (6 events) of known human-caused serious injury and mortality to right whales, while Canadian fisheries are estimated to be responsible for 18 percent (3 events); the remaining 47 percent (8 events) is attributed to ship strikes.[110] NMFS estimates that a minimum of 1.2 right whales from the western North Atlantic stock are seriously injured or killed annually by entanglement in U.S. fishing gear.[111] For the most part, NMFS considers this a minimum estimate because many entanglements go unobserved--occurring in areas where there is little sighting effort. NMFS's PBR for this stock is 0.4 right whales—the target for any take reduction plan. Therefore, if more than two serious injuries or mortalities incidental to commercial fishing operations occur within 5 years after the plan is promulgated, then the plan will not achieve its PBR goal.[112]

In the 1996 Stock Assessment Reports, NMFS estimates that rate of serious injury and mortality of humpback whales due to fishery interactions is 4.1 animals per year and is therefore,

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[110] 62 Fed. Reg. 16519-16538 (1997)

[111] *Id.* NMFS estimates that of those entangled whales, lobster gear is estimated to have entangled an annual average of 0.4 whales over the last 5 years; the Southeastern U.S. drift gillnet fishery for sharks is assumed to have entangled an annual average of 0.2 whales over the same period; the pelagic drift gillnet fishery is estimated to be responsible for 0.4 fishery-induced mortalities and serious injuries of right whales annually. The remaining known entanglements are from unknown fisheries.

[112] *Id*

below the stock's PBR level of 9.7.[113] The 1996 Stock Assessement Reports indicate that over the 1991-1995 period, the total known fishery-related mortality and serious injury rate for fin whales is less than 3.4 fin whales per year—well under the PBR of 34 fin whales.[114] Likewise, in the 1996 NMFS stock assessment report NMFS estimates that 2.5 minke whales are seriously injured or die from fishery-related encounters. This level does not exceed the PBR level of 21 for this stock.[115] Nevertheless, because of the endangered status of humpback and fin whales, and therefore their strategic stock designation, NMFS included these species under the Atlantic Large Whale Take Reduction Team.

2. The Atlantic Large Whale Take Reduction Team.

NMFS established the Atlantic Large Whale Take Reduction Team (ALWTRT) on August 6, 1996 to prepare a draft Atlantic Large Whale Take Reduction Plan to reduce takes of humpback, fin and right whales, which are listed as endangered species under the ESA (and are thus considered strategic stocks under the MMPA) in the South Atlantic shark gillnet fishery, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery.[116] Although minke whales are not listed as strategic at this time, the ALWTRT was also asked to consider measures that would reduce takes of minke whales. The ALWTRT included representatives of NMFS, the Marine Mammal Commission, Maine Department of Marine Resources, Massachusetts Division of Marine Fisheries, Rhode Island Division of Fish and Wildlife, Maryland Department of Natural Resources, Virginia Marine Resources Commission, North Carolina Division of Marine Fisheries, Georgia Department of Natural Resources, Florida Department of Environmental Protection, New England Fishery Management Council, Mid-Atlantic Fishery Management Council, environmental organizations, academic and scientific institutions, and participants in the fisheries considered in this plan.[117] The ALWTRT met six times between September 1996 and January 1997 and submitted a report to NMFS on February 4, 1997; however, the team did not reach consensus on all aspects of the plan.

2.1 The Report of the ALWTRT

The ALWTRT's report submitted includes: (1) A review of the status of the affected strategic marine mammal stocks; (2) descriptions of the New England multispecies sink gillnet fishery, the mid-Atlantic coastal gillnet fisheries, the Gulf of Maine and U.S. mid-Atlantic lobster trap/pot fisheries, and the Southeastern U.S. Atlantic drift gillnet fishery for sharks; (3) recommendations on potential measures to reduce the bycatch of large whales; and (4) other

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[113] 62 Fed. Reg. 16519-16538 (1997)
[114] *Id.*
[115] *Id.*
[116] 61 Fed. Reg. 40819 (1996)
[117] *Id.*

recommendations regarding research needs.[118] The ALWTRT's take reduction strategies included: modifications to fishing gear and practices, area restrictions, reduction of inactive fishing gear and retrieval of lost or discarded gear as marine debris, a gear marking system that could assist in the identification of where and from what fisheries whales may be encountering gear, aggressive research into gear modifications and design, and improved disentanglement efforts.[119] Finally, the ALWTRT recommended initiatives for fisher education and outreach, better monitoring of the distribution of whale stocks and entanglements, joint initiatives with Canada to reduce whale bycatch in commercial fisheries, and exploration of market incentives to reduce large whale bycatch in these fisheries.[120]

While the ALWTRT agreed on many strategies, the team could not reach consensus on two areas. The first was the need to close critical habitat areas where low to moderate fishing effort was occurring, but where there were also few sightings of right whales.[121] The second was where and what type of gear modification requirements should be required. Specifically, the consensus broke down over whether to require the use of sinking groundlines in rocky bottom habitat.

2.2 NMFS Proposed Rule for the Take Reduction Plan

NMFS published the proposed rule to implement an Atlantic Large Whale Take Reduction Plan on April 7, 1997 (sixty days after the plan was submitted).[122] The plan included seasonal fishery closures in times and areas where right whales are known to occur, and lists of gear modifications for gillnet and lobster gear (e.g. weak links, reducing the breaking strength of buoy and ground lines, greater use of sinking line, and anchoring requirements).[123] The plan also included a gear marking system to help determine the source of lines found on entangled whales; formation of a gear advisory group to aid in the identification and evaluation of various research proposals; and expanded support for disentanglement teams.[124]

In the proposed rule, NMFS greatly expanded the gear modification requirements to include area, such as Maine state waters, were few right whale sightings had been reported. This action elicited strong opposition from thousands of New England fishermen who cited concerns about the costs of modifying their gear to fish in areas where right whales were rarely seen.[125] All interest groups raised concerns over some of NMFS proposed gear modifications—such as 150 pound weak links—citing that, given the untested nature of many of these modifications, requiring

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[118] Team Report. 1997. Draft Atlantic Large Whale Take Reduction Report. Report prepared by the Atlantic Large Whale Take Reduction Team and submitted to the National Marine Fisheries Service February 4, 1997. 79pp.
[119] *Id.*
[120] *Id. See also,* 62 Fed. Reg. 16519-16538 (1997)
[121] MARINE MAMMAL COMMISSION, 1997 ANNUAL REPORT TO CONGRESS 18 (1998).
[122] 62 Fed. Reg. 16519-16538 (1997)
[123] *Id.*
[124] 62 Fed. Reg. 16519-16538 (1997)
[125] MARINE MAMMAL COMMISSION, 1997 ANNUAL REPORT TO CONGRESS 20 (1998).

such alterations without knowing whether they will achieve the require reduction may be premature.[126]

The issue quickly became both highly polarized and politicized. NMFS received over 13,000 comments (including form letters, postcards and signatures on petitions) from state and Federal agencies, Congressional offices, State legislature representatives, towns, conservation groups, industry associations, businesses, fishermen and other private individuals.[127] In addition, NMFS received oral testimony at twelve public hearings held from Maine through Virginia and attended by more than 2,500 people.

2.3 NMFS Interim Final Rule on the Take Reduction Plan

On July 22, 1997, NMFS published the interim final rule to implement the Atlantic Large Whale Take Reduction Plan.[128] NMFS substantially revised the interim final rule from the proposed rule.[129] In the interim rule, NMFS required all lobster and sink gillnet gear be rigged so that the buoy line does not float at the surface of the water at anytime.[130] The interim rule also prohibits "wet storage" of lobster gear--the practice of leaving unbaited traps in the water rather than storing them on land.[131]

NMFS revised the proposed gear modification requirements to reduce the area in which the rules applied (removing the requirement that gear deployed in coves and harbors be modified) and create, instead, a menu option that required gear from various area be modified to include some characteristic(s) that would reduce the risks associated with entanglement.[132] For example, at least one modification from a list of acceptable options must be used if the gear is set in areas whales rarely use, and at least two of the modifications are required if the gear is set in areas whales use more frequently.[133] Additionally, there were more specific requirements for gear allowed in areas that have previously been declared "critical habitat" for right whales with critical habitat areas off Massachusetts and Georgia/Florida being closed to some gear during times when whales are known to aggregate.[134]

2.4 Problems with the Interim Final Rule

The problem was that NMFS crafted these menu options in such a way that the existing gear required little or no modification. Therefore, in the opinion of the environmental community the Interim Final Rule for the Atlantic Large Whale Take Reduction Plan significantly weakened the proposed rule by creating a greater reliance on a gear technology list to implement the plan

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[126] MARINE MAMMAL COMMISSION, 1997 ANNUAL REPORT TO CONGRESS 20 (1998).
[127] 62 Fed. Reg. 39157-39188 (1997)
[128] 62 Fed. Reg. 39157-39188 (1997)
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*

which, in most cases, provided no meaningful risk reduction and was not a departure from the current fishing practices that have entangled whales.[135] In the summaries provided in Table 1 and 2, it is clear that the Interim Final Rule proposed, for both lobster and gillnet gear, requiring only two gear options for areas such as Cape Cod Bay, Great South Channel, and Stellwagen Bank/Jeffreys Ledge, made this proposal far less restrictive than the strategies recommended by either the Commonwealth of Massachusetts Endangered Whale Working Group (CMEWWG) in its Conservation Plan for Massachusetts Waters to Minimize Entanglement Risk for Right Whales for Cape Cod Bay, the ALWTRT's report, or the Fishing Industry in its Industry-State Agency Large Whale Take Reduction Plan (See tables 1 and 2). Most of these plans proposed using four or more gear technology restrictions; smaller diameter line 5/16; and reduced breaking strength (< 1,100 lb.)

In addition, NMFS significantly weakened the take reduction strategies for the Mid-Atlantic anchored gillnet fisheries, proposing a take reduction strategy that now only requires one gear modification. This is a withdrawal from the consensus strategy proposed by the ALWTRT in its Report.

However, NMFS's proposed actions represented no real risk reduction while at the same time removing other requirements that would provide important data and information. For example, NMFS proposal for prohibiting floating line at the surface didn't result in any meaningful risk reduction as current practice results in line that does not usually float at the surface. The same was true with the prohibition on "wet storage", because, as written, fishermen could stow gear in the water so long as he/she "hauled it out of the water at least once in 30 days"--thereby meeting the requirement of the law while all the time the gear presents a potential risk of entanglement to whales. On the other hand, NMFS removed the requirement to mark gear by region color code, thereby decreasing the utility of the data derived from gear marking to aid in determining the area and fishery where whales may be encountering gear. Finally, NMFS removed from the Interim Final Rule all contingency measures to extend gear requirements or to close a restricted area in the event of anomalous right whale distribution. NMFS did not replace these contingency measures with any early warning mechanism to notify fishermen that right whales are in the area.

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[135] NMFS usurped the authority of the ALWTRT by creating a competing body in the Gear Advisory Group, a free-standing body which contained no representation from the conservation community and reported directly to the Regional Administrator rather than the ALWTRT. NMFS consulted with this team during the comment period on the proposed rule, and because NMFS did not require the recommendations from the Gear Advisory Group be reviewed by the ALWTRT, the gear modifications recommended by this group, and incorporated into the interim rule, were substantially weaker than those recommended by the ALWTRT.

Table 1. A summary of the various proposed take reduction strategies for Cape Cod Bay Critical Habitat and the areas adjacent or west of Cape Cod Bay critical habitat.

INDUSTRY PROPOSAL[136]	TAKE REDUCTION PLAN[137]	PROPOSED RULE	INTERIM FINAL RULE
Lobster Gear Other Restrict Period: May 16 - December 31	**Lobster Gear** Other Restrict Period: May 16 - December 31	**Lobster Gear**: Other Restrict Period: May 16 - December 31	**Lobster Gear** Other Restrict Period: May 16 - December 31 ***At least TWO characteristics from the Gear Technology List must be used.***
		Limit on buoy lines--no more than one buoy line is used per trawl consisting of fewer than four pots and no more than two buoy lines used per trawl consisting of four or more pots.	All buoy lines are 7/16 inches in diameter or less.
Sinking buoy lines--all buoy lines are sinking except for the bottom 1/3.	Sinking buoy lines--all buoy lines are sinking	Sinking or modified sinking buoy lines[138]	Sinking buoy lines--all buoy lines are composed entirely of sinking line.
Weak link or break-away at or just below the buoy in all lines	Weak link or break-away at or just below the buoy in all lines (Recommended breaking strength--150 lbs)	Breakaway buoys[139] or weak buoy lines[140] (Breaking strength 150 lb)	All buoy are attached to the buoy line with a weak link having a max. breaking strength of up to 1,100 lbs. Weak links may include swivel, plastic weak links, rope of appropriate breaking stength, hog rings, or rope stapled to a buoy stick.
Sinking groundlines--All groundlines are sinking line.	Sinking groundlines--All groundlines are sinking line.	Sinking groundlines--All groundlines are sinking line.	Sinking groundlines--All groundlines are made of sinking line.

[136] Industry proposal as presented in Industry-State Agency Large Whale Take Reduction Plan. Implementation as presented for January 1, 1998.

[137] The ALWTRT Team Report was designed to implement the Commonwealth of Massachusetts Conservation Plan for Massachusetts Waters to Minimize Entanglement Risk for Right Whales (State Plan); however, since the submission of that report the State Plan has been modified to require restrictions from January 1 - May 7, no single pot trawls, sinking groundlines, modified sinking buoy lines with the bottom 1/3 floating line, and weak link below the buoy.

[138] The floating line is not attached to the buoy, is used only in the bottom most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water; the floating line is not larger than ½ inch in diameter; and the floating line is attached to the sinking line by a splice and not by a knot.

[139] The buoy line is attached at the top of the line to a breakaway buoy of a breaking strength of no more than 150 pounds

[140] The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line at the bottom, the weak buoy line must have a breaking strength no greater than 150 pounds.

Table 2. A summary of the various proposed take reduction strategies for Great South Channel Critical Habitat other restricted period.

INDUSTRY PROPOSAL	TAKE REDUCTION PLAN	PROPOSED RULE	INTERIM FINAL RULE
Lobster Gear Other Restrict Period: July 1 - March 31	**Lobster Gear** Other Restrict Period: July 1 - March 31 **NO PROPOSALS**	**Lobster Gear**: Other Restrict Period: July 1 - March 31	**Lobster Gear** Other Restrict Period: July 1 - March 31 ***At least TWO characteristics from the Gear Technology List must be used.***[141]
		Limit on buoy lines—no more than one buoy line is used per trawl consisting of fewer than four pots and no more than two buoy lines used per trawl consisting of four or more pots.	All buoy lines are 7/16 inches in diameter or less.
Sinking buoy lines except for the last 10 fathoms which may be up to ½ inch floating rope spliced in to prevent formation of a knot.		Sinking or modified sinking buoy lines[142]	Sinking buoy lines--all buoy lines are composed entirely of sinking line.
Weak link at or just below the buoy in all buoy lines.		Breakaway buoys[143] or weak buoy lines[144] (Breaking strength 150 lb	All buoy are attached to the buoy line with a weak link having a max. breaking strength of up to 1,100 lbs. Weak links may include swivel, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.
		Sinking groundlines—All groundlines are sinking line.	Sinking groundlines--All groundlines are made of sinking line.

[141] In the Interim Final Rule, NMFS states that: "although portions of the Great South Channel critical habitat would be considered offshore, NMFS believes that the weaker maximum breaking strengths allowed for inshore gear are more appropriate in the critical habitat, since right whales may return to the area when not expected. Therefore, the Great South Channel critical habitat is not considered "offshore" for the purposes of this plan. [62 Fed. Reg. 39163]. CMC supports this position.

[142] The floating line is not attached to the buoy, is used only in the bottom most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water; the floating line is not larger than ½ inch in diameter; and the floating line is attached to the sinking line by a splice and not by a knot.

[143] The buoy line is attached at the top of the line to a breakaway buoy of a breaking strength of no more than 150 pounds

[144] The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line at the bottom, the weak buoy line must have a breaking strength no greater than 150 pounds.

The conservationists concerns about the plan were well founded. During 1998, under the interim final rules two right whales were entangled, one was seen entangled in unidentified gear in the Bay of Fundy and another entangled twice in lobster gear in Cape Cod Bay.[145] The latter was disentangled on both occasions.

2.5 Modifications to the Interim Final Rule and the Final Rule

On February 7 and 8, 1999 NMFS reconvened the ALWTRT. Despite the team's failure to reach consensus on a plan, disillusionment with the process, and the divisive dialog, which had surrounded both the proposed and interim rule, the ALWTRT was, nevertheless, able to formulate several consensus recommendations. First the team expressed concern about NMFS's proposal to remove the anchoring provisions in the list of gear alternatives. The ALWTRT members recognized that for a weak link to properly function in a gillnet, the gillnet had to be anchored in such a way as to create the tension necessary to allow the weak link to break. Also the ALWTRT recommended that NMFS revisit the gear marking requirements and whether a whale can break 7/16ths line easily.

NMFS published the final rule on February 16, 1999[146], with an April 1, 1999, effective date. On April 9, 1999 NMFS published a final rule with a partial stay concerning the final rule's gear marking regulations until November 1, 1999, or until a better system is designed.[147] The other recommendations from the ALWTRT's February 1999 meeting were largely ignored.

In 1999, three whales were observed entangled in the Great South Channel in spring, and one, right whale entangled in gillnet gear, died. Clearly, this information indicates that the take reduction plan is not meeting its goal of reducing entanglement, serious injury, or mortality of right whales. Therefore, in February the ALWTRT met to revise the plan. The team has tentatively agreed to additional gear modifications and has done away with the menu options, requiring, instead, several modifications for fisheries both in an adjacent to critical habitat.

2.6 Right Whale Litigation

Under *Strahan* v. *Linnon* the plaintiff alleged in an amended brief filed in June 1996 that the NMFS had failed to establish take reduction teams or implement take reduction plans for right whales and other whale species within the mandated timeframes and that NMFS had improperly refrained from classifying the New England lobster fishery under category I on its list of fisheries.[148] On August 30, 1996 the plaintiff filed a motion for a preliminary injunction based on its claim that the government had failed to develop a large whale take reduction plan. NMFS

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[145] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 20 (2000).
[146] 64 FR 7529 (1999)
[147] 64 FR 17292 (1999)
[148] MARINE MAMMAL COMMISSION, 1997 ANNUAL REPORT TO CONGRESS 21 (1998).

indicated that would issue a draft plan by April 1,1997 and a final plan by July 15, 1997; consequently, with those assurances, the court denied the motion for an injunction.[149]

In another lawsuit, *Strahan* v. *Coxe*, the plaintiff contented that Massachusetts's licensing of gillnet and lobster fishing in state waters was a violation of the Endangered Species Act and the MMPA, and that allowing the use of such gear in critical habitat is an impermissible modification of that habitat.[150] The court granted the plaintiff partial relief and the court instructed the state to (1) apply for incidental take permits under the MMPA and the ESA; (2) develop and submit a proposal to restrict, modify, or eliminate the use of fixed fishing gear in coastal waters of Massachusetts listed as right whale critical habitat; and (3) convene a working group on endangered whales to discuss modifications to fishing gear.[151] The team was convened and a plan was developed in response to the court order, many of the provisions of that plan were included in the final take reduction plan.

3. Evaluation of the ALWTRT.

It was indeed unfortunate that the ALWTRT failed to reach consensus, again, perhaps if more time were available for additional negotiations and the ALWTRT did not have the added pressure of both state and federal lawsuits, consensus may have been reached. While the ALWTRT failed to build consensus, NMFS equally failed to take advantage of the ALWTRT's substantive and political progress and the level of agreement that it did achieve on many issues—including some take reduction strategies. Instead, NMFS proposed an initial regulation that was, in some areas such as Maine state waters, too restrictive and an interim version that lacked sufficient conservation and risk reduction. With the pendulum swinging from one extreme to the other, NMFS failed to achieve any real conservation for right whales or other whale species in the Atlantic.

The CMC and most of the fishing industry recommended repeatedly to NMFS to focus its limited enforcement resources and mitigation strategies on those areas where there is the greatest potential for interaction with whales in areas such as outside the already designated right whale critical habitat areas these areas are Stellwagen Bank and Jeffreys Ledge—not Maine state waters! Areas such as Jeffreys Ledge and Stellwagen Bank should be considered high-risk areas and should receive the majority of gear modification requirements. Two years later this is exactly the recommendations the ALWTRT is proposing. Moreover, the many members of the ALWTRT agree, that if data demonstrates that large whales are becoming entangled and/or further action is need to meet the goals of the MMPA, tested and refined gear modifications could be used in other areas of the Gulf of Maine (e.g. Maine state waters). But now the greatest need is to aggressively research and field test gear modifications that will eliminate the risk of entanglement for whales.

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[149] *Id.*
[150] *Id.*
[151] *Id.*

It is extremely unfortunate that NMFS failed to consider the progress made in the take reduction team process. If it had, it would have been clear that there was a significant amount of common ground between environmentalists and fishermen. This could have allowed NMFS to avert the political interventions, the volatile discourse, and the explosive reactions from all members of the ALWTRT and public. Rather, NMFS's proposal only fueled the breakdown in communication within that ALWTRT that was the result of the team's failure to reach consensus. Again in this situation, the motive of team members became suspect, other members and the press generated rumors and half-truths that mischaracterized the position of various organizations and individuals. NMFS did a disservice to both the conservation community and fishing industry. It ignored proposals developed over six months of negotiations and it ignore the ALWTRT's 1999 recommendations. It erased the goodwill developed between the environmental community, fishing industry, and the federal and state governments. In its interim rule, it merely postponed needed gear regulations on Stellwagen and Jeffreys Ledge, waiting until 1998 and 1999 when whales became entangled, injured, and killed. Nevertheless, there is hope in the fact that despite NMFS actions, the ALWTRT is still functioning and attempting to devise consensus recommendations.

E. Pacific Offshore Cetacean Take Reduction Team

1. Background of Marine Mammal Takes in the Pacific Fisheries

The California/Oregon drift gillnet fishery has a historical incidental bycatch of several strategic marine mammal stocks including: several beaked whale species, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales.[152] The California/Oregon drift gillnet (CA/OR DGN) fishery for thresher shark and swordfish is classified as a Category I fishery under section 118 of the MMPA and the fishery is a pelagic fishery with the majority of the fishing effort occurring within 200 miles (320 kilometers) offshore of California and Oregon.[153]

Table 1. 1995 Marine Mammal Stock Assessment—Strategic Stocks with Fishery Interactions.

SPECIES/STOCK	PBR	ANN. FISHERY MORTALITY	FISHERY SOURCES OF MORTALITY
Humpback Whale/ California-Mexico	0.5	>0.5	CA/OR Drift gillnet Fishery
Sperm Whale/ CA to WA	1.0	17	CA/OR Drift gillnet Fishery
Baird's Beaked Whale/CA, OR, WA	0.2	>0.15	CA/OR Drift gillnet Fishery
Pygmy sperm whale/CA, OR, WA	4.8	5.7	CA/OR Drift gillnet Fishery
Cuvier's beaked whale/ CA, OR, WA	8.9	24	CA/OR Drift gillnet Fishery
Mesoplodont beaked whale/ CA, OR, WA	1.4	7.7	CA/OR Drift gillnet Fishery
Minke whale/ CA/WA/OR	2.6	0.5	CA/OR Drift gillnet Fishery

[152] Barlow, J., R.L. Brownell Jr., D.P. DeMaster, K.A. Forney, M.S. Lowry, S. Osmek, T.J. Ragen, R.R. Reeves, and R.J. Small. 1995. U.S. Pacific Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS, NOAA-TM-NMFS-SWFSC-219. 162 p.

[153] 16 U.S.C. 1361 et seq.

2. Pacific Offshore Cetacean Take Reduction Team

NMFS established the Pacific Offshore Cetacean Take Reduction Team (POCTRT) on February 15, 1996 to prepare a draft take reduction plan.[154] The POCTRT included representatives of NMFS, the California Department of Fish and Game (CDFG), the Pacific States Marine Fisheries Commission, environmental organizations, academic and scientific organizations, and participants in the CA/OR DGN fishery.[155] In selecting these team members, NMFS sought an equitable balance among representatives of resource user and non-user interests.[156]

The POCTRT was tasked with developing a consensus plan for reducing incidental mortality and serious injury of strategic marine mammal stocks of beaked whales, pilot whales, pygmy sperm whales, sperm whales, and humpback whales in the CA/OR DGN fishery. The POCTRT met five times between February and June 1996 and submitted a consensus draft plan to NMFS on August 15, 1996.[157]

The take reduction plan relies on four primary strategies with a strong contingency section in the event these strategies fail to succeed. The POCTRT proposed regulations to implement three of these primary strategies, these include: the establishment of a depth of fishing requirement; the use of acoustic deterrent devices (pingers); and mandatory skipper workshops.[158] The POCTRT recommended that one other primary strategy be implemented by NMFS, yet not through Federal regulation. This would be for NMFS to encourage California Department Fish and Game (CDFG) not to reissue lapsed permits, and to encourage the Oregon Department of Fish and Wildlife (ODFW) to continue issuing the same number of permits.[159]

The POCTRT recommended that NMFS establish a fleet-wide 16 fathom (36 feet; 10.9 meters) minimum extender line length requirement. Extender lines attach buoys (floats) to the drift gillnet's floatline and determine the depth in the water column at which the net is fished.[160] Based on the analysis of NMFS' observer data for the CA/OR DGN fishery from 1990-95 the POCTRT noted that the majority of the cetaceans incidentally taken were observed entangled in the upper third of the net and a significantly greater number of cetaceans are caught during sets that use extenders that are less than 6 fathoms (10.9 meters) deep; therefore, lowering nets in the water column will likely significantly reduced the incidental bycatch of cetaceans.[161]

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[154] 61 Fed. Reg. 5385 (1996)
[155] 62 Fed. Reg. 6931 (1997)
[156] *Id.*
[157] 61 Fed Reg. 5385 (1996)
[158] 62 Fed. Reg. 6931 (1997)
[159] 62 Fed. Reg. 6931 (1997)
[160] PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p.
[161] PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p.

The POCTRT recommended that NMFS conduct mandatory skipper workshops on the components of the take reduction plan, together with expert skipper panels, to further generate and consider potential, additional take reduction strategies.[162] Workshops would provide drift gillnet skippers with information relevant to how the take reduction plan was developed, the components of the plan, plan implementation, species identification information, and how to avoid marine mammal entanglement.[163] All CA/OR DGN vessel operators would have to attend one Skipper Education Workshop before fishing in the 1997/98 fishing season (May 1 to December 31). Finally, the workshops would solicit feedback from fishers on how to reduce marine mammal interactions.

The POCTRT recommended that NMFS and the CA/OR DGN fishery initiate an acoustic deterrent device (pinger) experiment in the fishery during the 1996-97 fishing season to evaluate the effectiveness of pingers at reducing incidental cetacean and strategic stock bycatch.[164] If experimental results indicate a reduction in cetacean bycatch, then the POCTRT recommended that NMFS require mandatory fleetwide pinger use for all CA/OR DGN fishery vessels prior to the next fishing season (1997-98).[165] NMFS and the CA/OR DGN fishery initiated a pinger experiment in the CA/OR DGN fishery in August 1996.[166] The CA/OR DGN fishery pinger experiment used pingers with the same sound frequency, level, and pulse duration and rate as those used in the New England sink gillnet fishery. The results indicated that observed cetacean entanglement rate was almost 4 times greater for non-pinger sets than for those sets that used pingers.[167]

Finally, the take reduction plan also included: (1) A review of the current information on the status of the affected strategic marine mammal stocks; (2) a description of the CA/OR DGN fishery; (3) an analysis of data from NMFS's CA/OR DGN fishery observer program from 1990-1995; (4) primary strategies to reduce takes of strategic marine mammal stocks; (5) contingency measures that would reduce fishing effort; and (6) other recommendations regarding

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[162] PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p.
[163] PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p.
[164] A workshop of cetacean and acoustic experts concluded that a pinger experiment should be conducted in the CA/OR DGN fishery to test its effectiveness at reducing cetacean entanglement. The workshop participants recommended that the pingers used in the New England sink gillnet fishery (10 kHz at 132 dB re 1<greek-m> Pa at 1 meter) be used experimentally in the CA/OR DGN fishery because the sound frequency of the pingers was within the hearing sensitivity of most of the cetaceans that interact with that fishery. Reeves, R.R., R.J. Hofman, G.K. Silber, D. Wilkinson. 1996. Acoustic Deterrence of Harmful Marine Mammal-Fishery Interactions: Proceedings of a Workshop held in Seattle, Washington, 20-22 March 1996. NOAA Technical Memorandum, NMFS-OPR-10. 70 p.
[165] 62 FR 51805 (1997)
[166] 62 FR 51805 (1997)
[167] 62 FR 51805 (1997)

voluntary measures to reduce takes, enhancing the effectiveness of the observer program, research on oceanographic/environmental variables, and other potential strategies considered and rejected by the team.[168] The plan also contained language on contingency measures if takes continue to exceed PBR levels which states "(if)...the TRP objectives have not been met, the TRT will evaluate and recommend methods to reduce fishing effort in the upcoming season..."[169]

3. Evaluation of the POCTRT Process and Plan.

The POCTRT submitted its plan on August 15, 1996, and NMFS published the proposed rule to implement the plan on February 14, 1997—six months after the team's submission. On October 3, 1997, NMFS published the final rule, effective October 30, 1997, which implemented the team's plan, requiring that the top of the nets be set at a minimum depth of 36 feet below the water surface, that pingers[170] be used on all nets, that the states of California and Oregon reduce the number of "inactive" permittees, and that vessel operators be required to attend educational workshops to educate them about marine mammals and the take reduction plan.[171]

On June 1-2, 1998, the POCTRT reviewed the data regarding marine mammal takes in the 1997/1998 fishing season and determined that the fishery had achieved its 6-month goal of reducing takes to below PBR—having reduced marine mammal incidental mortality by 65%.[172] At the POCTRT's recommendation, NMFS published an interim final rule on January 22, 1999 modifying specifications for deploying pingers that allow for safer deployment (i.e. longer attachment lanyards.)[173] In 1999, the POCTRT met and again found that the marine mammal mortality had declined in the 1998/1999 fishing season, although one sperm whale was reported killed.[174] This mortality occurred in a set in which the required number of pingers had not been deployed; consequently, the POCTRT view this as an compliance and enforcement issue and did not recommend further modifications to the plan.[175]

The POCTRT functioned smoothly, the plan was nearly implemented within the timeframe required by the MMPA, and this is the only team that has achieved its goal of reaching PBR. The reasons for this success are: implementation of the plan was a priority for both regional and

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[168] PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p.

[169] PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p..

[170] Under this rule, NMFS-approved pingers must be used on all vessels, during every set, and during the entire fishing season. A NMFS-approved pinger is an acoustic deterrent device which, when immersed in water, broadcasts a sound frequency range of 10 to 80 kHz at 132 dB re 1 micropascal at 1 meter with a pulse duration of 300 milliseconds and a pulse rate of 4 seconds.

[171] 62 FR 51805 (1997)

[172] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 105 (2000).

[173] 64 FR 3431 (1999)

[174] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 105 (2000).

[175] MARINE MAMMAL COMMISSION, 1999 ANNUAL REPORT TO CONGRESS 36 (2000).

headquarter staff; the plan was implemented under the authority of the MMPA and required no further action by a fishery management council or plan; the plan was strongly support by excellent scientific modeling and analyses; the fishery was not overly burden by other fishery management closures and restrictions; the team was small and all members of the POCTRT seems open and willing to accept the science and work together toward consensus; and NMFS science staff quickly conducted the necessary experiments to support the research needs of the plan. This mix of commitment to the process and its implementation at all levels and the willingness to accept the data and actively engage in the process is the keystone to success in the take reduction team process.

IV. CONCLUSIONS AND ANALYSIS OF THE TAKE REDUCTION TEAM PROCESS.

A. Survey of the Take Reduction Team Process

In the Fall of 1998, RESOLVE, a dispute resolution firm contracted by NMFS to conduct the facilitation for the take reduction teams, undertook a survey of take reduction team members, soliciting feedback on the negotiation phase of the take reduction team process. The goal of the survey was to evaluate the process for each of the five take reduction teams, to provide team members with an opportunity to express their interests and concerns about the TRT negotiation process, and to assist NMFS in improving its future multiparty negotiation processes.

In summary, the results of the survey indicated that:

- Most respondents felt the process is effective in resource management decision-making. (86% of respondents.)
- Most respondents felt that the negotiation process was fair. (78%)
- Most respondents felt that there was adequate time for the overall negotiations. (60%)
- However, many participants were not satisfied with the results or the outcome of the negotiation. (60%)
- Most respondents also felt that there was insufficient data to support the negotiation. (68%)

We will examine several of this issues in greater detail below.

B. The Role of the Facilitator

Through the take reduction teams we learned more about the status of marine mammals and their interactions with commercial fisheries and the ecosystem. We have also refined a process by which resource managers, users of the marine environment, and the public can develop

relationships that lead to better public policy. One of the reasons that most respondents felt that the process was fair is likely due to the work of the facilitator.

During the take reduction teams, the facilitator was key in helping identify participants, working to achieve a balance of interest groups, formulating a team,[176] ensuring adherence to ground rules, setting dates, and places for meetings, keeping the group on schedule, providing a means to keep discussions flowing and open to all participants, collecting notes and materials, and circulating drafts of various elements of emerging proposals. The facilitators were essential in helping players get past conflicts and move through posturing to substance. As talks progress to increasingly difficult issues, the facilitator helped identify obstacles and assisted the group in reaching critical breakthroughs. CMC recommends that NMFS continue to use facilitators in the take reduction team process.

B. Commitment of Participants

The composition of the team and the authority of the NMFS staff person at the take reduction team negotiations are critical. The success of negotiations, particularly those requiring consensus, rely heavily on the good faith of the participants to actively negotiate and not arbitrarily attempt to block consensus or the progress of the group. Therefore, it is critical to select participants who will negotiate in good faith and who are prepared to fully support the negotiation, consensus process, commit their organization, and implement its outcome. Facilitators have noted that participants will only engage in multi-party negotiations if they believe they will do better by building consensus than by lobbying their specific interests directly with the agency or Congress, or initiating lawsuits. For the most part, in all five of the take reduction teams, representatives from industry and environmental organizations and state managers negotiated in good faith and did their utmost to devise consensus plans.

However, the RESOLVE report noted that the role of the NMFS staff was not the same on all five take reduction teams, and sometimes the roles of NMFS staff changed over the course of the six-month negotiation. In the take reduction team, the expectation is that representatives can speak on behalf of their organization, association, or agency. It was clear, on several occasions that NMFS staff did not represent the senior management team and did not have the authority to commit the agency to the consensus. This inequity resulted in a significant amount of frustration with the process after the conclusion of the negotiations and at the publication of the plan by NMFS. Often participants perceived that their recommendations were not being acted upon or implemented, because a NMFS staff person with higher authority significantly changed the published take reduction plan from that recommended by the team. Sometimes these changes were made, in direct violation of the MMPA, because they contained little or no justification for the change.

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[176] Prior to the commencement of the negotiations it is important to identify and determine whether all of the necessary interest groups will be represented in the negotiations.

If the take reduction team process is to succeed and participants to regain faith in the NMFS decision makers, those staff with decision-making authority must be present at the table, and they must actively engage in the negotiation process.

C. Allowing Enough Time for Take Reduction Team Negotiations.

While the survey indicated that 60% of respondents felt that there was sufficient time for negotiations, two teams may have reached consensus if they had had additional time. One of the benefits of the MMPA's 6-month statutory time frame is that it pushed players to come to closure on the take reduction team, negotiation; however, two teams in particular—the MATRT and the ALWTRT could have benefited from one additional meeting.

Generally, the timelines specified by the MMPA should not be changed. Time limits call for both facilitator and negotiators to set priorities, and identify issues on which they are most likely to achieve consensus early in the process. This then establishes a foundation from which to attack the more contentious issues later. At the same time, it is important to recognize that difficult issues require sufficient time, and any successful negotiation needs at least one opening session where parties do little more than "posture" and stake out territory before getting down to the business of compromise. In all situations, the take reduction teams met at least four times over several days. The process requires a significant amount of time, and teams often found themselves trying to reach consensus on issues or adopting draft take reduction plans over the phone or by email. In the case of both the ALWTRT and the MATRT consensus may have been reached had there been one additional meeting. CMC recommends that NMFS work to ensure sufficient time for deliberations and the development of a take reduction plan, to the maximum extent possible, there should be one final meeting where the plan is approved. In addition, nearly every take reduction team has recommended that the team meet during the public comment period for the proposed rule to implement the plan. The teams felt that this meeting is critical to discuss changes to the plan or modify the plan if unexpected issues arise.

D. Improve the Data Needs and the Science

Approximately 68% of the survey respondents felt that there was insufficient data to support the negotiations and upon which to base take reduction strategies. The surveys also indicated a greater willingness on behalf of the government and environmental representatives to accept the available data than the fishing community. Nearly every take reduction team identified data gaps and recommended research to address those gaps. The population abundance data, bycatch estimate, observer data, and fishing effort data are central to the success of both the development and implementation of the take reduction plan. NMFS must dedicate sufficient resources to gather this data and update it in a timely manner to it is available for the take reduction team.

In the crafting of the 1994 amendments, the authors deliberately set out to separate the scientific assessment from the regulatory regime, by creating two separate processes. Section 117

of the MMPA specifically addresses stock assessments, independent peer-reviews of those assessments, and consultations. The goal of this approach was to create greater confidence in the science upon which management measures were based. This notion has not proven entirely accurate. Some team members—especially those from the fishing industry—often did not agree on the data, the PBR calculation or estimate or the data upon which it is based. This, in turn, caused significant debate on the necessary level of protection for the marine mammal species or stock. Consequently, the success of the take reduction team deliberations is strongly correlated to each group's ability to accept the underlying stock assessments, bycatch estimates and PBRs, even if they are "imperfect" science, and move forward to discuss conservation measures. Those teams that were both "data rich" and where there was a level of trust and confidence in the scientists that presented and analyzed the data, faired best.

In addition, scientists who participate in the peer reviews and consultations (scientific review groups), who then participate in the subsequent take reduction team discussions facilitate a better understanding of the origins of the calculations for the fishermen and conservationists. Discussions appear to fare better if there is a person on the take team who is either perceived as unbiased or perhaps was part of regional scientific review group. Additionally, given the imperfection of our existing best available data, the take reduction plans often recommend further research and data collection. The scientist on the take team then can act as a liaison with the regional scientific peer review group to ensure that these recommendations are given attention. Finally, participation by scientists makes the scientific aspects of the management process more transparent. Since fishers tend to be skeptical and challenge data, the presence of a people with scientific expertise lends credibility to the underlying scientific information.

Nevertheless, the issue of reliable and sufficient scientific data upon which to develop and implement take reduction plans is critical to participants' perception of the legitimacy of the process. NMFS must make every attempt to acquire accurate stock assessment, bycatch, effort, and observer data in a timely fashion. Furthermore, that data must be presented and statistically analyzed in a manner that is accessible to all team members. Finally, NMFS must work with take reduction team members to better integrate the scientific process with the management process to garner greater understanding and acceptance of the available science and the biological premise for PBR and the MMPA.

E. NMFS Implementation of the Take Reduction Plans

Perhaps the greatest downfall in the take reduction team process is not the negotiation, but the implementation of the product. In every case, NMFS failed to implement the take reduction plans within the statutory timeframe. In the case of the GOMTRT and the MATRT, NMFS had to be sued to implement the consensus portion of those plans. NMFS also made other critical errors: attempting to implement the take reduction plans under the authority of the Magnuson-Stevens Act and using the take reduction team process to close fisheries. Finally, an equally disturbing reality is NMFS reluctance to accord this process the same level of importance as the fishery management council process. For those individuals engaged in this process, and

whose livelihoods depend on the outcome, this process is just as important as council deliberations. Yet, NMFS does not require the staff that has the decision-making authority, such as the regional administrator, to attend. Furthermore, in the case of the ALWTRT, when consensus was not reached on a plan, in formulating its plan, NMFS ignored areas where there was common ground and the history of the debate which could of resulted in NMFS producing both a less controversial and strong and less risk-averse plan than the one it produced. Finally, there is even the question as to how NMFS views this body—some indications are that the take reduction team's views and comments carry no greater weight than those of the general public. This was not the MMPA's intent.

NMFS has severely undermined this process and the good faith that developed among the various interests groups in the course of the negotiations. The implementation of these plans is not in the control of either the environmental community or the fishing industry—it rests with NMFS. Therefore, CMC strongly recommends that NMFS give higher priority to the take reduction team process, the implementation of the plan, commit its decision-makers to be active participants in the process, and view the take reduction team as an advisory body on par with the fishery management council.

In conclusion, take reduction teams are a valuable multi-party process that have a great potential to yield effective conservation strategies to eliminate the entanglement of marine mammals in commercial fishing operations. However, the take reduction teams and plans rely heavily on the good faith efforts and commitment of all participants, effective and timely implementation, and adequate resources to gather the information needed to evaluate whether the plan is achieving its goals. The success of these teams hinges on NMFS ability to be an active participant and secure the necessary resources.

Mr. SAXTON. Thank you very much. Mr. Foster.

STATEMENT OF WILLIAM FOSTER

Mr. FOSTER. Thank you, Mr. Chairman and members of the committee. The title of coastal gillnet industry is really a category rather than a group. I am here representing and speaking solely for myself as a person who has participated in a large whale team and continues to try to be active in the process. My oral comments are the same as the written comments that I will run through briefly. In fact, I will go ahead and just jump to the recommendations because I think you have covered it as far as how the teams have worked.

My recommendations to improve the take reduction team process would be, No. 1, to calculate the Potential Biological Removal for a stock using the mean population estimate rather than the minimum population estimate. That is, use the best available scientific information rather than the worst available scientific information. The only reason to use a minimum population estimate is to create a crisis to promote an agenda or generate funding. This introduction of bias into fishery stock assessments is labeled the Precautionary Approach by NMFS.

No. 2, develop plans which assess the cumulative impacts of regulations on both marine mammals and fishermen. Plans and regulations are being layered on top of each other with no concern for their cumulative impacts. Even though NMFS does not attempt to comply with the Regulatory Flexibility Act with regards to the cumulative impacts of regulations, the Act does require that those impacts on fishermen to be considered. Common sense requires that we do the same for marine mammals.

No. 3, NMFS should assign one person solely to each take reduction team. That person should be given both the responsibility and the authority to negotiate and make decisions for the agency. One person with one secretary should be able to handle all the work associated with one plan and one take reduction team. There would be enough biologists freed up by this action to do all the research that needs to be done. NMFS has some very good people if they could get out of meetings long enough to do some research.

One other comment I would like to be is the reference toward strategic stocks. Some of these strategic stocks such as bottlenose dolphins are there because of the science that is available. Bottlenose dolphin is strategic stock because of the die off back in 1988, I think it was, supposedly killed approximately 50 percent of the population but that depends on what the population was and that population estimate is very flawed and probably would not be a strategic stock if it were not for that assumed low population level.

The hardest thing for the fishermen to deal with is that some of these things are locked in before we get into the take reduction process. This Potential Biological Removal locks in the number of animals that we are dealing with and where it is not based on the best information it makes it very hard to try to cooperate to achieve a goal that is realistic. The idea that we are trying to get all marine mammal interactions to essentially a 0 level rather than treating marine mammals as renewable resources. For some rea-

son, we put them up on a level where they are not supposed to be touched and rather being part of the overall ecosystem that we are a part of.

And those things are locked into the Act apparently and to the extent that they are locked in, they make it very difficult to be really effective in trying to go ahead and reduce these interactions. Thank you.

[Prepared statement of Mr. Foster follows:]

I would like to briefly answer the questions which you have provided and to recommend ways to improve the process.

YOUR QUESTIONS WITH ANSWERS:

How were the teams convened and operated? OK.
How was consensus reached on recommendations? Give and take during late hour meetings.
What happened to the recommendations? NMFS considered them for an extended period, then implemented final rules which were somewhat different than our recommendations.
Was the process successful? As a public process, it was more successful than anything else NMFS is involved in.
Should the process be recommended for other species? Yes – especially if any of accompanying recommendations are incorporated. This is the only place in federal fisheries management where an individual has an opportunity to influence the process.
How successful have the Plans been in reducing the take of marine mammals? There is nothing in any Plan which provides for a quantifiable estimate of success.

RECOMMENDATIONS TO IMPROVE THE TRT PROCESS:

1. Calculate the Potential Biological Removal (PBR) for a stock using the mean population estimate rather than the minimum population estimate. That is, use the best available scientific information rather than the worst available scientific information. The only reason to use a minimum population estimate is to create a crisis to promote an agenda or generate funding. This introduction of bias into fishery stock assessments is called the "Precautionary Approach" by NMFS.

2. Develop Plans which assess the cumulative impacts of regulations on both marine mammals and fishermen. Plans and regulations are being layered on top of each other with no concern for their cumulative impacts. Even though NMFS does not attempt to comply with the Regulatory Flexibility Act with regards to the cumulative impacts of regulations, the Act does require that those impacts on fishermen be considered. Common sense requires that we do the same for marine mammals.

3. NMFS should assign one person solely to each TRT. That person should be given both the responsibility and the authority to negotiate and make decisions for the agency. One person with one secretary should be able to handle all the work associated with one Plan and one TRT. There would be enough biologists freed up by this action to do all the research that needs to be done. NMFS has some very good people if they could get out of meetings long enough to do some research.

Thank you for the opportunity to be here. I hope that you will invite me back when you consider the reauthorization of the Magnuson-Stevens Act.

William A. Foster
April 6, 2000

Mr. SAXTON. Thank you very much. We will now move on to Ms. Sharon Young.

STATEMENT OF SHARON YOUNG

Ms. SHARON YOUNG. Thank you, Mr. Chairman, members of the subcommittee. I am Sharon Young and I am a marine mammal consultant for The Humane Society of the United States. On behalf of the 7.3 members—million members of the Humane Society, we are really a lot bigger than seven, I am grateful for the opportunity to address you and to provide our thoughts on Section 118 and particularly where it has been less than effective in reducing marine mammal mortality.

I would like to raise a couple of different points. One of them is that Section 118 does not include any mandate for including recreational fisheries and take reduction plans despite the fact that many of these fisheries use the same type of gear as commercial fisheries and are known to kill marine mammals. We believe that they should be included as part of the take reduction process. Additionally, the mandates of Section 118 are often undermined by funding shortfalls.

The National Marine Fisheries Service has recently resorted to taking money away from critical research and take reduction team implementation line items in order to find base operating expenses. This is not acceptable. The agency needs to identify and advocate for its fiscal needs clearly so that Congress can grant funds adequate to carry out the mandates of Section 118. We are particularly concerned, however, with NMFS' failure to meet statutory deadlines which is four stakeholder groups to turn to Congress and to litigation although the amendments were designed to obviate this need.

As previously mentioned, the deadlines under Section 118 would have brought fisheries to PBR by October 1996 but because of delays within the agency no fisheries were actually able to comply with this mandate. In fact, no take reduction plan had even published by that date. Despite Congress granting an extended date for compliance for the Gulf of Maine gillnet fishery Harbor Porpoise were still being killed at a rate over three times their PBR when the April 1997 deadline came and went without any publication of take reduction plan.

NMFS has never convened teams for two of the stocks that it itself identified as priorities. Four of them have been dogged by litigation or threat of litigation as a result of delays and insufficiency of response and only one has actually met the intent of the law. On the Atlantic Coast they have been slow to convene teams. Recommendations made by teams are tabled without action unless there is court oversight. The Atlantic large whale team was convened subsequent to litigation and litigation dogs it to this day while the very survival of North Atlantic right whales is imperiled.

The Harbor Porpoise team, considered by NMFS to be its highest priority was convened late and despite submitting consensus recommendations on time no plan was published for over 2 years until litigation was filed that compelled NMFS to release the plan. Three years after submitting a consensus plan to the National Marine Fisheries Service the Atlantic Offshore Team still has had no plan

published. Most of its recommendations do not exist and the driftnet fishery that was part of the team was closed without any attempt to determine whether a take reduction plan might have reduced its interactions.

Four years after the MMPA mandated a time line there is still no take reduction team for bottlenose dolphins to deplete its stock with takes in excess of their PBR. Following threats of litigation by the Humane Society, NMFS now promises to convene a take reduction team this year. There is still no team for stellar sea lions in Alaska. These delays have cost the lives of hundreds of marine mammals and it undermines confidence in the take reduction process. The amendments put a system in place and promotes collaborative work by stakeholders. The system can work.

The Pacific Offshore Team is in part an example of this. It met, reached consensus, had its plan published promptly and its methods have been largely successful. Where the system fails, it is not a result of the inability of stakeholders to comprehend the problem and to develop a solution. In most cases teams have reached consensus on the majority of their recommendations and when plans are implemented they are generally effective. The take reduction teams have not failed, rather the National Marine Fisheries Service has failed the take reduction teams.

As previously mentioned, funding issues sometimes hamper the agency's ability to take timely action and enforce its mandates but funding alone is not enough to explain the failure of NMFS to enact plans. An example of this fact is that litigation was necessary to force publication of a take reduction plan for Harbor Porpoise although the plan had been complete for a year prior to the suit. This illustrates I think a different problem, the fact that the agency has a dual mandate. It is charged with promoting fisheries and conserving fish stocks as well as protecting marine mammals and these goals are often in conflict.

The conflict in mandates which appears greatest on the East Coast often results in NMFS taking insufficient action to protect the marine mammals. While the Humane Society urges Congress to appropriate sufficient funds to allow NMFS to carry out its mandates, we also urge you to more directly monitor and oversee the agency's actions. Section 118 of the MMPA was a product of years of negotiation, compromise and consensus but without congressional and constituent oversight NMFS consistently fails to carry out recommendations that so many of us have worked so hard to achieve.

We urge you to watch over the National Marine Fisheries Service because without your insistence that NMFS obey your laws, we fear that the agency will continue to have its mandates implemented by the judicial branch of the government, which is an inefficient and dangerous standard operating procedure. We thank you for seeking constituent input regarding the implementation of these amendments. We have submitted more detailed written recommendations that outline additional problems with Section 118 and we ask you to take them into consideration as well. Thank you.

[Prepared statement of Ms. Sharon Young follows:]

TESTIMONY OF

SHARON B. YOUNG

MARINE MAMMAL CONSULTANT

ON BEHALF OF

THE HUMANE SOCIETY OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AN OCEANS

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

ON SECTION 118 OF THE MARINE MAMMAL PROTECTION ACT

APRIL 6, 2000

Mr. Chairman, members of the Subcommittee, my name is Sharon Young and I am a marine mammal consultant for The Humane Society of the United States (HSUS). On behalf of The HSUS and its 7.3 million members and constituents, I am grateful for the opportunity to present our views on the implementation of the Marine Mammal Protection Act (MMPA), specifically the use of take reduction teams that are required as a part of Section 118 of the Act. I will review the requirements of the Act and our perspective on the degree of compliance by the National Marine Fisheries Service (NMFS) with its mandates.

BACKGROUND

In 1994, Congress enacted amendments to the MMPA that were intended to provide a structure for complying with the Act's mandate that fishery-related mortality and serious injury of marine mammals be reduced to levels that are "insignificant and approaching zero," the so-called zero mortality rate goal of the Act. These amendments required the periodic assessment of stock or populations of marine mammals and they provided a means of identifying marine mammal stocks that were subjected to levels of mortality and serious injury that were likely to be unsustainable [Section 117].

For each stock of marine mammals a Potential Biological Removal Level (PBR) was determined. This PBR is the product of a mathematical formula that is based on calculations of the population abundance and reproductive rate and a fractional conservation factor called the recovery factor. The PBR represents the maximum number of marine mammals, not including natural mortalities, that can be removed from a stock while allowing the stock to reach or maintain its optimum sustainable population. Some stocks may be designated as strategic stocks

if the level of direct human-caused mortality exceeds the PBR or if they are listed as threatened or endangered under the Endangered Species Act (ESA), as depleted under the MMPA or are declining and likely to be listed. Once these strategic stocks were identified, Section 118 required the NMFS to identify those fisheries most likely to interact with them. Interactions with marine mammals are referred to as "takings." Fisheries with a likelihood of taking strategic stocks of marine mammals are represented on take reduction teams, whose mandate is to develop a plan to reduce the mortality and serious injury of marine mammals to below PBR within 6 months and to the zero mortality rate goal within 5 years. Take reduction teams were to be comprised of representatives of conservation groups, representatives of the affected fisheries, scientists, state and federal managers and any other stakeholders.

The MMPA provided a clear timetable for ensuring that the goals were met by the NMFS on a timely basis. Specifically, the law required that the status of all marine mammal stocks be assessed within 9 months of the enactment of the MMPA amendments [Section 117 (a)-(c)]. The MMPA was enacted in May of 1994, so stock assessments were supposed to be in place by February of 1995, although they were not actually completed until August of 1995. The Secretary was charged with convening take reduction teams for strategic stock within 30 days of the publication of the stock assessments. The MMPA states: "at the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment…for a strategic stock, the Secretary shall…..(i)establish a take reduction team for such stock and appoint the members of such team in accordance with subparagraph(C);" [Section 118(f)(6)(A)]. The first take reduction team (Team) was not convened until six months after publication of the stock assessments, and four and a half years after the first stock assessments, some teams still have not been convened.

The MMPA provides six months for the Team to develop a draft plan to reduce mortality and serious injury to below PBR. If the Team cannot reach consensus on a plan, the Secretary has an additional 60 days to develop his own plan; or if the Team does reach consensus, this 60-day period is used by the Secretary to review the plan and publish a draft plan for public comment[Section 118(f)6)(B)]. The public comment period on the published proposal is not to exceed 90 days. Following the close of the public comment period, the Secretary has 60 days to consider the comments and issue a final plan and implementing regulations [Section 118(f)(6)(C)].

The goal of the take reduction plan is to reduce mortality and serious injury to below PBR within 6 months of the implementation of the plan. [Section 118(f)(5)(A)]. Under the schedule established in the MMPA when it was enacted in May of 1994 , fisheries should have been at or below PBR by October of 1996. Because of the extremely high levels of mortality of harbor porpoise in gillnet fisheries in the Gulf of Maine, Congress made special provisions for this fishery. MMPA provided that the Secretary may "modify the time period required for compliance with section 118 (f)(5)(A), but in no case may such modification extend the date of compliance beyond April 1, 1997." [SEC 120 (j)(2)]

Because of delays within the NMFS, no fisheries were able to comply with the MMPA deadlines for reducing their interactions with strategic stocks to below PBR by October of 1996. In fact, no take reduction plans had even been published by this date. Gulf of Maine harbor porpoise were still being killed at a rate almost three times their PBR when the April 1997 deadline came and went without publication of any take reduction plan.

The extent of the delays and the consequent impact of the delay on both fisheries and marine mammals varied with each Team.

THE TAKE REDUCTION TEAMS

As previously mentioned, stock assessments for all marine mammals were released to the public in August of 1995, a delay of a little of over six months after the nine months granted in the MMPA's timetable. Twenty-three (23) stocks of marine mammals were designated as strategic stocks because the estimate of total annual mortality in commercial fisheries exceeded their PBR; some of these were endangered species. The MMPA mandated that take reduction teams be convened for these stocks and/or the fisheries interacting with them. An additional five species were considered strategic because they were listed as endangered under the ESA, although fishery related mortality and serious injury of these stocks were less than their PBR and therefore a Team for these stocks was not a high priority.

When the NMFS reported its 1995 activities to Congress, it stated that a "coordination process" to "initiate" Teams was begun in September 1995. The report states that they had contracted with a facilitator who was to be responsible for convening six (6) take reduction teams during 1996 to address the mortality of the strategic stocks whose PBR was exceeded. Some of these Teams were to address mortality in multiple stocks of marine mammals that interacted with a single fishery. NMFS stated that these six teams would be "in order of priority: Gulf of Maine stock (population) of harbor porpoise; Atlantic offshore cetaceans; Pacific offshore cetaceans; and the Atlantic baleen whales (humpback and northern right whales)." Furthermore they reported that "[t]he development of [Teams] for three other stocks; the Atlantic coastal stock of bottlenose dolphins; and the eastern and western stocks of Steller sea lions, *is also being considered*." We have emphasized the last four words, as these stock are all strategic stocks with known fishery interactions. Bottlenose dolphins were being killed in

numbers exceeding their PBR and were a depleted stock; therefore a take reduction team was mandatory. Steller sea lions were declining in portions of their range and portions of the stock have been designated as endangered or threatened. Despite apparent statutory obligation, no take reduction teams were convened in 1995.

Even if allowance is made for the fact that the stock assessments were late in development, thereby delaying the convening of take reduction teams, the MMPA states that take teams must be established "at the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment." Despite this clear mandate, NMFS did not convene the first take reduction team until February 12, 1996, a delay of six (6) months after the stock assessments were released in August of 1995. As of the date of this testimony NMFS has convened only four of the six teams that they themselves had identified as having "the highest priority for the development of take reduction plans to reduce incidental bycatch of...strategic stocks." Four and one half years after the publication of the first stock assessment, there are still no take reduction teams for coastal stocks of bottlenose dolphins nor for Steller sea lions in Alaska. Even when teams were convened, commercial fisheries were unable to meet any of the statutorily mandated deadlines in the MMPA for reducing mortality to below the PBR, largely as a result of delays in implementing take reduction recommendations. With the exception of the Pacific Offshore Cetacean Team, I have represented the HSUS on all of these Teams. I would like to offer my observations on the successes and failures of the take reduction process. I would like to start with the proverbial "good news."

Pacific Offshore Cetacean Team

In contrast to the other fisheries that have been part of the take reduction process, this Team almost serves as a model for how the process can work. The team was convened in February,

1996 and submitted a plan as mandated in August of 1996. The NMFS published the draft and final plans in a timely manner and in early 1997 the plan was implemented. Since that time, its measures have apparently been effective in reducing mortality in the Pacific driftnet fishery. While there have been some issues of compliance by the fishery with some portions of the take reduction plan, the NMFS has gone forward to address these problems with education programs and enforcement and this Team's efforts appear to have been a success. The same cannot be said of the other take reduction teams.

Gulf of Maine Harbor Porpoise Teams

The NMFS convened two Teams to address mortality of Gulf of Maine harbor porpoise. One team included fisheries in the Gulf of Maine and the other focussed on mid-Atlantic fisheries. The take reduction team for the coastal gillnet fishery from Maine to New York was convened on Feb 12, 1996. The Team dealing with mortality in the mid-Atlantic was not convened until one year later in February of 1997. At the time that the first team was convened, an estimated 1,500 harbor porpoise died annually in gillnets in New England, Canada and the mid- Atlantic, although the PBR for harbor porpoise was only 403 animals. Approximately 1,200 porpoises died in New England alone.

The Gulf of Maine take reduction team met, reviewed data on bycatch and population status, and reached consensus on a plan to reduce mortality of harbor porpoise to below PBR. As mandated by the MMPA, the plan was submitted to NMFS in August of that year, six months after the Team was convened. The plan relied on strategic closures in times and places of highest mortality and on use of acoustic deterrent devices, called pingers, to try to deter harbor porpoise from becoming entangled in the nets. The team also recommended that the NMFS undertake

research to determine whether or not pingers were likely to displace porpoise from important habitat and whether porpoises might become habituated to the sound of pingers and fail to respond, resulting in decreased effectiveness of the devices.

Development of this plan involved hard work and compromise by both the conservation group representatives and fisheries representatives on the team. Deliberations were further complicated by the fact that the New England Fisheries Management Council was also considering closures for conservation of groundfish. The timing of some of these closures was not necessarily compatible with the ideal time for closures to conserve harbor porpoise. The Council representative on the Team indicated that the Council was unlikely to consider effects on harbor porpoise as it structured its closures. Indeed, shortly after the Team met, the Council's plan was released. It incorporated some of the closures recommended by the Team, but did not include some times and areas in which the Team had determined that high mortality of porpoises might occur. The NMFS did not act on any of the Team's recommendations.

The MMPA established April 1997 as the date by which Gulf of Maine gillnet fisheries must be below the PBR. This date came and went. Mortality of harbor porpoises in 1997 exceeded 1,200 animals, with 775 killed in New England fisheries alone, yet the NMFS took no action on the consensus plan that was submitted by the Team in August of 1996.

The NMFS convened a separate mid-Atlantic Team to address mortality of harbor porpoise from New York through North Carolina. This team formally began deliberations in February of 1997. The Team submitted a plan to NMFS in August of that year. The Team reached consensus on all portions of a plan, with the exception of a recommendation to conduct an experiment with pingers that would have been for the sole benefit of New England boats fishing in the mid-Atlantic during the winter. A review of data from NMFS indicated to the Team that

local fishermen in the mid-Atlantic caught fewer harbor porpoise than boats from New England that fished in the same time and area. Because local fishermen used fishing gear that differed from that used by the New England boats, the Team's plan relied on requiring use of prevailing local practices. The NMFS took no action on this plan either.

In December of 1997, the NMFS reconvened the Gulf of Maine Team to review a plan proposed by the NMFS that would have adopted the Fishery Management Council closures that had thus far failed to substantially reduce mortality. With no published plan in place, uncertain as to the utility of this meeting and frustrated by delays, the majority of representatives of the fishing industry on the Team did not attend the two-day meeting. Because the team was no longer representative of the stakeholders involved, no formal consensus recommendations could be put forward.

In 1998, subsequent to this Team meeting, the New England Fishery Management Council implemented additional closures to conserve groundfish, some of which were in areas and times that had historically high mortality of harbor porpoise. This provided some additional reduction of mortality in harbor porpoise.

In August of 1998, the HSUS, the Center for Marine Conservation, and several other plaintiffs filed suit against the NMFS for failure to meet the deadlines under the MMPA and for failure to take action on a petition to list harbor porpoise under the ESA. While the MMPA had stipulated that mortality of harbor porpoise was to have been below PBR by April of 1997, in 1997 and 1998 mortality was still over 1,000 animals a year. The NMFS had taken no action to publish a take reduction plan. The MMPA deadlines were clear and the court was extremely sympathetic to the plight of the porpoises who were being killed in unsustainable numbers in the face of continuing inaction by the NMFS. As a consequence of the suit, the NMFS entered into a

settlement agreement with the plaintiffs. Under the terms of the agreement, the NMFS was to publish a plan to reduce mortality by December of 1998. The NMFS plan relied on closures established by the New England Fisheries Management Council and closures recommended by the mid-Atlantic harbor porpoise Team. It also included a requirement for the use of pingers in much of the Gulf of Maine, and the use of prevailing local practices in the mid-Atlantic. The NMFS also committed to conducting the research recommended by the Gulf of Maine Team. Additionally, the settlement agreement included a schedule for releasing bycatch data to stakeholders in a timely manner. The NMFS has missed two of the four deadlines stipulated in the settlement agreement for reporting data. The HSUS is currently considering appealing once again to the Court to force the NMFS to obey its legal obligations.

In December of 1999 the Gulf of Maine Team was again reconvened. The Team was presented with data indicating that the mortality had declined dramatically and was apparently close to PBR, although the NMFS was unable to determine how much of this decline was due to Fishery Management Council mandated closures and how much was due to increased use of pingers. The Fishery Management Council was due to meet shortly after the Team and there was some concern that shifting closures might adversely affect the reduction in mortality.. The Team expressed its concern that action by the New England Fishery Management Council to change closures might undermine the efforts of the take reduction team. The Council, in fact, did not make any substantive changes, but the risk remains that as groundfish recover and the Council changes the configuration of its closures, harbor porpoise mortality may increase as a result of Council actions, over which the Team has no control.

The Team dealing with harbor porpoise mortality in the mid-Atlantic was reconvened in January of this year. Although mortality in gillnets had apparently declined, the NMFS was

unable to inform the Team which components of the plan were most effective in reducing the mortality. Fisheries representatives on the Team were frustrated that changes to the Team's plan had impacted fisheries not included on the Team and the Team had not been consulted before the changes were made by NMFS when it published the plan. The Team was also informed by NMFS that fishermen in North Carolina had been refusing to take federal observers aboard their boats, despite a statutory obligation to do so. This, combined with low levels of observer coverage in a number of gillnet fisheries, results in an incomplete picture of the true mortality of animals in this area and mortality estimates are therefore likely to be underestimates. Furthermore, it is likely that porpoise are being caught in bait and recreational gillnets that are not covered by the mandates of the take reduction plan.

In sum, the two Teams addressing mortality of harbor porpoises were largely able to reach consensus on their take reduction plans, only to see their plans remain unpublished. In the interim, Team members resigned in frustration with the process and large numbers of harbor porpoise continued to die unnecessarily. Although it entered into a binding settlement agreement that required it to release data, the NMFS has failed to comply with its legal obligations, making it difficult for Team members to understand the trend in porpoise mortality or the reasons for any trend.

The Mid-Atlantic Team for Bottlenose Dolphins

In its report to Congress for the year of 1996 (released October 1997), NMFS stated that it had not yet convened a Mid-Atlantic Team; however, "NMFS expects to convene this team in the spring of 1997 to address incidental takes of harbor porpoise and bottlenose dolphins in ocean gillnet fisheries from New York to North Carolina." As stated above, a mid-Atlantic team was

convened in February of 1997, almost two years after the timetable outlined by the MMPA. However, the Team was directed by the NMFS to focus its efforts solely on harbor porpoise. Because the HSUS made the Team aware of the obligation to reduce mortality in bottlenose dolphins, the Team reached consensus on a number of recommendations for additional data that should be gathered prior to it or another team being convened to address the problem. The Team also reached consensus on a recommendation that if NMFS had not convened a bottlenose dolphin team by January of 1999, the mid-Atlantic harbor porpoise team should itself address the need to reduce mortality in bottlenose dolphins.

Although its initial meetings ended in August of 1997, the mid-Atlantic harbor porpoise team was not reconvened until January of 2000 and it was still not charged with reducing bottlenose dolphin mortality. In 1999, the HSUS sent a letter to NMFS notifying them of our growing concern that they had not yet convened a team for bottlenose dolphins, despite repeated promises to do so, and threatening litigation. We received a commitment from NMFS to convene a Team in the fall of 2000, following completion of expanded data gathering efforts. In the interim, and because we are committed to the importance of stakeholder involvement, the HSUS has sought and received funds from NMFS and private sources to fund a series of meetings with fishermen in North Carolina. In keeping with the spirit of collaboration, this project was developed jointly by myself, Bill Foster of the North Carolina Fishermen's Association and Dr. Andrew Read of Duke University. The meetings were intended to allow the industry to share information about the operation of their fisheries and their observations of entangled animals in order to begin a dialogue that can lead to the development of solutions. These meetings are on-going and the next one will occur in May of this year. We hope that these meetings will result in information that will inform the take reduction team process once a team is convened. The HSUS also hopes that

the NMFS will abide by its agreement to convene a Team this year. We would like to avoid litigation as a means of enforcing their statutory obligation to protect bottlenose dolphins.

Atlantic Offshore Cetacean Team

This team was convened on May 23, 1996 to address the incidental mortality and serious injury of a number of pelagic (i.e. offshore) whale species including pilot whales, white-sided dolphins, common dolphins and beaked whales. When the Team was convened, it included representatives of three commercial fisheries: the Atlantic longline fleet, the Atlantic driftnet fishery and the experimental pair trawl fishery, all of which target swordfish and/or large tuna. Midway through the meetings, the NMFS discontinued the experimental pair trawl fishery, although the representatives of the fishery continued to attend the meeting. The Team submitted a consensus take reduction plan to NMFS in November of 1996. Over three years later, the NMFS still has not acted to implement recommendations in the plan.

Shortly after the Team concluded its meetings, the NMFS temporarily closed the driftnet fishery on an emergency basis because there was no take reduction plan in place to reduce the risk to north Atlantic right whales that the fishery had previously entangled. An eleven day re-opening of the driftnet fishery in the summer of 1998 resulted in the deaths of over 300 whales and dolphins and several endangered turtles, but the full fishery quota was not caught. The PBR was exceeded for several species of dolphins and beaked whales and no take reduction plan had been published to prevent this mortality. The HSUS notified the NMFS of its intent to file for a restraining order if the NMFS pursued its intent to allow the boats to return to sea to catch the remaining allocation of its fishery quota without a take reduction plan in place. The NMFS did not allow the fishery to catch the remainder of its quota and, in fact, permanently closed the

fishery in 1998 without publishing a take reduction plan that might have allowed the fishery to continue to operate while still reducing mortality of a number of whale species.

A management plan published by NMFS to address conservation of swordfish contained some of the Team's recommendations that affected the longline fishery. Other recommendations were disregarded and remain unpublished to this day.

In 1998 and 1999, the NMFS informed the Atlantic Scientific Review Group, of which the HSUS is a member, that the same whale and dolphin species for which the Team was convened are also being killed in substantial numbers by the trawl fishery for squid, mackerel and butterfish. This fishery had not been part of the take reduction team, as insufficient observer coverage was available to quantify its interactions with these stocks. Although the fishery is now believed to kill large numbers of animals, the Team has never been reconvened to reassess its recommendations for the longline fishery and address mortality in this offshore trawl fishery.

The Atlantic offshore cetacean team is an unfortunate illustration of the failure of NMFS to keep faith with the spirit of take reduction teams and of its disregard for the mandates of the MMPA. A consensus plan, developed by the team in 1996, has never been published. Two of the original fisheries were disallowed, partly as a result of their high level of interaction with marine mammals, though there was no opportunity to determine whether or not a take reduction plan might have mitigated those interactions. Subsequent to the final meeting of the Team, a new fishery was identified as interacting with the same marine mammal species, and yet it has not been included in the take reduction team to reduce this mortality and serious injury. Hundreds of marine mammals continue to die or be injured in the longline and offshore trawl fisheries with no take reduction plan in place and no apparent plans by the NMFS to reconvene

this team, which has not met in almost 4 years. This is another Team whose efforts were apparently in vain and which may result in litigation to force action by the NMFS.

Atlantic Large Whale Team

This Team was convened to address the mortality of a number of species of large baleen whales: north Atlantic right whales, humpback whales, fin whales and minke whales. The major focus of the team was the mortality and serious injury of right whales, the most critically endangered species of large whale. The team was convened in August 6, 1996, following a suit filed by Max Strahan of Greenworld which alleged that the NMFS had failed to protect right whales from death and serious injury in gillnets and lobster pots set in the waters of the northeast.

The task of this team was difficult because, although the likelihood of any particular lobster pot entangling a whale was extremely low , the likelihood of a whale getting entangled in some lobster pot or gillnet was extremely high: over 60% of whales show evidence of entanglement at some point in their lives. Furthermore, the PBR for right whales was calculated to be 0.4 whales per year; in other words, less than one whale could be killed or seriously injured every 2.5 years. With 300 or fewer right whales remaining, and evidence mounting that the population is in decline, it was urgent that measures be taken to alter current fishing practices that were entangling whales, although there had been virtually no research into alternative fishing practices that might reduce risk.

Over the course of six months, the Team had productive negotiations, but was unable to reach consensus on all of its recommendations and requested additional time to meet. The NMFS did not grant this request. It took the findings from the team's February report into consideration

and issued a draft plan in April of 1997. Satisfied that the NMFS was taking steps to address the problem of entanglement, the Federal District Court in Massachusetts dismissed the complaint against the NMFS.

The draft plan may have been a step toward addressing the problem, but it required extensive, untested modification of fishing gear, even in areas where right whales were unlikely to occur (e.g. in harbors of Rhode Island and Maine). It was roundly denounced by both conservation and fishery groups for a variety of reasons. Fishermen from New England appealed to their Congressional Representatives and Senators for relief. Senator Olympia Snowe convened field hearings on the plan that were heavily attended and very heated. The NMFS reconsidered its proposal and issued an interim final plan in July of 1997. This interim plan reduced the stringent requirements for gear modification requirements. Conservation and animal welfare groups charged that it now did virtually nothing to reduce risk. Indeed, in the July Federal Register notice that announced the plan, the NMFS admitted that it relied on "current best fishing practice," which were clearly insufficient to protect right whales . The NMFS made a commitment to undertake additional gear research. The success of the plan was heavily dependent upon disentangling whales that became entangled in fishing gear, although there was only one disentanglement team on the entire east coast, located in Cape Cod, Massachusetts.

In February of 1999 the Team was reconvened. At that meeting, the Team recommended additional funds for research. It recommended that gear modification requirements be changed to pair anchoring requirements with requirements for weaker breaking strength in the rope of the buoy line. It recommended suspension of gear marking requirements. The only recommendation arising from this meeting that the NMFS implemented was the recommendation to suspend the requirement that gear be marked to help identify the origin and nature of the gear

if it entangled a whale. It failed to act on the other consensus recommendations, and in fact reduced spending for gear research.

Despite their commitment to research, the 1998 gear research budget of $130,000 was reduced in 1999 to $115,000 and salary monies for NMFS personnel were deducted from this amount. Disentanglement funds were limited. While funds were expended to train hundreds of fishermen in Maine to identify right whales and report entanglements, fishermen in other states received no training. It was only after the death of a humpback whale in tended fishing gear in North Carolina that fishermen in that state finally obtained training and disentanglement response equipment. The reliance on disentanglement response has not been a panacea. Although several whales have been successfully disentangled, others have died or were lost subsequent to attempts to disentangle them and have not been seen since. Clearly the promise of research and the reliance on disentanglement have not been adequate. Measures contained in the plan to prevent disentanglement have also failed.

Since implementation of the plan in 1997, right whales have continued to become entangled, resulting in their serious injury or death. In 1998, right whale #2212 was entangled three separate times in lobster gear set in Cape Cod Bay and it is considered seriously injured as a result of gear remaining in its throat. In 1999, right whale #2030 became entangled in gillnetting off the coast of Massachusetts and, after several unsuccessful attempts to disentangle her, died that year of injuries sustained in the entanglement. Already in 2000 a dead right whale was seen floating off the coast of Rhode Island with fishing gear encircling its tail stalk. Additionally, at least 3 other right whales have been entangled and, based on the nature of the entanglements, are likely to be seriously injured. Humpback whales, minke whale and fin whales have also become

entangled and seriously injured or killed as a result. Clearly the take reduction plan is not working and requires significant modification.

In February of 2000 the Team was again reconvened. The Team again recommended that NMFS dramatically increase funding of gear research to try to identify a technological solution to the problem of entanglement. Team members reached consensus on some limited changes in the list of gear modifications to try to reduce risk. They were unable to reach consensus on the need for additional closures or on a means of responding to aggregations of whales in unexpected areas, such as happened in the winter of 1998-99 off Block Island Sound near Rhode Island. A meeting is scheduled for April 11 of this year to discuss contingency response to unexpected right whale aggregations.

As a result of efforts by a coalition of non-governmental organizations and fishing groups, Congress provided an additional three million dollars for research related to right whales for this fiscal year. Despite the clear need for innovative gear research, out of a Congressional budget allocation of $750,000 for gear research, the initial NMFS budget proposal identified less than fifty thousand dollars for this purpose. The remainder of the monies were designated to fund projects not related to research on gear modification (e.g. telemetry work to track whales, funding permanent staff positions for existing staff, etc). An outcry by members of the Team resulted in some reallocation of spending priorities, but we await word of final budget allocations.

We do not yet know how the NMFS will address the large number of deaths and serious injuries that have occurred in the wake of their take reduction plan, especially in the face of the failure of the take reduction team to reach consensus on recommendations other than expanded gear research.

Given the history of failure by the NMFS to act on a timely basis and in the face of a mounting death toll in right whales, in March the HSUS filed a notice of intent to sue under the ESA and the MMPA. It is with reluctance that we move in this direction; however, the history of the take reduction team process to date indicates that without litigation or threat of litigation, little is accomplished, even when the statutory requirements are perfectly clear and the body count of animals continues to rise.

Alaska Steller Sea Lion Team

In their report to Congress on activities undertaken in 1996, the NMFS states that they had not yet convened this team; however they stated that "NMFS expects to convene this team to address incidental takes of Steller sea lions in Alaska Commercial fisheries. The team will be facilitated by Mediation Services, Seattle, Wa." As of the date of this testimony in April of 2000, this team has still not been convened. Given the fact that Steller sea lions continue to decline in some parts of their range, the need for oversight of fishery-related mortality is critical. It may be that the issue of failure to convene a take reduction team will become one of the many issues being litigated with regard to Steller sea lions.

General Concerns With the Take Reduction Team Process

There are a number of general issues of concern that have come to light as a result of the stock assessment and Take Reduction Team process. Among them are the role of recreational fisheries in the mortality of marine mammals, the insufficiency of funds to monitor fisheries and determine the degree of mortality, the failure of the NMFS to enforce mandates of the take

reduction plans and the inappropriate use of research and implementation monies to fund base operating expenses.

Recreational Fisheries

Meetings of the mid-Atlantic Take Reduction Team brought to light the issue of recreational fisheries interacting with marine mammals. Section 118, which focuses on commercial fisheries, does not provide jurisdiction over recreational fisheries. Gillnets that are used to catch bait for personal use are similar in design and method of operation to that of commercial gillnets. Similarly, recreational gillnets are used in the mid-Atlantic to catch fish that are consumed by the owner. Both commercial fishermen and scientists working in the area have observed dolphins and porpoises caught in these nets that are not under the jurisdiction of Section 118 of the MMPA. Recreational lobster gear poses a risk to whales that is no less than that posed by commercial lobster pots, yet may not receive the same degree of oversight.

We believe that there should be a mechanism for quantifying the nature and extent to which recreational fisheries interact with marine mammals when they use gear that is similar in type to that of commercial gear known to kill or injure marine mammals.

Quantifying the Impact of Fishery Interactions

This may be a very significant problem that results in an underestimate of the number or impact of mortalities in fisheries that may interact with marine mammals. For example, since the 1994 amendments to the MMPA, stock assessments for marine mammals in and around the Hawaiian Islands acknowledge that there has been no effort directed to determining the population abundance of most stocks and there is no observer coverage on most fisheries in this area. We have no way of knowing how many animals there are, let alone whether commercial

fisheries may be having a negative impact on their populations. Resources must be directed to assess stocks and fisheries in this area.

The funding for the observer program is insufficient to provide anything but rudimentary observer coverage in many fisheries. We wish to offer several examples. Many Alaskan gillnet fisheries have historically had little or no observer coverage. The extensive Atlantic longline fleet, which is known to seriously injure hundreds of animals each year, has less than 5% observer coverage to monitor its operations and, in some areas or times when interactions may occur, there is virtually no observer coverage to document interactions. The Atlantic Offshore Cetacean Team reached consensus on a recommendation to increase the rate of coverage on the longline fleet and to reexamine placement of observers, but this has never occurred. Observer coverage of many small boat gillnet operations in the mid-Atlantic is almost non-existent. As a consequence, the extent of their interactions is poorly understood, although we find marine mammals stranded with evidence of entanglement in the areas in which these fisheries operate. The lack of observer coverage for the deepwater trawl fishery prevented its inclusion in the Atlantic Offshore Cetacean Take Reduction Team, although more recent limited coverage has revealed that they apparently have a substantial interaction with marine mammals.

Because of a lack of resources there are a number of fisheries with a likelihood of killing marine mammals but about which we know little. Until we can provide additional and more uniform observer coverage, we are unlikely to be able to understand the extent of fishery interactions with marine mammals. This results in an underestimate of mortality and an inability to track the efficacy of take reduction measures.

The NMFS needs to request, and Congress needs to grant sufficient funding to assure an adequate observer program that will be able to detect sources, levels and trends in marine mammal mortality.

Enforcement of Provisions of Take Reduction Plans

Although we have focussed much of our testimony on the glacial speed of the NMFS response to MMPA mandates to convene take reduction teams and publish take reduction plans, there is also a problem that arises with enforcement of the plans once they are published.

When they are reconvened, the teams are often informed of serious problems with violations of the plans. These violations hamper the ability to accurately depict the level of interaction and undermine the provisions of the plan itself. For example, as mentioned previously, fishermen in parts of North Carolina have routinely refused to take federal observers, with absolutely no consequence resulting from their having violated the law. This provides disincentive to other fishermen who are law abiding and it means that the data that are gathered do not provide a random and representative look at the fishery's interactions with marine mammals. The result of this skewed picture is that we may either underestimate the number of animals killed, to the detriment of the marine mammal population; or we may overestimate the number of animals killed, to the detriment of the fishery. Similarly, the harbor porpoise team in the Gulf of Maine has been told at both of its reconvenings that fishermen that have been documented by federal observers to be fishing in closed areas. No enforcement action has been taken against them. Again, this is a disincentive to those fishermen who are obeying the law and it undermines the effectiveness of the take reduction plan. These are but two examples of a broader problem.

It is paramount that the NMFS examine the compliance issues that have come to light in these teams and take action against violators. Where implementing regulations are unclear or other internal administrative policies prevent action, these situations must be remedied. Furthermore, it is urgent that Congress provide adequate funds to both the NMFS and Coast Guard to assure that their resources are sufficient to enforce compliance with laws and regulations.

Funding Issues

Earlier, we pointed out some of the problems with the NMFS budget for research related to the right whale take reduction plan. This problem is epidemic. Protected species budgets and MMPA implementation funds are routinely robbed for so called "base funding" shortfalls. That is, the NMFS has insufficient funds to pay for operating costs and permanent staff positions and, rather than fund recommendations by take reduction teams for additional research or personnel, uses these funds to pay for general operating budgets. This is an unacceptable practice.

We urge the NMFS to clearly and accurately depict their needs for on-going operating costs and we further urge that Congress grant sufficient base funding to meet these needs. Funds identified for implementing Take Reduction Team recommendations and for conducting research that helps us understand and reduce levels of mortality in marine mammals must be used for their intended purpose.

Conclusions and Recommendations

The 1994 amendments put in place a system that was designed to allow conservationists, fishermen and scientists to join with government managers to develop plans that reduce mortality of marine mammals consistent with the mandates of the MMPA. This system can work. The illustration provided by the Pacific Offshore Cetacean Take Reduction Team is, in part, an

example of this. Where the system has failed, it is generally not as a result of an inability of stakeholders to comprehend the problem and work collaboratively to develop a solution. In most cases the teams have reached consensus on the vast majority of their recommendations and when the plans are implemented, they generally appear to be effective. The take reduction teams have not failed; rather, it is the National Marine Fisheries Service that has failed the take reduction teams.

On the Atlantic coast, NMFS has been slow to convene teams, then recommendations made by Teams are tabled without action unless there is court oversight. The Large Whale Team was convened subsequent to litigation, and litigation dogs it to this day. The Harbor Porpoise Team, considered by NMFS to be its highest priority, was convened late and despite consensus recommendations, no plan was published for over two years until litigation was filed. The Atlantic Offshore Team still has not had its recommendations published and the driftnet fishery was closed without any attempt made to publish a take reduction plan. Four years after the MMPA mandate to convene a team, there is still no take reduction team for bottlenose dolphins, although they are listed as a depleted stock under the MMPA. After being threatened with litigation, NMFS now promises to convene a Team this year. There is still no Team for Steller sea lions in Alaska, although NMFS listed this as one of the six priority teams.

These delays have cost hundreds and hundreds of animals their lives and may threaten extinction of north Atlantic right whales. Where the failure to convene teams or to implement plans is a result of funding and personnel insufficiency, the NMFS must seek and Congress should grant adequate funds. But funding alone does not seem to explain the failure of the NMFS to take action on take reduction plans. Some of the team's recommendations that are intended to reduce risk would have cost the agency nothing, yet the NMFS refused to act on

them. For example, the 1999 consensus recommendation by the Atlantic Large Whale Take Reduction Team to amend the gear technology list to require anchoring requirements along with requirements for weak links was simply a clarification of an existing regulation. It could have been accomplished by a fairly non-controversial Federal Register notice; yet it was never done. A more egregious example of this perplexing failure to act is the fact that litigation was necessary to force publication of the take reduction plan for harbor porpoise although the plan had been largely complete for over a year prior to the suit.

The delays also undermine the confidence of Team members in the take reduction process. It is arduous work for diverse stakeholders to develop a plan that all can agree is likely to be effective and is acceptable to all interested parties. It is frustrating to have this hard work end with the NMFS refusing to publish a plan, often for years, with little or no explanation for the delay. The take reduction team process was designed to reduce the need to use lobbying and litigation as management tools. Instead, delays have forced both the fishing industry and conservation groups to use the very tools that the process was designed to obviate, further weakening confidence in the efficacy of the process.

The failure of the NMFS to meet its statutory obligations leads to a waste of resources that must be consumed by legal fees, lobbying efforts and oversight hearings. More importantly, the failure to meet statutory obligations under the MMPA has lead to a needless waste of animal's lives.

While The HSUS urges Congress to appropriate sufficient funds to allow the NMFS to carry out its mandates, we also urge you to more directly monitor and oversee the agency's actions. Section 118 of the MMPA was the product of years of negotiation, compromise, and consensus, but without Congressional and constituent oversight, the NMFS has consistently failed to carry

out the recommendations that so many spent so much labor achieving (both during the formulation of Section 118 and during the formulation of take reduction plans). We urge you to watch over the NMFS, because without your insistence that the NMFS obey your laws, we fear that the MMPA will continue to be implemented by the judicial branch of government, an inefficient and dangerous standard operating procedure.

We thank the Sub-Committee for seeking constituent input regarding the implementation of the 1994 amendments.

Mr. SAXTON. Thank you very much, Ms. Young. Mr. Calambokidis. Did I do that right?

Mr. CALAMBOKIDIS. That was very good.

Mr. SAXTON. Thank you.

STATEMENT OF JOHN CALAMBOKIDIS

Mr. CALAMBOKIDIS. Thank you for the opportunity to testify before the subcommittee. I have submitted longer written testimony. My testimony highlights the experience of one of the take reduction teams, the Offshore Cetacean Take Reduction Team in the Pacific, and I was the scientific—one of the two scientific representatives on that committee. Ours was one of the smaller teams that consisted of four representatives from the Offshore Drift Gillnet Fishery, three members of conservation groups. We had two scientists with independent bodies. One of them myself. And we also had members of a Pacific State Marine Fishery Commission, the California Department of Fish and Wildlife and National Marine Fisheries Service.

The situation we faced in the Pacific was an offshore drift gillnet fishery targeting thresher shark and swordfish. There were a number of cetaceans and pinnipeds, seals and sea lions taken in this fishery and there were six different species that were deemed critical, which means their level, the number of animals killed in the fishery exceeded what was thought to be able to maintain their populations at optimal levels.

So when the team convened in 1996 our first priority was to look at how to reduce those mortalities in the first 6 months and even though I think the Pacific team was one of the more successful teams that time line was clearly one that would be difficult to achieve. The fishery only operated on a seasonal basis. To be able to meet and put those into effect that rapidly wasn't possible but we were able to make a great deal of headway. The team was one of the smaller of the five take reduction teams and I think that helped in its success. We have between 12 and 15 members on the team and very quickly in the first 6 months where we are meeting on a monthly basis we are able to work and establish some trust between the different interest groups that were there.

And as a scientist, I was particularly pleased to see this group working very closely with the scientists and with the data and making a direct application between the science and how that applied to the animals that were taken, why they were being taken, and how to reduce them. We were able to come up with recommendations. The four primary recommendations that came out of the team focused on, first of all, trying to keep the fishery from growing until the marine mammal problem was solved. This was something the fishing groups on the panel agreed with so we wanted to make sure that new permits were not being issued for the fishery.

Secondly, we increased the depth that the net hung in the water because we found that most of the entanglements were occurring in the upper part of the net and we thought that could be done to reduce mortality of marine mammals and not affect the fishing catch. Third, we instituted an experiment on the effectiveness of these underwater acoustic devices termed pingers that were re-

ferred to in the last panel. We needed to test the effectiveness of those because they had been found to be effective on Harbor Porpoise but the six species that we were dealing with in the Pacific were a different species and there was no data on whether these pingers would serve as a warning device for those species.

After that experiment we found it was very effective and we mandated the use of pingers and we also mandated the skipper educational workshops that helped to train fishermen in the use of some of these pingers and other procedures would identify and make them aware of the problem and also solicit their recommendations in solving the problem. This plan has been every effective. Right now mortalities of total Cetaceans are down to almost a tenth of what they were prior to the plan. The pingers especially have been a very effective component of the plan.

I think the multiple interest groups and stakeholders, the presence of environmental groups and the fishing industries themselves played a critical role in the success of the plan, not only in devising these strategies but then once they were devised in implementing the same set of strategies developed independently by an outside body would not have been implemented as effectively had they not been come up with by the groups themselves working together so that was a key element.

We did have road blocks that we faced. The group did agree that data would have been much better if there was better date on population size, rates of take, and they wanted to see more of that. Fishermen struggled with the resources to buy these pingers and put them in place in the tight time schedule. But in conclusion, I think it was a very successful process. We continue to meet and work toward trying to achieve the zero mortality rate goal and the team continues to meet on that but it has been a very successful process.

[Prepared statement of Mr. Calambokidis follows:]

Testimony of Mr. John Calambokidis
Research Biologist, Cascadia Research, Olympia, WA
Regarding the Development and Performance of Take Reduction Teams Established Under Section 118 of the Marine Mammal Protection Act

Before the House Committee on Resources
Subcommittee on Fisheries Conservation, Wildlife and Oceans

Longworth House Office Building, Room 1334
April 6, 2000

SUMMARY

My testimony summarizes my experience working as a scientist on the Pacific Take Reduction Team (TRT). The team convened in 1996 to try and reduce the mortality of marine mammals in the offshore drift gill-net fishery for swordfish and thresher shark. The team included participants from the fishing industry, environmental groups, scientists, and managers with National Marine Fisheries Service. The Pacific TRT worked extremely well together successfully developing and implementing a plan that has significantly reduced marine mammal mortality while not having a major financial impact on the fishery. The TRT process, while not always easy, was clearly worth the effort. Not only was a better plan developed as a result of the mix of participants in the team, but the direct involvement of these different constituencies resulted in their backing and helping to implement the plan. The TRT has accomplished the initial objective of reducing mortality of strategic stocks to below critical levels. It is now proceeding with the next step in the process, reducing mortality of all marine mammal species to levels approaching zero. In my testimony I review the steps taken by the Pacific TRT, how we worked together, the success we achieved, and some of the problems we encountered as well as solutions that would have helped deal with these problems.

BACKGROUND

I began working on this team in 1996 as a representative from the scientific community. Although I am employed at an independent non-profit research organization, much of my research has been under contracts from different branches of NOAA including Southwest Fisheries Science Center, the National Marine Mammal Laboratory, and several National Marine Sanctuaries. A focus of my work has involved assessments of marine mammal populations and impacts on humans on marine mammals in the North Pacific. Because I had been studying some of the marine mammal populations involved in incidental takes, my expertise was directly relevant to the goals of the TRT. For that reason, when I was asked to serve on the team, I agreed. This was despite the fact that the lack of compensation (other than reimbursement for travel) for committee members would be a hardship for both myself and the relatively small research organization with which I am employed.

The Pacific TRT was convened to reduce the mortality of a number of mostly offshore cetacean species that were becoming entangled in drift nets set for swordfish and thresher shark off

Oregon and California. Most of the fishing was done in offshore waters of southern and central California. Most of the boats are fairly small (30-75 feet long).

A variety of marine mammal species were incidentally caught in the nets. Although the most common species entangled were short-beaked common dolphins, elephant seals and California sea lions, it was the smaller number of kills of several less common species that were of greater concern. Kills of these species, which included pilot whales, several species of beaked whale, pygmy sperm whale, sperm whale, and humpback whale, were of concern because the number estimated killed exceeded a level that could put the population at risk. The reduction in the kills of these so-called "strategic stocks" was the immediate priority of the TRT.

PARTICIPATION

Participants in the Pacific TRT included four fishermen directly involved in the swordfish thresher shark drift gill-net fishery, three representatives from environmental groups, several scientists who studied marine mammals in this region, and representatives from NMFS, California Fish and Game, and the Pacific States Marine Fisheries Commission. Also crucial to the process was the direct involvement of a number of scientists with Southwest Fisheries Science Center and a professional mediator who facilitated the meetings.

The active and enthusiastic participation of the fishery groups was a key to the success of the process. They acted from a genuine desire to decrease their impact on marine mammals and also understood that, for their long-term survival and public image, it was essential that they deal with this problem. Many times as the group as a whole searched to understand the causes of the problem and potential solutions, the crucial role of the fishermen was demonstrated as they provided insight hard to obtain from the data alone.

While the fishery representatives on the Pacific TRT worked faithfully and diligently to come up with solutions, there were also clear moments of tension among the participants. Early in the process, consideration of reductions in fishing effort that would reduce mortality but also make it harder to catch fish were clearly a difficult topic. We moved on from this with the agreement we would return to this after all other solutions to solve the mortality were explored first.

SEARCH FOR SOLUTIONS

The Pacific TRT worked intensively in the first half of 1996 to come up with methods to reduce mortality of the species which had been designated "critical" based on a mortality rate that exceeded what could safely be sustained. As a team we worked closely with scientists with Southwest Fisheries Science Center that conducted analyses of the data on marine mammal mortalities documented by observers place aboard a percentage of the fishing trips. The team examined all aspects of the data trying to identify patterns in the mortality that would indicate what factors caused higher rates of mortality and which appeared to result in lower mortality.

The interaction between scientists and fishermen was extremely productive. They suggested patterns they had noted in their fishing and these could be tested in the data. Other times the data

would suggest a pattern and the fishermen would provide crucial information that would provide a reasonable explanation for the pattern. This was critical because there were many factors to consider and the relatively small number of mortalities documented when an observer was aboard meant there was limited "statistical power" to tease apart confounding or inter-related factors.

At the end of 6 months the team settled on a four key recommendations:

1. **Modify how deep the net hung in the water to require at least a six fathom gap between the surface of the water and the top of the net**. This stemmed from analyses that showed mortality was lower in nets that hung at least this deep in the water and from the observations that many marine mammals that became entangled did so near the top of the net.

2. **Begin deployment and testing of "pingers" on the nets.** These devices generate noise in the water and had been shown to reduce the mortality of harbor porpoise in gill nets in several areas. Although they had not been tested on the principal species of concern to the Pacific TRT, data from this fishery revealed that entanglements tended to occur in the portion of the net farther from the vessel. This suggested these species might be avoiding or being alerted by the sound made by the vessel. Because of the uncertainty of the effectiveness of this strategy with the species involved the team recommended that the effectiveness of the pingers be tested with a rigorous experiment starting the next season.

3. **Take voluntary steps to keep the fishery from expanding.** There was agreement on the TRT that it was premature to require a reduction in fishing effort as a way to reduce mortality. First we needed to try other strategies. There was agreement, however, that certain steps could be taken to at least prevent the fishery from expanding until methods were found to reduce marine mammal mortality. The team recommended that should the permits of an inactive fishermen expire, the California Department Fish and Game should not reissue that permit. We also recommended that a voluntary program of permit buy-backs be conducted, should the funds be available, to encourage inactive fishermen to let their permits lapse.

4. **Require drift gillnet fishers to attend a workshop**. This was a program with backing of the representatives from the fishing industry to conduct workshops to educate the other fishermen in the industry. These workshops would provide a way to make fishermen aware of the problem, train fishermen in practices that would reduce mortality, make them aware of the teams recommendations, and get their input into other ways to reduce mortality.

SUCCESS

Strategies taken by the TRT have resulted in a dramatic reduction in mortalities of whales and dolphins. The experiment with pingers revealed they were extremely effective reducing mortality of many species. In the 1998 season, when all strategies recommended by the TRT were in effect, including the now mandated use of pingers, mortality of cetaceans was less than a fifth (17%) of what it had averaged in the six years prior to implementation of the plan. Most importantly to achieving the first goal of the TRT process was the reduction in mortality of the

species deemed "critical". With the exception of the sperm whale, there was not a single documented mortality of another one of these critical species.

IMPLEMENTATION

One of the most important benefits of the active participation of fishermen occurred in the implementation of the plan. Decisions by the group were clearly made with the fishermen in mind, and there was clearly more respect given to the group by fishermen as a result of their own representatives being direct participants in the process. Without this, it would have been hard to convince fishermen to participate in the experiment to test the effectiveness of pingers and the next year to bear the expense of buying pingers for their nets.

Training workshops and dialogs with fishermen were a clear priority of the plan. Mandatory skipper workshops were conducted by NMFS and TRT members participated in these. Again the direct involvement of the fishing groups in the process and in the training was critical to its success.

SPECIAL CIRCUMSTANCES

I recognize that some aspects of the success of the Pacific TRT may be partly the result of unique circumstances. The close working relationship, mutual respect, and trust that developed in our group was certainly not an inevitable part of the process. Slightly different personalities among any of the constituencies represented could easily have short-circuited the process early on when the group was trying to develop mutual respect and trust.

Our group also benefited from the dramatic and immediate effectiveness of one of the strategies the group developed; the use of pingers (sound generators placed on the net). Implementing some other alternatives the group was evaluating, the most contentious of which being further restrictions on where and when the fishery could occur, would have been far more divisive and could have fragmented the group.

IMPROVEMENTS

Through the process there were a number of limitations that hampered the team. I identify below some of the things that would have improved the success of the Pacific TRT in reducing marine mammal mortality.:

Need for biological research on population units and population size. SWFSC scientists advising the TRT did an excellent job of analyzing data, responding to questions from team members, and conducting experiments testing the effectiveness of the pingers. There was often frustration by team members, however, at the limited data on some species and the long intervals between planned surveys. Because the process of setting PBRs (Potential Biological Removals) relies on these data and uncertainties or imprecision in these estimates reduce the calculation of allowed take, the team clearly needed up to date and accurate estimates. The one thing all

members of the group shared in common was a desire to see more frequent and accurate estimates made.

Need for resources to assist fishermen. The TRT recognized that many of the steps that needed to be taken were hard to do because of lack of resources. For example, everyone agreed that it would be a good idea to buy out the permits of some fishermen (those who were inactive or wanted to get out of the fishery). Removing these permit would prevent the fishery from expanding in the future and thereby causing an increase in mortality. The primary limitation was not having a source of funds to use to buy out these fishermen. Similarly, mandating the use of pingers on all nets put a hardship on many fishermen who had difficulty coming up with the thousands of dollars needed to get the required number of pingers.

Need for development of better pingers. It is clear that pingers have reduced mortality, however, they have not been designed for specific use on the drift net gear, nor are they necessarily using ideal sound parameters to reduce entanglement of the species caught in this fishery. If a pinger could be designed that could be left on the net, it would reduce the danger to fishermen trying to deploy them in rough weather and would improve compliance.

Need for clearer definitions. The group sometimes struggled to meet some of the demands of the TRT process when there were not clear definitions for some of the terms. For example at the TRT's 1999 meeting the definition of the "Zero Mortality Rate Goal" had not yet been finalized.

Better enforcement. The Pacific TRT recognized the need for better enforcement of some of the regulations they have recommended and which have become adopted by NMFS. The lack of enforcement was suspected as one of the factors contributing to the a significant level of non-compliance (not using enough pingers or not placing them as required). Even the TRT representatives from the fishing industry backed better enforcement. They recognized that the lack enforcement hurt the fishermen adhering to the new rules while allowing those not following the regulations to obtain an unfair advantage.

In conclusion, I thank you for the opportunity to testify on my experiences as a member of the Pacific TRT. I have been honored to work with the team and am proud of our accomplishment. I think the creation of these teams proved extremely successful.

Contracts and Purchase orders from Agencies within the Department of Commerce

Purchase Order	Yr	Agency	Project	Amount
40ABNF901105	1999	Southwest Fisheries Science Center	Humpback & blue whale abundance, reproduction, and mortality	$47,846
40ABNC901489	1999	Olympic Coast National Marine Sanctuary	Surveys in Olympic Coast Sanctuary for humpback and gray whales	$3,986
40ABNC0S0460	1999	Channel Islands National Marine Sanctuary	Surveys in Channel Is. Sanctuary for humpback and blue whales	$4,942
40ABNF901439	1999	National Marine Mammal Laboratory	Surveys for gray whales in Washington, Oregon, and California	$15,998
40ABNF801113	1998	Southwest Fisheries Science Center	Humpback & blue whale abundance, reproduction, and mortality	$46,989
40ABNC801428	1998	Olympic Coast National Marine Sanctuary	Surveys in Olympic Coast Sanctuary for humpback and gray whales	$3,500
40ABNF801822	1998	National Marine Mammal Laboratory	Surveys for gray whales in Washington, Oregon, and California	$5,068
40BANF701067	1997	Southwest Fisheries Science Center	Humpback & blue whale abundance, reproduction, and mortality	$45,365
40ABNC701327	1997	Olympic Coast National Marine Sanctuary	Surveys in Olympic Coast Sanctuary for humpback and gray whales	$4,068
40ABNF701750	1997	National Marine Mammal Laboratory	Surveys for gray whales in Washington, Oregon, and California	$4,000

Mr. SAXTON. Thank you very much. You each have quite different perspectives although I hear some common themes running through most of your testimony. Mr. White, I don't want to mischaracterize your testimony but you used the word ineffective when describing I guess I would say the process that we created in trying to create these teams, and Ms. Young on the other hand said it works and cited the fact that there are three take reduction plans in place.

On the other hand, Mr. Foster, it sounded to me like you were saying that perhaps the teams go too far and that the process therefore is harmful I guess to your industry. Ms. Young spoke of funding shortfalls that that NMFS doesn't do its part of the job and Mr. Calambokidis, it sounded like you were talking about a very successful experience that your team had so you all had some different perspectives.

I guess what I would like to ask you is a follow on to the question that I asked the first panel and that would be with regard to the role NMFS plays. Obviously, there are probably different perspectives on this as well but in regard to the process and the role that NMFS plays in it. Could you each take just 1 minute and characterize your feelings and your beliefs relative to how NMFS interacts or does not interact properly in and throughout the process that you have observed. Would you start, Mr. White?

Mr. WHITE. Thank you. I would like to clarify one point in that I was speaking only of the Northeast Large Whale Take Reduction Team as a specific take reduction team. And I think the group in itself has been very successful in what it has tried to accomplish. I think my frustration from that point on comes either financially or whatever with the enforcement of the implementation of a plan because I don't think anything—there has been very little action to supporting what came out of the plan so we don't even know if what came out of the plan before is even working and we are already starting to develop a new plan. I think that is the frustration level that I have from the fixed gear fishery in the Northeast.

Mr. SAXTON. Thank you. Would you speak to NMFS' role?

Mr. WHITE. Would I speak for NMFS?

Mr. SAXTON. Would you give us your impression—one of the key—when Congress wrote the provisions that we are discussing, it was our intent to create a process to reduce the take of marine mammals, especially those that are in short supply, so to speak, in a way that would involve people who are concerned about and involved in one way or another with species. And it has been suggested by some that the process is not working well because NMFS doesn't interact with and throughout the process. My question is would you comment on that and give us your feelings?

Mr. WHITE. Yes, I would like to answer that with two answers, if I could. I think NMFS' involvement in the take reduction team needs to be expanded and I don't know how that is possible under their current funding situation. I sense a frustration from the agency in not being able to accommodate the needs that we feel are necessary to get the information to successfully come up with a management plan.

I also on the other half of it am frustrated with what appears to be a lack of financial support to implementing the regulations

that have come out of a plan. There was some very good compromises that came out of the last take reduction plan and implemented ″in the National Marine Fisheries Service Plan″ but the enforcement on it has been little or none. I think in the State of Maine we have two enforcement agents for 3,500 miles of coast line. It just can't be done.

Mr. SAXTON. Thank you. Nina Young.

Ms. NINA YOUNG. I think there are two things. As you heard, resources is one, but it is important we engage NMFS in the process. The team often times come up with some level of consensus only to have the plan fail to be implemented according to the statutory time lines or changed, in some cases dramatically, as if no discussion even occurred. And I would much rather have instead of ten NMFS staff sitting around on the periphery and two at the table, Dr. Rosenberg there at the critical point when we are devising the consensus.

Usually there are six teams or six meetings during a team and the first few are ones where people are setting out their positions. They are developing and reviewing the science. It is really the last two where you are coming up with that consensus and it is at that point that I would like somebody from the senior level of management of NMFS to be present to commit the agency to the consensus, somebody from NOAA general counsel to say, yes, we can turn these into regulations and somebody from enforcement to tell us whether or not this is going to be a strategy that is easily enforced.

I think those are three components, those are the people that we need at the table, not a bunch of staff at lower levels who have to constantly go back to their seniors to brief them about this. An example that I will provide for you is the Fishery Management Council. There the regional administrator sits through the deliberations and plays a role. The take reduction teams, for those of us that participate in them, are just as important as the Fishery Management Council process so they should have the same importance in the eyes of NMFS as that council process and they should have that same level of management authority.

Rarely does a regional administrator come to those meetings, maybe to provide opening remarks but none of them have been there when the rubber hit the road and the consensus was being reached. Going back to the resources, we definitely need National Marine Fisheries Service to ask for more money to implement these teams. As you will probably recall, Mr. Chairman, when we did this law back in 1994, we estimated that it was going to cost somewhere around $18 million just to implement Section 118 and all that NMFS gets in its Federal appropriations is $10 million for the entire act.

So you can see that there is a tremendous shortfall that doesn't allow us to really implement some of the creative strategies that we come up with in these negotiations with the fishing community.

Mr. SAXTON. I just noted that Dr. Rosenberg was nodding his head yes when you described the funding shortfall. Mr. Foster.

Mr. FOSTER. I am trying to remember your question but as far as the role of NMFS the devil is in the details and on the large whale team we work very hard to get as close to consensus as we

could. The biggest issue was right whales which affects the Northeast and Southeast regions mostly. We were primarily impacted by the humpbacks in the Mid-Atlantic. The final regulations that the team agreed upon, when they came out as final rule that the team was reconvened, we were given a copy of the final rule. It was going to publication. The team was asked to comment on it but no changes were going to be made in it.

So, in other words, there wasn't any reason to have that meeting but we were there to comment on it. The final rules that were implemented in the Mid-Atlantic were not what we—they had been changed enough where it was not what we had come up with. Consequently, there was no real harm done to the fishermen but there wasn't any benefit for the whales. It did essentially nothing because of the lack of defining the gear in the way it needed to be defined. So it got to—there has got to be a way for NMFS to follow through and get somebody that understands what we are talking about with gear so that it gets implemented in the way that it was proposed by the committee.

Mr. SAXTON. Thank you. Ms. Sharon Young.

Ms. SHARON YOUNG. I won't belabor the issue of funding which has already been covered but I want to also reiterate a suggestion that Bill Foster made earlier, which is I think it would be helpful to have someone in particular charged with following the plan through from the end of the team meetings all the way through publication of the final rule so that there is someone you can go to that is accountable and can address some of the questions that the team will have on an ongoing basis.

It also is important that the team be consulted if plans are changed. I think some of the controversy that has arisen about the large whale plan was because once the team didn't reach consensus NMFS developed a plan and rather than seeking input from the people on the team about the plan it just went out and we ended up in a very adversarial process. And in the Mid-Atlantic the plan was changed quite substantially from the way the team focused to a way that was much more readily administrable by the agency but the team didn't understand that a change was going to be made until the plan was published and it could have—a lot of misunderstanding could have been avoided if the team had been consulted.

And also again I do want to reiterate that I think one of the other problems with this is that the agency has a conflicted mandate and in trying to conserve fish and trying to conserve marine mammals the two arms of the National Fisheries Service don't always talk to one another and it would be helpful also I think to have some of the people from the fishery management side at the table as well as the marine mammal protected resources folks,. In the offshore take reduction team in the Atlantic, I would say probably 25 percent of our time was consumed over squabbles of the swordfish allocation and it really distracted from our ability to focus on marine mammals.

And in the case of the gillnet fishery in the Mid-Atlantic they are already being pretty hard hit by fishery management restrictions. I think it is very difficult for the agency to then take a take reduction plan that is proposing additional restrictions and impose that on the fishermen as well. I think sometimes it is easier to have

someone litigate than to take a really hard-nosed approach to that kind of thing. And as somebody who has had to speak before the Fishery Management Council, they don't always talk about marine mammals.

Fishery Management Council people on the team will say that we can't consider the effect of our plan on Harbor Porpoise. We can't. And that I think is something the agency might be able to help facilitate because if you have those things being melted better together, I don't think we would be having the breakdown in implementation and the squabbles over the effect that it is having on the fisheries.

Mr. SAXTON. Thank you very much. Mr. Calambokidis.

Mr. CALAMBOKIDIS. There were a couple of different aspects to NMFS' role in the Pacific Take Reduction Team. On the one hand we had some of the scientists at the table as advisors and I think by and large their role was very positive. They were very responsive as best they could to the requests of the take reduction team. They were operating within certain constraints. The abundance estimates and these PBR calculations of biological removal came through a separate process.

These stock assessment reports were reviewed by a scientific review group but as best as they could, they could provide information on what generated those and we could provide input back into these SRG teams on where we thought estimates needed to be changed or there were problems. Now we had fairly good consistency in terms of the NMFS people at the table negotiating. Thought I see elements of some of the concerns that have been raised certainly occurred in the Pacific team.

For example, there was uncertainty when the team met initially on would NMFS follow through on all these recommendations and what would NMFS be viewing and there would be questions put to the NMFS representatives that they couldn't always answer exactly what would happen after we developed our consensus, would it be implemented. In all fairness, I have to say there was also a positive aspect of that unknown, a statement that was not said by NMFS but that those of us on the team operated under and was a major incentive to reach consensus was we better find a way to come up with a good plan that works, otherwise, NMFS will.

And on the one hand it provided pressure that we knew if we didn't do our job and reach a plan that worked there was this other body that would step in and take over so that had both a—kind of a concern but it also played a positive role in another way.

Mr. SAXTON. Well, thank you all very much. The gentleman from Maryland from the eastern shore of the Chesapeake. The gentleman from the eastern shore of New Jersey.

Mr. GILCHREST. It sounds like—I am a little confused now about the process. I almost want to ask Dr. Rosenberg another question. Is there—and could I ask Dr.—I guess I can. Thank you. Dr. Rosenberg, you wouldn't mind—from what I will say John C. has said and what the other members of the panel have said it seems at least to some extent to some people for the most part that the teams have worked fairly effectively, and one person during the testimony said that, at least my interpretation of it, was that the

teams need to have NMFS participation which I assumed each team has one or two people from NMFS on that team.

Is there a very specific protocol for NMFS role on each team for using scientific data, how that data is analyzed and then a consensus for a plan and then the implementation of that plan? Is there a clear strategy developed for each one of those teams as far as NMFS is concerned?

Mr. SAXTON. Dr. Rosenberg, before you answer, would the gentleman suspend, take the chair for a few minutes. Thank you.

Mr. ROSENBERG. Congressman, the answer is yes. There is a clear set of instructions and those instructions are to the extent that we possibly can provide information to the team in response to their requests made them aware of what information we have available and what information we don't have available. Everyone in every fishery management resource management discussion is always frustrated by a lack of information because everyone would like to know the perfect answer before they have to make a decision and of course we always have very imperfect information.

So the reason that you have a large number of staff from NMFS in the room but as you pointed out only one or two on the panel is twofold, one to provide as much information to the team as possible, and, second, for those people who are working on that problem specifically to learn what the team wants to know about and also learn from the information that the team has to provide.

Often fishermen or conservation groups have either anecdotal information or hard information that is immediately useful to the scientists as they do their analyses but compiling that information is very difficult so our primary role is to provide them as much information as we can from both the policy perspective as well as the scientific perspective and to make sure that they realize what the limitations of that information are and what the strengths are and also to make sure that people do not inappropriately combine sources of information.

If you have a strong peer review stock assessment you should view that as a very strong piece of information. If you have comments from an individual scientist that is not peer reviewed that is of a very different quality than a peer reviewed well thought through team-produced report on a stock assessment. Second, the team members are there to try to do everything they can to get the team to come to consensus. They are not there as decisionmakers and there is a simple reason for that and a number of the analysts mentioned this.

And that is because when the team makes its recommendation on a plan if they make a recommendation, and several of the teams have not been able to come to consensus, including the large whale team that was referred to. When they come to agreement on a plan or make their recommendations they do not have in front of them the documents required for determinations of the national environmental policy act, the Marine Mammal Protection Act, the Endangered Species Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, and so on, because none of those things can be produced until we have a plan to do the analysis, so we can't prejudge, yes, this will be OK until we do the—we actually put to-

gether the documentation and analyze it compared to the respective laws.

The team does not do that. Our staff does it afterwards so our people need to remind people that those things need to occur and that certain measures will not be—you know, may or may not work depending on how that analysis turns out. We try to give them as much information as we can and some things are clear the same as in the Fishery Management Council that they won't work or they look like they probably will work.

But the Secretary can't make a determination unless he has the decision documents in front of us, otherwise, all of these people will sue us and say you made an inappropriate decision. If you sit at the table, you know, that is OK, so we try to make sure that they realize what those limitations are but that is an awkward position for a team member to be in.

Mr. GILCHREST. Based on your explanation that you just gave, I think it was Nina Young that said earlier that during the process those in NMFS that can make a decision are too far from the team at the time they need that decisionmaking made, did I adequately—and can you see how that might be a problem, Dr. Rosenberg?

Mr. ROSENBERG. I can see how that might be a problem. On the other hand, technically, legally I cannot give a definitive answer that, yes, this plan is acceptable or, yes, it is implemented until it has been analyzed under applicable law and that is not possible at a team meeting so I used to be——

Mr. GILCHREST. Can the team again reassemble after the analysis by the higher ups is made?

Mr. ROSENBERG. They can and they usually do. In fact, they are continuing to meet now but I think what people are asking for is someone like me or when I was a regional administrator, regional administrator to be at the table to say yeah, that looks good.

Mr. GILCHREST. How difficult is it to have a regional administrator at the table periodically?

Mr. ROSENBERG. Well, they work about 90 hours a week and having them work 100 hours a week would be OK.

Mr. GILCHREST. I am not asking——

Mr. ROSENBERG. That is impossible, sir. I am not being flippant.

Mr. GILCHREST. I don't want people to work 100 hours a week. We as members only work about 10 hours a week. We have 4 hours worth of lunch a day and we have Mercedes Benz with people driving—no, I am just kidding. We are all tired. I am just asking is it a sufficient enough priority to manage the time of the regional managers for them, and I don't know, I am just based on what I am hearing today, is it a sufficient priority for these teams to implement these plans so that a regional manager can have more involvement in the process.

And I wanted to ask Mr. C. on the end, based on this discussion can you give us—it sounds like your team was pretty successful. Did you perceive any problem with not having enough input from the regional manager in the process?

Mr. CALAMBOKIDIS. Well, I think we had quite a bit of consistency in NMFS role and——

Mr. GILCHREST. Dr. Rosenberg, you can pull up a chair, if you want, sir.

Mr. CALAMBOKIDIS. And I think perhaps because the plan was so clearly successful we didn't maybe face as much scrutiny or challenge as the plan was reviewed so we may have gotten off a little easier than some of the take reduction teams that were facing more difficult challenges and had a harder time coming up with a plan that was working. In our case the NMFS role worked OK. We had a regional administrator present at certain meetings but we had a great deal of consistency in who was there both from regional and the national office and there was no overruling or challenging of the role they played by higher ups so it worked smoothly.

Mr. GILCHREST. So you think yours worked smoothly because you more easily arrived at a consensus from all the participating parties?

Mr. CALAMBOKIDIS. I think that is partly it and I also think that the consistency of the individuals that were there worked well. We did not have NMFS really challenge or change our document in any substantial way.

Mr. ROSENBERG. Mr. Chairman, if I may, I think the—I did not mean to be flippant about whether it is possible to have a regional administrator there and I do believe they work about half the amount of time that Congressmen do but the——

Mr. GILCHREST. That was a good comment.

Mr. ROSENBERG. I would point out that the assistant regional administrator for protected resources as far as I am aware has been attending every one of the take reduction team meetings in the Northeast and I suspect almost all the teams have been in the Northeast and that person is a senior official. I don't think that there has actually been an overruling necessarily at a higher level in the process in any circumstance but it is possible to have regional administrators at the teams.

That doesn't mean that there aren't disagreements between what one staffer might think and what the agency finally decides to do but an overruling of the information we have given to a team I don't believe has occurred. And it is possible——

Mr. GILCHREST. When you say overruling you don't think there has been an overruling of any team when the team arrived at a consensus with the——

Mr. ROSENBERG. I am sorry. An inconsistency between the position of the people who are at the meeting versus the position that the agency took I don't believe has occurred of the three teams that I have had direct involvement with. Other people may have a different view of that but I have been directly involved as a regional administrator in three of the teams.

Mr. GILCHREST. I see. Ms. Young.

Ms. NINA YOUNG. Thank you. There are some things there in what Dr. Rosenberg said where I would like to point out some differences based on my experience. I think that scientists are critical and one of the things I would like to do is commend the National Marine Fisheries Service scientists. There were scientists that were involved in the process that had they not been involved we probably would not have reached consensus. And when they were involved in the process, we were able to do models and analyses that

allowed us to have a fairly good level of confidence that we were going to achieve the target of the PBR to reduce the incidental take.

And it is that confidence, I think is critical—I understand Dr. Rosenberg's point that you can't without having all the analysis and all the environmental assessments and things that the agency must do afterward, that you probably will not be able to say with absolute certainty that yes, this is a plan that is going to go forward. But being a scientist, as he is, what I think we are looking for is, plus or minus 95 percent confidence in what is going to go forward as a recommendation from the team is what is likely to be implemented.

We have a very unfortunate situation in the Atlantic Offshore Cetacean Take Reduction Team where two fisheries came to the table and negotiated in good faith. There were a total of three. By the end of that negotiation one was closed and despite the recommendations that we had developed which National Marine Fisheries Service was there at the table and participated in, those recommendations were essentially totally thrown out the window. That fishery was closed. And we have one fishery and no take reduction plan essentially for that fishery. What has been implemented——

Mr. GILCHREST. Which team was that?

Ms. NINA YOUNG. That was the Atlantic Offshore Cetacean Take Reduction Team. And now the only fishery that remains is the long line fishery. The Pairtrawl fishery was closed and the drift net fishery was closed. If NMFS' intent, from the fishery side, was to close these fisheries from the very beginning they should have just done it, but instead these people came to the table in good faith and negotiated only to find their fisheries closed later on.

Mr. GILCHREST. So there was a——

Ms. NINA YOUNG. That is what we are trying to avoid.

Mr. GILCHREST. I see. I guess we could spend 2 days here discussing these teams analysis. Could I ask a question with—I would like to get back to that one but I guess this would take us—the difference of opinions on the data created a determination by NMFS different from the teams' consensus. Dr. Rosenberg.

Mr. ROSENBERG. If I may, because I think that this is a really important illustration on the Atlantic Offshore Cetacean Team. Your description of what happened is quite right that we did end up closing the paratrol fishery and the drift gillnet fishery. The recommendation from the team in our analysis essentially would have used the entire budget we had available for observers as well as for implementation for that one fishery alone so if we wanted to do nothing for Harbor Porpoise and for large whale take reduction team in terms of observers, in terms of other effort and devoted all to implementing that plan, we could have gone that way.

But we viewed that that fishery was causing so many problems and in 1998 in one season had 300—I think it was over 300 takes of marine mammals that the fisheries should not be operating because of its high take of marine mammals and because to implement the take reduction plan was prohibitively expensive so we determined that was not in the best interest of good government to allow it to continue and spend all our money in that direction. The

paratrol fishery was closed for other reasons as well rather early on and the team knew about that.

There are measures in place for the other fishery but they are fishery management measures under the highly migratory species plan and this also came up in several discussions. The same is true in the Harbor Porpoise plan. While I think it was pointed out that we did not implement the take reduction plan and it was said until after we were sued for it almost pieces of that take reduction plan were implemented but they were implemented as the Magnuson-Steven Act provisions by the councils and so what we tried to do was work the council process and the take reduction process together so that the closures that were put in place were put in place coherently between the two bodies and therefore we didn't implement directly the Harbor Porpoise Take Reduction Plan. We implemented it through the council process we believe to the same effect to modifications thereafter.

Mr. GILCHREST. Let me——

Mr. ROSENBERG. So in many cases—I am sorry, Congressman, in many cases the agency has had to make a choice about what is an efficient way to try to achieve the goal that the teams have given us rather—even if the team has done a good job of developing a plan to try to solve a problem it may not be feasible for the agency to implement it in that form and we try to find another way to do it.

Mr. GILCHREST. So that is the Mid-Atlantic team, take reduction team?

Mr. ROSENBERG. The Gulf of Maine Harbor Porpoise.

Mr. GILCHREST. Gulf of Maine.

Mr. ROSENBERG. And then the other one was the Atlantic Offshore Cetacean Team where we closed two of the fisheries and implemented other provisions under the highly migratory species plan.

Mr. GILCHREST. So in other words the team came up within your judgment a pretty good plan but to implement that plan would have drawn all your resources from other activities of NMFS?

Mr. ROSENBERG. Other take reduction activities for a fishery that included less than 20 vessels.

Mr. GILCHREST. So as a result that NMFS didn't have the resources, if NMFS had the resources then the take reduction team's plan would have been followed through with.

Mr. ROSENBERG. It could have been followed through with if there were not other issues related to that fishery. It is not clear to me that there weren't other issues particularly related to turtles the team did not consider and we may have closed that fishery anyway because of other problems with the drift gillnet fishery. That is the fishery that we are talking about. It was a very small fishery and a very high cost and we did not judge it as cost effective to keep it open given the problems with both turtles and marine mammals.

Mr. GILCHREST. So the fishery was closed which means there is no fishing there.

Mr. ROSENBERG. All of those vessels have gone to long lining.

Mr. GILCHREST. Oh, I see.

Mr. ROSENBERG. Which with one exception which incidentally of course has an issue with turtle bycatch as well but these are very complicated things with lots of interactions. The fishermen continued fishing I think with one exception but they no longer can use drift gillnet gear as we are not allowing that gear to be used.

Mr. GILCHREST. So you said part of the plan was merged into the management council to implement. How does that work?

Mr. ROSENBERG. I am sorry. This is not my panel. I apologize.

Mr. GILCHREST. So the management council took some of the recommendations of the take reduction team and merged it into its plan?

Mr. ROSENBERG. Yes, although it was not quite so clean as that. That effectively is what happened with Harbor Porpoise or highly migratory species. There isn't a management council but there are advisory panels and some of the—well, there was a discussion of but I don't think they implemented some of the large whale take reduction measures through council action. We raised with the council and the council considered in committee, you may have even been on the committee, a number of the measures to protect Harbor Porpoise including area closures.

What we did not want to have was entirely different and disjunct area closures that were meeting two different purposes and would be totally confusing both to our enforcement agents as well as to fishermen so we tried to pull them together through the council process and I believe we did that successfully.

Mr. GILCHREST. I will let Nina respond to that and then I will yield to Mr. Faleomavaega.

Mr. NINA YOUNG. Thank you, Mr. Congressman. I think harkening back to what Dr. Calambokidis has said, what is important there and one of the reasons why that team was successful is it did have support at high levels by the NMFS personnel. They implemented that plan solely through the Marine Mammal Protection Act which was really the intent of Congress. It was also intended that there be better coordination, not kind of a piecemeal implementation of the plans, some provisions under the Marine Mammal Protection Act, some under the council.

On the one hand, we don't want to create an additional burden on the fishermen by having additional closures and such. As much as possible, the take reduction teams have tried to merge fishery management closures with marine mammal closures and restrictions. There needs to be better coordination of the fishery management council actions with the take reduction team actions. But I still think that we need to adhere to the intent of Congress and that was to implement these plans under the Marine Mammal Protection Act so that it can be enforced under that Act with all the sanctions and provisions thereof.

I think in terms of the discussion with the Atlantic Offshore Cetacean Team that fishery already was being observed. The gillnet fishery had 100 percent observer coverage. It would have been beneficial to know again, at the table, when we were coming up with what were arguably rather complex strategies to reduce take in that fishery. It would have been good to know right there at the table that this was just going to be too expensive, that really what

we were looking at was the potential, the most effective way was to close that fishery down.

That was the feedback that we are lacking, even if it is a back of the envelop calculation of what it is going to mean to the agency to implement this, that is important information that we never received, that we need to take into consideration as a team. Unless we start to have that dialog—unless that dialog starts in the team and we get that kind of feedback in terms of management and implementation, we are always going to be in this situation where there is going to be concern, and all the good faith will go out the window as far as the implementation of the team.

We need much more active participation at a lot of different levels of NMFS. Scientists really did help us a lot but in other cases I really feel for the fisheries that engaged in that negotiation only to come out the other end and have the fishery be closed. That wasn't the intent of the Act. Thank you.

Mr. GILCHREST. Thank you. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I heard your statement earlier say that you are a little confused by all this. Well, I am a little more confused but I shall attempt to raise some questions if Dr. Rosenberg will not mind if he can take the side chair again. I have a couple of questions for the National Marine Fisheries. I am sorry about that. With all the data and constructive criticism that our panelists have received this morning concerning the NMFS, would I be correct, Dr. Rosenberg, to say that one of the reasons why you are unable to do some of the things that have been alluded to earlier by the members of the panel is because of budget restrictions? Is that a fact?

Mr. ROSENBERG. Yes, sir, budget and staff restrictions, yes, sir.

Mr. FALEOMAVAEGA. All right. I noticed also that the five teams that were established under the National Marine Mammal Sanctuary Act, I noticed that out of the five established only one is for the Pacific. Now we have a very balanced approach to this committee. My good friend, the Chairman, and the gentleman who sits right next to me are very proactive as far as the Atlantic Ocean is concerned. I happen to come from the Pacific. And is there some strong implications here that we don't have as many problems in the Pacific as far as protecting the marine mammals? Is that the reason why we don't have as many teams as our friends of the Atlantic?

Mr. ROSENBERG. Congressman, I think that the reason that it has happened that way is twofold. One is that amongst the urgently needed attention where stocks on the Atlantic were immediately interacting with fisheries and in the Pacific a number of the stocks that were immediately interacting with fisheries were being dealt with under other mechanisms. For example, in Alaska there was stellar sea lion work going on through the council as well as through a recovery team although someone suggested that we should—and I believe it was suggested here we should form a take reduction team in that process as well, which is already quite complicated.

For monk seals in the Hawaiian Islands there is an endangered species issue but it is not a direct fishery interaction issue. And of course there are some other interactive issues that have been dealt

with under other legislation such as tuna-dolphin, so there are a number of things going on in the Pacific but not so much directly through the take reduction team process. It is not because we are less interested of course in Pacific fisheries but we try to choose the marine mammal fishery interactions that seem ready to move into a take reduction process and didn't already have some other kind of forum where the issues were being discussed.

Mr. FALEOMAVAEGA. We are having a royal battle going on now between the Department of Commerce and the Department of Interior as to which agency should have the lead on protecting our coral reefs, and I notice also the involvement of the Department of Agriculture. When you capture a marine mammal it comes under the Agriculture Department. This is a very distinct scenario here. We have three Federal agencies involved and I would like to ask Dr. Rosenberg is this going on OK between you and National Fisheries in trying to determine whether an animal goes into a certain thing and all of a sudden you just stop right there and AFIS has to come in and take over. Is this a pretty good way of running the provisions of this Act?

Mr. ROSENBERG. I understand your question, Congressman. I think that you are referring to animals that are held in captivity and then dealt with other AFIS rules such as the monk seals that were then transferred to Sea World in Texas. And they have the expertise on display animals. That has been not so much of a problem. The larger issue is how do we protect the monk seals in place. There is, as you noted, both Department of Interior interest as well as Department of Commerce interests and I am sure you can recognize that I have absolutely no opinion on that matter.

However, I would point out that National Marine Fisheries Service, the Department of Commerce has the overall expertise in marine resource science and management and I believe coral reef. Corals are all marine but with regard to monk seals similarly we had been working intensively in the northwest Hawaiian Islands to try to develop measures for protection among seals and will continue to do so. The interaction in the reef ecosystem is a complex one and certainly needs a lot more work. I don't think agriculture is involved in that part, only in the display part.

Mr. FALEOMAVAEGA. If I could ask the members of the panel and also Dr. Rosenberg, do you see any provision in the current law that is defective to the extent that we really need to make amendments? Do we need to make any major surgery on any of the provisions to the current law so that it becomes more palatable? We can work with it in a more practical way.

Are we putting too much on the table as far as the Congress is concerned —and yet we have so many shortcomings on the ability of the Administration and the commissions or whatever groups there are to enforce the provisions of this Act. Are there any provisions here that you would recommend, Dr. Rosenberg, that we ought to change?

Mr. ROSENBERG. Congressman, I don't think that there are specific provisions we ought to change but I do believe that we—staff is probably going to throw something at me if I miss something but our biggest concern is whether we can effectively carry through the process with the team, take reduction teams, have sufficient re-

sources, staff them sufficiently and provide them the information in a sufficient manner for them to do the work.

I don't think that is a matter of changing the law although the deadlines of course are as everyone has noted are problematic for us and they are statutory.

Mr. FALEOMAVAEGA. Members of the panel.

Mr. WHITE. Just as a followup to what Dr. Rosenberg said, I am wholly supportive of the process as it is conceived and I think it is just something we need to build on. I am not an expert at all on the laws and I can't see that as I understand them now things need to be changed other than we need to do what its original intent was and just build on that. I think the process is there and the process is an excellent one. I am wholly supportive of it but it is like what I understand an unfunded mandate is. It just needs to be carried further and improved on.

Mr. FALEOMAVAEGA. Ms. Young.

Ms. NINA YOUNG. Thank you. We totally reviewed the Act and have given this a lot of thought and we would be happy to provide you with our recommendations for amendments to the Act. I could probably encapsulate that by saying for the most part there are technical changes, things to make the Act run more smoothly, oversights, that once we got involved in the implementation we hadn't really thought about. I think that Section 117 and 118 are functioning well.

I understand that there is a problem with the deadlines. We would probably recommend changes there along the lines of including again higher level participation by NMFS personnel in the take reduction team process but overall I think those provisions are functioning as we had hoped even though they aren't meeting their deadlines and that potentially with more time we will see them reach their targets, the zero mortality rate goal, the Potential Biological Removal.

My view is that the time that we spent has been more or less growing pains in trying to implement this rather complex section of the law. Overall, in other areas, I think we need additional research into deterrence for pinnipeds to keep them away from fishermen's gear and catch and we need a much more dedicated effort in that regard, as Dr. Reynolds said.

We also need to start to think proactively about the health of marine mammal stocks. In some cases, stocks have recovered. In other cases, we have concerns about Hawaiian monk seals and even healthy stocks like California sea lions. We are seeing a much larger occurrence of cancers, various tumors, diseases, hepatitis, herpes virus in these animals than ever before and I think we would really welcome the Congress to look at Title IV, which is the Marine Mammal Health and Stranding Response Act, and look to ways to bolster that effort to better assess the health of marine mammal stocks.

Mr. FALEOMAVAEGA. I am not a scientist, Ms. Young, but I would think that Dr. Rosenberg is probably aware of the fact that these diseases in these animals were not on their own. It probably had a lot to do with human pollution.

Ms. NINA YOUNG. That is correct.

Mr. FALEOMAVAEGA. And our lack of providing a clean environment for them to live in. Please. I am sorry.

Ms. NINA YOUNG. That is it. Thank you very much.

Mr. FOSTER. I have to admit that I was not involved in drafting this Act and I am not familiar with it. As fishermen, we should have been more active when this came along. I have serious concerns about the ability to reach a zero take on the animals and whether or not that is—it is not just feasible or whether it makes sense to try that and still try to produce food from the ocean. It winds up that everything we do every year is a compromise.

Some stocks such as the right whale may go extinct the way it is going now no matter what we do even if we stopped all fishing. It looks like the way they are headed right now they may be gone. Other stocks are going to do quite well no matter how much fishing we do and to have it across the board that we are trying to get to zero take the Act may prescribe something that doesn't make a whole lot of sense to me as a person who produces seafood.

Mr. FALEOMAVAEGA. Well, as I recall, the problem that we were having with the dolphins because our method fishing was not only purse seining, but in other methods of fishing that we were killing about a half a million dolphins a year. An interesting thing was that it wasn't because the Congress in its wisdom that decided to come out with a ban on doing the method of fishing that we had, it was because of the outcry of the American people. And it did such a tremendous effect on the leaders on the Hill that that is when we came about in passing a law to ban this method of fishing that killed half a million dolphins a year——because the purse seining method was utilized.

But now we have changed that again and my good friend here from New Jersey and I have a—I'm more of a purist when it comes to this, because now we are killing only about 3,000 dolphins a year as a result of this mandate. And of course I am a little familiar because Starkist Tuna had a little problem here in the way that they were advertising, how they were capturing the tuna. My district happens to have the largest tuna canning facility in the world. I am a little familiar with this issue.

But as you had mentioned, sir, about the fishing industry if there is anything I want to do it is protect the fishing industry as well. But at the same time my real sense of serious complaint is that while we are putting our commercial fishing industry on this high standard that you are not to capture these mammals, not do this, what about the other countries in the world and their fishing methods. I will tell you right now they are not in any way near the standards that we are putting on our fishing industry, and I think that is a crying shame but that is what we are living with as far as reality is concerned, and I don't agree with that.

But I do appreciate your concerns, sir, about the fishing industry and I will get to that in the next question. I didn't mean to disrupt Ms. Young. She might have a strong feeling about what I am saying. I am not an expert on this Act myself but I just wanted to know if there are obvious problems. I would like to suggest, and I am sure the Chairman would agree, if you have any specific suggestions on proposed changes or amendments to the current law that we ought to look at.

We are open, and one thing I do enjoy is working with my good friend here, the Chairman we are very sensitive about the needs of the community. Ms. Young.

Ms. SHARON YOUNG. Thank you. I couldn't agree with some of your comments more. As a matter of fact, I think the Act does not need major surgery and I think we have a lot to be proud of with it. I think it serves as an example to many other countries. Australia and other countries have adopted similar protective measures because of the example we have set and I think there is a lot to be proud of.

And I think some of our great concerns are because of that disparity and because of our trade agreements with other countries. We are often finding ourselves in very difficult positions because of the trade agreements we have made that may undermine our own protective agreements and a study that came out about a year ago by Steven Keller of Yale University indicated that attitudes of the American people toward marine mammals haven't changed at all really. They are just as strongly supportive as ever.

I am perhaps a little bit complacent in thinking we have saved all the whales but I think their feelings are so deep that they are easily aroused and I think that the Act's existence has made a lot of people feel a lot better about how we are treating those animals I think most of us care so much about. In my testimony I mentioned some minor possibilities including the inclusion of recreational fisheries which may have similar impacts to commercial fisheries where the commercial fisheries are called to count and the recreational fisheries right next door with the same net doesn't have to do anything any different necessarily.

And there may need to be some clarifying regarding language dealing with enforcement because there was apparently some concern by enforcement people about what their authority is to enforce the provisions. But most specifically I think—and also the Marine Mammal Commission suggestion about perhaps stakeholder process that might be able to include other interactors such as boats and so forth is just a clarifying thing but it is not major surgery.

And most specifically the funding issues do have to be addressed. I think the budgets have to be dramatically increased so where the MMPA deals with budget line items the biggest change would be making those numbers go a lot higher if it is possible.

Mr. FALEOMAVAEGA. Please.

Mr. CALAMBOKIDIS. I don't have specific language and I couldn't comment on the language. I can make some of the points that I see could be improved in the process and I don't know how they exactly translate into changes to the Act. Certainly some of the time lines were difficult for the groups to deal with. One aspect that got briefly alluded to, the zero mortality rate goal, is something the Pacific team is now dealing with and having clearer definitions of what that means so that that is an essential element of how the team can work together to know if it has come up with an adequate plan right now.

It is somewhat vague and you have some latitude to take in other economic factors and the fishery and what is practical but it is important that things be as clearly defined as possible for the team to work toward consensus. And then the other thing that has

been alluded to several times is I think aspects of funding and support for things like the assessments. There was a mention earlier of the use of the minimum population estimates in calculating these potential biological removals.

And what that does, and I think it is a healthy thing, is it puts pressure on accurate assessments. The more accurate and less uncertainty in your assessment, the closer that minimum estimate is to the best estimate and so it does put an important force and need for accurate assessments. There were other aspects on our team, things like pinger development. There is little support for testing better ways.

The pingers were developed and we found co-incidentally they worked fairly well with other species but few experiments done what might be a more optimal frequency species by species that would work more effectively than just right now we are using the same pinger used for Harbor Porpoise out in the Pacific to try to alert beat whales and there may be other frequencies that would work better.

And then there was also mention enforcement is a key issue. Interestingly enough, within the Pacific Take Reduction Team the strongest voices for better enforcement were from the fishermen themselves because what they didn't want to see is those of them that followed the provisions of the take reduction team played by the rules to reduce mortality to be undercut by the fact other people could be getting away without following the provision.

So that was something, enforcement across the board they wanted to see and there were very great difficulties in seeing how the resources could be brought to bear to provide that for something like an offshore fishery in the Pacific.

Mr. FALEOMAVAEGA. Thank you very much. I really appreciate your comments. I just started serving as a member of this subcommittee last year. Why our country has to import $7 billion worth of fish which goes to the pockets of foreign countries, and why our own country cannot produce domestically enough fish for our own consumers is beyond me.

With all the technology and the capabilities that come with a $1.7 trillion budget——and we are having to buy fish from other countries. It is something that I hope the Chairman will want to pursue. One of the trends that is happening now in my observation, it is quite obvious that the Atlantic is over fished and now they are coming over to the Pacific. The nation of Kiribati [ph] has just accepted about 14 purse seiners from the Spanish fishing purse sein industry.

They are going to be fishing for tuna at Kiribati and there are several other island groups that are going to be doing this because they are hard up in their own local economies. But what is happening now is that they are coming over to the Pacific to do a lot of fishing. And I think this issue definitely is going to be a global one, not just our own interest, but it is going to create demands on the entire planet if we don't take up conservation measures as we are now trying to do. Soon we could face the same problems that we are now faced with in the Atlantic region. Mr. Chairman, thank you and thank you again, Dr. Rosenberg, and members of the panel.

Mr. SAXTON. Thank you, Mr. Faleomavaega. There are a series of questions that other members have for the panel but we are not going to ask you to sit here for another 2 hours through lunch because Mr. Faleomavaega forgot to bring pizza for everybody so——

Mr. FALEOMAVAEGA. Actually, Mr. Chairman, I was going to bring some raw fish but I didn't know if they——

Mr. SAXTON. I do want to thank everyone on the panel for their insight and for their expertise they have given us today. The hearing record will be held open for 30 days for responses from the witnesses and the members, and we will try to reach into this Act and collaborate with all of you today to make sure that our human response to this human-induced crisis is fixed for succeeding generations.

I do want to thank all of you for your patience, Mr. Faleomavaega for his patience with my lengthy questions and then my patience with his lengthy questions and for all your lengthy responses. I want to thank you all very much. We do have other questions that we will probably get to you and continue to work on this issue. And I thank all of you for your dedication. The hearing is adjourned.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

[Prepared statement of Mr. Faleomavaega follows:]

Statement of the Honorable Eni F. H. Faleomavaega
Oversight Hearing on the Marine Mammal Protection Act
Tuesday, March 28, 2000 at 10:00 a.m.

Good morning Mr. Chairman.

I would like to also extend a welcome to our panel of witnesses and express my appreciation for their cooperation and willingness to testify before the subcommittee today on implementation of programs and activities authorized under the Marine Mammal Protection Act. I will be very interested to hear from all of you, but before you get your chance to speak, I would like to make a few brief remarks.

This hearing is the second in what will be a short series of oversight hearings concerning implementation of the 1994 amendments to the Marine Mammal Protection Act. I commend the Chairman for his wisdom in recognizing that in this instance, it is not only appropriate, but necessary, for this subcommittee to conduct thoughtful oversight before leaping into legislation. I look forward to continuing this series of productive hearings, and believe that they will be most helpful to our future deliberations.

I also suggest that the subcommittee exercise caution as it continues this process. The 1994 amendments inserted several new provisions into the Act which have proven to be very challenging for the Agencies to implement. For example, the 1994 amendments required NOAA to convene "take reduction teams" for all Category I and Category II fisheries that interact with marine mammals. Yet 5 years after enactment, I am surprised and disappointed to learn that only 5 "take reduction teams" have been convened, and little substantive success has been made in developing "take reduction plans" for these fisheries.

I am forced to ask, how are we ever going to reach the goal of a zero

mortality rate for marine mammal mortalities and serious injuries incidental to commercial fishing operations, if we cannot make progress on developing and implementing these essential management tools? This subcommittee needs to determine conclusively why a situation like the delays in convening "take reduction teams" has happened, before proposing a legislative remedy. I am glad that Chairman Saxton is committed to a thorough review of the obstacles or problems, whatever the source.

With these thoughts in mind, I look forward to working with you as we get down to the business of oversight, and I look forward with great interest to hearing from our witnesses.

Thank you, Mr. Chairman.

HEARING ON: SECTION 119 OF THE MARINE MAMMAL PROTECTION ACT

House of Representatives,

SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met pursuant to other business at 2 p.m. in Room 1334, Longworth House Office Building, Hon. Don Young [Chairman of the Committee] presiding.

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA; CHAIRMAN, COMMITTEE ON RESOURCES

Mr. YOUNG. The meeting will come to order. Today's hearing will focus on Section 119 of the Marine Mammal Protection Act. Section 119 authorizes the Secretaries of Commerce and Interior to enter into cooperative Agreements with Alaska Native Organizations to conserve marine mammals and provide for the co-management of subsistence use of marine mammals by Alaska Native communities.

The Agreements entered into by the Agencies and the Alaska Native Organizations can include grants to support the collection of population data, monitoring of harvests, and research activities. It is important that the users of these resources be active participants in the research and populations surveys because they have local and historical knowledge that can be useful to the collection of this information.

The Secretary of the Interior has co-management Agreements with the Alaskan Sea Otter and Sea Lion Commission, the Alaskan Polar Bear Commission, and the Eskimo Walrus Commission. The Secretary of Commerce has a co-management Agreement with the Alaska Native Harbor Seal Commission and is currently in negotiations with the Alaska Beluga Whale Committee, the Cook Inlet Marine Mammal Council, and the Tribal Government of St. Paul.

I would like to have a dialogue today on the processes used to develop these Agreements, the length of time it has taken to implement them, and the relationships between the Alaska Native Marine Mammal Commissions and Agencies.

I am concerned that the annual renewal of the research portion of the Agreements and would like to know why the Agreements were developed this way and if this annual renewal hinders the long-term goals of the Commissions.

I want to thank the witnesses for appearing before the Subcommittee, especially those who have traveled so far down to testify today. Especially, as I begin, I would like to thank those, my constituents, the distinguished Alaskans who traveled so far to give their valuable insights on the Marine Mammal Protection Act.

[The prepared statement of Mr. Young follows:]

STATEMENT BY THE HONORABLE DON YOUNG, CHAIRMAN, COMMITTEE ON RESOURCES, AT THE SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS HEARING ON SECTION 119 OF THE MARINE MAMMAL PROTECTION ACT: APRIL 6, 2000.

Today's hearing will focus on Section 119 of the Marine Mammal Protection Act. Section 119 authorizes the Secretaries of Commerce and Interior to enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals and provide for the co-management of subsistence use of marine mammals by Alaska Native communities.

The Agreements entered into by the Agencies and the Alaska Native Organizations can include grants to support the collection of population data, monitoring of harvests, and research activities. It is important that the users of these resources be active participants in the research and population surveys because they have local and historical knowledge that can be useful to the collection of this information.

The Secretary of the Interior has co-management agreements with: the Alaska Sea Otter and Sea Lion Commission, the Alaska Nanuuq (polar bear) Commission, and the Eskimo Walrus Commission. The Secretary of Commerce has a co-management agreement with the Alaska Native Harbor Seal Commission and is currently in negotiations with the Alaska Beluga Whale Committee, the Cook Inlet Marine Mammal Council, and the Tribal Government of St. Paul.

I would like to have a dialog today on the process used to develop these Agreements, the length of time it has taken to implement them, and the relationships between the Alaska Native Marine Mammal Commissions and the Agencies.

I am concerned with the annual renewal of the research portion of the Agreements and would like to know why the Agreements were developed this way and if this annual renewal hinders the long-term goals of the Commissions.

I thank the witnesses for appearing before the Subcommittee and look forward to hearing today's testimony.

In particular, I want to warmly welcome my constituents, those distinguished Alaskans who have traveled so far to give us their valuable insights on the Marine Mammal Protection Act.

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MEMORANDUM

TO: Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

FROM: Subcommittee Majority Staff

RE: Oversight hearing on the Marine Mammal Protection Act

At 2:00 p.m. on Thursday, April 6, 2000, the Subcommittee on Fisheries Conservation, Wildlife and Oceans will meet in Room 1334 Longworth House Office Building to conduct an oversight hearing on the Marine Mammal Protection Act of 1972. The hearing will focus on the development of co-management agreements between the Alaska Native Organizations and the National Marine Fisheries Service or the U.S. Fish and Wildlife Service. Those invited to testify include: The Honorable Bruce Babbitt, Secretary of Interior; Ms. Penelope Dalton, Assistant Administrator of Fisheries, National Marine Fisheries Service; Mr. Caleb Pungowiyi, Chairman, Indigenous People's Council for Marine Mammals; Mr. Charlie Johnson, Executive Director, Alaska Nanuuq Commission; Ms. Monica Riedel, Executive Director, Alaska Native Harbor Seal Commission; Mr. Alvin Osterback, Chairman, Aleut Marine Mammal Commission; and Ms. Magaret Roberts, Alaska Sea Otter and Steller Sea Lion Commission.

BACKGROUND

The Marine Mammal Protection Act:

The Marine Mammal Protection Act (MMPA) was enacted in 1972 for the purpose of ensuring that marine mammals are maintained at, or in some cases restored to, healthy population levels. The original Act established a moratorium on the taking (under the MMPA a "take" is defined as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal") or importing of marine mammals and marine mammal products except for certain activities which are regulated and permitted.

Under the MMPA, jurisdiction over marine mammals in the wild is split between two agencies, the U.S. Fish and Wildlife Service (USFWS) (under the Department of the Interior) and the National Marine Fisheries Service (NMFS) (under the National Oceanic and Atmospheric Administration within the

Department of Commerce). The USFWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus, while the NMFS has jurisdiction over all other marine mammals. The 1994 amendments transferred authority of captive marine mammals to the Animal and Plant Health Inspection Service (APHIS) (under the Department of Agriculture).

Section 101 of the MMPA establishes the Alaska Native exemption, with respect to the taking of marine mammals. Any Indian, Aleut, or Eskimo, who resides in Alaska and who dwells on the coasts of the North Pacific or Arctic Oceans, can take a marine mammal for subsistence purposes or for purposes of creating and selling authentic articles of handicrafts and clothing.

The Secretary has the authority to regulate subsistence harvests by Alaska Natives, only when the stock is listed as depleted under the MMPA (or listed as threatened or endangered under the Endangered Species Act). The Secretary must issue a notice and hold a hearing on any regulations prescribed to limit subsistence harvests. The regulations can include the specific marine mammal, the geographical description of the area, the season for taking the stock and any other relevant factors.

To pro-actively manage marine mammal populations in Alaska and avoid depleted listings, the 1994 amendments to the MMPA, (Public Law 103-238), created Section 119 - Marine Mammal Cooperative Agreements in Alaska and a new subsection (d) in Section 110.

Section 110(d) of the MMPA authorizes the Secretary of Commerce in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native Organizations to undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem. Based on this section, the Agencies have entered into a "Memorandum of Agreements for Negotiation of Marine Mammal Protection Act Section 110 Agreements" with the Indigenous People's Council for Marine Mammals. This umbrella agreement was designed to be a template for the development and implementation of co-management agreements under Section 119. The MOA recommends that the co-management agreements consider: collection and analysis of marine mammal natural history and population data; development of co-management infrastructures; cooperation in enforcement efforts; establishment of harvest levels; development and distribution of public education materials; development of management plans; incorporation of traditional knowledge into management decisions; and training.

Section 119 allows the Secretaries of Commerce and the Interior to enter into cooperative agreements with Alaska Native Organizations (ANOs) to conserve marine mammals and provide co-management of subsistence use by Alaska Natives. The Section also allows for the use of grants to facilitate the collection and analysis of data on marine mammal populations, the monitoring of subsistence harvests, research, and developing marine mammal co-management structures with Federal and State agencies.

The Secretary of the Interior has co-management agreements with these ANOs: the Alaska Sea Otter and Sea Lion Commission, the Alaska Nanuuq (polar bear) Commission, and the Eskimo Walrus Commission. The Secretary of Commerce has a co-management agreement with the Alaska Native Harbor Seal Commission and is currently in negotiations with the Alaska Beluga Whale Committee, the Cook Inlet Marine Mammal Council, and the Tribal Government of St. Paul. There are a number of other ANOs that regulate the harvest of marine mammals but do not have an agreement: the Bristol Bay Marine Mammal Council; the Sitka Marine Mammal Council; the Aleut Marine Mammal Commission; and the Pribilof Island Marine Mammal Commission.

The 1994 amendments to the MMPA authorized $1.5 million for the Secretary of Commerce and $1 million for the Secretary of the Interior through fiscal year 1999. To date, the Secretary of Commerce has not received funding under Section 119; however, there is a Native Marine Mammal Commissions line item in the Commerce, State, Justice Appropriations bill. In FY 2000, the Alaska Eskimo Whaling Commission received $400,000, the Alaska Harbor Seal Commission received $150,000, the Beluga Whale Committee received $225,000, the Bristol Bay Native Association received $50,000, and the Aleut Marine Mammal Commission received $125,000. The Secretary of the Interior has received $250,000 annually since 1997.

ISSUES

1. How have the Alaska Native Organizations and the Agencies worked together to implement the co-management agreements?

2. Have the co-management agreements been successful in conserving and managing marine mammal populations in Alaska? Have they been in place long enough to make this determination?

3. What type of projects have been funded by Section 119 grants?

4. Have the Agencies made contact with all of the Marine Mammal Commissions in Alaska regarding the establishment of co-management agreements? What has been the response?

5. In the case of those Commissions that currently do not have a co-management agreement, what steps are necessary to develop and implement one with the appropriate Agency?

6. If a Commission wants to have an agreement involving a number of marine mammal species, is it possible to implement a co-management agreement that is all inclusive or is it necessary to have several co-management agreements for each individual species?

7. What happens when more than one group wants to have a co-management agreement to cover a single stock?

8. Do the Commissions coordinate with one another in those cases where marine mammal populations cover a broad geographical range? Does the co-management agreements take this issue into account?

9. The Nanuuq (polar bear) Commission currently has a co-management agreement in place. This polar bear population is shared with Russia which currently allows a subsistence hunt of this species. Does the co-management agreement reflect Russia's activities allowing a take of polar bears?

Mr. YOUNG. We do not have a ranking minority member here, but that is their problem right now. We will go ahead with the hearing. And the first witness I would like to call up, I understand that Penny Dalton is caught in traffic.

Ms. DALTON. She is here.

Mr. YOUNG. Oh. She is here. All right. Good. I mean, you did that on show. I am surprised there wasn't a band playing and a little applause, Penny. But thanks for making it and I am sorry about the traffic. I was just about to announce you were caught in traffic.

So we will start with Panel I, and Ms. Dalton will be the Assistant Administrator for Fisheries, National Marine Fisheries Service. And joining her would be David Allen, Regional Director of Fish and Wildlife Services. And the two of you—David, would you join them, please? And, Penny, if you want to, I will let you catch your breath. I will let David go first or vice versa. Is that all right?

Ms. DALTON. Yeah.

Mr. YOUNG. David, would you mind going ahead and giving your testimony first and just let her get her breath and have a glass of water?

Mr. ALLEN. That is fine, Mr. Chairman.

STATEMENT OF MR. DAVID B. ALLEN, REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, ALASKA

Mr. ALLEN. Mr. Chairman, I appreciate the opportunity today to testify. I am David Allen, Regional Director for the Fish and Wildlife Service in Alaska. My testimony is on the Service's implementation of the Marine Mammal Protection Act and in particular, on Section 119, Cooperative Agreements with Alaska Native Organizations for the conservation of polar bears, sea otters, and Pacific walrus.

In addition, I will be recommending that the Act's authority be expanded to allow Alaska Native Organizations, in cooperation with the Service, to manage subsistence use of marine mammals prior to individual stocks becoming depleted.

Mr. Chairman, the Section 119 Amendment, in 1994, has been a positive addition to the MMPA. Marine mammals are of vital importance to Alaska Natives for both cultural and subsistence purposes and are visible indicators of change in the marine environment. Alaska Natives, as subsistence users, are often first to note changes in marine mammals that are important to assessing conditions in the marine environment.

Section 119 recognizes these connections and allows their potential benefits to be realized. We currently have three Section 119 cooperative Agreements in place with the Alaska Sea Otter and Steller Sea Lion Commission, the Alaska Nanuuq Commission, and the Eskimo Walrus Commission. These Agreements have been in place since 1997 and provide a contractual framework for accomplishing specific activities for the conservation of marine mammals.

A basic benefit of these Agreements has been improved communication between the Commissions and the Service and among the Commission members who represent the Alaska Native hunters and their respective villages.

To illustrate the value of Section 119, I will share with you three examples of the success we have had in working with our Alaska Native partners. My first example is the Cooperative Biological Sampling Program and mortality surveys of sea otters around a fish-processing facility in Cordova. This cooperative effort with the Alaska Sea Otter and Steller Sea Lion Commission is leading to a change in the facility's discharge practices and permits from the EPA to protect sea otters that have been dying from parasite infections caused by eating waste from processed fish.

In another example, the Alaska Nanuuq Commission has been a full partner with us in developing a draft Agreement between the United States and the Russian Federation on the conservation and management of the Alaska-Chukotka Polar Bear population. In addition, we have assisted the Nanuuq Commission in a study to compile traditional ecological knowledge of polar bears in the Chukotka region of Russia.

My third example of successful partnership is our work with the Eskimo Walrus Commission. A recent product of our partnership with this Commission is the collection of walrus harvest information in Russia. The collaboration began with a bilateral workshop on harvest monitoring followed by training of Russian harvest monitors in the Village of Gambell on St. Lawrence Island. And, as you know, that is in the Bering Sea just about 60 miles from Russia. The newly trained Russian native monitors collected harvest data in Chukotka that provided vital important information on the Pacific walrus population.

Mr. Chairman, although we have made significant progress in working with our Alaska Native partners on marine mammal conservation matters, we could do much more if we had expanded authority for co-management Agreements. Currently the MMPA does not include enforceable provisions for management of subsistence harvests of marine mammal stocks before they become depleted.

Under existing Section 119 and cooperative Agreements, we can work with our Native partners to develop management strategies implemented through local authorities, such as tribal ordinances. However, this arrangement is strictly voluntary on a village-by-village basis with further limitations related to the scope of jurisdiction and enforcement authority.

Our goal is to expand Section 119 to include enforceable management provisions governing the Native subsistence harvest of marine mammal stocks prior to depletion through co-management Agreements. We are working with our Alaska Native partners and the National Marine Fisheries Service to develop such a proposal. When we reach consensus on the provisions of a co-management proposal, we will advise the Subcommittee.

Mr. Chairman, in closing, I want to emphasize the Service's commitment to working with Alaska Native partners in the conservation and management of marine mammals. Ultimately, we believe it will be more effective to conduct our marine mammal conservation responsibilities through enhanced co-management Agreements with Alaska Native subsistence users and the appropriate federal partner. Such Agreements can be structured to ensure our Alaska Native partners have the first opportunity to address specific management issues and concerns.

We do envision, however, that the federal government will retain ultimate authority for enforcement of the MMPA, international treaty obligations, stock assessments, and permit programs.

Mr. Chairman, that concludes my remarks and I will be happy to answer any questions. Thank you.

[Prepared statement of Mr. David B. Allen follows:]

TESTIMONY OF DAVID B. ALLEN, REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS, OVERSIGHT HEARING ON THE IMPLEMENTATION OF SECTION 119 OF THE MARINE MAMMAL PROTECTION ACT.

April 6, 2000

Mr. Chairman, I am grateful for the opportunity to provide testimony on the U.S. Fish and Wildlife Service's (Service) implementation of the 1994 amendments to the Marine Mammal Protection Act (MMPA) of 1972 and in particular, our implementation of Section 119 - Marine Mammal Cooperative Agreements in Alaska. The Marine Mammal Protection Act establishes a Federal responsibility for the management and conservation of marine mammals. Under this statute, both the Secretary of the Interior and Secretary of Commerce have management responsibility. Specifically, the Secretary of the Interior, through the Service, protects and manages polar bears, sea and marine otters, walruses, three species of manatees, and dugongs. One of the 1994 amendments to the Act (Section 119) authorized the Service to enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals taken for subsistence and handicraft purposes.

Mr. Chairman, the Service believes that Section 119 has been a positive addition to the Act for the conservation of marine mammals. Marine mammals are a vitally important cultural and subsistence resource for Alaska Natives, and are visible indicators of change in the marine environment. Alaska Natives, as subsistence users, are often first to note changes in marine mammals that are important to assessing conditions in the marine environment. Section 119 recognizes these connections and allows their potential benefits to be realized.

To illustrate the benefits of Section 119, I will share some of the progress we have made in working with our Alaska Native partners to increase our knowledge about marine mammals, improve communication and management processes, and negotiate a new bilateral agreement with Russia for the Conservation and Management of Polar Bears.

I will also provide suggestions that we believe will build on this significant progress and enhance our ability to protect marine mammal resources. We recommend the Committee consider expanded authority for co-management agreements under the Act. Specifically, as we reported to this committee last year, we believe it is time to develop a proposal that allows Alaska Native Organizations, in cooperation with the Service, to manage their subsistence use of marine mammals prior to individual stocks becoming depleted.

First, let me share with you some of our success stories. The Service currently has three cooperative agreements in place: (1) for sea otter, with the Alaska Sea Otter and Steller Sea Lion Commission; (2) for polar bear, with the Alaska Nanuuq Commission; and (3) for Pacific walrus, with the Eskimo Walrus Commission. These agreements have been in place since 1997 and provide a contractual framework for accomplishing specific activities, which are detailed through "scopes-of-work" attached to the cooperative agreement. Agreements are reviewed and implemented annually. A basic benefit of these agreements and the resources they provide is improved communication not only between the Commissions and ourselves, but also among the Commission members.

Both the Alaska Sea Otter and Steller Sea Lion Commission and the Service emphasize involving local Native organizations in the management of activities that affect sea otters throughout the State of Alaska. Such efforts include: development of local sea otter management plans; collection of traditional knowledge regarding sea otter distribution and abundance; and ongoing local projects to assess sea otter population trends and health. A specific example illustrating the involvement of tribal members is the cooperative biological sampling program and mortality surveys that documented the change in feeding habits and the associated mortalities of sea otters around a fish processing facility over the past several years. This has led to efforts, involving the local tribe, the fish processing facility, the Service and the U.S. Environmental Protection Agency, to change the discharge practice. This problem was first identified by a local observer working with the Commission.

The Alaska Nanuuq Commission (ANC) was formed in 1994 to represent Alaska Native hunters from 16 coastal communities in Alaska on polar bear matters. Our cooperative agreement with the ANC supports polar bear conservation with the direct involvement of subsistence users. A highlight of our work with the ANC has been the Commission's support in developing a draft bilateral agreement with Russia on the conservation of the Alaska-Chukotka Polar Bear population. The ANC coordinated meetings, conducted negotiations, and developed a Native-to-Native agreement with Russia's Chukotka Natives to assist in implementing the agreement between countries. Another accomplishment of working with the ANC has been the expansion of the effort to study and compile traditional ecological knowledge of polar bear habitat use to include Chukotka, Russia.

Our agreements with the Eskimo Walrus Commission relating to Pacific walrus help the Commission network with village hunters, conduct biological and contaminant monitoring, and promote sustainable harvest and conservation actions. An important outcome of our partnership with this Commission is the collection of walrus harvest information in Russia. The collaboration began with a bilateral workshop on harvest monitoring followed by the training of Russian harvest monitors in Gambell during that village's spring harvest. Subsequently, the newly trained monitors collected harvest data in Chukotka. This partnership among native hunters from the two countries provides vitally important information about the walrus population.

Although we have made significant progress in working with our Alaska Native partners, we can do much more to manage and conserve marine mammals cooperatively by expanding the authority for co-management agreements. The MMPA does not include enforceable provisions for management of subsistence harvests of marine mammal stocks before they become depleted. Under Section 119 and our existing cooperative agreements, we can work with our Native partners to develop management strategies implemented through existing authorities, such as tribal ordinances. This is a limited capability, however, as it is a strictly voluntary endeavor on a village-by-village basis with further limitations related to the scope of jurisdiction and the level of compliance and enforcement authority.

Our goal is to work with our Alaska Native partners to develop an expanded Section 119 with enforceable management provisions for marine mammal stocks prior to depletion through co-

management agreements. We are working with our Alaska Native partners and the National Marine Fisheries Service to develop such a proposal. When we reach consensus on the provisions of a co-management proposal, we will advise the subcommittee.

Mr. Chairman, in closing, I would like to emphasize the Service's commitment to continued collaboration with our Alaska Native partners to further enhance their role in the conservation and management of marine mammals. Ultimately, we believe we can be more effective at addressing our responsibilities in marine mammal conservation through enhanced co-management agreements between Alaska Native subsistence users and the appropriate Federal partner. Such agreements can be structured to ensure our Alaska Native partners have the first opportunity to address specific management issues and concerns. We do envision, however, that the Federal government will retain ultimate authority for enforcement of the MMPA, international treaty obligations, certain monitoring and reporting requirements, life history studies and permit programs.

Mr. Chairman, this concludes my remarks and I would happy to answer any questions.

Mr. YOUNG. Thank you, David. That was excellent testimony and it was right on time. That usually doesn't happen.

Mr. ALLEN. Thank you.

Mr. YOUNG. Penny, you are up.

STATEMENT OF PENELOPE DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Ms. DALTON. Okay. Between the tour buses and the roadwork, getting from Silver Spring down here is quite an adventure. Good morning, or good afternoon, Mr. Chairman. I am Penny Dalton, Assistant Administrator for NOAA Fisheries. Thank you for inviting me to testify today on development—

Mr. YOUNG. Penny, is that mike on?

Ms. DALTON. Yeah.

Mr. YOUNG. Okay. Bring it a little closer.

Ms. DALTON. Testify today on development of co-management Agreements with Alaska Natives under the Marine Mammal Protection Act. Section 119 of the MMPA authorizes the Secretaries of Commerce and Interior to enter into cooperative Agreements with Alaska Native Organizations for the co-management of marine mammals subsistence harvests.

In 1997, NOAA Fisheries, the U.S. Fish and Wildlife Service, the U.S. Geological Survey, and the Indigenous People's Council for Marine Mammals signed an umbrella Agreement. The umbrella Agreement establishes guiding principles for the negotiation of subsequent Agreements. It calls for stocks to be maintained at levels that support subsistence harvests and equal participation by Alaska Natives and harvest decisions. Other elements include collection analysis of population data, adequate enforcement, education activities, and management plans.

Co-management Agreements have been developed under Section 119 for beluga whales, harbor seals, Steller sea lions and northern fur seals. Prior to enactment of Section 119, an Agreement was signed with the Alaska Eskimo Whaling Commission for co-management of bowhead whales.

With respect to beluga whales, NOAA Fisheries entered into an Agreement in December 1999 with the Alaska Beluga Whale Committee to manage the western Alaska populations. The Agreement covers beluga whales in the Beaufort, Chukchi, and Bering Seas and promotes scientific research on the species.

A separate Agreement to co-manage this year's harvest of Cook Inlet beluga whales recently was negotiated with the Cook Inlet Marine Mammal Council and is now in the NOAA clearance process. Authorized legislatively, the Agreement specifically provides for the allocation of one whale to the Native Village of Tyonek. It is subject to the National Environmental Policy Act and we currently are developing an environmental impact statement. A new Agreement will be negotiated for harvest in 2001 and beyond based on the outcome of the proposed depletion determination and the agency response to a petition to list Cook Inlet belugas as endangered.

In April 1999, NOAA Fisheries entered into an Agreement with the Alaska Native Harbor Seal Commission for harbor seal conservation and management throughout Alaska. Under the Agreement, a committee comprised of commission officers and the NOAA Fisheries staff will develop action plans for harbor seals. The plans will identify activities to be undertaken by the parties for population monitoring, harvest management, education, and research.

On Steller sea lions and northern fur seals, we currently have a draft Agreement with the Tribal Government of St. Paul in the NOAA clearance process. This Agreement provides for co-management of subsistence harvests on St. Paul Island and establishes a committee similar to those under other Agreements. It calls for cooperation and monitoring, research, disentanglement programs, maintenance of fur seal rookeries, and education programs.

One significant issue in developing co-management Agreements is which Alaska Native group should participate. Section 119 and the accompanying House report suggest that any Native organization or tribal government that represents subsistence users can be party to an Agreement. However, Administration policy directs that agency actions be implemented in a manner that is respectful of tribal sovereignty and allows for input by tribal officials. Consequently, NOAA Fisheries has tried to enter into Section 119 Agreements with tribal governments or organizations that have tribal authorization.

This preference also stems from the need to develop enforcement mechanisms for Agreements. All the co-management Agreements developed so far address enforcement. However, the MMPA currently does not provide authority for federal process to support enforcement and adjudication of violations by Native organizations.

Nor, does NOAA Fisheries have authority to regulate Native marine mammal harvests prior to a depletion finding unless the take is wasteful. Thus, the preferred enforcement mechanism is for tribal government or council to adopt ordinances that reflect the provisions of the Agreement or management plan and then adjudicate violations through whatever traditional conflict resolution process is applicable. However, it may be cumbersome for statewide commissions representing many villages to attempt to gain passage of such ordinances from all member tribes. In addition, these ordinances would not be applicable to hunters unaffiliated with the member tribes.

Another concern is the applicability of the Federal Advisory Committee Act to committees established through co-management Agreements. The Unfunded Mandates Act granted FACA exemptions to meetings with elected tribal government officials or their designated employees.

We interpret this to provide a FACA exemption to officers of Native marine mammal commissions authorized by tribal resolution. However, this exemption probably could not be applied to organizations that are not tribally authorized.

NOAA Fisheries has been involved in discussions regarding such issues with the Indigenous People's Council for Marine Mammals and the Fish and Wildlife Service. Discussion participants agree that strengthening enforcement provisions in Section 119 Agreements, or within their associated management plans, would greatly

improve conservation. We also agree that it is worthwhile to explore options for regulating marine mammals subsistence harvest by Alaska Natives prior to depletion, but only through mutually agreeable arrangements. We currently are working together on the details of how such an authority could work.

I welcome the opportunity to discuss the resolution of these and other important marine mammal conservation issues. Thank you.

[Prepared statement of Ms. Penelope Dalton follows:]

TESTIMONY OF
PENELOPE DALTON
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

ON
SECTION 119 OF THE MARINE MAMMAL PROTECTION ACT OF 1972

BEFORE THE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES

APRIL 6, 2000

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify before the Subcommittee today on the development of co-management agreements with Alaska Natives for the conservation and management of marine mammals under the Marine Mammal Protection Act. I am Penelope Dalton, Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA).

The National Marine Fisheries Service (NMFS, along with the U.S. Fish and Wildlife Service (FWS), administers the Marine Mammal Protection Act of 1972 (MMPA), which is the principal Federal legislation that guides marine mammal protection and conservation policy. Under the provisions of the MMPA, NMFS is responsible for the management and conservation of over 140 stocks of whales, dolphins and porpoises, as well as seals, sea lions and fur seals, 40 of which are classified as strategic, and 29 of which are listed under the Endangered Species Act. The remaining marine mammal species, such as polar bears, walruses, sea otters and manatees, fall under the jurisdiction of the FWS.

Section 119 of the MMPA authorizes the Secretaries of Commerce and Interior to enter into cooperative agreements with Alaska Native Organizations (ANOs) for the co-management of marine mammal subsistence harvests by Alaska Natives. This provision, added in 1994, created a new opportunity to develop and formalize partnerships between NMFS and Alaska Natives to conserve the marine mammal stocks that are a significant part of their culture and traditional subsistence lifestyle. Of the 32

marine mammal stocks recognized and managed by NMFS in Alaska, 16 are utilized for subsistence purposes by Alaska Natives. Joint activities pursued under these agreements can have substantial positive impacts on marine mammal conservation in Alaska.

I welcome the opportunity to discuss the efforts NMFS has taken to develop co-management agreements, the structure and status of these agreements, and challenges that we face in implementing section 119. I will also touch on one area that NMFS, in consultation with other agencies and constituents, has identified for possible improvements to section 119.

Structure and Development of Co-management Agreements

Section 119 states that cooperative agreements may be entered into with ANOs to conserve marine mammals and provide for the co-management of subsistence use by Alaska Natives. Prior to this amendment, NOAA had entered into a cooperative agreement with the Alaska Eskimo Whaling Commission (AEWC) to co-manage the subsistence harvest of bowhead whales under the Whaling Convention Act of 1949. This agreement has been in place since 1986, and was noted by Congress during the 1994 MMPA re-authorization to be an ideal example of what was envisioned for co-management agreements.

In an attempt to establish common principles for section 119 agreements, NMFS, the U.S. Fish and Wildlife Service, the Marine Mammal Commission, the U.S. Geological Survey, and the Indigenous Peoples Council for Marine Mammals began a series of discussions and negotiations to establish the scope and framework for future agreements applicable to specific species or stocks. The result of these negotiations was the "Memorandum of Agreement for Negotiation of Marine Mammal Protection Act Section 119 Agreements," signed in August 1997.

This "umbrella agreement" contains the guiding principles for the negotiation of subsequent agreements. The signatories to the umbrella agreement supported the goal that marine mammal stocks should be maintained at a level that can accommodate a sustainable subsistence harvest and preserve the animals' role in the ecosystem. Another fundamental point is that the best way to conserve marine mammal populations in Alaska is to provide full and equal participation by Alaska Natives in decisions affecting subsistence management to the maximum extent allowed by law. Shared decision-making is achieved through consensus between ANO representatives and NMFS.

The umbrella agreement establishes guidelines for the required elements of individual agreements, as well as the types

of actions that individual agreements can prescribe. Individual co-management agreements may include provisions relating to the collection and analysis of population data, ANO infrastructure, enforcement to ensure compliance with agreements, harvest practices, information and education activities, management plans, research, and training. The umbrella agreement also called for the establishment of funding panels comprised of Alaska Native tribal government officials representing their governments and ANOs and officials from FWS and NMFS. The purpose of the panels is to develop protocols for establishing co-management priorities and for the application, review, and award of any section 119 funds.

Subsequent co-management agreements have built upon the principles developed in the umbrella agreement. To ensure shared decision-making and provide a formal route for Alaska Native input, agreements have provisions to create co-management committees comprised of officials from the participating ANO and NMFS. These committees provide a formal mechanism to discuss joint efforts to conserve marine mammal populations and maintain a sustainable harvest for subsistence uses.

Agreements are negotiated by teams drawn from our Alaska Regional Office, the Alaska Fisheries Science Center, the National Marine Mammal Laboratory, our Office of Protected Resources, and NOAA General Counsel. After initial discussions with the ANO, smaller teams are created to craft the agreement. Upon reaching a satisfactory agreement, the draft is cleared by the ANO membership and the Department of Commerce and ultimately signed by the Alaska Regional Administrator of NMFS.

Status of Co-management Agreements

Co-management agreements have been developed for beluga whales, harbor seals, Steller sea lions, and northern fur seals.

Beluga whales. In December 1999, NMFS entered into an agreement with the Alaska Beluga Whale Committee (ABWC) to conserve the western Alaska populations of beluga whales, protect Alaska Native beluga whale subsistence hunting traditions and culture, and promote scientific research on beluga whales. The western Alaska population includes beluga whales occurring in the Beaufort, Chukchi, and Bering Seas (including Bristol Bay). The ABWC has secured resolutions from 26 tribal village governments or traditional councils authorizing ABWC representation for beluga whale issues. With this agreement, NMFS and ABWC will co-manage the western Alaska beluga whale subsistence harvest through regional management plans that set forth principles governing beluga whale conservation, subsistence harvesting, use,

reporting and monitoring, research, as well as public involvement and enforcement. NMFS and ABWC have been working together for years prior to this agreement conducting joint research and monitoring programs. This agreement formalized much of the work that was already being performed. This type of partnership is one which NMFS hopes can be repeated in other agreements.

An agreement to co-manage this year's harvest of the Cook Inlet stock of beluga whales has been negotiated with the Cook Inlet Marine Mammal Commission (CIMMC) and is currently in the NOAA clearance process. CIMMC operates under tribal resolution from eight tribal village governments or traditional councils in the Cook Inlet region. This agreement was negotiated under the separate authority of Public Law 106-31 and provides for the allocation of one whale to the Native Village of Tyonek, through a permit system operated by CIMMC. The agreement describes specific harvest practices that must be followed as conditions of the harvest permit. Because this agreement specifically permits a harvest, it is subject to environmental analysis under the National Environmental Policy Act. We are currently developing an Environmental Impact Statement for public review and comment before signing the agreement. A new agreement will be negotiated for harvests in 2001 and beyond dependent upon the outcome of the proposed depletion determination and the agency's response to a petition to list the beluga as endangered under the Endangered Species Act.

Harbor seals. In April 1999, NMFS entered into an agreement with the Alaska Native Harbor Seal Commission (ANHSC) to set forth an operational structure for the conservation and management of harbors seals throughout their range in Alaska. The ANHSC has received authorizing resolutions from 22 tribal, village or traditional councils and associations. The operational structure of the agreement creates a co-management committee, comprised of ANHSC officers and NMFS staff, that will develop action plans for harbor seals specifying or recommending activities to be undertaken by the parties for population monitoring, harvest management, education, and research. Through a biosampling program, the ANHSC has fostered the collection of seal tissue samples for genetic and other analyses. Collaborative programs such as this are greatly increasing our understanding of harbor seal biology in Alaska.

Steller sea lions. A draft agreement with the Tribal Government of St. Paul (TGSP) to co-manage subsistence harvests of Steller sea lions and northern fur seals on St. Paul Island is currently in the NOAA clearance process. This agreement provides for a co-management committee similar to those established under the

agreements with ABWC and ANHSC. The committee will develop management plans that include actions to be taken by either party for monitoring and research, disentanglement programs, maintenance of fur seal rookeries, co-management of subsistence harvests, and education programs. Since NMFS and TGSP have had a long working relationship, this agreement essentially formalizes our ongoing partnership to manage these harvests.

NMFS has discussed entering into agreements with other ANOs to address other parts of the Steller sea lion range, including the Aleutian Islands and Kodiak Island.

Other Agreement Discussions

NMFS is exploring regional, rather than stock-specific, approaches to section 119 agreements with several ANOs. For example, we are working with the Bureau of Indian Affairs Integrated Resource Management Planning Program, the Native Village of Quinhagak, and with a group comprised of representatives from western Alaska tribal village governments to coordinate section 119 agreements and tribal natural resource management plans. To date, none of these discussions have developed into agreements.

Challenges to the Negotiation and Implementation of Agreements

The overall negotiation process tends to be lengthy, due to both Native and agency procedures. NMFS continues to strive to improve the process by which we negotiate and finalize agreements to reduce delays in implementation.

A more significant issue is determining which Alaska Native groups should be party to an agreement. Section 119 statutory language and the accompanying House report suggest that any ANO or tribal government that represents subsistence users can be party to an agreement. However, administration policy directs activities by agencies affecting Native American tribal rights or trust resources be implemented in a manner respectful of tribal sovereignty, and provide an effective process to provide meaningful input by tribal government officials or representatives. In an effort to reconcile these directives, NMFS adopted the position that, as far as possible, an ANO entering into a section 119 agreement should be a tribal government or an organization that has obtained resolutions of tribal authorization for representation.

Our preference for entering into co-management agreements with tribally authorized organizations (as opposed to non-tribally authorized organizations) stems from the need to develop enforcement mechanisms for the agreements. All the co-management

agreements developed so far have contained enforcement elements. In general, these elements mirror the arrangement that exists for the AEWC bowhead whale agreement, in part because this Committee highlighted the AEWC agreement as an ideal model for co-management agreements. The AEWC agreement, however, is authorized under legislation other than the MMPA. The MMPA currently does not provide authority for a federal adjudicatory process to support ANO enforcement and adjudication of violations.

Under the MMPA and tribal law, NMFS has no authority to regulate Native marine mammal harvests prior to a depletion finding unless the take is found to be wasteful. Thus, the only current possibility of enforcement is for a tribal government or council to adopt ordinances that reflect provisions contained within an agreement or management plan, and then adjudicate violations through whatever traditional conflict resolution process is applicable. However, for statewide commissions representing many villages, it could be particularly cumbersome to attempt to gain passage of such ordinances from all member tribes. Such ordinances would also not be applicable to hunters unaffiliated with the member tribes.

A third area of difficulty has been the status of committees established through co-management agreements under the Federal Advisory Committee Act (FACA). The Unfunded Mandates Act granted FACA exemptions to meetings with elected tribal government officials or their designated employees.

NMFS interprets this to mean that officers of the Native marine mammal commissions (authorized by tribal resolution) qualify for this exemption. However, this interpretation probably would not apply to non-tribally authorized organizations.

Finally, in regards to the funding of Section 119 agreements, NMFS has interpreted direct line-item appropriations made by Congress to Alaska Native marine mammal commissions as distinct from funding for co-management agreements. The funding of co-management agreements through the agency budget process has met with limited success due to the wide range of critical needs and priorities.

NMFS has been involved in discussions regarding the above issues with the Indigenous People's Council of Marine Mammals and the U.S. Fish and Wildlife Service, and the parties agree that some changes to section 119 may improve our ability to more fully develop partnerships between Federal agencies and ANOs. In these

discussions there is unanimous agreement that strengthening the ability to enforce harvest provisions agreed to in section 119 agreements, or within their associated management plans, would greatly improve the use of section 119 agreements as conservation tools. Specifically, the parties have agreed that it is worthwhile to explore options for allowing the Secretaries and ANOs jointly to regulate marine mammal subsistence harvest by Alaska Natives prior to depletion, but only through mutually acceptable agreements. All parties currently are working together on the details of how such an authority could work.

Conclusion

Mr. Chairman, section 119 provides important authority for communicating and sharing decisions for the co-management of subsistence harvests, and taking joint action to conserve stocks of marine mammals in Alaska. Though there have been challenges in developing and implementing co-management agreements, the agreements that are in place are fostering improved working relationships between NMFS and ANOs in performing research, monitoring, and harvest management activities.

I welcome the opportunity to discuss these issues in detail with you, stakeholders and our co-management partners to work toward effective resolution of these and other important marine mammal conservation issues.

Mr. YOUNG. Thank you. I am going to make this relatively short because I want to get to my Alaskan witnesses. But, Dave, why are the research portions of the cooperative Agreements renewed annually? Is it based on annual appropriations? Why is it just one year?

Mr. ALLEN. That is the convention that we have always used for these types of Agreements. And clearly the intent is to continue it beyond one year, but we do renew them on annual basis.

Mr. YOUNG. But wouldn't it be better to make it a two-year or three-year deal, or would you still prefer to leave them one year?

Mr. ALLEN. I personally wouldn't have any objection in doing that. As I understand, but I can certainly check this, I think it is a contracting convention that governs this. It is not something that we do by choice.

Mr. YOUNG. Now, we passed this Act in 1994, I believe. And you have an Agreement with three Commissions now.

Mr. ALLEN. Yes.

Mr. YOUNG. And you reached those Agreements when?

Mr. ALLEN. We received our first appropriation to fund Section 119 Agreements in Fiscal Year '96—I am sorry, '97, in the fall of '96.

Mr. YOUNG. So they reached Agreement in '95, one year prior to the Appropriation.

Mr. ALLEN. We concluded an Agreement within a few months after we received the first appropriations—

Mr. YOUNG. Which three—

Mr. ALLEN. —in early—

Mr. YOUNG. Which three do you have an Agreement with?

Mr. ALLEN. We have an Agreement with the Alaska Nanuuq Commission, who deal with polar bears; the Eskimo Walrus Commission, and the Alaska Sea Otter and Steller Sea Lion Commission. All three of those commissions.

Mr. YOUNG. Okay. And you had some suggestions on how to improve this. And what were those two suggestions?

Mr. ALLEN. The principal suggestion is that we expand the authorities within Section 119 to allow for harvest management for subsistence purposes prior to depletion. As you know, presently, under the Section 101(b), Native Exemption, there is no management regime and there is no federal authority to actually conduct any kind of a management program until depletion occurs. And, of course, the concern everyone has is that that is not when we want to begin management as partners. That is what we want to prevent.

Mr. YOUNG. What you are suggesting now is the only time they become involved is after the depletion occurs. It would be better to have them involved prior to the depletion. Is that what you are saying?

Mr. ALLEN. Yes. And the only time we get involved, that is the federal government, in terms of any kind of management regime that has any enforceable provisions, is only when depletion occurs. So the basic recommendation is to create authorities through co-management Agreements that would allow for management programs working with the Alaska Native Commissions so that we could maintain a harvestable surplus for subsistence purposes prior to depletion.

Mr. YOUNG. David, are you stationed in Alaska or are you stationed down here?

Mr. ALLEN. I am stationed in Alaska.

Mr. YOUNG. Okay. Penny, how many Agreements do you have?

Ms. DALTON. We have five now. One of them was—or at least two in the clearance process, two completed, and one that was actually done. The Alaska Eskimo Whaling Commission was done before Section 119 was enacted.

Mr. YOUNG. How many—okay—you say five. You have jurisdiction over five. Right?

Ms. DALTON. Yes. We have five either in place or in the works.

Mr. YOUNG. Okay. How many are in the works?

Ms. DALTON. The one—there are two in the works. For Cook Inlet Marine Mammal Council and also for the Tribal Government of St. Paul for sea lions and northern fur seals.

Mr. YOUNG. And what is holding that up?

Ms. DALTON. I think we just recently created—completed the Agreements and they are still just moving through our clearance process.

Mr. YOUNG. And how soon do you expect that to be finalized?

Ms. DALTON. And so it sounds like within the next few weeks. We will get you a definite date for the record.

Mr. YOUNG. Okay. Now, the thing I am curious—and I was here when we did this—why did we split it up between National Marine Fisheries Service and Fish and Wildlife?

Ms. DALTON. You mean—I think it is—

Mr. YOUNG. Why do you have beluga whales and bowhead whales and whatever else it is—

Ms. DALTON. We have the—primarily more ocean-going—the species that spend more of their time in the ocean and Fish and Wildlife Service has the species that spend a significant portion of their time on land is my understanding of the division.

Mr. YOUNG. But they are all marine mammals.

Ms. DALTON. Yes.

Mr. YOUNG. Okay. And I don't want to ask either one you this, but I am going to. Turf-wise, wouldn't it be better to have all of them under one program?

Mr. ALLEN. I would love—

Ms. DALTON. While I won't pretend that there is Agreement between the two departments on every marine issue, I don't think, at least in the time that I have been here, that there has been a big problem on marine mammals with the jurisdictional split because it is pretty clear who has which species.

Mr. YOUNG. Okay. I will leave that go for a while because we are in the midst of some other witnesses. But, see, I have—and this is very important to me because I happen to agree with what David says, and I hope you agree the same way. I think there ought to be the management probably prior to the depletion occurrence—

Ms. DALTON. Yes.

Mr. YOUNG. —and try to stop that if necessary. I do think, though, that even though it is a cooperative Agreement, in the form of an enforcement, I think if they had a better role in enforcement, it might work. Believe it or not, it does work under the Whaling Commission.

I do think that more responsibility that is placed upon the groups, the better management you have of the species themselves, especially if I am able to give them a little better say. Because a lot of times, decisions are made in your agency and even Fish and Wildlife Agency and even above your pay grade that do it on a basis of pressure and emotionalism instead of reality.

And I have been one that always said most of laws we have passed here have been misused because there has been little science or really information applied to the law. We have interest groups on both sides, be it commercial fisherman, or be it the environmental group, and there is no way that the information could really be based upon sound facts of science.

I think that the commissions themselves—I know the Whaling Commission did this—they actually got science to recount the whales. And the first time there was only 2,500 bowhead whales left, and through their science they established the fact there was over 6,000 and I think there are around 10,000 whales now.

Science is very important in this and the front edge is very important. Prior to—it is always somebody saying, all right, to establish sea lions they are all dead because of, and no science to back it up. So you have heard me on this before about what areas to study.

So I just—I hope what I am hearing is correct, that you are working hard to make these Agreements work. That I hope maybe, David, that you will look beyond the Fish and Wildlife as far as other parts of your agency. And there may be better ideas about how managing other game than marine mammals. Bad thing for me to say, but keep that in mind.

Mr. ALLEN. With your guidance, Mr. Chairman.

Mr. YOUNG. Yeah. Yeah. If we can get more interest on—and someone has something to lose or gain by it, there is—better management occurs. So I don't have any other questions. The gentleman from the great State of Maryland, outstanding Chesapeake protector, provider of great wisdom, would you like to ask any questions?

Mr. GILCHREST. I am fine.

Mr. YOUNG. I thank both of you. And I will be communicating with both of you as far as my interests in this. This is important to me and I want it to work. And maybe we can expand upon it. And just remember, those that are on the ground sometimes have a little better knowledge of what is really occurring out there instead of someone reading something in the Smithsonian Magazine or from the National Geographic or from a newspaper in San Francisco.

So thank you very much. I appreciate it. And I am sorry you were so late, Penny, as far as the traffic. And for your information, we will be submitting some written questions to you so you can have the opportunity to respond to those as far as the agencies.

The next panel, Caleb Pungowiyi, Chairman of the IPCoMM Reauthorization Committee; Charlie Johnson, Alaska Polar Bear Commission; Monica Riedel, Alaska Native Harbor Seal Commission, Alvin Osterback, Aleut Marine Mammal Commission, son of the great Osterback representative that I served with; Lianna Jack, Alaska Sea Otter and Steller Sea Lion Commission. Thanks

for coming to the table and appreciate all your long travels and appreciate your being here today. And we will go—Caleb, you will go first, please.

STATEMENT OF MR. CALEB PUNGOWIYI, CHAIRMAN, MMPA REAUTHORIZATION COMMITTEE, INDIGENOUS PEOPLE'S COUNCIL FOR MARINE ANIMALS, KOTZEBUE, ALASKA

Mr. PUNGOWIYI. Thank you, Mr. Chairman. My name is Caleb Pungowiyi or Loman [ph] is my Native name and I am from—originally from a Village of Savoonga. I am presently the president of Robert Aqqaluk Newlin, Sr. Memorial Trust in Kotzebue. I want to thank the Chairman for the invitation to testify before this Committee and I appreciate the opportunity to do so.

I am testifying today as the Chairman of the Reauthorization Committee of the Indigenous People's Council for Marine Mammals and also as a former Executive Director of the Eskimo Walrus Commission. Mr. Chairman, back in 1994, I testified before this Committee urging the Congress to amend the Marine Mammal Act to add Section 119 to involve the Alaska Native many commissions to enter into co-management Agreements with federal agencies.

And I want to state today that those of us who have entered into co-management Agreements that those Agreements, in terms of conservation of marine mammals and also learning more science about the status of marine mammals has been very successful. And I think as you will hear from the rest of the—our panel this afternoon that this message is something that the can be echoed with all the commissions that have entered into co-management Agreements.

Also the fact that in 1994 we had testified that there was a large communication gap between the agencies and the Native community. But today I think you have heard that there is improved communications. There is cooperation and more efforts to work together in terms of conserving and protecting the species that exist in Alaska.

IPCoMM is a consortium of 15 Alaska Native Commissions, tribes and organizations working to conserve and protect the marine mammals and Alaska Native users of those marine mammals for subsistence and making of handicraft and clothing. Together these organizations cover most marine mammals populations found in Alaska and represent those Native villages most dependent upon marine mammals for their nutrition and culture.

In closing in 1994, as I mentioned earlier, the Section 119 has resulted in a number of effective partnerships between Fish and Wildlife Service, National Marine Fisheries Service, and Alaska Native Organizations. This is not to say that the implementations came easily. I think that, as you will hear from the commissions, that there were lengthy negotiations, times when it seemed like there would never be an Agreement reached between the agencies.

But you also want to applaud that—the efforts that were made by U.S. Fish and Wildlife Service, especially Dave Allen, as the Regional Director, that the implementations probably came a lot easier and quicker than if it had been another director in his place.

We also negotiated an umbrella Agreement, as mentioned by Penny Dalton. And this umbrella Agreement was to establish

guidelines so that when different commissions negotiated the Agreements with federal agencies that there was a standard set it place so that these Agreements have some continuity and some equality in terms of managing the species that are used for subsistence.

As Dave mentioned, in 1997, the Walrus Commission, the Polar Bear Commission, and the Sea Otter Commission signed Agreements with Fish and Wildlife Service to co-manage those species that are under the management of Fish and Wildlife Service. The funding for that came through an appropriation that was earmarked as an add-on to the Fish and Wildlife Service budget to enter into co-management with these here entities to a tune of $250,000.

When we agreeing between ourselves divided to—agreed to divide this money between the three entities—$70,000 for the Sea Otter Commission, $80,000 to the Walrus Commission, and $90,000 to the Polar Bear Commission. Mr. Chairman, I must state that this amount of money barely covers the intended activity that we agreed to when we signed these Agreements with the U.S. Fish and Wildlife Service.

The travel alone for our commissions to meet exceeds $25,000 to $30,000 because of the large area that we cover under the jurisdictions or where the species habit—oh, I can't think of what to say. But the coastline, for example, for the Walrus Commission, is three times the coastline of California. It goes from Bristol Bay all the way up to Barrow. And we cover—there are about 35 communities that either directly or indirectly depend upon walrus for their utilization.

And so that is one of the shortcomings that we have seen in implementing these co-managed Agreements that there isn't enough adequate funding to cover the activities that are needed to fully implement the intention of the Congress in enacting Section 119.

In negotiations with NMFS or the National Marine Fisheries Service, did not begin until—in earnest in 1998. And while perhaps the best model for a cooperative Agreement is the Alaska Eskimo Whaling Commission, Mr. Chairman, the agency has been slow in implementing the Section 119 Agreement.

The first one was not signed until April of 1999 and there are still negotiations going on with other commissions. We believe this action, or lack of action, is on part of National Marine Fisheries Service because co-management Agreement, obviously, is not a priority within the agency. And it is reflected by the fact that the President's budget has never, and I repeat, never, contained a provision or a request for Section 119 funding.

In closing, I want to highlight some of the activities that the Walrus Commission has done since I am past Executive Director for the Walrus Commission. We began as a Commission in 1978 and this was in due to the fact that we felt strong concern when the State of Alaska had management of walrus, but there was some conservation issues that needed to be addressed and the fact that State of Alaska refused to recognize some of the communities that were legally recognized to hunt walrus.

And the Village of Togiak, as you remember, sued the State of Alaska and won, but the Native was exemplified by the Congress

allowed for the taking of walrus for subsistence and anigraft purposes. Since then we—

Mr. YOUNG. How much more time do you have? Go right ahead. I have to excuse myself and make one phone call and I will be right back, but he will take the chair. So—

Mr. PUNGOWIYI. Okay. As Dave mentioned earlier, we have a number of scope awards that we have identified with the Walrus Commission to work with in the conservation of walrus. One of them is the discussion of pilot bilateral Agreement with Russia on the shared population of walrus being in two countries. In 1995 there was a meeting in Chukotka where a protocol was signed to start negotiating an international treaty on the conservation of walrus in the two countries.

We have asked that there be no formal negotiations with Russia until we have seen the implementation of the Polar Bear Agreement between Russia. But we feel that the success or problems that may be associated with the Polar Bear Agreement will reflect on how we negotiate the new Agreement that will deal with walrus population.

But we will—that has not kept us from talking with the Russians. We have started our dialogue in developing our Native-to-Native Agreements on the management of walrus between the two areas. We have started monitoring—harvest monitoring programs in both counties. The Walrus Commission and the Fish and Wildlife Service has increased funding to implement the tabulated the harvest—Native harvest has occurred on both sides of the border so that we have a better idea to the number of walrus that are being harvested in both countries.

The Walrus Commission also has a biological sampling program where we collect—we ask the hunters to collect biological samples so that we have a better understanding of the population indices on the walrus. We collected teeth, the reproductive tracts, and also other organs to also look at the contaminants and pollution that may be building up in the tissues of the polar—walrus.

And these samples are provided by the hunters. We do, at the end of the season, have a drawing so that those who have given the samples will be like a lottery where they will either—we give one rifle, a barrel of gas, and $50 shopping at the nearest shopping center which usually means a native store. So it is not a whole lot of money, but it is something that entices the hunters to participate in this sampling program which is very, very important. And it indicates the age and the sex and the number of animals that are being taken and also the health status of the walrus population.

And, Mr. Chairman, I do want to say that our—there are some things I would like to speak and recommendations to may perhaps make some changes to the Section 119. And that is that I—as I mentioned earlier, the co-management Agreements have been stymied by a lack of adequate funding. And we would urge the Congress to fully fund the intended appropriations for implementing the co-management Agreement.

Secondly, we would like to strengthen to authorize the parties to Section 119 to enforce conservation and regulatory measures agreed upon and incorporated into Section 119. We agreed that it

is important to have regulations prior to depletion and that is something that can be worked in under Section 119 of the Act. And that the federal agencies should be empowered as negotiated by the parties through co-management Agreements to provide a backup role if the parties agree to such a role.

We also believe that Secretaries should try to maximize to the extent possible to work with affected Alaska Native Organizations and tribes in implementing regulations that are adopted after the listing of marine mammals under MMPA or ESA.

We also would ask that the definition of Alaska Native Organizations be amended to require organizations entering into co-management Agreements be either tribal governments or tribally authorized by the government.

Mr. Chairman, I want to thank you for the opportunity and we have other written testimony that will be given by myself as well as others. Thank you very much.

[Prepared statement of Mr. Caleb Pungowiyi follows:]

Testimony of
Caleb Pungowiyi
Chairman, MMPA Reauthorization Committee,
Indigenous Peoples Council for Marine Mammals
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 staring 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 Diomede. 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 access 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 governments, 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.

DISCLOSURE REQUIREMENT

Required by House Rule XI, clause 2(g) and the Rules of the Committee on Resources

A. This part is to be completed by all witnesses:

1. Name: Caleb Pungowiyi
2. Business Address: P. O. Box 509, Kotzebue, AK 99752
3. Business Phone Number: (907) 442-1611
4. Organization you are representing: Indigenous Peoples Council for Marine Mammals & Eskimo Walrus Commission
5. Any training or educational certificates, diplomas or degrees, or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:

6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:
   - Special Advisor - Alaska Native Affairs - Marine Mammal Commission
   - Chair, Indigenous Peoples Council for Marine Mammals, Reauthorization Committee
   - Member of the Arctic Research Consortium of the United States (ARCUS)
   - Past member of the Alaska Scientific Review Group
   - Past member, Advisory Committee, Office of Polar Pgms, Nat'l Science Foundation
   - Past member, Polar Research Board, Committee on Bering Sea Ecosystems, National Academy of Science
7. Any employment, occupation, ownership in a firm or business or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:
   - Executive Director, Eskimo Walrus Commission, 1996-1999
   - Past President of the Inuit Circumpolar Conference (ICC) 1993-1995
   - Marine mammal hunter and user since birth
8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:
   - Consultant - Eskimo Walrus Commission
   - Chairman, MMPA Reauthorization Committee, IPCoMM

B. This part is to be completed by nongovernmental witnesses only:

1. Any Federal Grants or contracts (including subgrant or subcontracts) which you have received since October 1, 1996, from the Department of Commerce or the Department of the Interior, the source and the amount of each grant or contract:
   $50,000 National Park Service
   $70,000 US Fish & Wildlife
2. Any Federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1996, from the Department of Commerce or the Department of Interior, the source and the amount of each grant or contract:

$80,000	USFWS	FY 1998	Eskimo Walrus Commission
80,000	USFWS	FY 1999	Eskimo Walrus Commission
83,000	USFWS	FY 2000	Eskimo Walrus Commission

3. Any other information you wish to convey to the Committee which might aid the members of the Committee to better understand the context of your testimony.

Mr. YOUNG. Thank you very much. We have a vote in about 15 minutes and we will expedite as far as possible and I will try to get back, but just keep that in mind. Charlie?

STATEMENT OF MR. CHARLES JOHNSON, ALASKA NANUUQ COMMISSION ON MMPA CO-MANAGEMENT

Mr. JOHNSON. Thank you, Mr. Chairman. My name is Tomungnuaq or Charlie Johnson, if you don't speak Inupiat. I am the Executive Director of the Alaska Nanuuq Commission and a member of the National Marine Fisheries Scientific Review Group.

The Alaska Nanuuq Commission is now in its third year of co-management of polar bear with the U.S. Fish and Wildlife Service under Section 119. The Commission was organized by the tribal governments of north and northwest Alaska to represent the villages on matters concerning the conservation and sustainable subsistence use of polar bear.

Our contract calls for the commission to represent the villages and to assist the Service in developing a bilateral treaty with Russia on the conservation of the shared polar bear population in Alaska and Chukotka. Our contract also helps—also calls for the development of a Native-to-Native Agreement to implement that treaty.

The Alaska Nanuuq Commission also has a contract with the National Park Service Beringia Program to collect information on polar bear habitat use in Chukotka gathered from the traditional knowledge of hunters in the villages—coastal villages of Chukotka. Additionally, the Commission has a small contract with the National Marine Fisheries Service to collect harvest data on ice seals from the villages of northwest Alaska.

We believe that there are some changes needed to be made to MMPA. Polar bear hunting has been banned in the former Soviet Union since 1956. In 1989, the polar bear population that Russia shares with Alaska in the Bering and Chukchi Seas was reclassified by the former Soviet Union as recovered and notified the U.S. that it wanted to share in the harvest of polar bears with Alaska Natives.

A bilateral Agreement between the U.S. and Russia on the conservation and management, which includes the implementation of the Agreement by a parallel Native-to-Native Agreement, has been developed.

In order for the Native-to-Native Agreement to be successful, change to MMPA Section 119 are needed. These are management before depletion. If Russia is to share in the harvest, it means numbers and numbers means quotas and quotas means management before depletion. But management before depletion ordered any time must be accomplished only through co-management with Alaska Natives.

Secondly, enforceable tribal ordinances. The Commission derives its authority from the tribal governments which also must accept the quotas and has authority to enforce the quotas. Federal regulations to enforce these ordinances must also be developed. Thirdly, additional funding. The fully authorized funding for Section 119 has never been requested by the Secretaries of Interior and Commerce. In fact, the day before yesterday, National Marine Fisheries

flatly told us that Section 119 is not a priority for National Marine Fisheries.

If co-management is to become more successful, full funding and additional funding is needed. In my written testimony I have indicated how these funds would be used by the Alaska Nanuuq Commission. The success of the Agreement with Russia and our Native-to-Native Agreement, as mentioned by Caleb, is critical in that it will set the standard for future Agreements of shared species between Alaska and Russia.

Additional help that we can get from Congress in—that is related but not necessarily part of the MMPA is that Congress can assist by working with the elected Deputies to the Duma, particularly from Chukotka and we recommend that you help educate them about Alaska and how co-management works.

Another issue is research. Research from—of the U.S. Fish and Wildlife is now split off into the U.S.G.S., which has no co-management mandate. Alaska is—we need—the commissions needs involvement in the setting of resource priorities and the current situation makes it difficult.

My last recommendation is that with the lack of interest in the Department of Commerce for co-management with Alaska Natives on marine mammals, consideration should be given by Congress to transferring management authority of those species that are used for subsistence to the U.S. Fish and Wildlife. Thank you, Mr. Chairman.

[Prepared statement of Mr. Charles Johnson follows:]

TESTIMONY OF CHARLES JOHNSON, ALASKA NANUUQ COMMISSION ON MMPA CO-MANAGEMENT BEFORE HOUSE RESOURCES COMMITTEE, US CONGRESS APRIL 6, 2000

Mr. Chairman and Members of the Committee, it is an honor to address you on behalf of the villages of North and Northwest Alaska on issues of the conservation of Nanuuq the polar bear. I am known as Tomungnuaq to the elders of my village or as Charles Johnson in English. I am the Executive Director of the Alaska Nanuuq Commission, which was formed in the village of Point Hope in June 1994 to represent the villages in Alaska, which are in the range of Nanuuq or polar bear, on matters concerning the conservation and management of polar bear.

Alaska's Natives Peoples have long been an intregal part of the environment and have always maintained an imitate relationship with the plants and animals that make up our diet. In the harsh climate of the arctic this knowledge has literally meant the survival of the Native Peoples. In Northern coastal Alaska marine mammals are the cornerstone of the culture of the Inupiat and Yupik Peoples. Knowledge of the seasons, currents, ice movements and the animal's relationship and use of the ice is vital for the hunting success of the people.

CO-MANAGEMENT BEGINNINGS IN ALASKA:
It wasn't until 1977 that we were allowed to use this knowledge to manage the use of marine mammals. That was when the Alaska Eskimo Whaling Commission signed its first co management agreement with the National Marine Fisheries Service. That agreement did not come easy. The scientists of the National Marine Fisheries Service had put the bowhead whale on the endangered species list. They had estimated that the population of bowheads was down to approximately 700 animals. But the whalers of the North Slope knew that there were at least ten times that many whales. They were able to convince the scientific community that most of the whales were missed when they were being counted. Today the population is estimated to be at least 7500 whales.

The agreement between the whaling captions and NMFS has set the standard for other co management agreements between Alaska Native Peoples and the federal management agencies. However the authority to manage the hunt is derived from the International Whaling Commission quotas.

In 1988 concern over the potential for over harvest of polar bears from the population shared with the Yukon and Northwest Territories of Canada led the North Slope Borough Department of Wildlife Management to develop The North Slope Borough/Inuvialuit Game Council Agreement for the Southern Beaufort Sea. The plan set voluntary annual harvest quotas that are split between the North Slope in Alaska and the Beaufort Sea area of the Northwest Territories in Canada. The agreement also calls for protection of females and females with cubs.

The success of this voluntary agreement is such that to date of the annual combined quotas of 80 animals the average taken is 68. And the percentage of females taken from this population is only 25% compared with 40% in Western Alaska.

A clear policy on co-management with Alaska Natives did not exist until June 28, 1994 when the late Director Mollie Beattie, issued "THE NATIVE AMERICAN POLICY" of the U.S. Fish and Wildlife Service. Under Article IV SELF-DETERMINATION the policy states:

> The Service favors empowering Native American governments and supporting their missions and objectives in assuming program management roles and responsibilities through contracting and other mechanisms. Therefore, the Service supports the rights of Native Americans to manage, co-manage fish and wildlife resources, and to protect their Federally recognized authorities.

The issuance of the Service's co-management policy was very timely for the Alaska Nanuuq Commission. In 1989 Soviet Union notified the U.S. Fish and Wildlife Service that it wished to participate in the harvest of the shared polar bear population in Alaska and Chukotka. Polar bear hunting had been officially stopped in the Soviet Union in 1956 when all polar bear stocks were listed in the red book as depleted. In 1989 the Bering and Chukchi stock was reclassified as a recovered stock in the Soviet Union's Red Book. Alaska Natives had continued to hunt bears from this stock under the Alaska Native Exemption of the 1972 MMPA.

The U.S. Fish and Wildlife Service began discussing the possibility of a polar bear treaty with Russia with the Eskimo Walrus Commission and regional groups such and Maniilaq and the North Slope Borough Department of Wildlife Management. The Native groups felt that if a treaty with Russia was negotiated they wanted to be an equal partner in the negotiations. They also felt that the treaty must include a Native-to-Native Agreement with the Natives of Russia similar to the North Slope/Inuvialuit Agreement. The Native groups stated that they also wanted to be involved in setting research priorities for polar bears.

ALASKA NANUUQ COMMISSION

In 1994 the tribal governments of the villages in North and Northwest Alaska in the range of the polar bear authorized the formation of the Alaska Nanuuq Commission. Each village government adopted a resolution that authorized the Commission to represent them on matters concerning the conservation and sustainable subsistence use of polar bear. The tribes also authorized the Commission to develop co-management agreements with local, regional and national governments and to enter into international agreements. And the resolutions gave authority to the Commission to join with other Native groups in efforts for the conservation of marine mammals, which also were aimed at preserving and enhancing the subsistence rights of Alaska Natives.

In 1997 the Alaska Nanuuq Commission signed its first cooperative management agreement with the U.S. Fish and Wildlife Service. The contract had two work plans:

1. To represent the villages of Alaska that are in the range of the polar bear on matters concerning the conservation of polar bear, to conduct meetings of the Commission and the Executive Committee, to keep the villages and hunters informed and to develop school presentations.
2. To assist the U.S. Fish and Wildlife Service in the development of a bilateral treaty with Russia for the conservation of the shared polar bear population in Chukotka and Alaska, and to develop a Native-to-Native agreement with the Chukotka Union of Marine Mammal Hunters which represent the Natives of Chukotka.

We are now in the third year of co-management with the U.S. Fish and Wildlife Service. Each contract has been for $90,000 annually. The Commission has had four annual meetings. The Executive Committee has met seven times. Reports in writing have been made to all of the village governments informing them of the progress of the bilateral discussions and the development of the Native to Native Agreement Most of the village governments have been given verbal reports.

UNION OF MARINE MAMMAL HUNTERS:
In June 1997 leaders from the coastal villages of Chukotka met in the village of Yanrakynnot and formed the Union of Marine Mammal Hunters (UMMH). It was a grass roots organization with both the Chukchi and Yupik village hunter organizations represented. Three commissions were formed: The Bowhead Whale Commission, The Pacific Walrus Commission and the Polar Bear Commission. These Commissions were to address the problems associated with the sustainable use of their respective species and to cooperatively seek solutions to these problems.

BERINGIA PROGRAM:
In June 1998 the Alaska Nanuuq Commission signed a cooperative agreement with the National Parks Service Beringia Program to collect information on polar bear habitat use in Chukotka by interviewing experienced hunters in each of the coastal villages. This information had already been collected in Alaska by U.S. Fish and Wildlife biologist Susanne Kalxdorff. By using the same methods and training the UMMH personal to do the report we would not only complete the habitat information on this population but also at the same time help the UMMH build their credibility. This is a three-year program now in its second year.

BILATERAL TREATY
The **"U.S-Russia Bilateral Conservation Agreement for the Alaska-Chukotka Polar Bear Population"** is in its final draft, being reviewed by the governments before it is presented to congress and the duma for ratification. The Alaska Nanuuq Commission has been an equal partner with the U.S. Fish and Wildlife Service on the U.S. negotiating team. The Natives of Chukotka have not been as well represented on the Russian delegation.

The objectives of the Agreement are to develop a conservation plan founded on the involvement of the Native Peoples and interested public in both countries. The Agreement will provide a joint long-range science based conservation plan for the protection of important habitat. And will provide Native people direct and equal involvement in the management programs.

Terms of the Agreement:

- The Agreement will be between the U.S. and Russian Government authorities.
- The governments will support cooperative implementation between Alaska and Chukotka Native organizations, in Alaska through the Alaska Nanuuq Commission.
- The Agreement will be consistent with the 1973 international "Agreement for the Conservation of Polar Bears" and for the first time formally implement management arrangements for an internationally shared population.
- The will implement the 1994 amendments to the MMPA which directs the Secretary of Interior to "consult with the appropriate officials of the Russian Federation on the development and implementation of enhanced cooperative research and management programs for conservation of polar bears in Alaska and Russia".

- Subsistence harvest by Native Peoples will be the exclusive consumptive use.
- The Agreement as proposed will provide for enforceable harvest limits based on sound wildlife management principles and population sustainability including protection for denning bears and females with cubs less than one year old and the prohibit the use of aircraft and large motorized vessels in the taking of polar bears, and enhance coordinated habitat conservation measures through bio-monitoring and other efforts, and provide for additional population studies.
- A Joint Commission will administer implementation of the terms of the Agreement. The Joint Commission will operate by consensus, and will be comprised of 4 representatives: a governmental official and a Native official from each jurisdiction.
- In the U.S., the Agreement will require stand alone enabling legislation to augment terms of MMPA. Ultimately the State Department will submit a final Agreement to the U.S. Senate for ratification.
- The Agreement will require additional funding for full implementation. The Service will seek Congressional authority to appropriate funds and will consult with the Interior Department's Office of the Budget and the Office of Management and Budget.

From the perspective of the Alaska Nanuuq Commission there are several key features of the draft Agreement:

- The governments recognize and respect the accumulated knowledge and wisdom of the Native people who best know the polar bear, and will use this traditional knowledge as a basis for management programs.
- The Native peoples of Alaska and Chukotka, as represented by the Alaska Nanuuq Commission and the Union of Marine Mammal Hunters respectively will play an equal role with the governmental representatives on the Joint Commission, which will set harvest limits and other policy principles.
- The Bilateral Treaty will be implemented by an Agreement between the Native peoples of Alaska and Chukotka.
- Subsistence is the primary use of polar bear.

Essentially the process of negotiating the draft treaty satisfies two of the demands made by the Alaska Native Organizations when they were notified of Russia's desire to resume hunting polar bear. These are: the Alaska Natives were an equal partner in the negotiations, and that a Native-to-Native Agreement will be developed to implement the treaty. The third demand, setting research priorities will be realized during the implementation of the treaty.

Since 1972 when the MMPA was enacted, Alaska Natives hunted polar bear and most other marine mammals with no restrictions other than the wasteful take limitations. The Native exemption allows nonwasteful uses of marine mammals unless the species was listed as depleted or endangered under the Endangered Species Act. Restrictions such as quotas could then be placed on species such as bowhead and specific stocks of other species. Since polar bear have not been listed, theoretically Alaska Natives could hunt them until they became threatened or depleted at which time restrictions could be enacted through regulation.

Essentially the Alaska Nanuuq Commission has expressed a willingness to accept restrictions by developing a Native-to Native Agreement to implement the treaty. The language of the draft treaty states that the Joint Commission created to establish harvest limits will operate on a

consensus basis. This means that the Native representative must agree to the harvest limits. The Alaska Nanuuq Commission realizes that if the Natives of Chukotka are to share in the harvest, it means they will take half of the harvest from the shared polar bear population. Essentially numbers boil down to quotas. But since any harvest limit will already be agreed to on the Joint Commission, we will be implementing quotas we had already agreed to.

The difference between the Alaska-Chukotka Native-to Native Agreement and the North Slope Borough/Inuvialuit Agreement is that the Alaska-Chukotka quotas will be enforceable. And therein lies a big hurdle facing the Native-to-Native Agreement Process. On the Alaska side it is envisioned that the tribal governments will eventually enact tribal ordinances adopting the quotas. We then expect the federal authorities to also issue regulations to formalize the quotas. Enforcement will first be worked out at the local levels with federal authority for backup.

In Alaska it is a matter of placing restrictions on hunting. It is just the opposite in Russia where restriction will be lifted. How enforcement will work is not well understood by the U.S. side, but there is more concern over the commercialization of the hunt than there is for over harvest.

DIFFICULTIES OF WORKING IN CHUKOTKA

In February 1998 the U.S. and Russian negotiating teams met in Eastsound, Washington and drafted what most of what is now in the final version of the Agreement. The listing of the members of the Joint Commission at that time was an addendum to the Agreement. The Union of Marine Mammal Hunters of Chukotka was named in the Definition Article as representing the Native People of Chukotka. The "of Chukotka" language was intended as a geographic indicator since it was not part of the official name of the UMMH.

In March 1998 the leadership of the UMMH were in Barrow working on whaling issues with the Alaska Eskimo Whaling Commission and the North Slope Borough Department of Wildlife Management. While they were in Barrow, the Governor of Chukotka, Alexander Nazarov, called a meeting of hunters and formed *The Union of Marine Mammal Hunters of Chukotka* and installed his Marine Mammal Director Yuri Tototto as the Executive Secretary of the organization.

This is the same Yuri Tototto that sold several hundred beluga whales to Japan in 1998. Only the protest of the International Whaling Commission, the United States and other international stopped the commercial hunt in Chukotka.

In September of 1999 Governor Nazarov ordered the Yupik Society of Chukotka dissolved for failure to file specific reports that were decreed without their knowledge. In February of this year, Governor Nazarov, Yuri Tototto and the leadership of the original UMMH were scheduled to attend a conference sponsored in Anchorage by the Alaska Eskimo Whaling Commission. Nazarov and Tototto went via Moscow and New York. The UMMH leaders were to come via Provideniya and Nome. According to airport officials in Provideniya, Nazarov ordered the airport to remain closed until after he left Anchorage. And that is exactly what happened. The original UMMH were not present in Anchorage to dispute his claim that Tototto was the real head of the Union of Marine Mammal Hunters of Chukotka and that there was no difference from the original UMMH, which he claimed, reorganized under their own volition.

Governor Nazarov through his Director of Protected Resources, Nicoli Zeleznov, have attempted to undercut the Beringia Program of the Alaska Nanuuq Commission and the UMMH, by demanding that U.S. Fish and Wildlife Biologist Susanne Kalxdorff obtain an impossible to get license to conduct research in Chukotka. The UMMH and Alaska Nanuuq Commission must find ways to get around these roadblocks to complete the habitat use study in Chukotka.

ECOSYSTEM APPROACH TO COMANAGEMENT

The Alaska Nanuuq Commission has adopted what we view is an ecosystem approach to co-management. We have just signed a small contract with the National Marine Fisheries Service to conduct harvest surveys of ice seals in the Maniilaq Region in cooperation with the North Slope Borough Department of Wildlife Management and the Eskimo Walrus Commission. We feel that single species management makes no sense in the conservation and protection of polar bear and other species. Polar bear depend primarily on ice seals for prey. The small contract for the harvest surveys is the first step in broader ecosystem co-management.

BILATERAL AGREEMENT EFFECTS ON CO-MANAGEMENT:

- The success of the Bilateral Agreement on Polar Bear with Russia will set the standard for agreements on other shared species, such as walrus and ice seals.
- The Agreement recognizes the needs of Natives and the knowledge they have accumulated in meeting these needs.
- The Native People have an equal voice in the Agreement, at least on the U.S. side.
- The Agreement provides an opportunity for the full exercise of the U.S. Fish and Wildlife Service Native American Policy.
- The Agreement provides an opportunity for Alaska Natives, and to some extent, Natives of Chukotka to build the mechanisms for true participation in the management process.
- The implementation of the Agreement will largely depend of Native self-regulation.

CHANGES TO MMPA THAT ARE NEEDED:

"MANAGEMENT BEFORE DEPLETION'

In order for the bilateral treaty to be successful and the Native-to-Native Agreement to re realized, the restriction on "management before depletion" must be lifted. Most Alaska Native represented by the Alaska Nanuuq Commission realizes that if the polar bear is to be enjoyed by our grandchildren and their grandchildren we must put install conservation efforts. They also recognize the desire and the right of the Native People of Chukotka to use polar bear as they had always done before 1956. Therefore we are willing to accept restrictions on our hunting if we set those restrictions ourselves.

"ENFORCEMENT OF TRIBAL REGULATIONS"

If we are willing to give up our right to unlimited hunting then the federal government must help by adopting regulations enacted by the affected tribes. Advocacy commissions like the Alaska Nanuuq Commission have the ability to enter into co-management and other agreements, but only the tribes can enact ordinances for self-regulation. If there is to be true co-management then the federal government must assist in the enactment of these ordinances and the enforcement of them if it becomes necessary.

FUNDING ISSUES:
To date the full congressionally authorized funding had not been requested either by the Secretary of Interior or the Secretary of Commerce. This has stymied the development of co-management with Alaska Native Organizations. The Alaska Nanuuq Commission receives $90,000 from its co management agreement with the U.S. Fish and Wildlife Service. With this I am to pay salaries, visit all the villages, hold commission and executive committee meetings and develop school presentations. Additionally I am to assist the Service in the development of the Bilateral treaty with Russia and to assist the Union of Marine Mammal Hunters develop their programs. Granted these funds give us a base and allows us to go after other funds from agencies such as the National Park Service Beringia Program and the National Marine Fisheries Service Harvest Monitoring.

Other than the lack of adequate funding the biggest issue is timing and the budget process itself. We, like most nonprofits and tribal organizations, are on a federal fiscal year. Because of the budget process we go for the beginning of each year without funds. Even though our fiscal year starts October 1, we usually don't receive funds until mid February.

ALASKA NANUUQ COMMISSION NEEDS

1. Funds to develop a long-term strategic plan and to set research priorities. This will involve a 4-5 day meeting of the Commission and would cost approx. $40,000.
2. Additional funds to pay Executive Director full time with other expenses $90,000
3. Additional staffing to develop self-regulation rules with the tribal governments. This will involve legal assistance, travel and other expenses totaling approx. $140,000 a year for at least two years.
4. Travel funds for increased interaction with the UMMH to develop the Native-to-Native Agreement of approx. $28,000 a year.
5. Additional habitat studies in Chukotka for 3 year of approx. $50,000 a year.

These additional funds would allow the Alaska Nanuuq Commission meet its current needs and to prepare itself to completely develop the Native to Native Agreement with the Union of Marine Mammal Hunters.

OTHER CONGRESSIONAL ASSISTANCE:
Chukotka recently elected a new Deputy to the Duma, Roman Abramovich. Deputy Abramovich is involved in oil and gas. It might be very helpful for members of the House Resources Committee, particularly the Congressman for all Alaska, Don Young to invite Deputy Abramovich to come to the U.S. and Alaska in particular to learn about the Bilateral Agreement on Polar Bear and to learn how we do business.

Thank you Mr. Chairman, that is my last suggestion.

Mr. YOUNG. Thank you, Charlie, and I appreciate that Monica.

STATEMENT OF MS. MONICA RIEDEL, EXECUTIVE DIRECTOR AND CEO, ALASKA NATIVE HARBOR SEAL COMMISSION

Ms. RIEDEL. Thank you, Mr. Chairman. My name is Monica Riedel or Nalatoa [ph]. I am the Executive Director of the Alaska Native Harbor Seal Commission located in Cordova, Alaska.

The Harbor Seal Commission was organized by tribal resolutions in 1995 to develop and implement an MMPA Section 119 Agreement with the National Marine Fisheries Service for harbor seals. We finalized and signed an Agreement in April of 1999. Our geographic representation spans an area that is equal to the width of the United States and was—and is within the habitat range of harbor seals.

Harbor seals are vital to our diet and spiritual and cultural well-being. Our current programs include a Community-based Biological Sampling Program, coordination with the Youth Area Watch Project, and we are in our third year of the Harbor Seal Monitoring, Research and Management Program, which has been fully funded through NOAA.

We also have entered into two cooperative Agreements with the Alaska Department of Fish and Games Subsistence Division. One is for a technical oversight of the Harvest Data Program and another is for Informational Development of a CD-ROM on Alaska marine mammals.

This past year we collaborated with the University of Alaska, Fairbanks to expand the scope of the tissue archival project to include Bering Sea communities and we are currently collaborating with the Alaska Sea Life Center on future projects.

Regarding self-regulation and co-management, Alaska Natives have thousands of years of historical use of marine mammals and we have established effective conservation methods. Now, through co-management, the Harbor Seal Commission have become equal partners with NMFS in resource management decisions.

Some of the difficulties incurred during the development of the Agreement were, one, long-distance communications between D.C. Headquarters and Alaska. Two, remoteness of our villages made it costly to meet on a regular basis. Three, reaching consensus on consultation and the enforcement process. Four, us understanding NMFS's agency constraints that were often translated by lawyers. And, five, them understanding our system of oral history and conservation practices.

With regard to proactive management through our Section 119 Agreement, first in the Agreement we have established a co-management committee structure made up of three NMFS representatives and three Harbor Seal Commission representatives. Secondly, NMFS recognizes tribal authority to regulate our own members and the Harbor Seal Commission recognizes the Secretary of Commerce's authority to enforce existing provisions of the MMPA. Thirdly, a consultation process will take place prior to listing stocks as strategic or depleted under the MMPA or the Endangered Species Act.

Co-management has benefited Natives by the federal agency's formal recognition of them as equal partners. The marine mam-

mals have benefited by having the primary users directly involved in prioritizing research and management decisions.

Hunters and elders hold traditional knowledge that they transfer and they transfer their conservation practices to youth and researchers. Communication has vastly improved among the ANHSC tribes and NMFS, but there is still room for improvement and growth. With adequate support Harbor Seal Commission is positioned to assume the responsibility of monitoring the harvest formerly done by ADF&G Subsistence Division.

Mr. Chairman, my recommendations for general improvements to Section 119 are, one, strengthen Section 119 so that agencies can share enforcement authority with tribally authorized co-management partners. Two, Section 119 Agreements need to be exempt from the Federal Advisory Committee Act. Three, fully appropriate the authorized funding for Section 119 for developing infrastructure and tribal management plans, collecting and analyzing population data, harvest monitoring, cross-cultural training, educational projects, biosampling, and tissue archival projects.

Finally, Mr. Chairman, the NMFS Alaska Region and the Harbor Seal Commission are committed to the co-management process as established in our Agreement and we are working hard on long-term solutions to our common goals. Thank you.

[Prepared statement of Ms. Monica Riedel follows:]

WRITTEN TESTIMONY TO THE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FISHERIES, CONSERVATION, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES

By Monica Riedel, Executive Director and CEO
Alaska Native Harbor Seal Commission
April 6, 2000

Thank you for the opportunity to present this testimony. My name is Monica Riedel and I am testifying in my capacity as the Executive Director and CEO of the Alaska Native Harbor Seal Commission (ANHSC). am also a subsistence user of marine mammals, Native artist, and tribal member of the Native Village of Eyak located in Prince William Sound, Alaska.

The ANHSC spans a geographic area almost equal to the width of the United States. We encompass approximately eighty remote villages most of which are accessible only by air or water. The geographical remoteness makes communication extremely difficult.

The commission was organized specifically to develop and implement a Marine Mammal Protection Act (MMPA)Section 119 Agreement and to address issues related to the Native subsistence harvest. Co-management Agreements were viewed as an effective means of addressing the decline of harbor seals in the Gulf of Alaska while providing for a continuation of traditional subsistence uses.

The importance of harbor seals to Alaska Natives.

Alaska Natives have been harvesting marine mammals for centuries. Current Harvest data shows that out of an estimated population of 80,000 harbor seals in Alaska, approximately 2,500 are taken for subsistence. (Information from NMML and the Alaska Department of Fish & Game, Subsistence Division)

The nutritional value derived from the seal far exceeds any other foods introduced and imported to Alaskan villages. The oil is unsaturated, "and is an excellent source of the long-chain omega-3 fatty acids that help prevent

coronary heart disease"(Professor Fereidoon Shahidi of Memorial University, Nammco International Conference and Exhibition Nov. 1997). Furthermore, recent studies show that seal oil may contain antibiotic properties. Just 3 oz of seal meat provides 95% of a person's daily requirement of iron.(Alaska Native Health Board)

Over the past 28 years, congress has consistently recognized the use of marine mammals by Alaska Natives as an integral part of our way of life. Marine mammals, including the harbor seal, are a key source of food and clothing for Alaska Natives living throughout coastal Alaska. Alaska Natives make a wide variety of handicrafts and clothing from the marine mammals they harvest. They barter these items through traditional trading networks throughout Alaska. The sale of handicrafts made from marine mammal by-products is a crucial source of income to many who live in remote Native villages. Marine mammals also play a prominent role in Native stories, art, traditions, and cultural and spiritual activities.

Background information on ANHSC Programs:

Community-Based Harbor Seal Management and Biological Sampling

With support from the *Exxon Valdez* Oil Spill (EVOS) Trustee Council, the ANHSC, in collaboration with the Alaska Department of Fish & Game Subsistence Division(ADF&G), has been conducting a biosampling program to collect tissue samples from subsistence-harvested seals. The overall purpose of the program is to combine Native traditional knowledge with western science to address the restoration and recovery of the seal population impacted by the 1989-oil spill. Over the past 5 years, the project has trained and certified over 80 hunters, and 50 students and subsistence users in rural Alaskan villages. The project has collected over 200 sample sets for distribution to a wide range of researchers and for the University of Alaska Tissue Archival Project.

Youth Area Watch

Through coordination with another *EVOS* funded program, an additional 350 students have been exposed to the scientific methods of collecting data. During youth spirit camps the hunters teach protocols of hunting methods,

as well as cultural relationships to the animal, while the ADF&G veterinarian and ANHSC staff train the youth in the scientific protocols of data collection. During the year, staff also visits elementary and high schools to educate students on Natives and marine mammal harvests.

Cooperative Agreement between ADF&G and ANHSC for Information Development

This project was initiated to develop an educational CD ROM geared to high school students. ADF&G compiled the data which includes historical and traditional knowledge about marine mammals in Alaska. It also has current technical data about marine mammals, including the ANHSC/NMFS Co-management Agreement. It will be demonstrated at the ANHSC spring meeting and then distributed to rural schools in Alaska in the Spring of 2000.

Cooperative Agreement between ADF&G and ANHSC for Technical Oversight of Harvest Data

In 1998 and 1999, the ANHSC provided the technical oversight of the Statewide ADF&G, Subsistence Division's Harvest Data Assessment for harbor seals and sea lions. This project has provided an excellent opportunity for the Board of Directors to scrutinize the data in detail and see the data compiled from a statewide perspective. Some of the directors themselves were the harvest surveyors in their respective villages.

Harbor Seal, Monitoring, Research and Management Program

With Congressional appropriations through the National Marine Fisheries Service (NMFS) the ANHSC has conducted a "Harbor Seal Monitoring, Research and Management" program. This program, combined with the EVOS biosampling project, has supported a full time executive director, and a contracted biologist to monitor harbor seal research on a statewide and national level. There are four main components to the program:

Cooperative Agreements
Harvest Assessment Oversight
Expansion of Biosampling to Southeast Alaska

ANHSC Outreach and Education

Expanding the Scope of the Subsistence Harvest Frozen Tissue Archive

The North Pacific Marine Research Program through the University of Alaska, Fairbanks, funds this project. The purpose is to expand the biosampling efforts to the Bering Sea, including the Aleutian Islands, Bristol Bay and more Kodiak villages. The importance of consistent samples over a long term is invaluable to determining factors of change in the environment. The ongoing subsistence harvest is providing tissue samples that are a crucial source of data for researchers investigating those changes.

Self-regulation and Co-management

The use of marine mammals for thousands of years has made Alaska Natives wise stewards of marine mammal populations. We bring unique knowledge and historical perspective to resource management. The National Marine Fisheries Service (NMFS), the federal agency with jurisdiction for the management of harbor seals, recognizes the advantages of direct involvement of subsistence users in managing harbor seals. Indigenous inhabitants and NMFS share the common goals of conservation and maintenance of a sustainable subsistence harvest. For that reason, the NMFS entered into a Marine Mammal Protection Act, Section 119 Co-management Agreement with the ANHSC.

Through co-management, hunters and Native Tribal representatives sit as equals within the policy-making bodies that make resource management decisions. Co-management provides an effective means of conservation without diminishing the ultimate authority or responsibility of the Secretary of Commerce.

Development of ANHSC/NMFS Sec. 119 Agreement

Co-management discussions between the Harbor Seal Commission and the National Marine Fisheries Service began in April 1995, shortly after the formation of the commission, and NMFS's proposed listing of the Gulf of Alaska harbor seal stock as "strategic". What followed during the next few

years were fundamental discussions while the commission was in its formative development. During that period, The Harbor Seal Commission took part in the meetings that resulted in the signing of the "Memorandum of Agreement for Negotiation of Marine Mammal Protection Act Section 119 Agreements" also referred to as the "Umbrella Agreement" in August of 1997.

Consequently, in September of 1997 earnest negotiations began between the Harbor Seal Commission and the National Marine Fisheries Service. It took a long time to research the authorities section. It took several meetings to come to consensus on the consultation and enforcement process. Both parties had to gap bridges to come to an understanding of NMFS's departmental constraints and the conservation methods practiced by Alaska Natives. In spite of the impediments of long distance communications between NMFS headquarters in Washington D.C. and between our remote villages, a Section 119 Co-management Agreement between the Alaska Native Harbor Seal Commission and the National Marine Fisheries Service was finalized and signed in April 1999. Since the signing, communications between NMFS and ANHSC has vastly improved.

Proactive management through Sec 119 Agreements

It is envisioned that through the Co-management Committee structure, which is established in the Agreement, the ANHSC and NMFS will consult on issues relating to regulation and enforcement. In Article VII Sec B) NMFS recognizes the existing tribal authority to regulate their members during the conduct of the subsistence harvest of harbor seals. The ANHSC recognizes the Secretary of Commerce's authority to enforce the existing provisions of the MMPA applicable to the Native harvest. Furthermore, Article VII Sec C), States: As concern about any Alaska harbor seal stock arises (ie., prior to listing as strategic or depleted under the MMPA and/or as threatened or endangered under the ESA) the Parties agree that the Co-management Committee shall:

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;

and

4. After listing, consult and recommend about possible arrangements for ensuring compliance and enforcement.

I am pleased to report that long-term commitment by NMFS and ANHSC to the co-management process was re-enforced at the first Co-management Committee meeting, which was held in Juneau, Alaska just last month. At that meeting initial steps were taken to implement the 1999 Agreement.

How Co-management Agreements have benefited Natives and marine mammals

Before the ANHSC was formed, hunters occasionally met with agencies to exchange information about harbor seals. Now, with formal recognition, the dialogue is much broader. With equal representation, scientific consultation, and through the co-management committee, as developed in the NMFS/ANHSC Sec 119 Agreement, hunters and subsistence users contribute their vast traditional knowledge to address research and conservation needs. The ANHSC Board of Directors is made up of hunters and subsistence users. They are directly involved in data analysis of the seal population, harvest numbers, as well as data generated from the biosampling program. ANHSC meetings are open to the public and the organization distributes newsletters, brochures and biosampling training videos.

Room for improvement

As background, it should be noted that the ANHSC recognizes that the most important data for managing any harvested population are regular censuses and monitoring of the size and composition of the harvests. The NMFS and the ADFG are well equipped for censusing harbor seals and they have an on-going census program. Unfortunately, there is no on going program for monitoring harvests. The ANHSC members are responsible users and recognize the importance of harvest monitoring. The ANHSC is in the best position to do so because harvests are spread over a very wide area (from Ketchikan to the western Aleutian Islands) and throughout the year, it

is impractical to monitor the harvests from agency offices. The ANHSC has representatives throughout the harbor seal's range in Alaska, and those representatives are knowledgeable about local hunting practices.

We need to find long-term commitments to support conservation and management efforts of the ANHSC as a partner in co-management with NMFS. ANHSC is hard at work collecting data on the harbor seals, participating in federal, state and private research, monitoring the harvest and other activities. Adequate support from NMFS would enable the commission to assist its member Tribes in developing formal codes and ordinances, databases, and generally support the work of the commission. Given adequate support, ANHSC is now in a position that it could assume responsibility for monitoring the harvest of harbor seals.

General comments on the MMPA and/or ways the MMPA could be improved:

Section 119 could be strengthened so that Agencies share enforcement authority with Tribally authorized co-management partners

Importing and exporting gifts made of marine mammal products for cultural exchange needs to be clarified

Section 119 Agreements need to be exempt from the Federal Advisory Committee Act so that we may utilize technical advisory groups

Full funding for Section 119 for programs such as:

1. developing infrastructure, and tribal management plans
2. collecting and analyzing population data
3. harvest monitoring
4. cross-cultural training and other educational projects biosampling and tissue archival projects

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify on the 1994 amendments to the Marine Mammal Protection Act. I will be happy to answer any questions you may have.

Mr. YOUNG. Thank you, Monica. Alvin.

STATEMENT OF MR. ALVIN D. OSTERBACK, ALEUT MARINE MAMMAL COMMISSION

Mr. OSTERBACK. Mr. Chairman, and, Members of the Committee, my name is Alvin D. Osterback. I am an Aleut, a member of the Qagan Tayagungin Tribe, and Chairman of the Aleut Marine Mammal Commission.

I am here today to speak to you on Section 119 of the Marine Mammal Protection Act and how we have been able to interact with government agencies and establish our role as set forth in the Act.

The first meeting of the Aleut Marine Mammal Commission, hosted by the Aleutian Pribilof Island Association, took place in Dutch Harbor on May 27 and 28th of 1997. The Alaska Department of Fish and Game, the Alaska Sea Otter Commission, Rural Community Action Program, and National Marine Fisheries Service provided the funding and technical support.

At this initial meeting each tribe selected a member and an alternate to represent each community, the formation of the Aleut Marine Mammal Commission was initiated, and they set direction to get incorporated and set our starting goals.

The commission did not have the funds available to set up the commission and having no funding, we used help wherever we could find it. The Aleutian/Pribilof Island Association assisted the Marine Mammal Commission to get the legal paperwork completed and incorporate. The Aleutians East Borough helped with the paperwork and our request for funding. The Qagan Tayagungin Tribe provided office space and their staff to assist when required. If it weren't for the help of these entities, we would still be at square one.

I talked to the Aleut Marine Mammal Commission Board members once using funds from the Qagan Tayagungin Tribe and just a month ago using a teleconference call provided free of charge by the Aleutians East Borough.

Just last week, while in Anchorage, Alaska, attending a fishery meeting, I had a chance to meet with a representative of the National Marine Fisheries Service and go over the budget with we had submitted on how to best utilize the funding that is available for the first year of operation.

At the time of this meeting I requested forward funding so the Board of the Aleut Marine Mammal Commission would be able to have a face-to-face meeting and complete some much needed business as we have not had a meeting since our first meeting of May of 1997. At this time I have not received a reply as to whether this can be done.

If this is not possible, I am hoping the Aleutians East Borough will be able to forward fund us and be allowed to pay this funding back from the monies available to the Aleut Marine Mammal Commission when funding is approved.

As you can see, we have been quite slow in getting on our feet with this Commission. It is quite hard to do without funds for startup. But thankfully the people of our area who have access to

and have available funds could see the importance and need for this committee to exist and extended a hand to get us this far.

We cover a very large area and range for the Steller sea lion as well as other Marine Mammals and feel that a good working relationship on co-management will help answer a lot of questions in our communities to the subsistence use of marine mammals as well as the commercial fisherman who interacts with marine mammals while sharing and pursuing the fish resource.

To my knowledge, to date, there has been no interaction between the National Marine Fisheries Service and the Aleut Tribes of our area or the Aleut Marine Mammal Commission on the status of Steller sea lions or other marine mammals in the area.

We are very concerned with the decline in the populations and feels that we should be consulted as our use and interaction with the Steller sea lion has been ongoing for thousands of years and we wish to continue this use, as a subsistence food item and non-harmful co-existing and sharing in the harvest of the ample fishery resources of the Aleutians area as commercial fisherman.

I would like to thank the Committee and the Chairman for the opportunity to testify.

[Prepared statement of Mr. Alvin D. Osterback follows:]

March 29, 2000

Mr. Chairman and Members of the Committee,

My name is Alvin D. Osterback; I am an Aleut, a member of the Qagan Tayagungin Tribe, and the Chairman of the Aleut Marine Mammal Commission.

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As you can see we have been quite slow in getting on our feet with this Committee, it is quite hard to do without funds to startup with. But thankfully the people of our area who have access to and have available funds could see the importance and need for this committee to exist and extended a hand to get us this far.

We cover a very large area and range for the Stellar Sea Lion as well as other Marine Mammals and feel that a good working relationship on co-management will help answer a lot of questions in our communities to the Subsistence user of Marine Mammals as well as the Commercial fisherman who interacts with Marine Mammals while sharing and pursuing the fish resource.

To my knowledge, to date there has been no interaction between National Marine Fisheries Service and the Aleut Tribes of our area, or the Aleut Marine Mammal Commission on the status of Stellar Sealions or other marine mammals in the area.

We are very concerned with the decline in populations and feel that we should be consulted. As our use and interaction with the Stellar Sealion has been on going for thousands of years and we wish to continue this use, as a subsistence food item and non-harmful co-existing and sharing in the harvest of the ample fishery resources of the Aleutian area as commercial fisherman.

I thank the Committee the Chairman for this opportunity.

Alvin D. Osterback

Alvin D. Osterback

Mr. YOUNG. Thank you, Alvin. And I have noticed that there is this comment about NMFS and we will be sending them some questions. And I have been told now that there is going to be expedited process. And as far as the funding goes, we will make sure that the funding does take place. It does not seem appropriate to have you to go other places to get funding when we should have been doing it ourselves. Lianna.

STATEMENT OF MS. LIANNA JACK, EXECUTIVE DIRECTOR, THE ALASKA SEA OTTER AND STELLER SEA LION COMMISSION

Ms. JACK. Thank you, Mr. Chairman, for this opportunity to testify.

Mr. YOUNG. Move that closer to you or turn it on, please.

Ms. JACK. Okay. My name is Lianna Jack. One of my Yupik names is Daviuk [ph]. And I am Executive Director for the Alaska Sea Otter and Steller Sea Lion Commission. Today I would like to speak of the co-management experiences of our commission.

TASSC was formerly known as the Alaska Sea Otter Commission. In 1998, our Commission added the statewide advocacy of Steller sea lions. We are going into our 12th year of operation and represent a total of 51 tribal organizations.

Our goals are to ensure Alaska Native participation in sea otter and Steller sea lion management and to continue the customary use of marine mammals by Alaska Natives for Subsistence. We strongly believe that local participation in management will result in conservation that prevents a depleted listing due to subsistence harvest. Based on our goals, we developed regional marine mammal plans with Bureau of Indian Affairs and Administration for Native American grants.

Since then, we have signed an MOA with the U.S. Fish and Wildlife Service and entered into our third co-management Agreement. For the past three years, we have received 70,000 per each Agreement. Our staff, which includes Alaska Native biologists, actively work with the Service on research and management.

We work on biological and harvest monitoring projects from subsistence harvested sea otters. To date, more than 300 samples have been collected. These samples have provided the basis to conduct a large-scale genetics study to address sea otter stock concerns.

In the '97 Agreement, we focused on developing local management plans and initiated one project on using local and traditional knowledge to document the growth and dispersement of sea otter in Southeast Alaska. The local management plan developed by Sitka Tribe of Alaska has served as a model as other communities begin managing their subsistence resources.

In the '98 Agreement, we developed a small boat survey protocol and focused on training local people to conduct these surveys. The small boat survey protocol provides communities with the ability to develop their own population trends on the distribution and abundance of sea otters in their area.

In the '99 Agreement, we are focusing efforts on the decline of sea otters in the Aleutians. In cooperation with researchers, our efforts will include standardizing the small boat survey protocol so

that locally conducted surveys can serve to estimate population trends.

Another area of interest is Port Heiden in the Bristol Bay area where this winter heavy storms moved the Bering Sea ice pack south and stranded otters. In response, we focused survey effort on the sea otter haul-out to assess mortality and extent.

While these projects have been successful and provided valuable management and biological information, we could do so much more if the Service would receive the entire appropriation amount within Section 119 and our funding increased.

Since we have taken up Steller sea lion advocacy, we have communicated with NMFS to negotiate and sign a co-management Agreement. At our last board meeting in February, NMFS met with our board to begin in earnest discussion on an Agreement. We have planned a meeting next month for further discussions.

Co-management activities will hopefully include projects that address sea lion issues and management and include local people to collect critical biological and ecological information.

We ask that TASSC is granted funding to implement projects we have discussed with NMFS, which include harvest monitoring, small boat surveys, and biological sampling.

We are a successful commission in that we accomplish needed projects to help manage and conserve marine mammal populations. We are known for our productive record and tough, but meaningful, relationship with the Service. We hope to be given that opportunity by receiving continued funding for sea otters and designated funding for sea lions. TASSC shares the concerns that you have heard today and we are in agreement with the recommendations you have heard on the Marine Mammal Protection Act.

Thank you again, Chairman, for giving our commission the opportunity to testify.

[Prepared statement of Ms. Lianna Jack follows:]

Testimony
on the
Marine Mammal Protection Act of 1972, as amended
before the
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
U.S. House of Representatives
106th Congress

April 6, 2000
2:00 p.m.
1334 Longworth Building

submitted by
Lianna Jack
Executive Director
The Alaska Sea Otter and Steller Sea Lion Commission
505 W. Northern Lights Blvd, Suite 217
Anchorage, AK 99503
(907) 274-9799

Thank you, Mr. Chairman. It is a pleasure to testify before the Subcommittee on Fisheries Conservation, Wildlife and Oceans. My name is Lianna Jack and I am the Executive Director of the Alaska Sea Otter & Steller Sea Lion Commission (TASSC). Our Commission was formerly known as the Alaska Sea Otter Commission. In 1998, our Commission added the statewide advocacy of Steller sea lions to our program. We are going into our 12th year of operation. We represent a total of 51 tribal organizations for sea otters, or sea otters and Steller sea lions.

Our goals are to ensure Alaska Native participation in sea otter and Steller sea lion management and to continue the customary use of marine mammals by Alaska Natives for Subsistence. We strongly believe that local participation in management will result in conservation that prevents a depleted listing under the MMPA due to subsistence harvest. Based on our goals, we developed regional management plans with Bureau of Indian Affairs (BIA) and Administration for Native Americans (ANA) grants.

Since then, we have signed a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service (Service) and have entered into our third comanagement agreement. Development of the initial agreement, and for subsequent agreements with the Service has happened quickly. For the past three years, we have received $70,000 for each year's agreement. At the direction of our Board, monies received from Section 119 have been used for our regions through the funding of research projects, such as the small boat survey; supply purchase; or direct contracts with communities. Our Staff, which includes Alaska Native biologists and Natural Resource specialists, actively work with the Service on research and management.

We work on biological and harvest-monitoring projects from subsistence harvested sea otters. To date, more than 300 samples have been collected. These samples have provided the basis to conduct a large-scale genetics study to address sea otter stock concerns. Additionally, we have developed a winter mortality survey protocol for sea otters which local people implement.

In the 1997 Comanagement Agreement we focused on developing Local Management Plans, and initiated one project on using local and traditional knowledge to document the growth and dispersement of sea otter in Southeast Alaskan waters. This project provides valuable information to resource users and scientists. The map will act as a guide as we develop a comprehensive stock survey for sea otters. The Local Management Plan developed by Sitka Tribe of Alaska (STA) has acted as model as other communities look to begin managing their subsistence resources. Ordinances that STA adopted, and a harvest monitoring program were developed from which STA is able to monitor their harvest of sea otters, and prevent the overutilization of the resource.

In the 1998 Comanagement Agreement we developed a small boat survey protocol and focused on training local people to conduct these surveys. The small boat survey protocol provides communities with the ability to develop their own population trends on the distribution and abundance of sea otters in their area. We worked with residents of Sitka, Cordova, Larson Bay and Port Graham/Nanwalek in a "train-the-trainers" program, where once trained, local people are enabled to train residents of other communities on the protocol. From this program, trainers have trained locals from Unalaska and Port Heiden. This agreement also allowed us to cooperatively address killer whale issues with the Service for the Aleutians. Through a survey, we attempted to document whether killer whales were preying on sea otters. With survey effort in False Pass, we received no documentation to substantiate this type of prey interaction.

In the 1999 Comanagement Agreement we are focusing efforts on the decline of sea

otters in the Aleutians. In cooperation with researchers, our efforts will include standardizing the small boat survey protocol so that surveys conducted by local people will be the trends for population monitoring. Once the protocol is standardized, we plan on training communities in the Aleutians so their surveys will align with the historic surveys conducted by researchers in their area. We also are planning for local participation in the aerial survey planned for the Aleutian Archipelago this spring. Another area of interest is Port Heiden in the Bristol Bay area. This winter, due to heavy storms and extreme weather, the Bering Sea pack ice moved south and stranded otters. In response, we focused survey effort on the sea otter haul-out to assess mortality and extent.

While these projects have been successful and provided valuable management and biological information, we could do so much more, if the Service would receive the entire appropriation amount within Section 119 and our funding subsequently increased to $310,000.

Since we took up Steller Sea Lion advocacy, we have communicated with the National Marine Fisheries Service (NMFS) to negotiate and sign a comanagement agreement. At our last board meeting in February, NMFS met with our board to begin in earnest discussion on a comanagement agreement. We have planned a meeting next month for further discussions.

Comanagement activities will hopefully include projects that address sea lion issues and management and include local people to collect critical biological and ecological information.

We ask that TASSC is granted $100,000 to implement projects we have discussed with the NMFS, which include harvest monitoring, small boat surveys, biological sampling and mortality assessments.

We are a successful Commission in that we accomplish needed projects to help manage and conserve marine mammal populations. We are known for our productive record and tough but meaningful relationship with the Service. We hope to be given that opportunity by receiving continued funding for sea otters and designated funding for sea lions. Thank you again Mr. Chairman, for giving our Commission the opportunity to testify before this committee.

Proposed projects include:

Sea otter: USFWS - $ 310,000

- *Local Management Plans and Ordinances* _____ *$ 50,000*
  Strengthening and expanding the Local Management Plans and Ordinances to allow for the tribal regulation and management of sea otter harvest
- *Small Boat Survey* _____ *$ 120,000*
  Expansion of the project to include additional communities
- *Sea Otter Biosampling Program* _____ *$ 5,000*
  Continuation of the Sea Otter Biological Sampling Program for the collection of tissue samples and baseline biological data
- *Carcass Survey Program* _____ *$ 30,000*
  Expansion of the Carcass Survey Program into additional communities for the assessment of sea otter mortality
- *Local & Traditional Knowledge Survey* _____ *$ 20,000*
  Expansion of the Local & Traditional Knowledge Survey focusing on the Alaska Peninsula and Kodiak Island
- *GIS Mapping Project* _____ *$ 15,000*
  Expansion of the GIS Mapping Project to allow for the layering and storage of data from the research programs.

- *Targeted Aerial Surveys* _____ *$ 40,000*
  Targeted aerial surveys to address critical populations or areas of concern, such as in Orca Inlet near Cordova, the Barren Islands, and the stretch of coastline between Cordova and Yakutat
- *Contingency Fund* _____ *$ 15,000*
  The continuation of a contingency fund is important to allow for the quick response to unanticipated situations, such as the sea otter stranding in Port Heiden in the Bristol Bay area.
- *Comanagement Operations* _____ *$ 15,000*
  Funding of the implementation and development of comanagement operations.

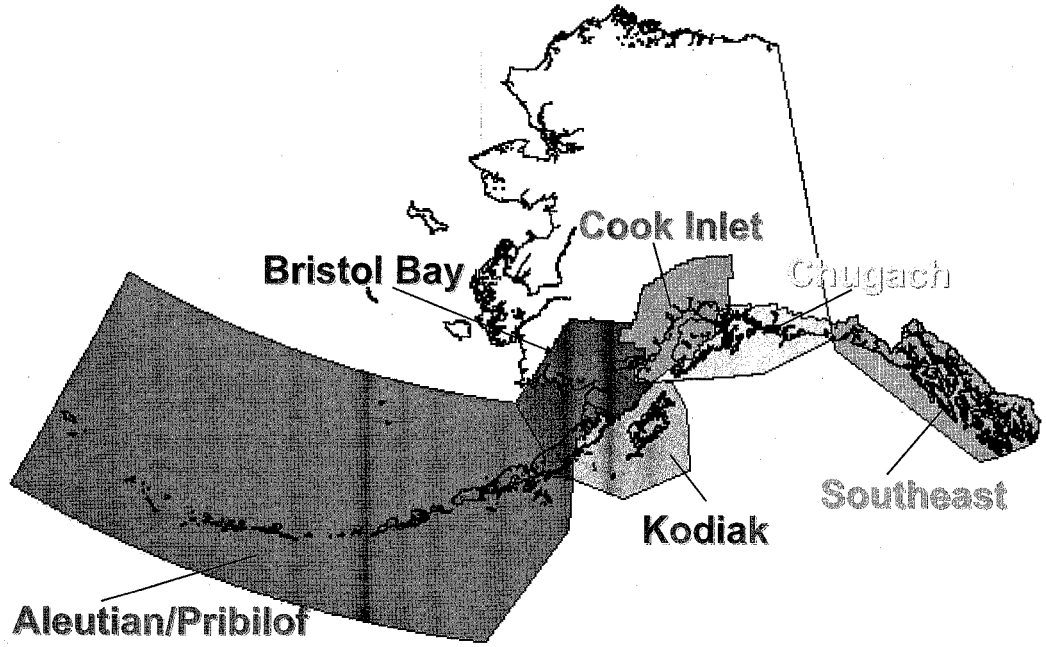
Steller sea lion: NMFS - $ 100,000

- *Harvest Monitoring Pilot Project* _____ *$ 30,000*
  Development of a pilot project for harvest monitoring of all marine mammals, including Steller sea lions, modeled after the FWS Marking & Tagging Program but which would be tribally authorized and enforced.
- *Steller Sea Lion Biosampling Program* _____ *$ 10,000*
  Development of a Steller sea lion Biological Sampling Program.
- *Small Boat Survey* _____ *$ 20,000*
  Modification of the Small Boat Survey protocol to account for the presence of all marine mammal species.
- *Carcass Survey* _____ *$ 10,000*
  Modification of the Carcass Survey protocol to collect morphological information and biological samples specific to Steller sea lions and used in ongoing research.
- *GIS Program* _____ *$ 5,000*
  Inclusion of Steller sea lion research and information in the TASSC GIS program.
- *Steller sea lion quick response fund* _____ *$ 5,000*
  To allow for the quick response to unanticipated situations regarding Steller sea lions.
- *Traditional Knowledge Survey* _____ *$ 20,000*
  Local and traditional knowledge survey to investigate changes in Steller sea lion diet over time.

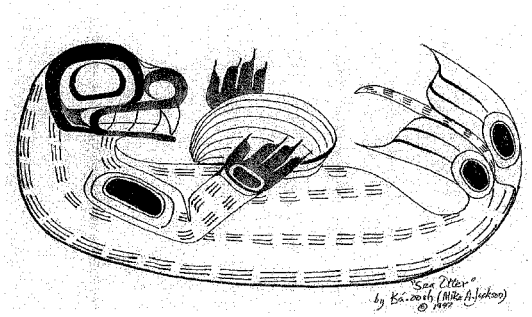
Please see the attachments for more specifics regarding our existing programs.

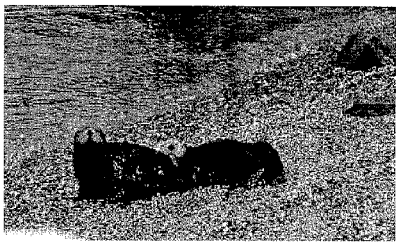
Attachment I: TASSC Regions

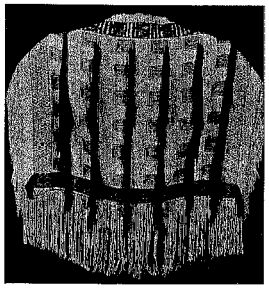
The Alaska Sea Otter & Steller Sea Lion Commission is composed of Six Coastal Regions



Attachment II: Subsistence - Science







Our goals not only include the participation of local people in the management of sea otter and sea lion populations, but we respect the cultural importance of the use of marine mammals for the creation of handicraft, the development of art and use in regalia.

Attachment III: Goals

Goals:

•Promote Alaska Native participation in sea otter and Steller sea lion conservation and management.

•Assess the health and condition of sea otters and Steller sea lions in Alaska through biological data and tissue collection.

•Work with regulatory agencies toward the common goal of enhancing and protecting healthy sea otter and Steller sea lion populations.

•Educate and inform the public on the traditional and contemporary relationship between the sea otter, the Steller sea lion and Alaska Natives.

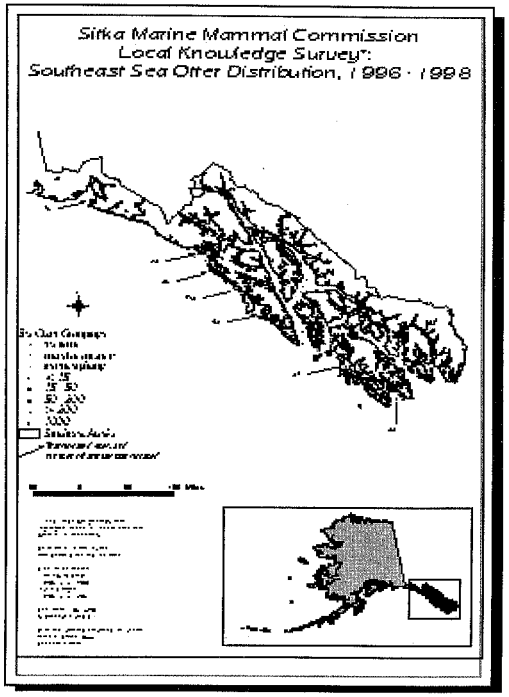
TASSC has developed protocols specific to promoting Alaska Native participation in conservation and management of sea otter populations.

Below is a list of a few programs derived from our goals:
First Comanagement Project
Sea Otter Biosampling Program
Carcass Survey Program
Small Boat Survey Program
The following pages gives highlights of these programs.

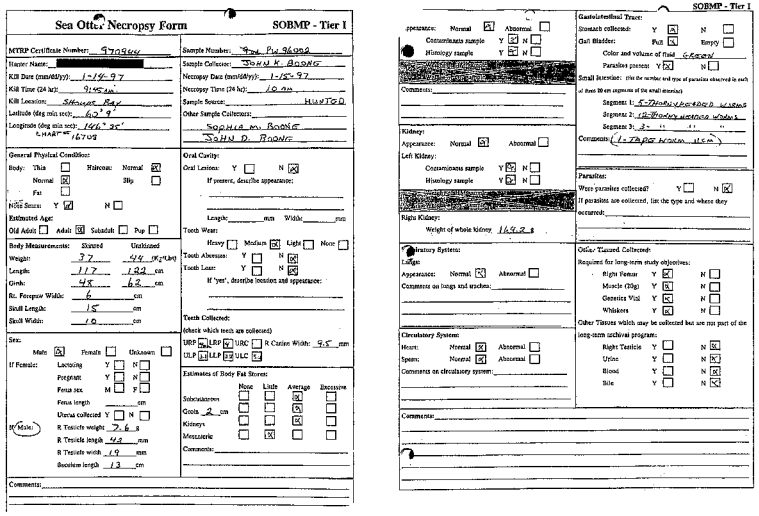
First Comanagement Project

Southeast Local Knowledge Survey

Tribal Biologists traveled around Southeast and interviewed fishermen and people who traveled by boat to document the numbers of sea otters observed in their travels. Local knowledge indicated sea otters populations have expanded. This information will be useful in planning more comprehensive surveys of the Southeast sea otter population. The resulting Local Knowledge Survey map has provided valuable information for scientists, artists, and tourists alike.



Sea Otter Bio-Sampling Program



Sea Otter Necropsy Form — SOBMP - Tier I

MTRP Certificate Number: 970944
Hunter Name: [redacted]
Kill Date (mm/dd/yy): 1-14-97
Kill Time (24 hr): 9:45 am
Kill Location: SHOWER RAY
Latitude (deg min sec): 60° 9'
Longitude (deg min sec): 146° 35'
CHART # 16708

Sample Number: 96 PW 96002
Sample Collector: JOHN K. BOOKE
Necropsy Date (mm/dd/yy): 1-15-97
Necropsy Time (24 hr): 10 am
Sample Source: HUNTED
Other Sample Collectors: SOPHIE M. BOOKE, JOHN D. BOOKE

General Physical Condition: Body: Thin ☐ Haircoat: Normal ☒ Normal ☒ Blp ☐ Fat ☐
Nose Scars: Y ☑ N ☐
Estimated Age: Old Adult ☐ Adult ☒ Subadult ☐ Pup ☐

Body Measurements: Skinned / Unskinned
Weight: 37 / 44 (kg/Lbs)
Length: 117 / 122 cm
Girth: 45 / 62 cm
Rt. Forepaw Width: 6 cm
Skull Length: 15 cm
Skull Width: 10 cm

Sex: Male ☒ Female ☐ Unknown ☐
If Female: Lactating Y ☐ N ☐; Pregnant Y ☐ N ☐; Fetus sex M ☐ F ☐; Fetus length ___ cm; Uterus collected Y ☐ N ☐
If Male: R Testicle weight 7.6 g; R Testicle length 43 mm; R Testicle width 19 mm; Bacculum length 13 cm

Oral Cavity: Oral Lesions: Y ☐ N ☒; If present, describe appearance:
Lesion: ___ mm Width: ___ mm
Tooth Wear: Heavy ☐ Medium ☒ Light ☐ None ☐
Tooth Abscesses: Y ☐ N ☒
Tooth Loss: Y ☐ N ☒; If 'yes', describe location and appearance:

Teeth Collected: (check which teeth are collected)
URP ☐ LRP ☑ URC ☐ R Canine Width: 9.5 mm
ULP ☐ LLP ☐ ULC ☐

Estimates of Body Fat Stores: None / Little / Average / Excessive
Subcutaneous ☐ ☐ ☒ ☐
Groin 2 cm ☐ ☐ ☒ ☐
Kidneys ☐ ☐ ☒ ☐
Mesenteric ☐ ☒ ☐ ☐
Comments:

Comments:

SOBMP - Tier I

Appearance: Normal ☒ Abnormal ☐
Contaminants sample Y ☒ N ☐
Histology sample Y ☒ N ☐
Comments:

Kidney: Appearance: Normal ☒ Abnormal ☐
Left Kidney: Contaminants sample Y ☒ N ☐; Histology sample Y ☒ N ☐
Right Kidney: Weight of whole kidney 1142 g

Respiratory System: Lungs: Appearance: Normal ☒ Abnormal ☐
Comments on lungs and trachea:

Circulatory System: Heart: Normal ☒ Abnormal ☐; Spleen: Normal ☒ Abnormal ☐
Comments on circulatory system:

Comments:

Gastrointestinal Tract: Stomach collected: Y ☒ N ☐; Gall Bladder: Full ☒ Empty ☐; Color and volume of fluid GREEN; Parasites present: Y ☒ N ☐
Small Intestine: (Give the number and type of parasites observed in each of three 30 cm segments of the small intestine)
Segment 1: 5-THREE-HOOKED WORMS
Segment 2: 12-THREE-HOOKED WORMS
Segment 3: 2- " " "
Comments: (1-TAPE WORM 15 cm)

Parasites: Were parasites collected? Y ☐ N ☒
If parasites are collected, list the type and where they occurred:

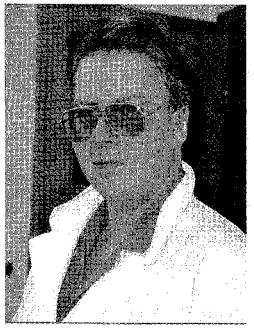
Other Tissues Collected: Required for long-term study objectives:
Right Femur Y ☒ N ☐; Muscle (30g) Y ☒ N ☐; Genetics Vial Y ☒ N ☐; Whiskers Y ☒ N ☐
Other Tissues which may be collected but are not part of the long-term archival program:
Right Testicle Y ☐ N ☒; Urine Y ☐ N ☒; Blood Y ☐ N ☒; Bile Y ☐ N ☒

In the Sea Otter Bio-Sampling program local people are trained in a standard protocol for the biological sampling of subsistence harvested or beachcast sea otters. Information collected is vital to the management of sea otters in a communities Local Management Plan.

The cooperative efforts of TASSC and the U.S. Fish & Wildlife Service have proven beneficial to local communities participating in the biosampling program. Possible research study ideas, information on the health of a local resource, and important scientific data are now being collected by local people for local people.

Carcass Survey Program

Purpose: Winter Mortality Assessment

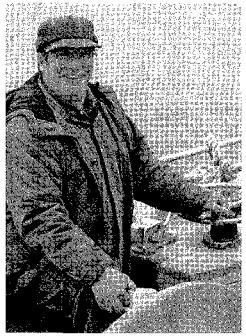


George Shellikoff, False Pass

SEA OTTER CARCASS SURVEY - INDIVIDUAL DATA SHEET

Directions: Circle appropriate response in each category or fill in blank.

Tag Number:_____	**Beach Location or Survey Name:**
Date:_____ **(Put multiple dates if applicable)**	**Estimated age:** 1. old adult 2. adult 3. subadult 4. pup 5. unknown
Surveyor's Name(s):_____	
Sex: Male Female Unknown	**Estimated beach-cast year:** 1. this past winter season 2. older than this past winter season
Location: Mark on map	
Carcass Condition: 1. fresh dead 2. beginning to decompose 3. beginning to be scavenged 4. decomposition obvious 5. scavenging obvious 6. bones with cartilage 7. bones, only (clean) 8. skull only 9. jaw only	**Carcass collected?** Yes No **Skull or jaw collected?** Yes No **Baculum collected?** Yes No **Pre-molar tooth collected?** Yes No **Other teeth collected?** Yes No **Genetics sample collected?** Yes No **Pelt salvaged?** Yes No **Biosampling completed?** Tier I Tier II Tier III



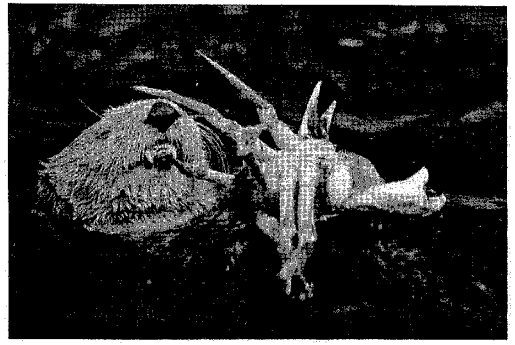
Mark King, Cordova

George Shellikoff , after receiving his necropsy training through the biosampling program, called TASSC with information about dead sea otters on a small island outside of False Pass. Protocols were developed to assist George in assessing sea otter winter mortality. Without having this connection with George, we would have never known about the southeastern sea otter mortality event.

Mark King is a trained biosampler, also trained in the Small Boat and Carcass Survey protocols. He has used this training to conduct surveys in the Cordova area for the last 5 years. With his training, Mark has become a 'sea otter resource' for the Eyak Tribe. In conducting biosampling, small boat and carcass surveys, Mark has documented unusual sea otter morality occurrences. Local people are the first responders in noticing changes in their environment

Small Boat Survey Project

Purpose: Conduct distribution and abundance studies for Local Management Plans



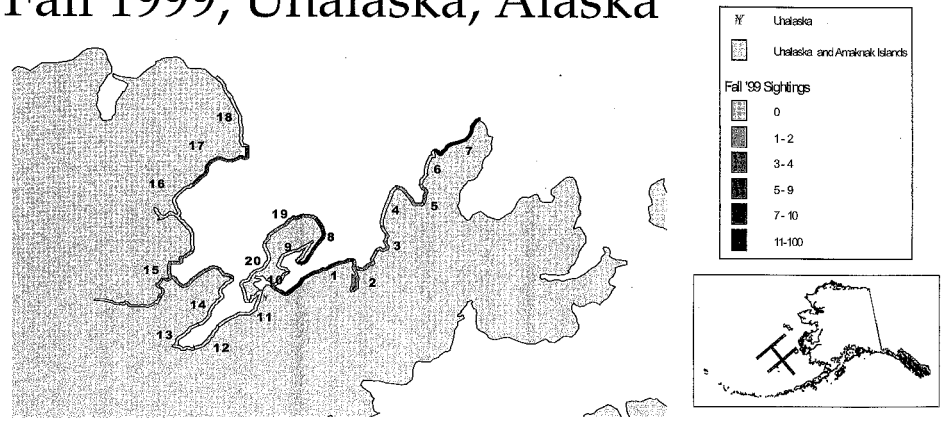
Communities who have participated in the Small Boat Survey to date include: Cordova, Port Graham and Nanwalek, Larsen Bay, Sitka, Unalaska, Yakutat, and Port Heiden.

The Small Boat Survey assesses live sea otter populations, giving communities the ability to manage and make decisions on a population.

A communities resource area is divided into transects, and a standardized protocol is followed to gather information on sightings, and survey and weather conditions.

Attachment VIII: Steller sea lion sightings

Steller Sea Lion sightings
Fall 1999, Unalaska, Alaska



While performing surveys, communities have begun to document all species they encounter. Although the purpose of the 1999 Small Boat Survey was to collect information on sea otter distribution and abundance, surveyors not only counted sea otters, but identified and counted other marine mammals, like Steller sea lions, and birds. The Small Boat Survey provides valuable, real-time information on these species - enhancing a communities ability to manage their resources.

This shows how easily we can adapt our existing protocols to address Steller sea lion distribution, abundance and management issues.

Mr. YOUNG. I want to thank the panel. I want to also, while I am thanking you, you came forth with some recommendations and, Lianna, you brought that out. And that is important we have these hearings because I don't know exactly what to do and I do appreciate the recommendations. I am a little curious. Do you feel that you are equal partners with the agencies—this is a generic question to anyone who wants to address it—in developing these programs? Charlie?

Mr. JOHNSON. Mr. Chairman, the Alaska Nanuuq Commission, I think, has been a very equal, particularly in negotiation of the bilateral treaty with Russia. That has given us, I think, a real good standing with the Fish and Wildlife Service and they have been very supportive of the conditions that Alaska Nanuuq Commission wanted in the treaty. So I feel very strongly that we—in this particular case, we are an equal partner.

Mr. YOUNG. Okay. Now, and, Charlie, you are talking about the treaty, but I am talking about management within the domestic area. Are you—or do you feel as you are co-equals with the agency?

Mr. JOHNSON. Not at this point because, you know, we are expected to do a whole lot with a very little amount of money. We can't be an equal partner with somebody that has millions when we only have a few thousand.

Mr. YOUNG. Okay. Now, this is for anybody who wants to jump in here. What happens if there is an Agreement with the commission with all the villagers, which I think, Monica, you mentioned this? Do you have any enforcement capability?

Ms. RIEDEL. At this time, we only can self-regulate. We don't—

Mr. YOUNG. Just within your own area.

Ms. RIEDEL. Yes, Mr. Chairman. We don't have the authority like the NMFS does with regards to the provisions with Native—take, particularly wasteful take?

Mr. YOUNG. That is one of the main ones with me.

Ms. RIEDEL. Yeah. That is the main one.

Mr. YOUNG. Now, if that takes place, does the—your case is NMFS. Right? Or Fish and Wildlife?

Ms. RIEDEL. NMFS.

Mr. YOUNG. Okay. Does NMFS enforce or do they just ignore?

Ms. RIEDEL. Mr. Chairman, with the Agreement, they are now committed to discuss any of these issues with the Harbor Seal Commission prior to any action.

Mr. YOUNG. Okay. Now, would you want enforcement authority?

Ms. RIEDEL. I would say it is very important for us to be able to have that authority to self-regulate, Mr. Chairman.

Mr. YOUNG. Well, I—

Ms. RIEDEL. Yes.

Mr. YOUNG. Personally, I think it would be extremely valuable. I know—

Ms. RIEDEL. Yes.

Mr. YOUNG. —as hard as it may be, we do have individuals that, within our own groups, that take—and I call it—want and taking and wasteful use. And I believe your own kind can be best to supervise that. We—I have seen it on my salmon where people will bring in 150 salmon and go have a party and they all perish. That

shouldn't be allowed, but the only person who is going to enforce that is actually the State Fish and Game.

And so nobody gets—and it is a bad example to set for anybody else. And I have always said this is wrong because that takes away the whole concept of a heritage use of a species. And that is my own personal opinion. Do the—do you—I notice there is a little crossover. Do all of you cooperate with one another?

Ms. RIEDEL. Yes, we do, Mr. Chairman.

Mr. YOUNG. Is that agreeable? Everybody agree with that?

Ms. RIEDEL. With exception of the new commission, the Aleut Commission, who just formed, all of us are, as Caleb mentioned earlier, members of the Indigenous People's Council for Marine Mammals which meets usually a couple of times a year where we can discuss common issues.

Mr. YOUNG. Okay. Okay. The gentleman from Maryland. Does anyone like to make a comment on this? I met with most of you the other day, but we are—we want to rewrite this legislation if we can do it correctly. I tend to notice that there is a little bit of reluctance of NMFS' part.

I have one last question and I know my good friend from Fish and Wildlife is behind you and he might want to comment. Why shouldn't—why should you be co-partners? Why can't you be the managers of—with supervision from the agencies? And there is a difference. And I mean, the Fish and Wildlife guy can kick in here. I mean, I have a little concern because you hit the idea when there is a lot of money and you don't have any money—if the money that they have, if you could get it and manage it with their supervision, it would seem that it would be—work out a whole lot better than to have all the manpower and all the money and, Mr. Fish and Wildlife, you kick in first if you want to and then sit down because they are all ganging up on you. But go ahead.

Mr. ALLEN. All right. I mean, you have hit the nail on the head, Mr. Chairman. That is exactly what I think what our goal is here. What we want by this expanded authority is to have the enforceable provisions in the Act that allows us to back up basically local enforcement. That just doesn't exist.

As I mentioned, and we do work right now with local communities to try to develop local ordinances, but, as you know, those only affect tribal members within that community. So really what we are trying to strike here is a situation where we would have fair and equitable rules across the state for all eligible subsistence users. And working through the commissions, we would expect that they would take as much as the responsibility as they want in terms of developing the rules and regulations associated with—

Mr. YOUNG. Well, David, what I am suggesting, and I appreciate your comment—what I am suggesting here—you don't see any objection then to contracting with the commissions because you have access to monies that they can't access. There is nothing for that in the budget. If we get the same result, you could be the boss, but they would do the work, but they also get the money to do the work.

Mr. ALLEN. Yes. And, in fact, we do some of that right now.

Mr. YOUNG. Okay. Anybody else like to—Alvin?

Mr. OSTERBACK. Yes, Mr. Chairman. You know, I think in the past, over the—well, ever since the last reauthorization of the MMPA, as far as, say, in our area with the Steller sea lions, once we found out they were becoming an issue—the only way it actually does work is the people that live in the area and interact with the mammal are the ones that are truly going to be the ones that save them or not.

So the areas are so large that any type of management, I think, needs to belong in the hands of the tribal entities in the area or the commissions. And I think they do a very good job of policing themselves. And I think if there is interaction or a co-management Agreement, the scientists can get all of the information they need during takes, harvests, during the subsistence use. So that portion is needed.

But on the enforcement side, I think unless the people that are living in the area and interacting, the areas are so large that unless they can be convinced by their own people that this is something that needs to be done, it wouldn't happen anyway.

Mr. YOUNG. Well, I agree. And there is also the cultural clash. I mean, I remember when the Fish and Wildlife made the raid on the walrus hunters out at Gambell. Right, wrong, or indifferent, they may have been taking further tests, but the image was big government attacking the aboriginal people that live in the area. And that was the image I saw on television. I may be prejudiced, but I mean, that is what I related to.

If, in fact, that type of thing was taking place and it was illegal, it seemed to me it could be better taken care of by the commission itself or someone in that arena. Because, at least, it wouldn't have been on NBC or CBS and CNN, you know. And I think there has been a little better control of what would have happened.

The theme here is management prior to depletion. That is really what you are asking. We have to change the Act, I believe, to do that. And you would not be against the idea of contracting out. I mean, yourselves being the ones that receive the contract to do what you are doing now because it would give you the money to do so. Would it not? Yeah, Charlie. And I have got about five minutes and I do apologize.

Mr. JOHNSON. Mr. Chairman, just very briefly. To show how this would work, we have a voluntary program right now which is an Agreement between the North Slope Borough and the Inuvialuit and the Southern Beaufort Sea. That is a voluntary Agreement for quotas have been set to split the harvest of the polar bears in the Southern Beaufort Sea. Of the—in the last ten years, the quota has totaled a cumulative total of 800. Of that, only 680 bears have been taken, which have been almost equally split between Canada and the North Slope.

And another important factor with this voluntary Agreement that has no funding or other jurisdiction from outside of the North Slope, is that the protection of females. In that particular population, only 25 percent of the female—bears that are taken are females. In western Alaska out of the Chukchi population, it is 40 percent. So that alone shows the capability that we have of managing ourselves with—even without outside support.

Mr. YOUNG. Okay. One of these days, Charlie, you and I are going to talk about the polar bear, but we won't do it today at this hearing. I want to thank the panel and I do apologize, but we are going to cut this hearing off because we have approximately 50 minutes of voting and I know someone has to catch an airplane. And I will—and we will, with your advice and comments—and that goes for Fish and Wildlife and NMFS also—I would like to see this thing work and work to a better degree. I think it could be a model for other management of game across the state as a whole. So it is something we might consider.

I want to thank the panel and I appreciate you all coming down. And we will send you some questions by the way. And the record will be open for 30 days and I do thank you. This Committee is adjourned.

[Prepared statement of Mr. Daniel Alex follows:]

Testimony of
Daniel Alex
Executive Director
Cook Inlet Marine Mammal Council
Anchorage, 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

Mr. Chairman and members of the Subcommittee, my name is Daniel Alex. I am a tribal member of the Native Village of Eklutna, located within the greater Anchorage area. I have been working for Cook Inlet Marine Mammal Council (CIMMC) since the Fall of 1997. I am testifying in my capacity as the Executive Director of the Cook Inlet Marine Mammal Council (CIMMC). CIMMC is an Alaska Native Organization, chartered by the federally recognized tribes in the Cook Inlet region of Alaska to co-manage marine mammals in Cook Inlet. CIMMC is concurrently chartered as a non-profit corporation under the laws of the State of Alaska, and as a 501(c)(3) educational corporation under the IRS code. CIMMC also represents Alaska Natives who hunt marine mammals in the Cook Inlet area who have registered with CIMMC. CIMMC was formed as a means of strengthening and increasing the role of Alaska Natives in the management and conservation of marine mammals in Alaska, while preserving traditional subsistence hunting activities in the Cook Inlet area. CIMMC is a member of the Indigenous Peoples Council on Marine Mammals (IPCoMM) and holds a seat on the Alaska Native Harbor Seal Commission (ANHSC).

Background

In 1989, Cook Inlet beluga whales were evaluated by National Marine Fisheries Service (NMFS) as a candidate species for listing under the Endangered Species Act. At that time, the Alaska Beluga Whale Committee (ABWC) urged NMFS to delay a listing until more research could be conducted. ABWC identified the need for better subsistence harvest data and recommended aerial surveys to assess the population status. Since then, beginning in 1993, NMFS has conducted annual aerial surveys of Cook Inlet beluga and began to work with beluga hunters in Cook Inlet to obtain better harvest information. In 1994, a Cook Inlet marine mammal hunter group began to form, which later became the Cook Inlet Marine Mammal Council. Since its formation in 1994, CIMMC has been engaged in efforts to assess the health of the Cook Inlet beluga whale population, to monitor the Native subsistence harvest, and to maintain traditional hunting practices and uses of the beluga whale by local hunters. CIMMC has also created a model sea otter

ordinance for the tribes, which establishes harvest and preservation management of sea otter in Cook Inlet.

After several years of surveys and better harvest data, it became apparent that the harvest of Cook Inlet beluga was high relative to the best population estimates. In November 1995, NMFS estimated that the harvest was at least twice what the population could likely sustain. Part of the problem was that muktuk was being widely sold in Anchorage by some hunters in Cook Inlet, and Cook Inlet beluga were being hunted not only by the local Cook Inlet hunters, but also by hunters from other parts of the State. It was felt that non-local hunters had higher hunting losses because they were not familiar with local conditions. Despite efforts by both ABWC and CIMMC to stem the sale of muktuk and to enforce a "no commercial use" policy for Cook Inlet beluga, CIMMC could not enforce its policy against non-tribal members. It also lacked the funding to effectively address the issue. NMFS took the position that it could not prevent the sale of muktuk in Anchorage or prohibit the taking of Cook Inlet beluga for sale by Alaska Natives, unless beluga were listed as depleted under the MMPA or threatened/endangered under the Endangered Species Act.

During this time, and despite the lack of adequate funding, CIMMC accelerated its work with the hunters in the Cook Inlet area to develop a co-management process, to do everything possible to eliminate commercial hunting and to reduce or eliminate the harvest of Cook Inlet beluga whales by non-local hunters. ABWC assisted in this effort by requesting resolutions from its member villages that would support a co-management process, asking non-local hunters to restrict their hunting of Cook Inlet beluga and supporting CIMMC in enforcing its hunting ordinances. ABWC also provided limited funding for a Cook Inlet traditional knowledge study, and to hold a Cook Inlet Science and Traditional Knowledge Conference. Part of the problem in implementing many of the conservation measures adopted by CIMMC was the lack of funding to allow CIMMC to effectively communicate with hunters, produce educational materials, meet regularly, and to be meaningfully involved in harvest monitoring, regulation or scientific research. It was hoped that through co-management, funding would be provided and NMFS and CIMMC could work cooperatively to accomplish their mutual goal of halting the decline of the Cook Inlet beluga population.

CIMMC's Efforts to Negotiate a Co-management Agreement with NMFS

In 1994, Congress added Section 119 to the Marine Mammal Protection Act in order to authorize cooperative agreements between the federal agencies with authority over marine mammals (NMFS and FWS) and Alaska Native Organizations to conserve marine mammals and to co-manage subsistence uses by Alaska Natives. Shortly after the amendments went into effect, the Indigenous Peoples Council on Marine Mammals (IPCoMM), formed a Native co-management committee to work with the two federal agencies to establish policies and procedures for the implementation of Section 119 agreements. That process was slow, but 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.

Before the signing of this "umbrella" agreement, NMFS declined to discuss a co-management agreement with CIMMC, or any other Alaska Native Organization. This was true even though in May, 1997, NMFS had written to the Alaska Regional Scientific Review Group (AKSRG), which had been pressing NMFS to enter into a co-management agreement 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 co-management agreement never materialized.

Instead, in November 1998, NMFS initiated a status review of the Cook Inlet beluga whale to determine whether a change in status under the MMPA or a listing under the ESA was warranted. When it became apparent that action had to be taken prior to the 1999-hunting season, to reduce the Native harvest, CIMMC stepped up its efforts to obtain a co-management agreement with NMFS. It was about this same time that the Center for Marine Conservation and several other environmental groups and individuals filed a petition to designate the Cook Inlet beluga population as endangered under the ESA. In conjunction with the NMFS' status review hearing in Anchorage on March 8 and 9, 1999, CIMMC, ABWC and the Rural Community Action Program (RurAL CAP) sponsored a symposium forum on the Conservation and Sustainable Use of Cook Inlet beluga on March 10-11, 1999. All members of the public were invited and did participate in the Symposium.

During that meeting, the Alaska Native participants which consisted of representatives from the local tribes, ABWC, CIMMC and Cook Inlet beluga whale hunters reviewed and approved a draft interim co-management agreement. That draft agreement provided, among other things, for harvest restrictions and other conservation measures for the 1999 hunting season, and a specific allocation for the Native Village of Tyonek. Tyonek is the only Cook Inlet Tribe with an ongoing, present-day practice of hunting beluga. The group also selected a negotiation team to meet with NMFS to hammer out the details of an interim agreement. The draft agreement crafted during that meeting formed the basis for negotiations with NMFS later that same day, and at subsequent meetings later that month. The negotiations were proceeding on schedule with the goal of having an agreement in place by April 15, in advance of the hunting season. The agreement contemplated a legislative provision that would prohibit hunting of beluga whales unless it was pursuant to a co-management agreement. CIMMC and ABWC sought and supported the legislative change, but CIMMC's support was always with the understanding that there would be a co-management agreement in place for the 1999 season that would allow a limited subsistence harvest, assuming the population could sustain such a harvest.

As it turns out, a small group of non-local hunters interjected themselves into the process and brought the negotiations with NMFS to a halt. This group of hunters had no tribal authorization whatsoever, yet it claimed the right to negotiate its own co-management agreement. A series of meetings were held in an effort to resolve the differences between CIMMC and this group, and to get the negotiations on a co-

management agreement back on track. Finally, in a meeting on April 22, 1999, the hunters agreed to "stand down" and not hunt during the 1999 season. They also voiced their support for a harvest by Tyonek during the 1999 season of two whales. Shortly after that meeting, the group disbanded and most of the hunters returned to the ranks of CIMMC. NMFS nevertheless declined to resume negotiations on a co-management agreement with CIMMC, citing the fact that CIMMC did not represent every hunter who had ever hunted a Cook Inlet beluga as a member of its organizations. This was despite the fact that CIMMC represented every tribe and every tribal member and tribal hunter throughout the range of the Cook Inlet beluga population, who had ever traditionally hunted in the area. As a result, final efforts in August and September to allow the harvest of one beluga by the Native Village of Tyonek failed -- despite the fact that NMFS had conceded that the harvest of one animal would not have a significant effect on the recovery of the population. We believe the failure of this co-management process was due largely to the fact that the MMPA was not clear in terms of directing NMFS to enter into co-management agreements only with tribes or tribally authorized organizations in the effected area.

Since there was no co-management agreement for 1999, Tyonek was forced to forego its long-standing, traditional and continuing practice of harvesting Cook Inlet beluga for nutritional and cultural subsistence uses. There was strong support from the hunters and the tribes alike for a co-management agreement that would permit the harvest of at least one beluga whale by Tyonek. CIMMC, with the support of IPCoMM and the Native community in general advocated strongly that the Native Village of Tyonek's subsistence use of Cook Inlet beluga should be the priority use for that marine mammal population. Tyonek is a federally recognized Alaska Tribe, and has harvested Cook Inlet beluga in its traditional territory for hundreds of years, to meet essential nutritional and cultural needs. Unfortunately, because of the opposition of this splinter group, and the lack of clear statutory language requiring NMFS to work with organizations that have the authorization of the local tribes, Tyonek was denied the opportunity to harvest a beluga during 1999.

Interim Agreement for 2000

The good news is that CIMMC and the Alaska Region NMFS personnel have made significant progress toward an "interim" agreement for 2000. The agreement allows a Native harvest of one strike, to be allocated to the Native Village of Tyonek. The purposes of the agreement are to promote the recovery of the CI beluga, to provide an opportunity for the continuation of the customs, traditions and culture of Alaska Natives by providing a limited harvest of CI beluga whales by the Native Village of Tyonek to meet their subsistence needs, and to promote scientific research on CI beluga whales and their habitat. The agreement puts in place a number of harvest practice regulations proposed by CIMMC hunters which are designed to help insure against the loss of the whale, and to minimize the possibility of taking a pregnant female. The agreement also makes the sale of edible beluga parts illegal. In the event there is a loss of beluga whales through strandings or other causes, NMFS, CIMMC and the Native Village of Tyonek will meet and determine whether to proceed with the hunt permitted by the agreement.

The decision will be based on the best available information and consistent with the primary goals of the agreement.

Before the interim agreement can go into effect, it must be approved by NMFS' Washington, D.C. office. Even then, it cannot be implemented until after the completion of an Environmental Impact Statement that is currently under development to assess federal activities necessary to halt the observed decline and promote the recovery of the Cook Inlet stock of beluga whale. *See* 64 Fed. Reg. 66901. In light of the congressional moratorium in place with regard to Cook Inlet beluga whales, the approval of a co-management agreement that allows a harvest of a Cook Inlet beluga is viewed as a federal action that must be analyzed under the applicable provisions of the National Environmental Policy Act.

In the meantime, CIMMC has made little progress toward reaching agreement with NMFS on a comprehensive and on-going co-management agreement. Its most recent "draft" of a comprehensive co-management plan was submitted to NMFS during the Symposium Forum on the Conservation and Sustainable use of Cook Inlet Beluga Whales in Anchorage on March 10-11, 1999. Because of the intervening events chronicled above, no discussions have occurred between CIMMC and NMFS on the proposed co-management plan. We are hopeful that once the interim agreement is in place, the parties can resume discussions on a long-term co-management agreement. We view co-management of this stock as an effective means of conserving and recovering the Cook Inlet beluga while also protecting the traditional subsistence uses of Alaska Natives. We also believe that co-management will provide for regulation of this stock at sustainable levels.

Recommendations for Improvements in the MMPA based on the Cook Inlet Beluga Experience

We strongly believe that self-regulation and co-management should have been the way to avoid the situation we find ourselves in with regard to Cook Inlet beluga. To better facilitate co-management in the future, we believe the provisions of Section 119 need to be strengthened to reflect true co-management. Primary among our suggestions are the following:

1. The definition of "Alaska Native Organization" (ANO) contained in 16 U.S.C. 1362 (23) should be amended to mean "an Alaska Native Tribe or tribally authorized" group...." This would ensure that all ANOs have the support of the local tribes, and will have an effective means of enforcing regulations governing the harvest of marine mammals through tribal ordinances. It would also address the problem posed by disgruntled hunters who do not wish to abide by tribal regulations. They would be foreclosed from asserting the right to negotiate a separate agreement unless they have the support of the local tribes.

2. Comanagement agreements authorized in Section 119 should be strengthened to authorize the parties to a Section 119 co-management agreement to enforce the provisions of the agreement. At the same time we strongly oppose any changes to Section 101(b), the Native Exemption provisions of the Act. We do not think it 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.

3. Funding for co-management needs to be increased so that Alaska Native organizations can be meaningfully involved in co-management.

4. Traditional knowledge gives excellent information about beluga population trends, habits, habitats, migration patterns, harvest levels, subsistence uses, and much other valuable information. There needs to be adequate funding for CIMMC to collect traditional knowledge and it needs to be integrated into the 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, Alaska Native Organizations need to be given a meaningful role in scientific research as well.

5. Finally, the agencies should be required to move more quickly on requests from ANOs for co-management agreements. We firmly believe that self-regulation and co-management could have averted last year's crisis in Cook Inlet. However, without adequate funding and support from NMFS on co-management, ANOs will continue to be strapped in terms of effectively communicating with hunters, producing educational materials, meeting regularly, or being meaningfully involved in harvest monitoring, research, regulation of the harvest or enforcement of those regulations.

Conclusion

Section 119 of the MMPA has proved to be an important tool in terms of marine mammal conservation. It is an effective way to conserve marine mammals and provide for traditional subsistence uses of Alaska's Native people. We believe the co-management provisions can be strengthened in a way that will benefit not only Alaska's tribes, but also the federal agencies, and further their mutual efforts to conserve and wisely mange the Cook Inlet beluga population.

March 30, 2000 – 4:50 p.m. draft (with Carol's & Sky's edits)

[Prepared statement of Ms. Michelle Sparck follows:]

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David O. David, Chairman

Jennifer (Chris) Hooper, Biologist
Michelle Sparck, AVCP / IUM
Natural Resources Specialist

Testimony Submitted for the Record to the
Subcommittee on Fisheries Conservation, Wildlife & Oceans
Oversight Hearing on the Reauthorization of the
Marine Mammal Protection Act
Section 119

April 6, 2000
2:00 p.m.
1334 Longworth House Office Building

Thank you Chairman Young and Chairman Saxton for allowing the Association of Village Council Presidents, Inc. (AVCP) and the Imarpigmiut Ungungsiit Murilkestiit (IUM) (Watchers of the Sea Mammals) to submit this testimony for the record. This document outlines the AVCP region's invaluable relationship with the Bering Sea and Marine Mammals which has sustained, influenced and is reflected in our very Yup'ik / Cup'ik Eskimo culture.

We would also like to go on the record to request the creation of an Iced Seals Commission under our Marine Mammal program. It is our belief, and existing documentation supports, that Iced Seals constitute the dominant Marine Mammal harvests in our region. The creation of an Iced Seals Commission would be vital in addressing the need for local Native pro-active management of marine mammal stocks to prevent listing under the MMPA. With the help of the Resources Committee and the Subcommittee on Fisheries Conservation, Wildlife and Oceans in the creation of this type of Commission, we may achieve sustainability and ensure the continuity of our Subsistence way of life.

- Submitted by Michelle Sparck,
AVCP / IUM Natural Resources Specialist

HISTORY OF AVCP AND MANAGEMENT DETERMINATION

In 1964, fifty-six Village Councils called for an establishment to work for the benefit of the tribal governments and the people of the Yukon-Kuskokwim Delta. The Association of Village Council Presidents, Inc. (AVCP) was created and is one of 12 regional Native non-profit organizations in Alaska. Our region encompasses 43 Million acres, roughly the size of Ohio, is largely dominated by State and Federal lands.

The last census estimated the AVCP population to be around 25,000, with predominantly Yup'ik / Cup'ik Eskimo inhabitants. What could be attributed to the slowest Western infiltration in Alaska, (the Y-K Delta's lack of easily extractable resources and remoteness of our region) our region is the least influenced in Western lifestyle in regard to language, art, culture and economy. Our villages are the most avidly practicing customary and traditional Subsistence users in the United States. The socioeconomic characterization of our region is similar to a Lesser Developed Country (LDC).

Before the Magnuson Act, our people stood on the shores of their seasonal food camps and watched international fleets fish off our coasts, destroying species and stocks in their wake and affecting our Subsistence needs. Most prevalent were the Japanese; whose economists dubbed our region, "The Fourth World," to describe the phenomena of third world standard-of-living conditions within a first world country.

Since the early 1970's, and prior to the MMPA, AVCP subcontracted marine mammal studies and traditional knowledge reports through scientific and technical staff of Nunam Kitlutsisti (Stewards of the Land). We joined in lobbying the UN and the U.S. and Russian governments to ban high seas driftnet fishing and succeeded. Nunam Kitlutsisti was eventually absorbed into the Department of Natural Resources (DNR) of AVCP. Since then, AVCP has been an actively participating in meetings with the Indigenous Peoples Council on Marine Mammals (IPCoMM), the Eskimo Walrus Commission (EWC), and the Alaska Beluga Whale Committee (ABWC).

For decades, AVCP has tried to improve the growing-pains of the assimilation process for Yup'ik / Cup'ik immersion into Western economy standards, while maintaining an enduring Native culture. AVCP coordinates regional, social, educational, economic and land / resource management programs.

The DNR is extensively involved in programs with the Yukon Delta National Wildlife Refuge (YDNWR), and the Alaska Department of Fish and Game. On shared resource issues we work extensively with other Native regional groups along with the Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and the California Department of Fish and Game.

AVCP has been co-managing programs with YDNWR and the Togiak National Wildlife Refuge in the following programs:

- Western Alaska Brown Bear Management Area Agreement
- Qauilnguut (Kilbuck) Caribou Herd Management Plan
- Lower Yukon Moose Management Plan
- Yukon-Kuskokwim Delta Goose Management Plan (Waterfowl Conservation Committee)
- Imarpigmiut Ungungsiit Murilkestiit (IUM) (Watchers of the Sea Mammals)
- Lower Kuskokwim Moose Management Plan
- Kuskokwim River Drainage Fisheries Association
- Kwethluk Counting Tower (Salmon spawning monitoring)
- Lower Kuskokwim Moose Management Area

IMARPIGMIUT UNGUNGSIIT MURILKESTIIT (IUM) (Watchers of the Sea Mammals)
AVCP / IUM currently represents 26 coastal villages and voices concerns regarding marine mammal Subsistence and the health and viability of the Bering Sea. With the development of an Iced Seals Commission under our marine mammal program, we are fully prepared to involve all Iced Seals Subsistence user groups in the State of Alaska.

AVCP / IUM intends to develop the scientific, traditional and technical expertise we need to become full partners in cooperative management to the benefit of federal partners and for the conservation and Subsistence use of marine mammals. IUM members will conduct harvest and population surveys, take samples for scientific studies, determine age and perform necropsies before or during the dressing of our harvests. Essentially, we will empower ourselves in the pursuit of our daily bread, and continue to take advantage of and protect the wealth of resources that our lands and waters offers us.

Currently, due to funding issues and existing infrastructure of Section 119 of the MMPA, AVCP / IUM does not receive funding. To date, there is only limited data on our region's marine mammal populations and take. The *best available data* is dated from the mid-1970's. It is no secret that in our region, exists an information gap that neither the U.S. Fish and Wildlife Service nor the Alaska Department of Fish and Game have been able to fill. The creation of IUM intends to address the information gap.

We recognize the need for more attention to our people's dependence on marine mammals for Subsistence beyond what the Walrus, Beluga or Steller Sea Lion Commissions affords us. Therefore, after the initial development of a Statewide Iced Seals Commission, we will expand to an ecosystem-wide, multi-marine mammal management group for our region.

It is AVCP / IUM's intent to pro-actively manage marine mammal stocks to prevent listings under the MMPA through co-management agreements. We envision a holistic, ecosystem-based organization for marine mammal management within our region. Our species are broad and plentiful, our harvests are responsible and sustainable. We want to integrate traditional knowledge with science and create a technically capable user group.

ICED SEALS COMMISSION
The most valuable marine mammal group in our region is the Iced Seals, we feel that the best way to achieve the goals of our regional organization is to garner the responsibilities of co-management for Iced-Seals as the foundation of our marine mammal program. We respectfully request your support in helping us achieve this co-management agreement with the National Marine Fisheries Service as we commence our negotiations.

With the assistance of The Alaska Sea Otter and Steller Sea Lion Commission (TASSC), AVCP / IUM is developing a funding proposal that outlines our project priorities in an agency acceptable format. When we have finalized the proposal, AVCP / IUM will forward a copy to the Subcommittee for your information.

What we have included in this testimony is an example of the costs associated with IUM business in the AVCP region, and a projected 5-year budget for the IUM program. Keep in mind, we do not yet have funding for these projections.

We have also included pictures that range from the early 1900's to modern hunts to portray our region's ancient relationship with Marine Mammals. Quyana (Thank you) for your time and consideration.

ATTACHMENT LIST

Attachment 1.	AVCP / IUM Marine Mammal Names
Attachment 2.	AVCP / IUM Meeting Costs
Attachment 3.	AVCP / IUM 5 Year Budget Plan
Attachment 4.	AVCP / IUM Region - Membership Map
Attachment 5.	AVCP 1980 Resolution on Marine Mammals
Attachment 6.	1976 AVCP Harvest Survey of 13 (IUM) Villages
Attachment 7.	James Barker Photo of Nelson Island Seal Hunters
Attachment 8.	J. Barker Photo of Bearded Seal Hunt
Attachment 9.	J. Barker Photo of Dried Seal Gut
Attachment 10.	J. Barker (Top 2) Photo's of Subsistence Seal Activities - Bottom Photo by M. Rearden
Attachment 11.	Examples of the Traditional Uses of Seal
Attachment 12.	Top Left, Bottom Photo's by J. Barker, Right Photo by M. Rearden
Attachment 13.	Old Kashunak (Chevak) Recollection of Traditional Subsistence Activities, including Seal Hunts
Attachment 14.	James Barker Photo's, Documents Beluga Whale Use in AVCP / IUM Region
Attachment 15.	James Barker Photo of Walrus in AVCP / IUM Region
Attachment 16.	AVCP / Calista Corporation Map of General Geographic Groupings of Craft Production in the Yukon-Kuskokwim Region, 1982
Attachment 17.	AVCP / Calista Corporation Map of the Bering Sea Marine Mammal Distribution along the Yukon-Kuskokwim Region, 1982

Attachment 1

AVCP / IUM AREA MARINE MAMMALS

Yup'ik / Cup'ik Names

Beluga Whales	**Cet'uaq,** Yup'ik name **Cit'uaq**, Cup'ik name
Minke Whales	**Cetuaqupak**, large beluga-like whale
Killer Whales	**Arrluk**
Walrus	**Kaurpaq**, **Asveq**, big club
Fur Seals	**Aataaq**, father
Steller Sea Lions	**Uri'naq**, seal that likes to be on land
Sea Lions	**Apakcuk**, **Ugiinaq**, one that climbs on top of things like rocks and high places, like banks
Sea Otters	**Aanaq**, woman or lady, **Agnak**, girl **Cin'kaq**, Cup'ik name

ICED SEALS

Spotted Seals	**Issurriq** **Yalirtaq** (equivalent to heaven, people's spirits went to seals) spots are so close together, they appear black
Ringed Seals	**Nayiq**
Bearded Seals	**Malaq** or **Maklaq**, small bearded seal **Maklasuk**, Kuskokwim name **Tungunquq**, **Taqukaq**, Nelson Island, dark or black one **Amirrkaq**, juvenile Bearded Seal
Ribbon Seals	**Qasruliq**, one with a mark
Harbor Seals	**Issurriq**, like Spotted, but still differentiated

Attachment 2

Example of IUM Meeting Costs

(Imarpigmiut Ungungsiit Murilkestiit)

	Village	RT Airfare	One-Day $61x1 Perdiem	Hotel	Two-Day $61x2 Perdiem	Hotel
1	Alakanuk	$280	$61	$61	$122	$122
2	Bill Moore's Slough	$280	$61	$61	$122	$122
3	Chefornak	$108	$61	$61	$122	$122
4	Chevak	$162	$61	$61	$122	$122
5	Chuloonakwick	$280	$61	$61	$122	$122
6	Eek	$82	$61	$61	$122	$122
7	Emmonak	$280	$61	$61	$122	$122
8	Goodnews Bay	$152	$61	$61	$122	$122
9	Hooper Bay	$162	$61	$61	$122	$122
10	Kipnuk	$108	$61	$61	$122	$122
11	Kongiganak	$124	$61	$61	$122	$122
12	Kotlik	$280	$61	$61	$122	$122
13	Kwigillingok	$124	$61	$61	$122	$122
14	Mekoryuk	$162	$61	$61	$122	$122
15	Newtok	$134	$61	$61	$122	$122
16	Nightmute	$134	$61	$61	$122	$122
17	Paimiut	$162	$61	$61	$122	$122
18	Platinum	$152	$61	$61	$122	$122
19	Quinhagak	$114	$61	$61	$122	$122
20	Scammon Bay	$162	$61	$61	$122	$122
21	Nunam Iqua (Shel. Pt.)	$280	$61	$61	$122	$122
22	Toksook Bay	$140	$61	$61	$122	$122
23	Tuntutuliak	$82	$61	$61	$122	$122
24	Tununak	$140	$61	$61	$122	$122
25	Umkumiut	$134	$61	$61	$122	$122
	TOTALS	**$4,218**	**$1,525**	**$1,525**	**$3,050**	**$3,050**
			$7,268		**$10,318**	

Hotel is $50 p/person w/2 per room @ Pacifica, or $61 @ Bentleys. Perdiem is @ 80%, Max is $154. Info re: Hamilton was not available at this time.

Attachment 3

Proposed 5-year IUM Budget

Full-time Marine Biologist:

($23.05/hr) x (7.5hr) x (5 days) x (52 wks)		=	$44,947.50
30% Fringe Benefit Charge		=	$13,484.25
	Total	=	**$58,431.75**

Office Expenses:

Computer		=	$1,700.00
Desk/chair/file cabinet		=	$2,000.00
Office Supplies (5 years)		=	$2,500.00
	Total	=	**$6,200.00**

One Annual IUM Meeting (1.5 days):

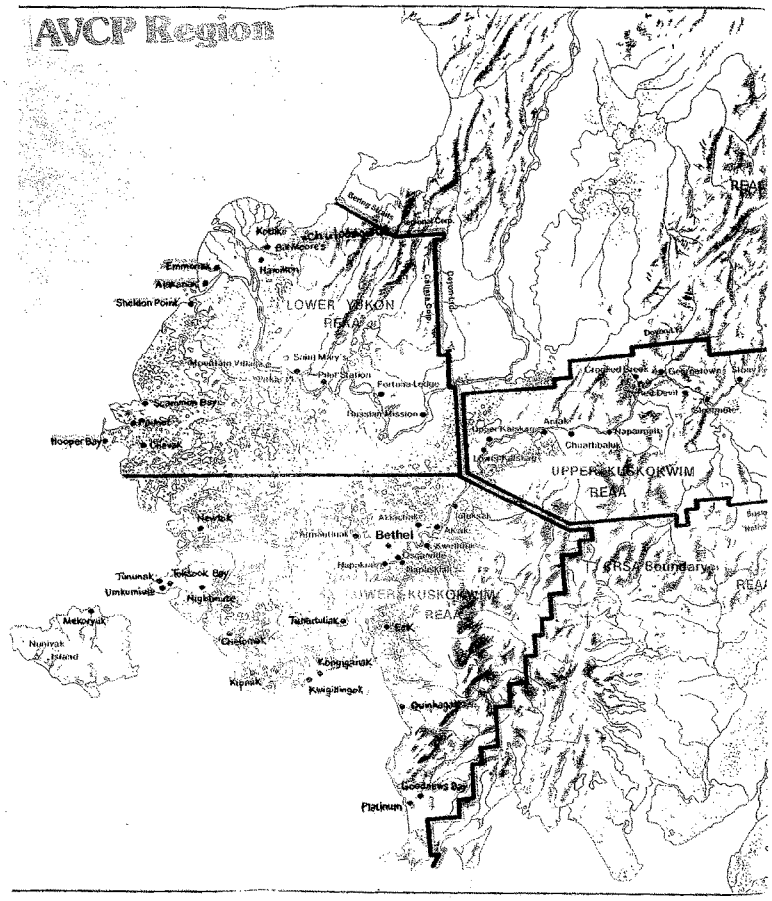
25 Members:			
Airfare to Bethel from Village		=	$4,200.00
Perdiem ($48/day)		=	$1,800.00
Hotel in Bethel (with room sharing)		=	$1,250.00
	Total	=	**$7,250.00**

One Executive Board IUM Meeting (1.5 days):

7 Members:			
Airfare to Bethel from villages		=	$1,200.00
Perdiem ($48/day)		=	$504.00
Hotel in Bethel (two per room)		=	$400.00
	Total	=	**$2,104.00**

TOTAL 5 Year EXPENSES:

Staff Person - 5 year salary		=	$292,158.75
Office Expenses		=	$6,200.00
5 Annual Meetings		=	$36,250.00
5 Executive Board Meetings		=	$10,520.00
			$345,128.75
36.5% Indirect Rate Charge		=	$125,971.99
	Total	=	**$471,100.74**



Attachment 4

Attachment 5

MARINE MAMMALS

WHEREAS, Congress is being asked to revoke the Native exemption which would place serious restrictions upon village hunters who depend daily on coastal hunting success off marine mammals, and the conservation of these animals by the villagers has been publically documented;

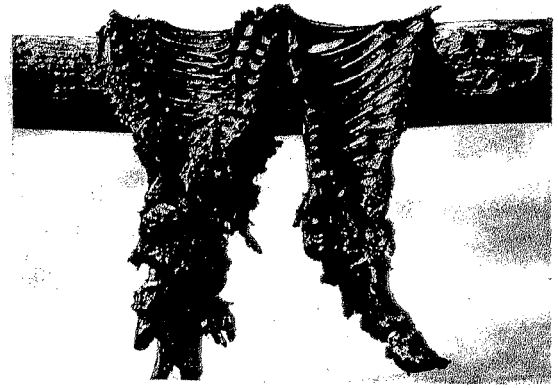
Now therefore BE IT RESOLVED that:

The Congress of the United States retain the marine mammal moratorium and its Native exemption to assure western Alaskan citizens that sustainable populations of marine mammals will be in the ocean guaranteeing a constant source of food. Be it further resolved that AVCP member villages will continue to monitor and control marine mammal harvest and discourage the waste of these mammals.

We need time ...to plan

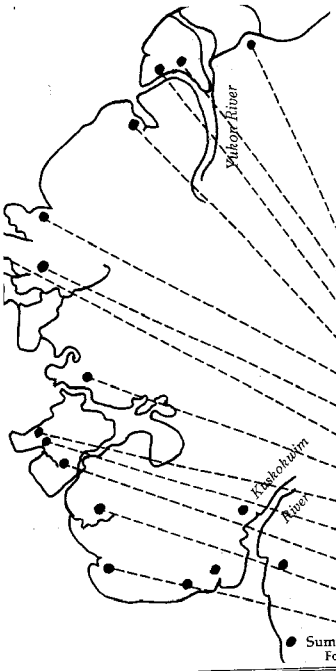
for the continued availability of locally harvested food sources

Drying seal meat.



Stretching and drying seal skin for mukluk boot soles.

Attachment 6



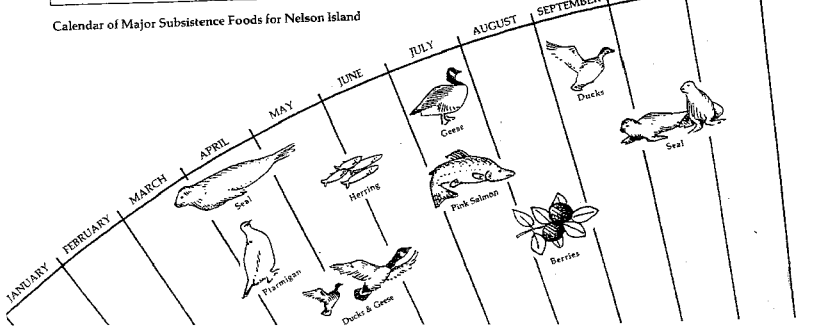
Village	No. of Households	Total Harvest Per Family	Pounds per Family and Percentage: Fish	Sea Mammals	Land Mammals, Birds & Vegetation
Kotlik	37	13,473	10,810	922	1739
Emmonak	75	10,807	8013	1089	1837
Alakanuk	83	10,924	8203	1113	1606
Sheldon's Point	21	13,301	10,602	485	2214
Scammon Bay	31	9640	6933	1478	1227
Chevak	68	10,980	8536	1107	1334
Hooper Bay	86	8950	6731	1052	1165
Newtok	23	11,020	7730	1562	1727
Tununak	53	9850	7587	1016	1245
Tooksook	50	12,166	9715	1201	1250
Nightmute	28	8780	6469	766	1543
Chefornak	27	11,906	8971	1450	1484
Kipnuk	52	9830	6638	1499	1692

● Summary of Subsistence Harvest
For Nelson Island Villages, 1976

VILLAGE	POUNDS PER VILLAGE	POUNDS PER FAMILY	POUNDS PER FAMILY & PERCENTAGE OF SUSTENANCE: FISH	LAND MAMMALS	SEA MAMMALS	VEGETATION	BIRDS
TUNUNAK	522,050 Lbs.	9,850 Lbs.	7,587 Lbs. - 77%	192 Lbs. - 2.0%	1,016 Lbs. - 10.3%	630 Lbs. - 6.4%	423 Lbs. - 4.3%
TOKSOOK BAY	608,320 Lbs.	12,166 Lbs.	9,715 Lbs. - 80%	215 Lbs - 1.6%	1,201 Lbs. - 9.9%	570 Lbs. - 4.7%	465 Lbs. - 3.8%
NIGHTMUTE	245,840 Lbs.	8,780 Lbs.	6,470 Lbs. - 73%	509 Lbs. - 5.8%	766 Lbs. - 8.7%	490 Lbs. - 5.6%	545 Lbs. - 6.2%

AVERAGE POUNDS OF HERRING PROCURRED BY EACH HOUSEHOLD: 2,400 Lbs.

Calendar of Major Subsistence Foods for Nelson Island



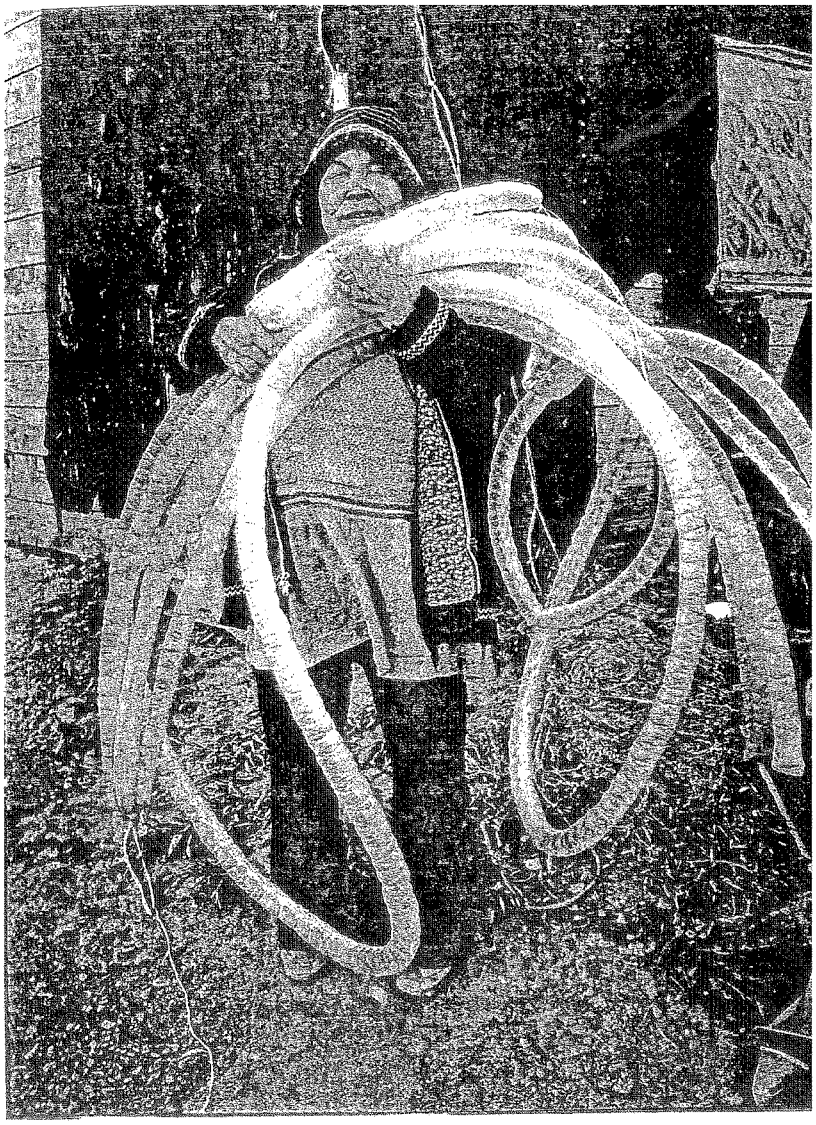
Attachment 7

Nelson Island hunters push through the ice toward open water.

Attachment 8

Simeon and Paul John pull a bearded seal onto an ice pan. Nelson Island

Attachment 9

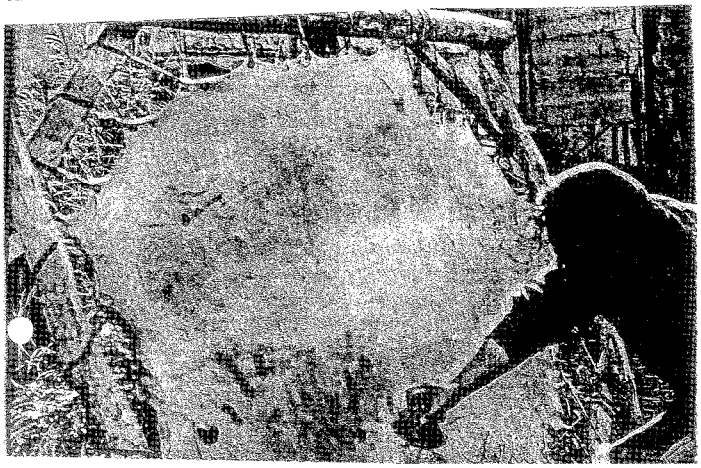


Frances Usugan holding dried seal gut, Toksook Bay.

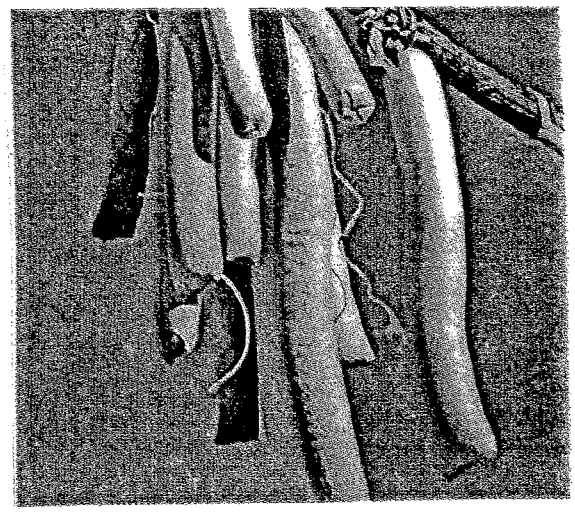
Attachment 10

Thomas Akerelrea, Scammon Bay, seal hunting.

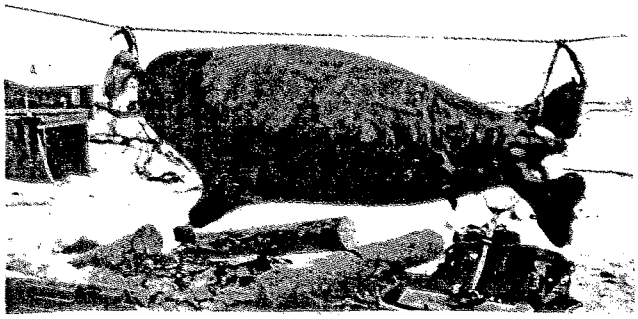
Martina Phillip skins her husband Joe's seal, Alakanuk.



Attachment 11



Above—Bleached seal throats at Mekoryuk. The throats are bleached white and used as decoration, usually as the band on the top of water boots.



Above—A sealskin is stretched to dry at Chefornak. There cannot be one hole or cut in the entire skin because the fat from the animal will be put back inside the skin and left in the sun to be rendered into seal oil.

Attachment 12

Women of a Tununak family conduct a seal party, in which a young man's first bearded seal is distribated.

Below—Butchering a seal, Mrs. Prince, a Yup'ik Eskimo and the author's mother, uses both the skin and meat of the seal. Clothing, purses, gun cases and Reals are just a few of the items made from parts of the seal. (Michael Fearden)

Wearing a seal gut parka Jesse Paul from Kipnuk collects herring eggs deposited on seaweed, Nelson Island.

ECOLLECTIONS OF OLD KASHUNAK

is is part of a story by Tom Im-
ree, of Chevak, reminiding about
old way of life. He was origin-
y from the abandoned village of
shunak, not far from the present
of Chevak. Originally spoken in
'pik Eskimo it is transcribed here
lowing the rythmic contours
d pauses of Mr. Imgaiten's
eech.

will say a little
out the way people lived long
ago,
out the life I was there to see,
hen I was a boy,
own there in Qissunaq.

the autumn around this time,
e women
nd to fish for arctic tomcods
ith dipnets.

utside,
hen it got cold, they used to
wade, even when the ice was
forming,
nd they wore only sealgut rain
parkas,
ed around the waist like so.

therwise, the women
ore nothing.
h, how they endured back then,
hose women!

hey closed off their rain parkas
y tying them around their waists,
keep their bodies
rom getting cold.
ut from the waist down
heir bare skin was exposed,
nce they did not have their pants
on in the water.

They fished,
nd the mud sometimes froze.

That is how it was
when they tried to catch fish for
storage
in the autumn.

By themselves
the men,
the husbands of these women,
went off to hunt bearded seal
down at the sea.
They speared them then,
they did not shoot them.

Whenever the weather was calm
down at the sea,
they went after these seals in
parties.

And by themselves,
the women
fished for sticklebacks, and
gathered vole-food from under the
ground,
trying to get for food
the things
that voles will store there.

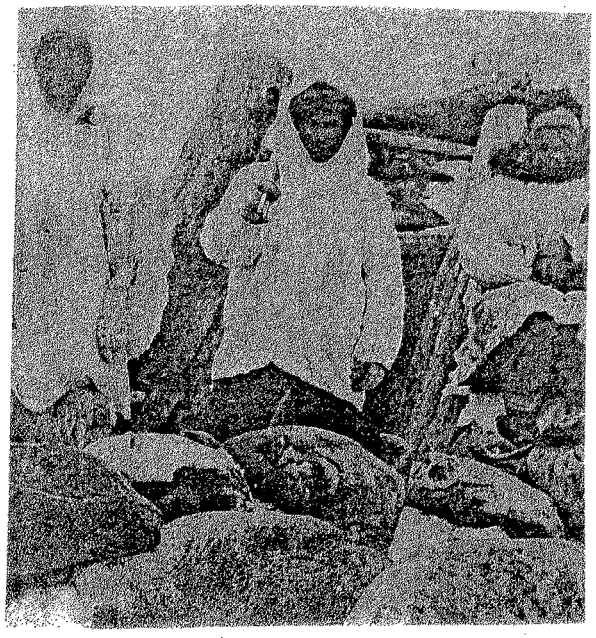
When it got cold, around this
time,

When it got cold, around this
time,
the women got grasses they need-
ed for the winter,
a sturdy flat grass for sleeping
mats,
a long rough grass for storage bas-
kets and partitions,
and regular grass for bedding and
bootliners.
All of these were gathered.

Their houses were made of sod
then.

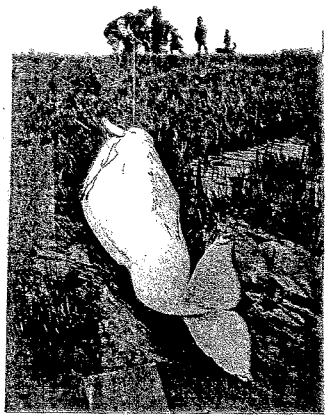
I was lucky enough to have known
my grandmothers, who now are
dead,
and who lived the way people did
long ago.

Translated by Leo Moses of Chevak



Attachment 14

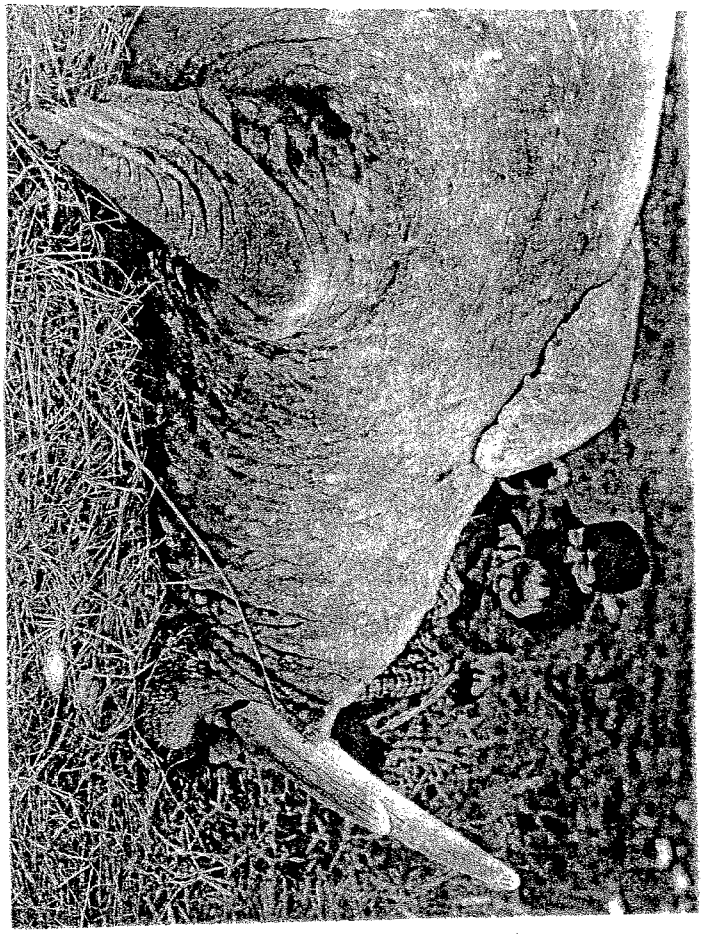
Mike Utereynk butchering beluga.
Black River fishcamp.



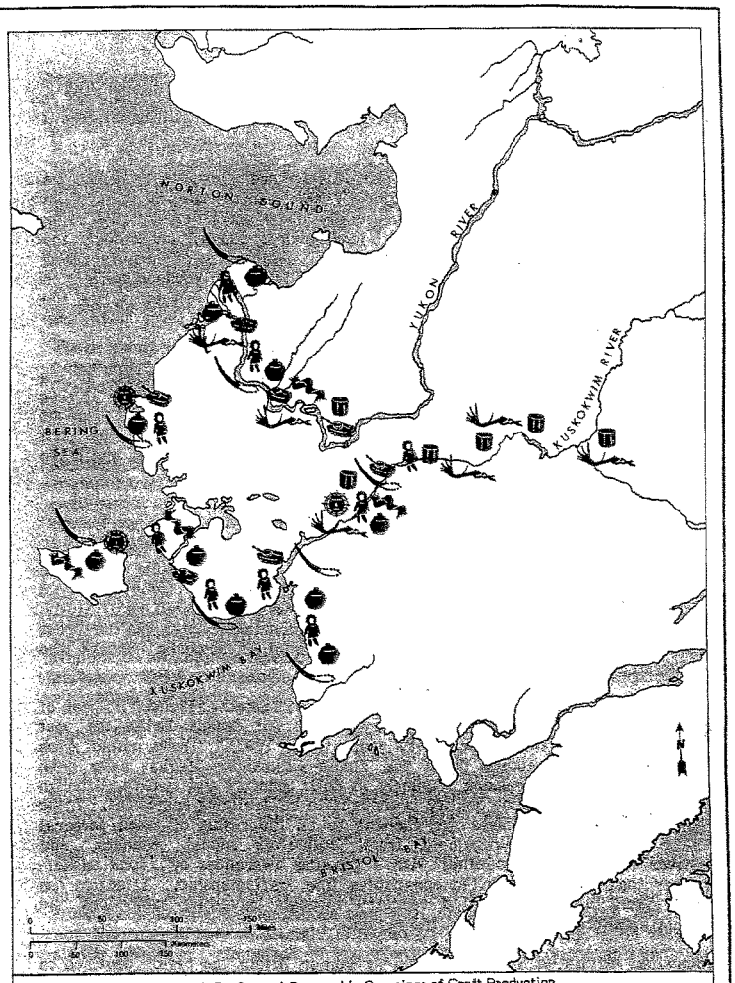
Pulling a beluga whale onto shore.
Black River fishcamp.

Francis Phillip butchers a beluga whale on Flat Island. These small whales can be hunted with skiffs and cornered in shallow water where they can be harpooned. Coastal Natives of the Delta eat beluga meat. (Michael Rearden)

Attachment 15



Attachment 16

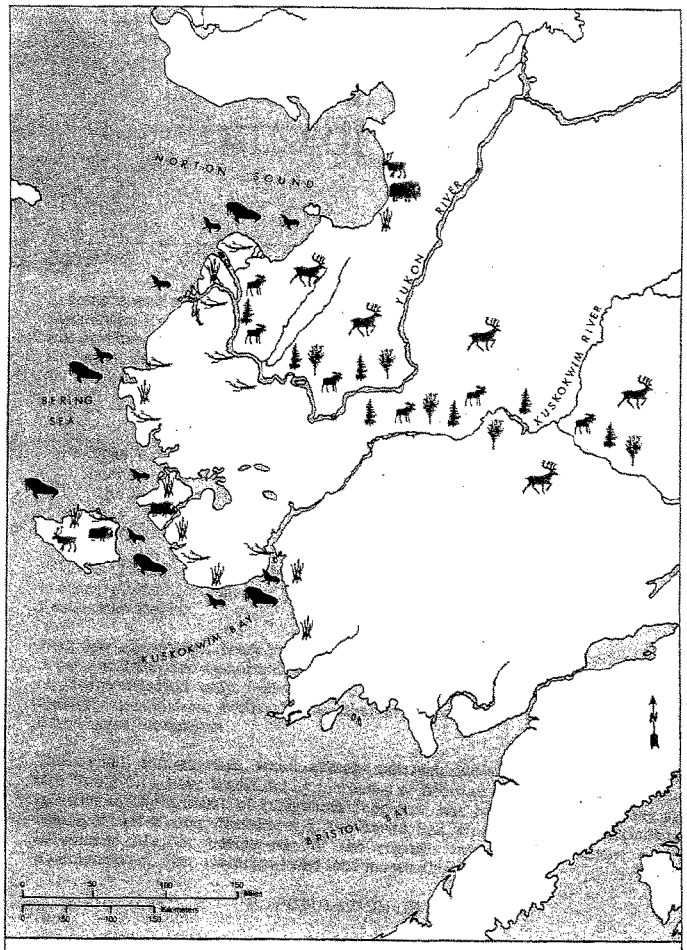


MAP E: General Geographic Groupings of Craft Production in the Yukon-Kuskokwim Region

Wood Carvings
Grass Baskets
Dolls
Ivory Carvings
Wood Masks
Giviut Garments
Bone Carvings
Birch Bark Baskets

Source: CPS, adapted from field survey data, Evans, 1982-83.

Attachment 17



MAP B: Raw Materials Map of the Yukon-Kuskokwim Region

Musk Ox
Moose
Spruce Tree
Driftwood
Reindeer
Caribo
Birch Tree
Walrus
Seal
Rye Grass

Source: CPS, adapted from Fitzhugh and Kaplan, 1982, and supplemented by field survey, Evans, 1982-83.

[Prepared statement of Mr. Eni F. H. Faleomavaega follows:]

Statement of the Honorable Eni F. H. Faleomavaega
Oversight Hearing on the Marine Mammal Protection Act
Tuesday, March 28, 2000 at 2:00 p.m.

Thank you Mr. Chairman, for scheduling today's oversight hearings on the Marine Mammal Protection Act.

This afternoon we will be focusing on the development of co-management agreements between either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service and Alaska Native organizations, as authorized under section 119 of the Act.

Although I do not purport to have the expertise possessed by the Chairman on this matter, I am very interested in how best to incorporate the knowledge and skills of Native peoples in the co-management of marine mammals with Federal and State authorities. I am eager to learn whether co-management agreements created under section 119 have been successful in Alaska, and how we may improve upon the process.

Thank you.

[Whereupon, at 3:03, the subcommittee was adjourned.]