

AGREEMENT BETWEEN

The Alaska Native Harbor Seal Commission
and
The National Marine Fisheries Service

April 28, 1999

AGREEMENT BETWEEN
THE ALASKA NATIVE HARBOR SEAL COMMISSION
AND
THE NATIONAL MARINE FISHERIES SERVICE

I. PURPOSES

- A. The primary purpose of this agreement is to set forth an operational structure for the conservation and management of harbor seals in Alaska between the Alaska Native Harbor Seal Commission (ANHSC) and the National Marine Fisheries Service (NMFS) (otherwise referred to as the Parties) in order to achieve the following goals:
1. To develop an Annual Action Plan for the conservation of Alaska harbor seal populations and the co-management of subsistence uses of harbor seals in Alaska;
 2. To promote the sustained health of harbor seals in order to protect the culture and way of life of Alaska Natives who rely on the harvest of harbor seals for subsistence uses;
 3. To promote scientific research and the collection of data, including the traditional knowledge of Alaska Natives, in order to facilitate management decisions concerning harbor seals in Alaska;
 4. To identify and resolve, as early as possible, through a consultative process, any management conflicts that may arise associated with Alaska harbor seals; and
 5. To provide information to subsistence hunters and the public at large, as a means of increasing the understanding of the sustainable use, management and conservation of harbor seals.

II. GUIDING PRINCIPLES

- A. As the primary consumptive users of Alaska harbor seals, Alaska Natives are committed to a long-term, sustainable harvest of harbor seals for food and handicrafts. Their long history of self-regulation coupled with their rich oral tradition and day-to-day contact with Alaska harbor seals gives them special insights into and knowledge of this important marine mammal.
- B. The National Marine Fisheries Service has expertise in biological, ecological and resource management science. Under the Marine Mammal Protection Act, as amended, NMFS is mandated to prevent marine mammal stocks from diminishing beyond the point at which they cease to be a significant functioning element in the ecosystem, and to maintain population levels that will allow sustainable subsistence harvests by Alaska Natives.
- C. The best way to conserve and provide stewardship of marine mammal

populations that are critical to the subsistence lifestyle of Alaska Natives is through a partnership between the federal agency with management authority and the Alaska Natives using that resource, and by providing for full and equal participation by Alaska Native tribes in decisions affecting the subsistence management of marine mammals to the maximum extent allowed by law.

- D. A key to the success of this partnership is to incorporate the spirit and intent of co-management by building trust and by establishing close cooperation and communication between the two Parties and their constituents. Shared decision-making shall be through consensus, based on mutual respect and understanding of each Party's cultural perspective.

III. AUTHORITIES

- A. The National Marine Fisheries Service has the authority to enter into this Agreement with the Alaska Native Harbor Seal Commission under Section 119 (16 U.S.C. § 1388) of the Marine Mammal Protection Act of 1972, as amended (MMPA), the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. § 1531 *et seq.*), and the Department of Commerce Joint Project Authority (15 U.S.C. § 1525). Guidance is provided by Executive Order #13084 of May 14, 1998 ("Consultation and Coordination with Indian Tribal Governments," 63 FR 27655), Presidential Memorandum of April 29, 1994 ("Government-to-Government Relations with Native American Tribal Governments," 59 FR No. 85). U.S. Department of Commerce Memorandum "American Indian and Alaska Native Policy of the U.S. Department of Commerce" of March 30, 1995, and the Memorandum of Agreement for Negotiation of Marine Mammal Protection Act, Section 119 Agreements" of August, 1997.

This agreement implements the goals of the Memorandum of Agreement for Negotiation of Marine Mammal Protection Act, Section 119 Agreements of August, 1997.

- B. The Alaska Native Harbor Seal Commission has the authority to enter into this Agreement under authorizing resolutions from those tribes and tribally-authorized organizations listed in Appendix A.

IV. SCOPE

- A. This Agreement is intended to cover the species *Phoca vitulina*, referred to as the harbor seal (English), x-ut (Haida), tsa'a (Tlingit), ge'lt'a'k (Eyak), Quiqyaq (Alutiiq-Chugach), Taquka'aq (Alutiiq-Koniag), Isux or Isugix (Aleutian Aleut), and arnat (Yu'pik) throughout its range in Alaska.
- B. The Alaska Native Harbor Seal Commission represents the conservation and co-management interests of harbor seal hunters and subsistence users in a geographic area that extends along the Pacific coast from southeast Alaska to the western tip of the Aleutian Island Chain, and north to Cape Newenham, which encompasses six distinct coastal areas: Southeast Alaska, Chugach, Cook Inlet, Kodiak, the Aleutian Islands, and Bristol Bay.
- C. This Agreement encompasses the entire region as described above. However, specific actions taken or recommendations made pursuant to this Agreement may be limited to certain regions or sub-areas, as deemed appropriate.

V. OPERATIONAL STRUCTURE

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

Action Plan for harbor seals in Alaska. The Annual Action Plan will be the guiding document for joint and separate management actions by the ANHSC and NMFS related to the conservation and management of subsistence uses of harbor seals. In developing and revising the Annual Action Plan, the Committee shall consider technical information, and such non-technical information including cultural, ethical, policy and legal concerns, as it deems appropriate. The Committee will evaluate the success of its Annual Action Plan and will update it annually.

VI. ANNUAL ACTION PLAN

- A. The Co-management Committee shall prepare and/or update an Annual Action Plan describing relevant information, specifying mutually agreed upon actions to be implemented by NMFS and the ANHSC, and setting forth recommendations for additional activities that would promote harbor seal conservation. Annual Action Plans will be comprised of the following five sections:
1. Population monitoring;
 2. Harvest management;
 3. Education;
 4. Research recommendations; and
 5. Other recommendations.
- B. Under each of these sections, the Annual Action Plan will summarize past activities and describe anticipated activities, including the following:
1. Summary of recent progress and new information; and
 2. Outline of future goals and activities.
- C. The Annual Action Plan will be developed in a step-wise fashion along the following lines:
1. Recent progress and new information pertaining to population monitoring, harvest management, and education activities will be reviewed;
 2. The Co-management Committee, through an integrative discussion of the aforementioned three items will identify information and conservation needs (e.g., information gaps, threats to healthy populations, and potential conservation measures);
 3. Identified needs will be prioritized and considered on a case-by-case basis for sharing responsibility between NMFS and the ANHSC by implementing them as action items; and

4. These needs can be transformed to action items in one of three ways as part of the Annual Action Plan:
 - a) If either Party is prepared to voluntarily commit its resources to implement an action item (e.g., conduct a survey, develop a monitoring plan, initiate an educational program), then the Parties will agree on who is to be responsible for undertaking that work during the forthcoming year (and the action item will be incorporated into the population monitoring, harvest management, and education sections of the Annual Action Plan);
 - b) If the action item pertains to gathering information, and neither Party is in a position to commit sufficient resources at that time to undertake the needed research, then the action item will be incorporated into the Annual Action Plan under "Research Recommendations;" and
 - c) If the action item pertains to something other than gathering information, and neither Party is in a position to commit sufficient resources to it, then the action item will be incorporated into the Annual Action Plan under "Other Recommendations."

D. Population Monitoring

1. To achieve its conservation goals, it is fundamentally important that the Co-management Committee have access to accurate information on harbor seal populations throughout Alaska. There are several sources for such information, including scientific information as well as local and traditional knowledge.
2. Effective population monitoring involves evaluating the best available information on the following topics:
 - a) Population abundance and trends by stock and, as possible, by sub-areas within those stocks;
 - b) Habitat use and seasonal movements (including information on preferred haul-out sites, foraging areas, and prey composition);
 - c) Sources of mortality to harbor seals (including the nature, extent, timing, and location of such mortality); and
 - d) Population status by stock and, as possible, by sub-areas within those stocks (including aspects such as age structure, vital rates, and indices of physical condition).

E. Harvest Management

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

F. Education

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

G. Training: cross-cultural/technical

1. The Annual Action Plan shall include provisions for orientation workshops and other programs for the exchange of cross-cultural information and perspectives. The perspectives may include Alaska Native ways of life, traditional ways of knowing, local concerns, and

issues regarding harbor seals and their use by Alaska Natives (i.e., medicinal, handicraft and spiritual uses) as well as agency policies, legal and administrative constraints, and scientific approaches.

2. Research Ethics. The Parties agree to encourage all scientists who plan to conduct research that will occur in Alaska Native villages to advise Native People who are to be affected by the study of the purpose, goals, and time-frame of the research, the data gathering techniques, and possible impacts of the research, and to obtain the informed consent of the appropriate governing body. The Co-management Committee shall assist researchers in identifying appropriate governing bodies.

H. Research Recommendations

1. For conservation and management efforts to succeed, it is vitally important that accurate, reliable, and timely information about harbor seals be available for consideration. Having access to such information is central to whether or not the Parties will succeed or fail in meeting this Agreement's objectives. Therefore, under this Agreement, the term "research" is used in reference to all relevant forms of information gathering, and includes both conducting scientific studies as well as making local and traditional knowledge available for consideration.
2. The Annual Action Plan will identify relevant information gaps that need to be filled to help achieve the Agreement's goals. These information gaps will consequently describe research needs that the Co-management Committee recommends be addressed as a matter of priority. The purpose of outlining research recommendations in the Annual Action Plan is to help raise the profile of particular information gaps, and thereby to assist researchers in securing and allocating the funds necessary to undertake such work.

I. Other recommendations

1. Under the Annual Action Plan's sections on population monitoring, harvest management, and education, it is expected that the Parties to this Agreement will identify a variety of future activities that they can commit to implementing uni- or bi-laterally (i.e., by NMFS and/or the ANHSC). However, given the wide range of environmental features and human activities that may impact harbor seal conservation, it is likely that the Co-management Committee may identify additional actions that could be helpful to harbor seals, but that are outside the scope of this Agreement.

2. Therefore, a list of "other recommendations" will be included in the Annual Action Plan. The purpose of these recommendations will be to highlight various conservation and management needs, and to encourage the appropriate persons or entities to take action as recommended in order to assist in the long-term conservation of harbor seals and to promote the sustainability of the harbor seal subsistence harvest by Alaska Natives.

VII. CONSULTATIONS

- A. Routine communications. NMFS and the ANHSC shall consult on a routine basis as set forth in this Agreement. In addition, the ANHSC Executive Director and the NMFS Harbor Seal Program Coordinator shall communicate on an as-needed basis concerning matters related to Alaska harbor seals which either Party believes are suitable for such consultation.
- B. Regulation and enforcement. 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 of harbor seals.
- C. As concern about any Alaska harbor seal stock arises (i.e., 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.
- D. Media contacts. Both Parties shall strive to support a policy of "no surprises" concerning contact with the media on potentially sensitive issues pertaining to harbor seals in Alaska. Each Party shall endeavor to consult with the other prior to initiating contact with the media on topics contained within this Agreement. Under circumstances in which the media initiate contact with one Party, the contacted Party shall inform the other Party and provide details on the nature of the information communicated. In addition, when a Party is contacted by the media concerning issues relevant to this Agreement, that Party shall provide the other Party's contact information to the media

representative, and encourage them to contact the other Party.

VIII. FUNDING

- A. Both Parties agree that long-term funding for sustained co-management and conservation programs is important for the health of harbor seals in Alaska. No financial commitment on the part of any Party is authorized or required by this Agreement.
- B. This Agreement does not replace the need for a financial assistance award in accordance with 16 U.S.C. § 1388. Until those funds become available, each Party shall bear its own costs in participating in this Agreement (e.g., for travel, consultations, training sessions, and population and harvest monitoring).
- C. This agreement is subject to the availability of funds.

IX. OTHER PROVISIONS

- A. Nothing in this Agreement is intended or shall be construed to authorize any expansion or change in the respective jurisdiction of Federal, State, or Tribal Governments over fish and wildlife resources, or alter in any respect the existing political or legal status of Alaska Native entities.
- B. Nothing herein is intended to conflict with current NOAA or NMFS directives. If the terms of this Agreement are inconsistent with existing laws, regulations, or directives of either of the Parties entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by a new Agreement, whichever is deemed expedient to the interest of both Parties.
- C. Should disagreements arise over the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within thirty days, the disagreement will be referred to the Co-management Committee for appropriate resolution.

X. ADOPTION, DURATION, AND MODIFICATION

- A. This Agreement shall take effect upon the date of signature of the respective Parties and shall remain in effect until terminated by either of the Parties in accordance with the termination provisions of this Agreement.

- B. Modifications of this agreement may be proposed at any time by either Party and shall become effective upon approval by both Parties.
- C. Termination clause: This Agreement may be terminated by either Party by giving 45 days prior written Notice of Termination to the other Party. Such Notice shall be addressed to the principal contact for the receiving Party.

XI. SIGNATORIES

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

Harold P. Martin 4/28/99 For Steven Pennoyer . Bug 4-28-99

Chairman
Alaska Native Harbor Seal Commission
320 West Willoughby Ave., Suite 300
Juneau, Alaska 99801

Administrator, Alaska Region
National Marine Fisheries Service
U.S. Department of Commerce
P.O. Box 21668
Juneau, Alaska 99801

Agreement between the Alaska Native Harbor Seal Commission and the National Marine Fisheries Service Entered into Pursuant to Section 119 of the Marine Mammal Protection Act of 1972, As Amended

Appendix A

List of Tribes and Tribally-authorized Organizations Providing Authorized Resolutions to the Alaska Native Harbor Seal Commission.

<u>Tribe</u>	<u>Resolution Date</u>
Akhiok Tribal Council	10-19-95
Akutan Traditional Council	10-29-96
Aleknagik Traditional Council	05-21-95
Aleutian Pribilof Islands Association	07-09-97
Bristol Bay Native Association	05-01-98
Chenega Bay IRA Council	04-24-98
Cook Inlet Marine Mammal Council	06-19-98
Kenaitze Indian Tribe, IRA	05-05-95
Native Village of Atka	01-17-97
Native Village of Chignik Lake	01-26-96
Native Village of Eyak	04-25-95
Native Village of Nanwalek	05-09-96
Native Village of Old Harbor	03-20-98
Native Village of Ouzinkie	04-20-95
Native Village of Port Graham	04-24-96
Tribe of Unalaska	11-26-96
Qutekcak Native Tribe	10-27-97
Seldovia Village Tribe	10-19-95
Tatitlek Village IRA Council	04-11-95
Unga Tribal Council	11-07-96
Valdez Native Tribe	10-26-95
Yakutat Tlingit Tribe	04-29-98

