

AGREEMENT
between the
NATIONAL MARINE FISHERIES SERVICE
and the
COOK INLET MARINE MAMMAL COUNCIL
for the
CO-MANAGEMENT OF THE COOK INLET STOCK OF BELUGA WHALE
for the YEAR 2002

I. PARTIES

This document constitutes an agreement between the National Marine Fisheries Service (NMFS) and the Cook Inlet Marine Mammal Council (CIMMC), otherwise referred to as the Parties.

CIMMC is an association, chartered by the Cook Inlet Treaty Tribes, which represents these Tribes and Alaska Native marine mammal subsistence hunters within the Cook Inlet area who are registered with CIMMC.

The Cook Inlet (CI) stock of beluga whales applies to all beluga whales occurring in waters of the Gulf of Alaska north of 58 degrees North latitude including but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelikof Strait, and off Kodiak Island and freshwater tributaries to those waters.

II. AUTHORITIES

A. NMFS has the authority to enter into this agreement with CIMMC under section 119 (16 U.S.C. 1388) of the Marine Mammal Protection Act of 1972 (MMPA). Section 3022 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106-31) provided a temporary requirement that the hunting of Cook Inlet beluga whales for subsistence uses by Alaska Natives must be conducted pursuant to a cooperative agreement between NMFS and affected Alaska Native organizations; this requirement for a cooperative agreement was subsequently made permanent by section 627 of Pub. L. 106-553. Additional 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,” 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.

- B. CIMMC has the authority to enter into this agreement under its charter and authorizing resolutions from Alaska tribal governments. Further, CIMMC is recognized as an Alaska Native organization under the MMPA and, as such, may enter into this agreement to co-manage the subsistence use of marine mammals by Alaska Natives.

III. PURPOSES

The purposes of this agreement between NMFS and CIMMC are to promote the recovery of the CI stock of beluga whales; to meet the subsistence needs and customs, traditions, and culture of Alaska Natives by providing an opportunity for a limited harvest of the CI beluga whale by the Native Village of Tyonek (NVT) and the community of Cook Inlet Alaska Native marine mammal hunters during 2002; and to promote scientific research on the CI beluga whale stock and their habitat.

IV. BACKGROUND

In 1972, the MMPA was passed by Congress and provided an exemption which allows the taking of marine mammals by Alaska Natives provided such taking is for subsistence purposes or done for purposes of creating and selling authentic Native articles of handicraft and clothing. Such taking may not be accomplished in a wasteful manner.

In 1994, CIMMC was established to facilitate cooperation and communication among beluga whale subsistence hunters, scientists, and the government regarding the conservation and management of CI beluga whales. CIMMC is composed of Cook Inlet village representatives and hunters who hunt CI beluga whales.

In April 1994, the MMPA was amended to include section 119 "Marine Mammal Cooperative Agreements in Alaska." Section 119 formalizes the rights of Alaska Native organizations to participate in conservation-related co-management of subsistence resources and their use. Section 119 also authorized the appropriation of funds to be transferred by NMFS to Alaska Native organizations to accomplish these activities.

On May 21, 1999, Pub. L. 106-31 required that the taking of a CI beluga whale shall occur pursuant to a cooperative agreement between NMFS and affected Alaska Native organizations. This authority expired on October 1, 2000.

On December 21, 2000, the requirement, established in May 1999, for a cooperative agreement was made permanent.

V. MANAGEMENT OF COOK INLET BELUGA WHALES

The Parties agree that the Native harvest of CI beluga whales during the calendar year 2002 shall consist of two (2) strikes. CIMMC shall allocate one strike to NVT and the second strike to the community of Alaska Native Cook Inlet marine mammal hunters. The allocation of the strike for the Cook Inlet community of hunters shall be made in cooperation and consultation with the ANMMHC and the community of Cook Inlet beluga hunters. A strike is defined as hitting a whale with a harpoon, lance, bullet or other object. Upon striking a whale, subsequent strikes on that same whale are not counted against the strike limit.

Harvest Practices

1. Only whaling boats and captains authorized under a permit issued by CIMMC may participate in the harvest allocated under this agreement. An Elder or experienced hunter shall be present and shall direct the harvest for each beluga whaling boat. This will reduce the chance of striking a calf, a female accompanied by a calf, or of striking a whale in an area or in a manner which may result in the loss of the whale.
2. Each whaling vessel must have aboard the following equipment: harpoon and attached rope/float, at least 30 feet of nylon rope or equivalent, and come-along or pulley system with deadman, to help insure against the loss of the whale.
3. All CI beluga whale hunting shall occur on or after July 13, 2002 to minimize the possibility of harvesting a pregnant female.
4. CIMMC, NVT, or the person or persons holding a permit for the strike allocated to the Cook Inlet community of hunters shall notify NMFS Enforcement, Anchorage office, 48 hours prior to the hunt.
5. The intentional or negligent taking of a maternally dependent calf, or a female beluga accompanied by a maternally dependant calf, is prohibited.
6. Belugas shall be struck with a harpoon and float prior to shooting. This is intended to reduce struck and loss. Whales shall not be hunted or taken with unattended nets.
7. Consistent with the desire of CIMMC in regards to this agreement, the current practice of NVT, and the desire of the ANMMHC and the Cook Inlet hunting community, the sale of the beluga whale, or parts thereof, harvested under this agreement, shall not be permitted; provided that the

nothing herein is intended to prohibit the use of non-edible by-products of a beluga taken under a permit authorized herein for use as handicrafts or clothing.

8. Upon harvesting a CI beluga whale, the whaling captain shall remove and retain the left lower jawbone, and must make the jawbone available CIMMC or NMFS within 24 hours of the harvest. CIMMC shall thereafter provide the jawbone to NMFS Anchorage office within three days of the harvest. The whaling captain shall also provide the harvest information to CIMMC or NMFS within 30 days.
9. All hunters shall comply with the provisions of this agreement and any permit issued by CIMMC. Non-compliance with any provisions may result in the loss of hunting privileges for CI beluga whales and prosecution.
10. Any unauthorized striking of a CI beluga whale by a member of CIMMC shall be counted against the strikes allocated to CIMMC . If such a strike occurs prior to the hunt conducted legally under a CIMMC Harvest Permit, that Harvest Permit will be voided as follows. If the unauthorized strike is by a member of the Cook Inlet beluga hunting Community or a member of the ANMMHC, the strike shall be counted against the strike allocated to the Community or to the ANMMHC, and any unused permit issued to the Community of hunters or the ANMMHC will be voided. If the unauthorized strike is by a member of the NVT, the strike shall be counted against the strike allocated to the NVT, and any unused permit issued to the NVT will be voided.
11. In the event of any loss of beluga whales through strandings or other causes, NMFS and CIMMC shall enter into consultation to determine whether to proceed with the hunt permitted by this agreement. Such determination shall be made based upon the best available information and consistent with the primary goals of the parties as set forth in Section III of this agreement. NMFS may suspend further hunting at any time if it finds unanticipated deaths within this stock are too high to permit additional removals consistent with recovery of the CI beluga.

VI. RESPONSIBILITIES OF CIMMC

- A. CIMMC, in cooperation with NMFS, will manage the CI beluga whale subsistence harvest. The authority and responsibilities of CIMMC are specified

by this agreement. CIMMC may provide for monitors to be aboard the whaling vessel to verify and report on the strike.

- B.** CIMMC and NMFS shall communicate on an as-needed basis concerning matters related to the enforcement of this agreement or the Harvest Permit. Any party to this agreement which initiates an enforcement action for a violation of a prohibition involving Native take of the CI whale shall notify, as soon as practical, the other party to this agreement of the enforcement action.
- C.** CIMMC, in consultation with NMFS, may conduct research on the biology, natural history, and traditional knowledge of the CI population of beluga whales. NMFS personnel may participate in such data collection. All information collected under this section shall be shared between CIMMC and NMFS.
- D.** No financial commitment on the part of CIMMC is authorized or required by this agreement.

VII. RESPONSIBILITIES OF NMFS

- A.** NMFS has primary responsibility within the United States Government for the management of beluga whales. NMFS may assert its Federal authority to enforce any provisions of the MMPA that are applicable to the Native harvest of beluga whales. Such assertion of Federal authority will be preceded by consultation with CIMMC as specified in VII.B. below.
- B.** NMFS and CIMMC shall communicate on an as-needed basis concerning matters related to the enforcement of this agreement or the Harvest Permit. Any party to this agreement which initiates an enforcement action for a violation of a prohibition involving Native take of the CI whale shall notify, as soon as practical, the other party to this agreement of the enforcement action.
- C.** NMFS, in consultation with CIMMC, may conduct research on the biology, natural history, and traditional knowledge of the CI population of beluga whales. CIMMC personnel may participate in such data collection. All information collected under this section shall be shared between CIMMC and NMFS.
- D.** No financial commitment on the part of NMFS is authorized or required by this agreement.

VIII. REGULATION AND ENFORCEMENT

NMFS recognizes the existing tribal authority to regulate tribal members during the conduct of the subsistence harvest of beluga whales. CIMMC recognizes the Secretary of Commerce's authority to enforce the provisions of the MMPA applicable to the Native harvest of beluga whales.

XX OTHER PROVISIONS

- A. 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, then those portions 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.

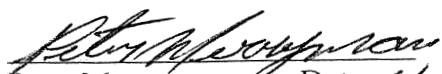
- B. Should disagreements arise over the provisions of this agreement, or amendments or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation cannot be reached within a reasonable time, a special meeting or teleconference shall be held to resolve the issues. This meeting shall include representatives of NMFS and CIMMC.

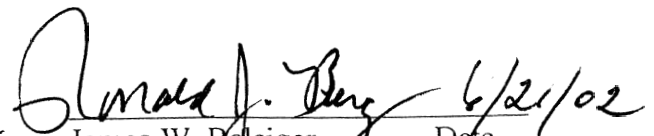
X. ADOPTION, DURATION, AND MODIFICATION

This agreement will become effective when signed by both Parties, may be amended at any time by written agreement of both Parties, and shall expire on December 31, 2002. Either Party may terminate this agreement by giving 45 days prior written Notice of Termination to the other Party.

XI. SIGNATORIES

The Parties hereto have executed this agreement as of the last written date below:


Peter Merryman Date 6/13/02
Chairman,
Cook Inlet Marine Mammal Council


For James W. Balsiger Date 6/21/02
Administrator, Alaska Region
National Marine Fisheries Service

PO Box 82009
Tyonek, AK 99682

P.O. Box 21688
Juneau, AK 99802-1668

Agreement between the Cook Inlet Marine Mammal Council 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 Tribally-authorized Organizations Providing Authorizing Resolutions to the Cook Inlet Marine Mammal Council. This list may be amended from time to time if additional authorizing resolutions are received from tribally authorized organizations representing CI beluga whale hunters, and with CIMMC approval.

Tribally Authorized Organization

Resolution Date

Cook Inlet Treat Tribes

Kenaitze Indian Tribe

Knik Tribe

Native Village of Chickaloon

Native Village of Eklutna

Native Village of Tyonek

Ninilchik Traditional Council

Qutekcok Native Tribe

Seldovia Village Tribe