

# DOI Solicitor

## Opinion on Eligibility of AK Natives to Take Marine Mammals

*Received via email from Anne Marie Eich (NOAA) on January 15, 2025*

### **III. Conclusion**

The U.S. Fish and Wildlife Service should interpret its existing regulations at 50 C.F.R. § 18.3 as providing three independent means of qualifying as an “Indian, Aleut or Eskimo” for purposes of the section 101(b) exemption of the MMPA. More specifically, FWS may not interpret its regulations as precluding persons who lack one-fourth blood quantum from qualifying as “Indian, Aleut, or Eskimo” if they are “regarded as an Alaska Native by the Native village or town of which he claims to be a member” and their “father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town.”

However, qualifying as “Indian, Aleut, or Eskimo” does not itself establish eligibility to take marine mammals pursuant to section 101(b) because this statutory exemption is further limited to those who reside in Alaska and dwell on the coast of the North Pacific Ocean or the Arctic Ocean. Also, section 101(b) only exempts take that is conducted for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing, and that is not accomplished in a wasteful manner.

## **FWS Director**

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### Conclusion

For these reasons, the Service necessarily rejects the restrictive interpretation and adopts the permissive interpretation of the second eligibility standard expressed in the definition in its regulations defining “Alaskan Native.” Therefore, the Service will consider any citizen of the United States who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean to qualify for the exemption who is:

- 1) one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof, including any Native, as so defined, either or both of whose adoptive parents are not Natives; or
- 2) regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town; or
- 3) enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act.

This interpretation does not address a number of important implementation questions under the second standard, such as the role of Tribes, Alaska Native Organizations (ANOs), the consideration of current and future co-management agreements, regionally-specific (e.g., North Slope, Southeast Alaska, etc.) and species-specific considerations, and conservation objectives. These questions should be addressed in implementing guidance developed by the Service in consultation with affected Alaska Native Tribes, Alaska Native Organization co-management partners, and discussions with the National Oceanic and Atmospheric Administration and the Marine Mammal Commission, among other stakeholders.

This memorandum is intended to improve the internal management of the U.S. Fish and Wildlife Service and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person