

Update on Continuing Process to Clarify Marine Mammal Harvest Eligibility

January 15, 2025 Update

The National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (FWS) continue progress with the evaluation of legal standards for Alaska Native marine mammal harvest eligibility under the Marine Mammal Protection Act (MMPA), but have not yet issued any implementing guidance or made any changes to existing regulatory requirements. We had hoped to begin joint consultations and meetings with our Alaska Native Organization co-management partners, Alaska Native Tribes, and others starting in December or January, but now plan to initiate the first of a series of such discussions February 3 and 4, 2025.

February 3: Meeting with Tribally-authorized MMPA section 119 co-management partners

February 4 (am): Government to government consultation with Alaska Native Tribes

February 4 (pm): Consultation with Alaska Native Corporations

Meeting call-in information will be sent out in forthcoming communications.

DOI Legal Opinion and Approach for Marine Mammal Species under FWS's Jurisdiction

The Department of the Interior's Office of the Solicitor began its initial review in July and provided a January 8, 2025, legal opinion to the FWS Director on this topic. The Solicitor found that a restrictive interpretation of FWS's implementing regulations, i.e., one that excludes persons with a known blood quantum of less than one-fourth degree from the second means of qualifying, is not consistent with the law and that FWS lacks discretion to interpret its regulation in this manner. Among other findings, the Solicitor noted:

- The legislative history of the MMPA clearly reflects Congress' broad intent to protect not only a food source for any coastal-dwelling "Indian, Aleut, or Eskimo who resides in Alaska" (language from MMPA), but also their cultural identity and way of life without any mention of or limitation relating to blood quantum.

Based on the Solicitor's opinion, the FWS Director issued a memorandum adopting a permissive interpretation of the FWS implementing regulations that will serve as a foundation for discussions with partners and the development of official implementation guidance related to eligibility for subsistence use of the marine mammal species under FWS's jurisdiction: northern sea otters, Pacific walrus, and polar bears. That interpretation does not alter the use of a minimum blood quantum as a valid way of qualifying, noting that blood quantum is only problematic under the law if used as a means to limit individuals who would otherwise be qualified under the second means. Both the Solicitor's opinion and FWS's interpretation note additional criteria for eligibility remain and raise a number of important questions that remain to be addressed in implementing guidance, 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. FWS will work with its co-management partners, Tribes, and others to develop appropriate implementation guidance for species under FWS's jurisdiction. Given concerns that have been previously expressed, it may be as important to convey what this opinion and interpretation do not do:

- They do not open the exemption to non-Natives or to sport hunting or guiding;
- They are not self-executing, meaning that implementation guidance is still necessary; and
- They do not foreclose a robust role for Tribes and co-management partners.

Approach for Marine Mammal Species under NMFS's Jurisdiction

The DOI Solicitor's Opinion pertains only to FWS. NMFS has not made the same determination as FWS or any other determination on potential changes to how it should implement the MMPA's Alaska Native exemption for subsistence-harvested species under NMFS's jurisdiction, including harbor seals, Steller sea lions, ringed seals, bearded seals, ribbon seals, spotted seals, northern fur seals, beluga whales, and bowhead whales. Like FWS, NMFS recognizes that a standard reliant on blood quantum poses challenges in some cases for the long-term continuity of traditional subsistence use of marine mammals, and warrants reconsideration. Before making any changes, NMFS will work with its co-management partners, Tribes, and others to explore options for clarifying Alaska Native harvest eligibility for species under NMFS's jurisdiction.

Next Steps

Both NMFS and FWS are committed to using a transparent and inclusive process to develop more clarity for Alaska Native subsistence users going forward. In the interim, eligibility requirements under the MMPA have not changed and will not change until the two agencies have worked through the process to develop official guidance. NMFS and FWS will be in touch with our partners soon to begin scheduling additional meetings and consultations.

If you have any questions or want to be included in these or other opportunities for engagement, please contact Anne Marie Eich at annemarie.eich@noaa.gov (NMFS) or Alice Garrett at alice_garrett@fws.gov (FWS).