



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
1011 East Tudor Road
Anchorage, Alaska 99503



In Reply Refer to:
FWS/R7

October 4, 2024

Subject: Marine Mammal Protection Act Eligibility

Dear Tribal Leader,

Over the past year, the Department of the Interior (Department) and U.S. Fish and Wildlife Service (Service) have received multiple requests from Tribes for government-to-government consultation on marine mammal co-management and the qualifications for harvest eligibility under the Marine Mammal Protection Act (MMPA), as outlined in the Service's regulations. These recent requests build on years of similar requests and resolutions sent to both the Service and National Marine Fisheries Service (NMFS) to address and clarify and/or amend their respective regulations implementing the MMPA.

As we've stepped into these consultations and conversations, we recognize Tribal leadership and collaborative co-management of lands, waters, and wildlife with Alaska Native peoples is essential in all we do, including stewardship of marine mammals who have been part of their life ways and cultures since time immemorial. Joint Secretarial Order 3403 affirmed the Federal government and Tribes are allies and partners in conservation and committed the Departments of Interior, Commerce, and Agriculture to engage in meaningful partnerships rooted in equity, respect, and trust, to co-steward and conserve resources for the benefit of all future generations.

To inform these consultations and ongoing co-management efforts, we sought clarification from the Department's Office of the Solicitor regarding eligibility under the Service's definition of "Alaska Native" at 50 C.F.R. § 18.3. While not a comprehensive review, the Alaska Region of the Office of the Solicitor clarified Service regulations provide multiple means of demonstrating eligibility to harvest marine mammals under the MMPA, including, but not limited to, a minimum blood quantum. We emphasize this is only a clarification of an existing regulation – no new regulation has been issued and nothing in the existing regulation is changing at this time.

We are reaching out to our Alaska Native partners as well as co-management partners to share this information and explore next steps to collaborate on developing further guidance. As part of this process, the Service has requested the Office of the Solicitor prepare a more comprehensive legal interpretation that will provide additional detail on this clarification.

In the meantime, to minimize confusion for hunters and facilitate continued subsistence harvest and sharing of cultural traditions with all generations of Alaska Native peoples, the Service is clarifying that our existing regulations provide options for determining Alaska Native harvest eligibility for marine mammals under the Service's jurisdiction (sea otters, walrus, and polar

bears). Eligible hunters, who reside in Alaska on the coast of the North Pacific or Arctic Oceans, can be:

- 1) “a citizen of the United States who is of 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”; or
- 2) “in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which [the hunter] claims to be a member and whose father or mother is (or, if deceased, was) regarded as a Native by any Native village or town”; or
- 3) “any citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act.”

We are committed to working directly with Tribal governments and co-management partners on a holistic and case-by-case basis to address approaches to eligibility, particularly under the second means of qualifying. We think there is a greater role for Tribes to play in this second means than previously considered.

We recognize this does not yet answer all questions. The Service views this approach as a step forward in a process that may include additional policy guidance and, if needed, changes to our regulations. We look forward to advancing that process through consultations and engagements with Tribes, Alaska Native Organizations, including the Indigenous People’s Council for Marine Mammals, the Marine Mammal Commission, and other stewards of these resources. Alice Garrett (alice_garrett@fws.gov), Project Leader for our Marine Mammals Management Office, and the rest of her team will be working with you to continue this process and respond to requests for further consultation.

The Service has coordinated with NMFS on this matter. Both the Service (at 50 C.F.R. § 18.3) and NMFS (at 50 C.F.R. § 216.3) have regulatory definitions of “Alaska Native” as that term is used in the MMPA. I am grateful that NMFS Regional Administrator Jon Kurland and his team have agreed to work with the Service to explore a consistent approach between our two agencies.

Again, we acknowledge this is one step in the process to resolve a long-standing issue and is coming after decades of confusion deterred many Alaska Native people from engaging in and passing on their cultural traditions and stewardship of marine mammals and coastal ecosystems. The Service is committed to working with Tribal Governments and Organizations to ensure that marine mammal populations can be sustainably stewarded and conserved for all generations and their ocean kin. We look forward to our continued dialogue and collaboration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sara Boario', with a stylized flourish at the end.

Sara Boario
Regional Director
Alaska Region
U.S. Fish and Wildlife Service

CC:

Jon Kurland, Alaska Regional Administrator, National Marine Fisheries Service
Jeff Mihan, Special Agent in Charge, Alaska Region, U.S. Fish and Wildlife Service
Vicki Cornish, Marine Mammal Commission