



Sealaska Heritage Institute

One Sealaska Plaza, Suite 301 • Juneau • Alaska • 99801-1249 • (907) 463-4844
www.sealaskaheritage.org • www.alaskanativeartists.com • Fax (907) 586-9293

March 30, 2012

US Fish and Wildlife Service
Marine Mammals Management Office
1011 East Tudor Road MS-341
Anchorage, AK 99503

RE: Draft issued by the USFWS, Dept. of Interior regarding "Significantly Altered" in MMPA

Dear Ms. Frances Mann:

Sealaska Heritage Institute (SHI) opposes the use of the terminology "significantly altered" in its entirety.

Congress was very clear in that "authentic Native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional Native handicrafts. Moreover, Congress stated that "Traditional Native handicrafts" include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

However, by including the language "significantly altered," in its regulation of sea otter Handicrafts, the USFWS is effectively legislating rather than regulating, and is not taking the intentions of Congress into account. Statutes should not be interpreted in a manner that renders another section of the same statute meaningless. In this case, it is the insertion of the language "significantly altered" which changes the customary and traditional culture of creating arts and crafts with sea otter.

The issue in the MMPA was not what can or cannot be made, but how to limit the creation of sea otter handicrafts to cottage industries and prevent a mass commercial harvest of marine mammals. Congress' solution was to define "authentic Native article of handicraft and clothing" to exclude mass copying devices [16 U.S.C. § 1371(b)(2)]. Had congress intended to limit these sales by defining significantly altered in such a way as to inhibit artistic ability, customs, traditions, and creativity, surely they would have expressly done so.

To provide some historical context, in 1972 on the Senate floor, Senator Hollings, the bill manager, announced that he would defer to Senator Stevens "for further elaboration on this point." 118 Cong. Rec. 25,254 (1972). Senator Stevens explained to the Senate how the S. 2871 Native hunting exemption was intended to operate. In doing so, Stevens made considerable effort to describe the importance of Native marine mammal hunting to obtain animal parts for handicrafts and clothing, rather than meat [25,258-63]. Stevens told the Senate:

"For many Alaska Natives, the selling of their handicrafts, fashioned painstakingly and with great skill from ocean mammals is the sole basis of their cash economy. These include the carving of ivory, the sewing of fur, and the sale of mammal food to other Natives."

Senator Stevens elaborated on his language under this part when S. 2871 was reported: "Many Alaska Natives are completely dependent upon ocean mammal resources for their existence. For these people, ocean mammals provide not only food and clothing, but also, through the sale of meat, seal oil, handicrafts, and clothing, the only available source of money income with which they may purchase a few



Sealaska Heritage Institute

One Sealaska Plaza, Suite 301 • Juneau • Alaska • 99801-1249 • (907) 463-4844
www.sealaskaheritage.org • www.alaskanativeartists.com • Fax (907) 586-9293

of the basic human needs taken for granted by everyone else in America. I feel our nation is morally bound to respect the traditions and lifestyle of these people." Senator Stevens went on to state that Alaska Natives be "permitted to make a living" through the sale of these arts and crafts and he more fully recognized that "by stripping these rights from them, they will face the certain fate of cultural extinction."

While it was the Senate version of this part that was adopted in Conference Committee, SHI believes that as the exemption's principal sponsor, Senator Stevens' explanation of the S.2871 Native hunting and crafts, as well as the cottage industry exemption, should be afforded significant weight. This has previously been recognized in "Ernst and Ernst v. Hochfelder, 425 U.S. 185, 203 (1976)."

Sealaska Heritage Institute believes that inclusion of "significantly altered" language by the USFWS is flawed, and its inconsistent interpretation is bringing about the very cultural extinction of skin sewing that Congress feared most. SHI believes that the "significantly altered" language is an unlawful attempt to legislate. In this case, the USFWS's use of the term "significantly altered" is meant to inhibit individuals from continuing their time-honored traditions of creating arts and crafts. Further, and more to the point, Sealaska Heritage Institute does not condone the USFWS including the language "significantly altered" anywhere in the regulations regarding sea otter handicrafts.

Conclusion:

For the reasons stated above, the USFWS should move to support and enforce the interpretation that Congress intended whereby "authentic Native articles of handicrafts and clothing" means "items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional Native handicrafts," and furthermore, that traditional Native handicrafts include, *but are not limited to* "weaving, carving, stitching, sewing, lacing beading, drawing, and painting" and allow the uninhibited sale of arts and handicrafts that follow the general rules that congress established.

There is significant need for this small, culturally-centered "cottage-industry" as it has a significant impact on Alaska Natives. The harvest of sea otter and the use of its pelts are significant and crucial in the livelihood of a great many Alaska Natives, but these activities are being hindered by such illogical language as "significantly altered." By continuing this practice, the USFWS will surely bring about the cultural extinction of skin sewing with sea otter, obliterating a life Alaska Natives and their ancestors have lived for thousands of years.

Sincerely,

Rosita Worl
President, Sealaska Heritage Institute

Clarification of the term “significantly altered” by the hunters and handicrafters at the sea otter co-management workshop in Anchorage

October 10-12, 2012

A sea otter will be considered “significantly altered” when it is no longer recognizable as a whole sea otter hide, and has been made into a handicraft or article of clothing as is identified below:

1. a tanned dried, cured, or preserved sea otter hide, devoid of the head, feet, and tail, which includes any of the following but is not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, painting, other decorative fashions, or made into another material or medium ;
2. tanned, dried, cured, or preserved sea otter head, tail, or feet, or other parts devoid of the remainder of the hide which includes any of the following but is not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, or painting, other decorative fashions, or made into another material or medium.

USFWS internal proposed definitions

March 1, 2013

1. *Dwells on the Coast.*-Dwells on the coast refers to residing in Alaska and living permanently in an area or community that is adjacent to waters that are tidally influenced or in an area commonly inhabited and used by marine mammals.

2. *Large-scale Mass Production.*-Large-scale mass production refers to the use of mass copying devices such as pantographs, multiple carvers, embroidery machines, cutting presses, stencils, transfers, stamps, and/or the use of assembly line production. The formation of traditional Native groups or cooperatives and the use of modern implements such as sewing machines are permitted. However, there can be no manufacturing on a large-scale by means of extensive mechanization or division of labor, such as using a standardized pattern on a large-scale.

3. *Significantly Altered From Their Natural Form.*-

a. In order to be considered significantly altered from its natural form, a tanned, dried, cured, or preserved part of a sea otter hide, devoid only of the head, feet, and tail (i.e., blocked), or any other remaining parts of the hide, must be substantially changed through means including, but not limited to: weaving, carving, stitching, sewing, lacing, beading, drawing, painting, or other handicrafting methods. Examples of significantly altered items include those items typically known as: mitten; hats; neck rolls; gloves; mukluks; purses; and blankets or scarves made from a hide or pieces of hide with a backing or lining and stitched around the edges.

b. Items will not be considered significantly altered from their natural form where merely minimal changes have been made to a hide devoid only of the head, feet, and tail (i.e., blocked), and where those items can be easily converted back to an unaltered piece of hide. Examples of items not considered to be significantly altered include: a cape that consists of a large hide with a single button neck closure; a hide that has been drawn on with a marker; a blanket with a few stitches.