

S J R

50

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 30, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/1/90

The RESOURCES Committee considered:

SJR 50

SENATE JOINT RES. NO. 50

PROPOSED USF&WS MARINE MAMMALS RULE

Relating to the rule proposed by the United States Fish and Wildlife Service relating to marine mammals.

RECOMMENDATIONS:

- be replaced with ACS SJR 50 the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) 3/26/90 ADFG
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

[Signature] McENARD
[Signature] DAVIDSON
[Signature] NAVARRE
[Signature] JACKO
[Signature] HUDSON

<u>[Signature]</u> SHARP		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: 5-5-89
Title: SJR 50 - USFWS Marine Mammal Rule
Sponsor: Zharoff
Requestor: Governor

Agency Affected: Fish and Game
BRU: Wildlife Conservation
Components: Wildlife Conservation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No impact on FY90

Prepared by: Bruce Dinneford
Division: Wildlife Conservation

Phone: 907-465-4190
Date: 3-22-90

Approved by Commissioner: *[Signature]*
Agency: _____

Date: 3/22/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Original sponsor(s): SEN. ZHAROFF, Adams, Eliason, Coghill, Winkley,
Szymanski, Kerttula, Duncan, Pearce, Jones, Sturgulewski, Uehling

1 IN THE SENATE

2 HOUSE CS FOR SENATE JOINT RESOLUTION NO. 50 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the rule adopted by the
6 United States Fish and Wildlife Service
7 relating to sea otters.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS the Native people of the state have been using sea otters for
10 subsistence and handicraft purposes for thousands of years; and

11 WHEREAS the Native people of the state are the original conservation-
12 ists and have historically managed resources in an ecologically sound
13 manner; and

14 WHEREAS the taking and use of marine mammals, including sea otters,
15 for handicrafts is a mainstay of the livelihood and cultural survival of
16 Natives in the state; and

17 WHEREAS the United States Fish and Wildlife Service has adopted a rule
18 that prohibits the taking of sea otters by Natives for use in creating and
19 selling authentic Native handicrafts, including clothing; and

20 WHEREAS the rule will subject Natives in the state who create and sell
21 handicraft items made out of sea otters to penalties of up to a year in
22 prison and fines of up to \$20,000; and

23 WHEREAS the rule violates the intent and express language of the
24 Marine Mammal Protection Act (16 U.S.C. 1361 - 1407), which specifically
25 provides an exemption for Alaskan Aleuts, Eskimos, or Indians who reside on
26 the North Pacific and Arctic Ocean coasts to take marine mammals, including
27 sea otters, for the purpose of creating and selling authentic Native handi-
28 crafts; and

29 WHEREAS the United States Fish and Wildlife Service is following an

1 inaccurate and overly restrictive interpretation of the Marine Mammal
2 Protection Act, and has ignored the actual language of the Act; and

3 WHEREAS the rule is not biologically justified because the sea otter
4 population in the state is healthy and growing; and

5 WHEREAS the rule would allow the unrestricted growth of the sea otter
6 population in the state, which would threaten the food resources that rural
7 persons depend on for subsistence; and

8 WHEREAS the United States Fish and Wildlife Service's justification
9 for the rule does not accurately reflect the historical use by Natives of
10 sea otters in the creation and sale of handicrafts; and

11 WHEREAS the rule does not take into account Native traditional prac-
12 tices and culture, and attempts to extinguish the rights of Natives in the
13 state; and

14 WHEREAS the rule originated with the Division of Law Enforcement in
15 the United States Fish and Wildlife Service, was written with ease of
16 enforcement as its main objective, and reflects an antagonistic, hostile,
17 adversarial, and dictatorial attitude toward the Native people of the state;
18 and

19 WHEREAS the rule was developed in the absence of a comprehensive sea
20 otter management plan and without the cooperation of the people who would
21 be affected, "despite their willingness to work with the United States Fish
22 and Wildlife Service; and

23 WHEREAS enforcement regulations that are developed in cooperation with
24 the people who would be affected would have broader support, would reflect
25 a consensus of opinion among the interested parties, and, because of this
26 agreement, would be much easier to enforce; and

27 WHEREAS the original notice for the rule when it was first proposed
28 was inadequate and did not allow enough time to inform the people in the
29 rural parts of the state about its purpose and effect; and

1 WHEREAS, the public comment in the state on the rule from both indi-
2 viduals and organizations was overwhelmingly opposed to the rule, and the
3 opponents included the state Department of Fish and Game, the Alaska
4 Federation of Natives, Inc., Alaska Legal Services Corporation, the Alaska
5 Sea Otter Commission, the Alaska Village Participation Conference, the
6 Aleutian/Pribilof Islands Association, Inc., the City of Cordova, Cook
7 Inlet Tribal Council, Inc., Kawerak, Inc., the City of Kodiak, the North
8 Pacific Rim, the mayor of the North Slope Borough, the Regional Resource
9 Management Commission for the Chugach Region, the Rural Alaska Community
10 Action Program, Inc., the Rural Alaska Resources Association, the Sealaska
11 Corporation, the Seldovia Native Association, Inc., the United States
12 Department of the Interior Indian Arts and Crafts Board, and others; and

13 WHEREAS the adoption of the rule demonstrates a disregard for the
14 views of the persons who will be directly affected by the rule; and

15 WHEREAS the United States Fish and Wildlife Service may replace the
16 rule with a final rule after a management plan for northern sea otters has
17 been completed;

18 BE IT RESOLVED that the Alaska State Legislature condemns in the
19 strongest possible terms the adoption by the United States Fish and Wild-
20 life Service of the rule prohibiting the taking of sea otters by Natives
21 for use in creating and selling Native handicrafts, urges the Service to
22 reconsider its adoption of the rule, and urges the Service to work with the
23 state's Native people, through the Alaska Sea Otter Commission and other
24 appropriate organizations, to develop regulations that meet the concerns of
25 both the Service and the Native people of the state and that comply with
26 the Marine Mammal Protection Act.

27 COPIES of this resolution shall be sent to the Honorable George Bush,
28 President of the United States; the Honorable Manuel Lujan, Jr., Secretary
29 of the U.S. Department of the Interior; the Honorable Becky Norton Dunlap,

1 Assistant Secretary for Fish and Wildlife and Parks of the U.S. Department
2 of the Interior; the Honorable Richard N. Smith, Acting Director of the
3 U.S. Fish and Wildlife Service; the Honorable Walter Stieglitz, Regional
4 Director of the U.S. Fish and Wildlife Service; and to the Honorable Ted
5 Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable
6 Don Young, U.S. Representative, members of the Alaska delegation in Con-
7 gress.

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1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO.
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Suspending Uniform Rules 41(b), 24(c),
6 and 35 of the Alaska State Legislature
7 concerning SJR 50.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 That under Rule 54 of the Uniform Rules of the Alaska State Legisla-
10 ture the provisions of Rule 41(b), Rule 24(c), and Rule 35 of the Uniform
11 Rules, regarding changes to the title of a bill, are suspended in consid-
12 eration of Senate Joint Resolution No. 50, relating to the rule proposed by
13 the U.S. Fish and Wildlife Service relating to marine mammals.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

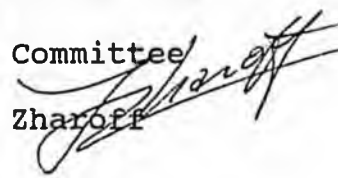
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Representative Cliff Davidson
Representative Curt Menard
Co-Chairmen
House Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: April 17, 1990

RE: Senate Joint Resolution 50 - "Relating to the rule proposed by the United States Fish and Wildlife Service relating to marine mammals."

I respectfully request that SJR 50 be scheduled for a hearing before the House Resources Committee at the earliest opportunity.

SJR 50 protests a proposed regulation formulated by the U.S. Fish and Wildlife Service that would prohibit the taking of sea otters by Natives for use in creating and selling authentic Native handicrafts, including clothing.

My view -- shared by Alaska's Congressional delegation and many others -- is that this proposed regulation is contrary to the language and intent of the Marine Mammal Protection Act, as passed by Congress in 1972. It also would be extremely detrimental to the culture and traditional practices of Alaska's Native population.

The U.S. Fish and Wildlife Service has been considering this regulation since it was first published in the Federal Register on Nov. 18, 1988. After much public pressure, the service held public hearings on the proposal in Alaska late in 1989. At the hearings, the proposed rule met with extensive public opposition. The service's final decision on the regulation is overdue. SJR 50 may yet help convince the federal agency to abandon the proposed rule.

The following backup information is attached:

1. The original notice of the proposed rule as published in the Federal Register, Nov. 14, 1988.
2. Letter of opposition to the U.S. Fish and Wildlife Service, signed by 18 legislators, dated May 10, 1989.

3. U.S. Fish and Wildlife Service reply to the May 10 letter, dated July 13, 1989.
4. ADF&G bill analysis and fiscal note.
5. Resolutions passed by the Alaska Federation of Natives.
6. Resolution passed by the Village Participation Conference.
7. Letter and resolution from the Citizens' Advisory Commission on Federal Areas.
8. Letter from U.S. Senator Ted Stevens, dated Jan. 17, 1989.
9. Letter from U.S. Senator Frank Murkowski, dated Feb. 17, 1989.
10. Letter from U.S. Senator Frank Murkowski, published in the Tundra Times, Dec. 11, 1989.
11. Tundra Times article, Oct. 16, 1989.
12. Bristol BayTimes article, Oct. 27, 1989.

I also have on file in my office copies of letters and/or resolutions of opposition from the Alaska Department of Fish and Game, the Alaska Federation of Natives, the Alaska Legal Services Corporation, the Alaska Sea Otter Commission, the Aleutian/Pribilof Islands Association, the Cook Inlet Tribal Council, the City of Cordova, the U.S. Department of Interior Indian Arts and Crafts Board, Kawerak Inc., the City of Kodiak, the North Pacific Rim, the Mayor of the North Slope Borough, the Rural Alaska Community Action Program, the Rural Alaska Resources Association, the Sealaska Corporation, the Seldovia Native Association, and Rep. Kay Wallis, in addition to my own letters and testimony to the U.S. Fish and Wildlife Service. I would be pleased to make any of these available to the committee upon request.

If the committee wishes, there are two individuals in the state who have extensive knowledge of the issue and who could testify before the committee through the teleconference system. They are:

Mr. Len Vining, Natural Resource Planner, The North Pacific Rim, 562-4155 (Anchorage).

Mr. Lloyd Lowry, Marine Mammal Coordinator, Division of Wildlife Conservation, Department of Fish and Game, 456-5156 (Fairbanks).

(n) Live crustaceans or viable eggs of mitten crabs, genus *Eriocheir*. Provided, that the Director shall issue permits authorizing the importation, transportation, and possession of such live fish or crustaceans or viable eggs under the terms and conditions set forth in § 10.22.

Dated: October 25, 1988.

Susan Recce,

Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 88-26182 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions to List Populations of the Western Snowy Plover and the California Mountain Lion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petitions.

SUMMARY: The U.S. Fish and Wildlife Service announces 90-day petition findings for two petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. Substantial information has been presented that a petition to list coastal western snowy plovers may be warranted. Substantial information has not been presented that listing a Santa Monica Mountains population of the California mountain lion may be warranted.

DATES: The findings announced in this notice were made in July 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the coastal western snowy plover petition may be submitted to the Supervisor, Fish and Wildlife Enhancement Field Station, 727 N.E. 24th Avenue, Portland, Oregon 97232. Information, comments, or questions regarding the Santa Monica Mountains mountain lion petition may be submitted to the Field Supervisor, Fish and Wildlife Enhancement Field Station, Federal Building, 24000 Avila Road, Laguna Niguel, California 92677. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, at the above Portland, Oregon, Field Station address (telephone 503/231-6179 or FTS 429-

0179); Ms. Nancy Kaufman, at the above Laguna Niguel, California, Field Station address (telephone 714/643-4270 or FTS 796-4270).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. The Service has received and made 90-day findings on the following petitions.

A petition from Dr. J. P. Myers, Senior Vice President, National Audubon Society, was dated March 11, 1988, and received on March 24, 1988. It requested that a Pacific coast population of the western snowy plover, *Charadrius alexandrinus nivosus*, be added to the list of threatened species. The petitioner submitted information documenting the decline of, current status of, and threats to coastal western snowy plovers. The number of birds nesting in coastal Washington, Oregon, and California, has declined by about 50 percent in the past two decades despite protective efforts by the affected States. Primary factors have been habitat loss and alteration from recreation, coastal developments, and introduction of European beach grass. Nest abandonment and predation have also been significant. Questions pertaining to the significance of interchange between coastal and interior stocks of the subspecies and demarcation of the subspecies itself remain to be answered. Nonetheless, the Service found that the petition presented substantial information indicating that the requested action may be warranted. Formal review of the status of the entire subspecies *Charadrius alexandrinus nivosus* has been in progress since the Service's December 30, 1982 vertebrate notice of review (47 FR 58454).

A petition from Mr. Sean Manion, on behalf of the Topanga-Las Virgenes Resource Conservation District of California, was dated April 12, 1988, and received on April 25, 1988. The petitioner requested that a Santa Monica Mountains population of the

California mountain lion (*Felis concolor californica*) be added to the list of endangered species. After review of the petition and supporting documentation, the Fish and Wildlife Service finds that the petition does not present substantial information that the requested action may be warranted.

The range of the California mountain lion encompasses most of California, southern Oregon, western Nevada, and southern Baja California, Mexico. The lion is distributed throughout the majority of its historic range and the population appears to be stable or increasing. Although the petition presents information suggesting deterioration of the lions' habitat in the Santa Monica mountains, there is insufficient evidence that would support a determination that these animals constitute a completely isolated subpopulation or that the status of the species, as a whole, is declining over all or a significant portion of its range.

Author

This notice was prepared by Ms. Jackie Campbell, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93-205, 87 Stat. 304; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-825, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 28, 1988.

Susan Recce

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 88-26188 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 18

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereafter the Service) proposes to amend the regulations implementing the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361-1407; 50

CFR 18. Recent U.S. District Court decisions in Alaska have called for a thorough administrative review of the taking of northern sea otters (*Enhydra lutris lutris*) under the native exemptions section of the regulations (50 CFR 18.23). The Service has conducted a preliminary analysis of all available information, including historical evidence, legislative history, and past policy statements and guidelines relating to the Alaska Native use of the sea otter in handicrafts and clothing. Sea otters apparently were not being taken for such purposes when Congress passed the Act, nor had they been taken legally within living memory by Alaska Natives. The clear intent of Congress in passing the Act was to preserve existing native uses of marine mammals rather than to promote expansion of Alaskan arts and crafts industries or the creation of new industries. Therefore, the Service interprets the Act and its existing regulations to prohibit the taking of sea otters by Alaska Natives for use in creating and selling handicrafts and clothing, and the Service proposes to amend the definition of "authentic native articles of handicrafts and clothing" to clearly state this interpretation. In keeping with the paramount objective of Congress to protect marine mammals, this amendment to the regulations is intended to supersede and inconsistent Service policy guidelines and resolve the existing controversy over the allowable native uses of the sea otter. Alaska Natives would continue to be permitted to take this species for subsistence purposes.

DATE: Comments must be submitted by January 13, 1989.

ADDRESSES: Comments and materials concerning this notice should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038-8006. Comments and materials may be delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Room 300, Hamilton Building, 1375 K Street NW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Thomas L. Striegler at the above address [(202) 343-9242 or FTS 343-9242].

SUPPLEMENTARY INFORMATION:

Existing Regulations

The Act provides for a moratorium on the taking and importation of marine mammals and marine mammal products, including the northern sea otter (*Enhydra lutris lutris*). However,

Congress created a limited exemption for Alaska Natives. 16 U.S.C. 1371(b) provides, in relevant part:

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes; or
- (2) is done for the purposes of creating and selling authentic native articles of handicrafts and clothing; provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce; And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "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 without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) In each case, is not accomplished in a wasteful manner.

Pursuant to the authority granted in 16 U.S.C. 1382, the Service promulgated regulations to implement the Act on December 21, 1972 (37 FR 28173) and substantially amended on February 25, 1974 (39 FR 7262). 50 CFR 18.3 provides, in pertinent part that "Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut, or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to section 18.23(c) may be used so long as no large scale mass production industry results.

The native exemptions section of the regulations (50 CFR 18.23) provides, in relevant part that except as otherwise provided in Part 403 of this Title, any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, subject to the restrictions contained in this section, if such taking is: (1) For subsistence purposes, or (2) For purposes of creating and selling authentic native articles of handicraft and clothing, and (3) In each case, not accomplished in a wasteful manner.

Historic Uses

Since 1741, the date of the earliest exploitation of sea otter populations for the fur trade, there has been virtually no use of sea otters by Alaska Natives. Native takings were largely precluded, and in fact prohibited by the Russians and later by Alaska statutes during the 18th and 19th century fur trade. There is evidence of certain uses of sea otter pelts and parts in Alaska prior to 1741. However, Alaska Natives have apparently not commonly produced and sold handicrafts or clothing from sea otters within living memory.

Congressional Intent

The paramount objective of Congress in passing the Act was the protection of marine mammals. Congress allowed the taking of marine mammals by Alaska Natives to continue as those practices existed at the time of the passage of the Act, but did not provide for the development of new uses or the expansion of taking by natives. Congress intended to preserve existing native uses of marine mammals, characterized as the maintenance of "cottage industries", rather than to promote economic development or the growth of Alaskan arts and crafts industries. The fact that sea otter handicrafts have not been commonly produced for more than 200 years makes it impossible to consider them a part of the "cottage industry" or status quo Congress was exempting from the provisions of the Act. The native exemptions were passed with the implicit understanding that the patterns of native taking and use of marine mammals would remain as they were in 1972, at the time of passage of the Act. For the sea otter, this would allow essentially no take by Alaska Natives for the commercialization of handicrafts and clothing. In the words of United States District Judge Holland, ruling the *Maria Rena Katelnikoff v. U.S. Department of the Interior, et al.*, A85-336 Civ. (D.C. Alaska; July 21, 1986):

• • • it is entirely conceivable that the regulation at issue could leave Alaska Natives with virtually no uses of sea otters and still be consistent with the congressional intent to preserve traditional lifestyles and handicrafts.

In keeping with the purpose of Congress in passing the Act, the Service believes that exemptions from the moratorium which permit limited taking of marine mammals should be construed narrowly. By amending the marine mammal regulations in 50 CFR 18 to clarify their application to the sea otter, the Service will comply with

congressional intent and supersede any inconsistent policy guidelines and rulings, thereby resolving the existing controversy over the allowable native uses of this species.

Note.—The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, there are no information collection requirements contained in this document that require Office of Management and Budget clearance under 44 U.S.C. 3501. Since there has been no lawful, commercial use of sea otters by Alaska Natives for more than 200 years, there will be no economic impacts on the public, individual industries, or Federal, state, or local governments. The only effect of this rule will be to eliminate the confusion and controversy which have resulted from the misinterpretation of congressional intent, previous regulatory language, and policy guidelines regarding the allowable native uses of the sea otter.

The Service has determined that an environmental assessment, as defined

under the authority of the National Environmental Policy Act of 1969, need not be prepared for this action. Since the proposed rule reflects the statutory language and intent of Congress in the Act, this document is considered an amendment to an approved action having no potential for causing substantial environmental impact, and thus qualifies as a categorical exclusion from National Environmental Policy Act requirements under 516 DM 6, Appendix 1, Section 1.4(A)(1). The primary author of this document is Special Agent Michael Sutton, Division of Law Enforcement, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Marine mammals, Transportation.

Regulation Promulgation

PART 18—[AMENDED]

For the reasons set forth in the preamble, Part 18, Subchapter B of

Chapter I, Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Part 18 continues to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92-522, 88 Stat. 1027; Pub. L. 97-58, 95 Stat. 979 (10 U.S.C. 1361-1407)).

§ 18.3 [Amended]

2. Section 18.3 is amended by adding the following sentence to the end of the definition of "Authentic native articles of handicrafts and clothing": "Provided that, it has been determined that no items created in whole or in part from sea otter meet paragraph (a) of this definition, and therefore no such items may be sold."

Dated: October 17, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-26085 Filed 11-10-88; 8:45 am]

BILLING CODE 4310-55-M



Official Business

Alaska State Legislature

2

P.O. Box V
State Capitol
Juneau, Alaska 99811

May 10, 1989

Ms. Susan Recce Lanson
Acting Director
United States Fish and Wildlife Service
P.O. Box 28006
Washington, D.C. 20038-8006

Dear Ms. Lanson:

In advance of the U.S. Fish and Wildlife Service's scheduled field hearings in Alaska, we -- the members of the Alaska Legislature who represent rural and coastal areas in Alaska -- wish to offer the following comments on the proposed rule that would prohibit the taking of sea otters by Alaska Natives for use in creating and selling authentic Native articles of handicrafts and clothing.

The Native people of Alaska have used sea otters for subsistence and handicraft purposes for thousands of years. They are the original conservationists and have historically managed resources in an ecologically sound manner. As an example of responsible conservation, the Alaska Sea Otter Commission -- in reaction to the Exxon Valdez oil tanker disaster in Prince William Sound -- requested all sea otter harvesters to stop taking sea otters in the Chugach Region until more information is available about the extent to which the sea otter population has been affected by the oil spill. The Native people have no desire to take sea otters in excess of conservation goals nor to jeopardize their recovery from past population declines. The taking and use of marine mammals, including sea otters, is a mainstay of the livelihoods and cultural survival of the Native people who live in Alaska's coastal communities.

We believe the U.S. Fish and Wildlife Service's proposed rule violates the intent and express language of the Marine Mammal Protection Act, which specifically provides an exemption for Alaskan Aleuts, Eskimos or Indians who reside on the North Pacific and Arctic Ocean coasts to take marine mammals, including sea otters, for the purposes of creating and selling authentic native articles of handicrafts and clothing.

The proposed rule, if adopted, would subject Alaska Natives who create and sell handicraft items made out of sea otter to penalties of up to a year in prison and fines of up to \$20,000.

We feel the U.S. Fish and Wildlife Service has adopted an inaccurate and overly restrictive interpretation of Marine Mammal Protection Act, and has ignored the actual language of the Act.

The proposed rule is not biologically justified because the overall sea otter population in Alaska is healthy and growing. As was pointed out by many

2000/05/10 10:45 AM JMS 26/14 X

May 10, 1989

individuals and organizations who responded to the first request for public comment, the Service's justification for the proposed rule does not accurately reflect the historical use by Alaska Natives of sea otters and does not take into account Native traditional practices and culture.

We note the proposed rule originated with the Division of Law Enforcement in the U.S. Fish and Wildlife Service, apparently with the main objective of making enforcement easier for the Service. It reflects an antagonistic and needlessly adversarial attitude toward the Native people of Alaska. It was not developed in cooperation with the people who would be affected, despite their willingness to work with the Service.

Our experience with the legislative process leads us to the firm conclusion that the Service's enforcement regulations would have much broader support if they were written in cooperation with the people who would be affected. In addition, they would be much easier to enforce if they reflected a consensus of opinion among the interested parties.

We also note that the original notice of the proposed rule was inadequate and did not allow enough time for informing the people of rural Alaska about its purpose and impact.

The proposed rule is opposed by many individuals and organizations throughout Alaska including, but not limited to, Alaska's delegation in Congress, the Alaska Department of Fish and Game, the Alaska Federation of Natives, Inc., the Alaska Legal Services Corporation, the Alaska Sea Otter Commission, the Alaska Village Participation Conference, the Aleutian/Pribilof Islands Association, Inc., the Association of Village Council Presidents, the City of Cordova, Cook Inlet Tribal Council, Inc., Kawerak, Inc., the North Pacific Rim, the mayor of the North Slope Borough, the Regional Resource Management Commission for the Chugach Region, the Rural Alaska Community Action Program, Inc., the Rural Alaska Resources Association, the Seldovia Native Association, Inc., and the U.S. Department of the Interior Indian Arts and Crafts Board. As elected officials representing the people of Alaska, we wish to add our names to this list.

We respectfully request the U.S. Fish and Wildlife Service to abandon its proposed rule and, in the future, to work with Alaska's Native people -- through the Alaska Sea Otter Commission and other appropriate organizations -- to develop regulations that meet the concerns of both the Service and the Native people, and that comply with the Marine Mammal Protection Act.

Sincerely,



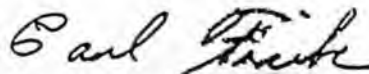
Senator Al Adams
District L



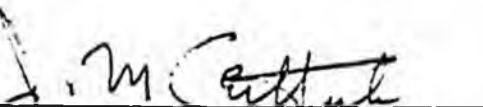
Senator Richard Eliason
District B




Senator Johnnie Blukley
District M




Senator Paul Fischer
District D



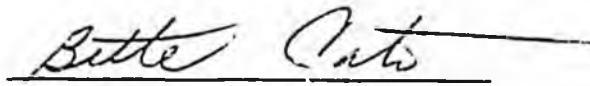
Senator Jalmar Kerttula
District E-A



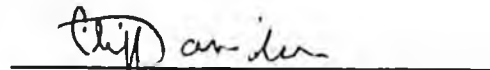
Senator Mike Szymanski
District E-B



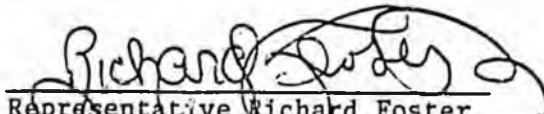
Senator Fred F. Zharoff
District N



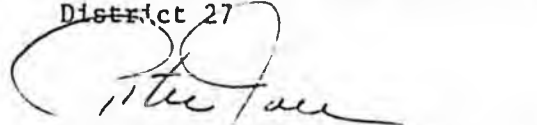
Representative Bette Cazo
District 6



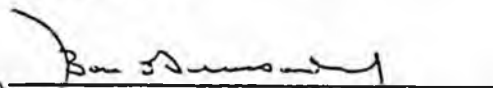
Representative Cliff Davidson
District 27




Representative Richard Foster
District 23



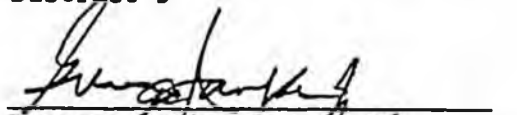
Representative Peter Goll
District 2



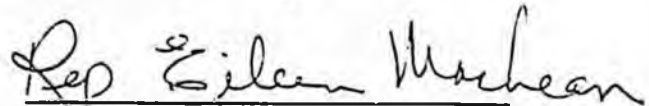
Representative Ben Grussendorf
District 3



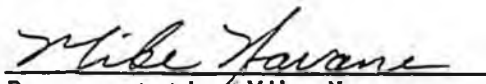
Representative Lyman Hoffman
District 25



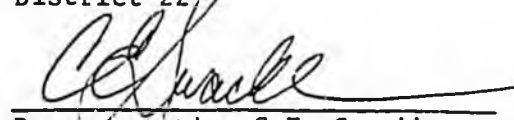
Representative George Sacko, Jr.
District 26



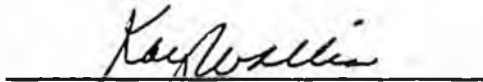
Representative Eileen P. MacLean
District 22



Representative Mike Navarre
District 5-A



Representative C.E. Swackhammer
District 5-B



Representative F. Kay Wallis
District 64

cc: Secretary Manuel Lujan, Jr.
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
Governor Steve Cowper
Walter Stieglitz, AK Region, U.S. Fish and Wildlife Service



United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

RECEIVED JUL 21 1989

In Reply Refer To:
FWS/MA/F9-2919

JUL 13 1989

Honorable Fred F. Zharoff
Alaska Senate
Juneau, Alaska 99811

Dear Mr. Zharoff:

Thank you for your letter dated May 10, 1989, which provided comments on the proposed rule that would prohibit the taking of sea otters by Alaska Natives for use in creating and selling authentic Native articles of handicrafts and clothing.

The Fish and Wildlife Service (Service), in a May 31, 1989, FEDERAL REGISTER Notice (copy enclosed), extended the public comment period for this rulemaking until November 30, 1989, to allow time for public meetings at selected locations within the range of sea otters. In order to accommodate the greatest number of Alaskan Natives who would be affected by the proposed rule, meetings will be held starting in October 1989. This additional extension of the comment period and the plan to conduct public meetings is in response to requests from Native organizations and individuals and conservation organizations.

The proposed rule has generated a great amount of public interest. At the close of the first comment period the Service had received 495 written comments on the proposed rule of which 87 were from individuals and organizations in Alaska. Based on the volume of comments received to date, the extension of the comment period and the schedule of public meetings (soon to be announced in a subsequent FEDERAL REGISTER Notice), the Service feels that it will have ample information to consider in making a decision on the proposed rule.

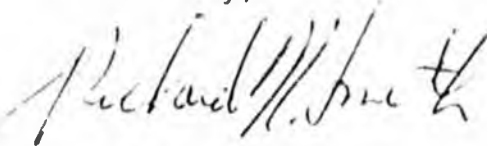
We agree with you that regulations and policy have much broader support when they are developed in cooperation with the people who would be affected. To that end, we hope that the extended comment period and public meetings will help to promote understanding and a consensus of opinion among all interested parties.

Honorable Fred F. Zharoff

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Thank you for your suggestions and comments. The Service appreciates your participation in the rulemaking process. If I may be of further assistance, please let me know.

Sincerely,


Acting
Deputy DIRECTOR

Enclosure



4

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER SJR 50	SPONSOR Zharoff
SHORT TITLE OF BILL USFWS Marine Mammal rule			
DEPARTMENT POSITION Support			
PREPARED BY Bruce Dinneford	DATE 3-22-90	COMMISSIONER'S SIGNATURE <i>Bruce Dinneford</i>	DATE 3 23 90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Public Safety	CONSTITUENT GROUP(S) AFFECTED BY BILL Native hunters and handicraft makers
ORGANIZATIONAL SUPPORT FOR BILL Native organizations	ORGANIZATIONAL OPPOSITION TO BILL USFWS

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This resolution requests the US Fish and Wildlife Service to abandon its course in disallowing the take of sea otters by natives for creating and selling handicrafts.

ANALYSIS OF BILL/PROGRAM EFFECTS

The resolution has no effect on our management of sea otters, because they are managed by USFWS. Recent surveys of sea otters indicate most populations are stable or increasing throughout their range. Little vacant habitat remains, with most population at or approaching carrying capacity.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: 5-5-89
 Title: SJR 50 - USFWS Marine Mammal Rule
 Sponsor: Zharoff
 Requestor: Governor

Agency Affected: Fish and Game
 BRU: Wildlife Conservation
 Components: Wildlife Conservation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No impact on FY90

Prepared by: Bruce Dinneford
 Division: Wildlife Conservation

Phone: 907-465-4190
 Date: 3-22-90

Approved by Commissioner: *William A. Piel*
 Agency: _____

Date: 3/22/90

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

ALASKA FEDERATION OF NATIVES, INC.
1989 ANNUAL CONVENTION

RESOLUTION NO. 39 - 45

TITLE: Sea Otter Management

WHEREAS the Native peoples of Alaska have been using sea otters for subsistence and handicraft purposes since time immemorial; and

WHEREAS the Native peoples of Alaska are the original conservationists and have historically managed resources in an ecologically sound manner; and

WHEREAS the Marine Mammal Protection Act specifically recognizes the Alaska Native peoples' right to harvest sea otters for subsistence and handicraft purposes; and

WHEREAS the U.S. Fish and Wildlife Service may regulate Native take only if the species has been depleted or found to be taken in an unuseful or wasteful manner according to the Marine Mammal Protection Act; and

WHEREAS the U.S. Fish and Wildlife Service has proposed a rule which would prohibit the taking of sea otters by Alaska Native peoples for handicrafts; and

WHEREAS this proposed rule is culturally insensitive, and ecologically unsound, based on shoddy research and a direct violation of the Marine Mammal Protection Act;

NOW THEREFORE BE IT RESOLVED by the delegates to the 1989 Annual Convention of the Alaska Federation of Natives, Inc. urges the U.S. Fish and Wildlife Service to immediately rescind its proposed rule and instead negotiate a memorandum of agreement and a comprehensive sea otter management plan in cooperation with the Alaska Sea Otter Commission.

SUBMITTED BY: Chugach Alaska Corporation and Eyak Corporation

COMMITTEE RECOMMENDATION: Do Pass

CONVENTION ACTION: Passed

ALASKA FEDERATION OF NATIVES, INC.

1989 ANNUAL CONVENTION

RESOLUTION NO. 89- 46

- TITLE: A RESOLUTION OPPOSING THE U.S. FISH AND WILDLIFE SERVICES (USFWS) PROPOSED SEA OTTER RULE PROHIBITING ALASKA NATIVES FROM TAKING SEA OTTERS FOR SUBSISTENCE AND HANDICRAFT PURPOSES
- WHEREAS the Alaska Native people of Alaska have been using sea otters for subsistence and handicraft purposes since time immemorial; and
- WHEREAS the Alaska Native people of Alaska are the original conservationists and have historically managed resources in an ecologically sound manner; and
- WHEREAS the U.S. Fish and Wildlife Service has proposed a rule which would prohibit the taking of sea otters by Alaska Native people for handicrafts; and
- WHEREAS this proposed rule is not consistent with the Marine Mammal Protection Act (MMPA) which specifically recognizes and guarantees the Alaska Native people's right to harvest sea otters for subsistence and handicraft purposes; and
- WHEREAS this proposed rule is based on illogical and convoluted reasoning; and
- WHEREAS this proposed rule is culturally insensitive, ecologically unsound, based on shoddy research, and a direct violation of the Marine Mammal Protection Act;

NOW THEREFORE BE IT RESOLVED that the AFN/Rural CAP Subsistence Conference hereby urges the U.S. Fish and Wildlife Service to immediately rescind its proposed rule and start negotiating for a memorandum of agreement (MOA) and a comprehensive sea otter management plan in cooperation with the Alaska Sea Otter Commission rather than pursuing the rule making process.

SUBMITTED BY: AFN/Rural CAP Subsistence Conference

COMMITTEE RECOMMENDATION: Do Pass

CONVENTION ACTION: Passed

VILLAGE PARTICIPATION CONFERENCE RESOLUTION #89-25

- ENTITLED: A RESOLUITON REAFFIRMING THE ALASKA NATIVE PEOPLE'S RIGHT TO USE SEA OTTERS FOR SUBSISTENCE AND HANDICRAFT PURPOSES.
- WHEREAS, the Native people of Alaska have been using sea otters for subsistence and handicraft purposes for thousands of years; and
- WHEREAS, the Native people of Alaska are the original conservationists and have historically managed resources in an ecologically sound manner; and
- WHEREAS, the Marine Mammal Protection Act specifically recognizes the Native people's right to harvest sea otters for subsistence and handicraft purposes; and
- WHEREAS, the U.S. Fish and Wildlife Service has proposed a rule which would prohibit the taking of sea otters by Native people for handicrafts; and
- WHEREAS, this proposed rule is baseu on illogical and convoluted reasoning; and
- WHEREAS, this proposed rule is culturally insensitive, ecologically unsound, based on shoddy research, and a direct violation of the Marine Mammal Protection Act.

Now, therefore, be it

RESOLVED: That the 1989 Village Participation Conference hereby urges the U.S. Fish and Wildlife Service to immediately rescind its proposed rule and to enter into a positive, productive, and cooperative working relationship with the Alaska Sea Otter Commission; and

be it further

RESOLVED: That the U.S. Fish and Wildlife Service should conduct public hearings in coastal villages affected by the proposed rule.

ADOPTED this 24th day of February, 1989 at the Village Participation Conference in Juneau, Alaska.

Chester Ballot, Chairperson
1989 Village Participation Conference



DEC 4 1989

7

Citizens' Advisory Commission on Federal Areas

November 29, 1989

250 Cushman St.
Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

Mr. Walter Stieglitz
Regional Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503

Re: Proposed amendment to 50 CFR Part 18 prohibiting the use of sea otters by Alaska Natives in the creation of handicrafts.

Dear Mr. Stieglitz:

The Citizens' Advisory Commission on Federal Areas has reviewed the U.S. Fish and Wildlife Service's (FWS) proposal to amend the regulations found at 50 CFR Part 18 implementing the Marine Mammal Protection Act of 1972 (MMPA). The proposed regulation prohibits the use of sea otter pelts by Alaska Natives in the creation of handicrafts for sale to non-Natives.

With the enclosed resolution, passed unanimously at the Commission's October 27, 1989 meeting, we wish to express our opposition to the Service's proposal. We offer the following additional comments with the hope that the FWS will acknowledge Alaska Natives' historical use of sea otters statutorily recognized by the Congress in the MMPA. We strongly urge the FWS to adopt a less restrictive, more cooperative approach to conducting its sea otter management responsibilities under the MMPA.

The rationale proffered by the FWS for its prohibition is that its current regulation requires that handicrafts made from marine mammal parts must have been commonly produced by Alaska Natives at the time of enactment of the MMPA in 1972. The proposed regulation which purports to "clarify" its current regulation (and by implication the intent of Congress) argues that a ban on Native sea otter use imposed by the Russian American Co. in 1741 was effectively enforced and continued under the administration of Alaska by the U.S. This unsubstantiated hiatus in traditional use of sea otters therefore disqualifies Alaska Natives from the exemption to the general prohibition on the taking of marine mammals for the creation of handicrafts. The FWS offers no evidence that this is what the Congress intended when it was contemplating passage of the MMPA. Quite the contrary, the MMPA states clearly enough:

"Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking-

- 1) is for subsistence purposes; or
- 2) Is done for the purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That

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only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, ... For the purposes of this subsection, the term "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 without the use of pantographs, multiple carvers, or other mass copying devices..." [emphasis added]

The MMPA says "any marine mammal", not "any marine mammal except sea otters". We believe the FWS has exceeded the authority granted it by Congress in proposing to ban Native Alaskans' use of sea otters for the creation of handicrafts.

The notice for the proposed regulation purports that the FWS is under court order to "clarify" ambiguities in its regulations. Unfortunately, the only thing that has been clarified by the FWS's proposal is its intent to administratively prohibit a traditional activity recognized by federal statute. While it is true that the court has suggested the need for a "...thorough administrative review..." to ascertain the necessity of special regulation in order to remove ambiguities, the court also expressed its doubt that the FWS "had fully and adequately considered the possibility that bona fide" Native use of sea otter had occurred (Didrickson vs. U.S. Dept. of Interior, et al., A85-336 Civil) prior to the MMPA. If the Service wishes to "clarify" its current regulations, it can do so by developing language which unequivocally affirms the rights granted to Alaska Natives in the MMPA.

Having conducted what the FWS terms in its supplemental information section of the regulation notice (53 FR 45789 Nov. 14, 1988) "a preliminary analysis of all available information, including historical evidence, legislative history, and past policy statements", we must express our own doubts as to whether a "thorough administrative review" has yet occurred. Certainly "all available information, including historical evidence" would demonstrate that traditional use of sea otters by Alaska Natives has occurred since 1741. This has been shown in the testimony given by Alaska Natives at every one of the ten public meetings held in Alaska.

Regrettably, we must note that the Service would not have held these public meetings at all were it not for a storm of protest from the statewide Native community, including many people and organizations living beyond the historical range of the sea otter. This is because many Alaska Natives perceive, quite accurately in our opinion, that if the FWS succeeds in imposing this regulation upon them, the door will be open for further initiatives inspired by animal rights groups that threaten the continuation of Alaska Native culture. Native feelings on this issue are so strong that one hears the term "cultural genocide" quite frequently. We hope that the Service will recognize and be prepared to contend with, if nothing else, the fact that this perception is fraught with serious consequences for many of its resource management programs in Alaska.

In addition to testimony by Alaska Natives, expert scholars knowledgeable about Native culture have testified for the record in court proceedings that

November 29, 1989

page 3

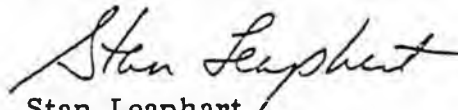
documentation exists for traditional Native use of sea otters (depositions of Dr. William Laughlin, Ph.D. and Dr. Lydia Black, Ph.D. in Katelnikov vs. Dept. of Interior). The FWS has conveniently overlooked this testimony in promulgating its regulation. Inevitably the FWS will encounter this expert testimony again if Alaska Natives are forced to litigate in order to have rights granted them by Congress recognized by the FWS.

Aside from ignoring historical fact, and contriving an inaccurate interpretation of the intent of Congress in its passage of the MMPA, the Service's proposed regulation makes little sense from a resource management perspective. There is no biological justification for prohibiting Alaska Natives use of sea otters for handicrafts. Alaska Department of Fish and Game (ADFG) biologists estimate that the population of sea otters residing in Alaska waters, currently 150,000 or more, is at or has exceeded historical numbers and is growing at about 15%-20% annually. FWS personnel do not dispute these population figures. This population growth, if unchecked, will eventually exceed the carrying capacity of the sea otter's habitat and is already having an impact on shellfish populations in some areas. The population of sea otters can easily sustain the current modest level of harvest by Alaska Natives and even allow for an appropriately managed growth of that harvest. The goal of the MMPA is to maintain healthy marine mammal populations. Failure to allow harvest of sea otters may very well militate against healthy populations by removing an important management tool.

The Alaska Sea Otter Commission (ASOC) has proposed a Memorandum of Agreement between the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and the ASOC. The agreement provides for the cooperative development of a comprehensive sea otter management plan. We believe this approach is more beneficial to the interests of all parties, including the population of sea otters, than the Service's proposed regulation. We encourage the Service to withdraw the proposed regulation and negotiate with the ASOC and the ADFG in a spirit of cooperation.

We hope you will find our comments thought provoking and useful as you endeavor to consider the public's views on this issue. If you have any questions or have a need for clarification of our position, please do not hesitate to contact our office.

Sincerely,



Stan Leaphart
Executive Director

cc:
Governor Cowper
Sen. Stevens
Sen. Murkowski
Rep. Young
Alaska Sea Otter Commission
Alaska Legal Services



*Citizens' Advisory Commission
on Federal Areas*

250 Cushman St.
Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

"A RESOLUTION OPPOSING THE U.S. FISH AND WILDLIFE SERVICE'S PROPOSED RULE PROHIBITING ALASKA NATIVES USE OF SEA OTTERS FOR HANDICRAFT PURPOSES."

WHEREAS, the Native people of Alaska have used sea otters for subsistence and handicraft purposes for many years; and

WHEREAS, the Marine Mammal Protection Act of 1972 specifically recognizes the right of Alaska Natives to harvest marine mammals, including the sea otter, for subsistence and for the creation of handicrafts; and

WHEREAS, the U.S. Fish and Wildlife Service has been instructed by a federal court to clarify certain regulations relating to the use of sea otters by Alaska Natives; and

WHEREAS, the U.S. Fish and Wildlife Service has proposed an amendment to its regulations which prohibits the use of sea otters for handicrafts; and


WHEREAS, the proposed regulation is inconsistent with the Marine Mammal Protection Act and exceeds the authority granted by the Congress;

NOW, THEREFORE, BE IT RESOLVED: That the Citizens' Advisory Commission on Federal Areas hereby urges the U.S. Fish and Wildlife Service not to adopt the proposed regulation.

BE IT FURTHER RESOLVED: That the Commission hereby encourages the U.S. Fish and Wildlife Service to agree to develop a comprehensive sea otter management plan in cooperation with the Alaska Sea Otter Commission and the Alaska Department of Fish and Game.

Adopted by the Citizens' Advisory Commission on Federal Areas at Anchorage, Alaska on October 27, 1989.

Lew M. Williams, Jr
Chairman

By: 
Stan Leaphart
Executive Director

JOHN C STENNIS MISSISSIPPI CHAIRMAN

RECEIVED JAN 17 1989

ROBERT C BYRD WEST VIRGINIA
 WILLIAM PROXMIRE WISCONSIN
 DANIEL K INOUE HAWAII
 ERNEST F HOLLINGS SOUTH CAROLINA
 LAWTON CHILES FLORIDA
 J BENNETT JOHNSTON LOUISIANA
 QUENTIN M BONDICK NORTH DAKOTA
 PATRICK J LEAHY VERMONT
 JIM BASSER TENNESSEE
 DENNIS DECONCINI ARIZONA
 DALE BUMPER OKLAHOMA
 FRANK R LAUTENBERG NEW JERSEY
 TOM HARKINS IOWA
 BARBARA A MELNIK MARYLAND
 HARRY REID NEVADA

MARE O MATHEID OREGON
 TED STEVENS ALASKA
 LOWELL P WICKER JA CONNECTICUT
 JAMES A MCCLURE IDAHO
 JAKE GARN UTAH
 PHAD COCHRAN MISSISSIPPI
 ROBERT W RASTEN JR WISCONSIN
 ALFONSE M DAMATO NEW YORK
 WARREN RUDDMAN NEW HAMPSHIRE
 ARLEN SPECTER PENNSYLVANIA
 PETE V DOMENICI NEW MEXICO
 CHARLES E GRASSLEY IOWA
 DON NICHOLS OKLAHOMA

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

FRANCIS J SULLIVAN STAFF DIRECTOR
KEITH KENNEDY MINORITY STAFF DIRECTOR

January 17, 1989

The Honorable Fred W. Zharoff
 Alaska State Legislature
 P.O. Box V
 Juneau, Alaska 99811

Dear Fred:

Thanks for writing to express your concern about the proposed rule regarding Alaska Native use of sea otter.


I want you to know that I disagree with the U.S. Fish and Wildlife Service's proposed ruling to eliminate the use of sea otter for the purposes of creating and selling articles of handicrafts and clothing. As such, I plan on submitting my own personal comments about this proposed rule to the USFWS. I will be working directly with the Service when it comes down to the final review here in Washington, D.C. to make sure that the interests of rural and Native Alaskans are protected. I've also written to the USFWS on your behalf and asked that they include your comments in the official record of public comments.

In the meantime, I contacted the USFWS about the possibility of extending the comment period, and am glad to tell you that the comment period was extended 60 days. Final comments are now due March 13, 1989.

Thanks again for writing. I want to stress that I am doing all I can to make sure that Native Alaskans are not deprived of their livelihood and cultural traditions.

With best wishes,

Cordially,



TED STEVENS

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:
VETERANS AFFAIRS (HONORARY MEMBER)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
INDIAN AFFAIRS
INTELLIGENCE

United States Senate

WASHINGTON, DC 20510
(202) 224-6666

February 17, 1989

9

ANCHORAGE
U.S. FEDERAL BUILDING
701 C STREET, BOX 1, 99513
(907) 271-3735

FAIRBANKS
U.S. FEDERAL BUILDING
101 12TH AVENUE, BOX 1, 99701
(907) 486-0233

JUNEAU
U.S. FEDERAL BUILDING
BOX 1647, 99802
(907) 686-7400

The Honorable Fred F. Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

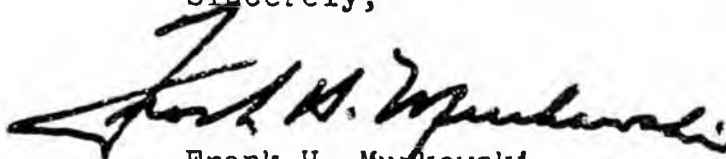
Dear Fred:

Thank you for letting me know how you feel about the proposed Fish and Wildlife Service rulemaking to prevent the taking of sea otters for subsistence and handicrafts under the Native Exemption to the Marine Mammal Protection Act.

After I learned of the Service's proposal, I advised the Director that I felt the comment period should be extended. More recently, to follow up on the issue, I wrote the enclosed letter.

I'm pleased to say that the comment period has now been extended, and that I have been informed by the Department of the Interior that further action will be taken only after the matter has been reviewed by officials of the incoming Bush Administration.

Sincerely,



Frank H. Murkowski
United States Senator

Enclosure

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:
VETERANS AFFAIRS (RANKING MEMBER)
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February 2, 1989

Frank Dunkle
Director
U.S. Fish and Wildlife Service
Department of the Interior
Washington, D.C. 20240

Dear Frank:

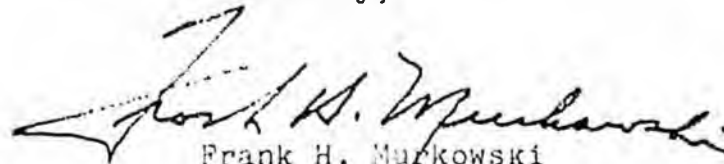
I am writing to advise against proceeding with the Service's proposed regulation on the taking of sea otter under the Alaska Native exemption to the Marine Mammal Protection Act.

I earlier communicated my support for an extension of the comment period on this regulation. Now, however, I want to encourage you to reexamine the agency's approach with great care. I do not believe the Service has adequately demonstrated either the need for or the basis for such a change.

A number of cogent arguments have been advanced to counter the individual points raised by the Service in explaining this rule. Without reiterating those, let me suggest that the Service appears to be on somewhat shaky ground. I urge you to halt all action pending a full review of this matter, with close scrutiny given to the clear meaning of the language adopted by Congress, and to the question of pre-1972 harvesting by Alaska Natives. Furthermore, it is my opinion that the far-reaching implications of the rulemaking demand that such a review include a comprehensive series of public hearings in Alaska's coastal villages, as any less effort on the part of the Service will not adequately address this issue.

I look forward to your prompt consideration of this matter.

Sincerely,



Frank H. Murkowski
United States Senator

Murkowski issues protest

T.T. 12/11/81

To Interior Secretary Manuel Lujan:

A regulation proposed over a year ago by the Fish and Wildlife Service to deny Alaska Natives the right to make and sell craft items from the sea otters has not yet been withdrawn by the service, despite sound and persuasive arguments against its adoption, and it is for that reason that I write to you.

The proposed rule is unwarranted and indefensible, and, accordingly, I urge you to withdraw it.

In my view, the Fish and Wildlife

Service has created an issue where none need exist. Alaska Native use of the sea otter fur in handicrafts, presently allowed by the exemption in the Marine Mammal Protection Act of 1972, is limited. Not only is the sea otter population unthreatened, it is growing.

I would be grateful if you will give this issue your personal attention.

Sincerely yours,
Sen. Frank H. Murkowski
Washington, D.C.

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Otter commission calls rule change 'devious'

10/16/99
by Alexandra J. McClunahan
Tundra Times publisher

A proposed U.S. Fish and Wildlife Service rule to restrict the taking of sea otters by Alaska Natives is being strongly opposed by the Alaska Sea Otter Commission.

"This proposed regulation is in direct conflict with a law known as the Marine Mammal Protection Act which guarantees Alaska Natives the right to

Subsistence

—Page Five

sell sea otter handicrafts," according to a commission letter to Alaska Natives.

Commission spokesperson Kimberly Martus called the proposal unfair.

"We think it's devious," she said

of the U.S. Fish and Wildlife Service's action. "They are abusing the rule-making process to actually change a statute that guarantees rights to Native."

Among others opposing the change are the Rural Alaska Community Action Program and the Alaska Federation of Natives.

"In light of the clear intent of Congress to not extinguish traditional uses

of marine mammals by Alaska Natives, we are, quite understandably in our opinion, alarmed that the service, in regard to this proposed ruling, seeks to do just that," Jeanine Kennedy, RurALCAP executive director, said in a letter to the Fish and Wildlife Service.

The rule would prohibit the taking

continued on Page Twenty-Three

Continued from page one

of sea otters by Alaska Natives for use in creating and selling authentic Native articles of handicrafts and clothing under the Native exemption section of the Marine Mammal Protection Act of 1972.

The proposed rule would allow continued Native take of sea otters for subsistence use only, according to the Fish and Wildlife Service.

The marine mammal act provides for a moratorium on the taking and importation of marine mammals and marine mammal products, including the Northern sea otter. However, Congress created a limited exemption for Alaska Natives.

Fish and Wildlife Service officials say they have determined that the intent of Congress in passing the Native exemption was to preserve existing Native uses of marine mammals, rather than to promote expansion of Alaskan arts and crafts industries or the creation of new industries.

The agency claims that sea otters were not being taken for handicraft or clothing uses when Congress passed the act, therefore officials say the act prohibits the taking of sea otters by Alaska Natives for use in creating and selling handicrafts and clothing.

Both AFN and RurALCAP's Kennedy note, however, that Natives have traditionally used sea otters.

"When one considers that the proposed ruling was not based on any biological factors, ignores evidence of traditional use and was authored by the service's Enforcement Division, a clear impression emerges that the service is attempting to unlawfully harass Native artisans," Kennedy said in her letter.

A series of public meetings has been scheduled by the service to take comments on the proposal, and the first was held last month in Atka, followed by meetings earlier this month in Sitka, Klawock and Cordova.

Martus said the Alaska Sea Otter Commission, a subsistence advocacy organization comprised of sea otter harvester/advocates from the Chugach, Cook Inlet, Koniag, Aleutian Islands, Sealaska and Bristol Bay regions, is urging all Alaska Natives to help decide the fate of the regulation.

In addition, she said the organization has called for a mediation meeting with the Fish and Wildlife Service, following this week's two-day subsistence conference.

Martus said the agency has agreed to meet with subsistence advocates Tuesday at 5 p.m. at the Egan Convention Center, the site of the subsistence conference.

She said advocates hope to convince the Fish and Wildlife Service that a series of public meetings is not the best means of dealing with the proposal.

"We believe this is a very superficial way to solve this," she said, noting that most Alaska Natives do not read the *Federal Register*, where the proposed rule was published, and many may not be aware of the hearings.

The Alaska Sea Otter Commission supports negotiations, she said.

She said the commission believes that the rule would actually undermine subsistence rights of all Alaska Natives.

Martus said the commission eventually hopes to develop management plans for sea otters and is in the process of initiating efforts to become a managing partner of the resource.

Other meetings planned by the Fish and Wildlife Service on the proposal include:

Comments and materials concerning the rule may be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage 99503.

1011 East Tudor Road, Anchorage.

•Thursday — 7 p.m., Kachemak Bay Campus of the Kenai Peninsula College, 533 E. Pioneer Ave., Homer.

•Oct. 23 — 7 p.m., Fisherman's Hall, Kodiak.

•Oct. 24 — 7 p.m., Senior Citizens Center, Dillingham.

•Oct. 26 — 7 p.m., Seldovia Native Association Office, Seldovia.

•Oct. 30 — 1 p.m., Fort Mason Center, Golden Gate National Recreation Area, Building 201, San Francisco.

The closing of the comment period for the proposed rule is Nov. 30. Comments and materials concerning the rule may be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage 99503.



Ilurat —

Recognize any of these folks? If you do, you may be able to help with an historic photo project now underway at Southwest Region Schools. Story page 3.

borough's state-mandated contribution for education to more than \$411,000, an amount Taylor says the borough cannot afford unless residents vote to tax on themselves.

"We don't see that as a possibility," Taylor said. "It's not what the people voted for. If we had had the \$102 million

See LAKE & PEN Page 2

Sea otter rule change denounced

by Fritz Johnson
Staff Writer

A proposed change in rules governing the harvest and use of sea otters by Alaska Natives has met nearly universal opposition from rural residents.

According to U.S. Fish and Wildlife Service officials, testimony in Dillingham Tuesday echoed feelings expressed at previous public hearings in Kodiak, Unalaska, and Southeast Alaska. A resolution approved at last week's Alaska Federation of Natives convention also denounced the Service's proposed clarification of a section of the Marine Mammal Protection Act, which would make it illegal for Native people to sell or trade sea otter hats, parkas or other handcrafted items outside the Native community.

"Why is the (Service) trying to clean

out a Native cupboard that is already nearly bare?" asked Dillingham City Councilman Tom Tilden. "Bartering and commercial use of artifacts, clothing and handicrafts have been a way of life for Alaska Natives for centuries."

Gusty Bartman of Dillingham and John Dyasuk of Togiak both recalled stories from elders who periodically traveled to Cook Inlet from the Kuskokwim region to hunt sea otters.

Tilden also presented written testimony prepared by Bristol Bay Area Health Corporation Director Robert Clark, who denounced what he called an effort to "discriminate against our people's historical ability to adapt, change and become stronger based on our creative abilities to survive."

In a press release issued Oct. 24, Senator

Fred Zharoff (D-Kodiak) called the proposed rule change "a classic example of a government agency using regulations to twist the meaning of a law."

Under provisions of the 1972 Marine Mammal Protection Act, only Alaska Natives are allowed to harvest marine mammals, including sea otters, walrus, sea lions and whales. The law permits the manufacture and sale of clothing and craft items made from marine mammals, but according to federal officials, the law is unclear with regard to sea otters.

The proposed change would make the sale to non-Natives of crafts made from sea otters a federal crime.

The Fish and Wildlife Service "would apparently rather arrest any Native they find who tries to sell an item made out of sea otter and throw them in jail" rather than work with Native Alaskans "to conserve the resource and protect traditional practices," Zharoff said.

According to biologists, Alaska's sea otter population, estimated at between 120,000 and 180,000, is presently healthy and not endangered.

Bill Knauer hearing officer for the Fish and Wildlife Service, said comments in most rural areas were similar to those expressed in Dillingham. "Only in Homer

See SEA OTTERS Page 2

1990 herring forecast:

TOGIAK — Old age is finally catching up with Togiak herring and next year's catch is not expected to be as strong as 1989's.

The Alaska Department of Fish and Game released its forecast for the 1990 herring season this week, predicting a catch of just over nine thousand tons: 6800 tons to be caught by the purse seine fleet, and 2300 for gillnetters.

That compares to catches of 9200 tons for the purse seine fleet and 2800 tons for the gillnetters this during the 1989 herring season.

According to Togiak manager Wes

Bucher, the total biomass of returning herrings is expected to be just over 56,000 tons in 1990. That's considerably less than the 99,000 tons of fish that returned in 1989.

Much of the reason for the decline is the natural mortality of the older age class herring. The eleven- and twelve-year-old herring that comprised 39 percent of the 1989 run will only make up 27 percent of next year's run.

Those two age classes have dominated the Togiak run for several years, and

See TOGIAK Page 3

McElroy joins BayTimes

by Fritz Johnson
BayTimes Editor

DILLINGHAM—David McElroy, former managing editor of Lindauer publications' Bristol Bay News, has joined the staff of the Bristol BayTimes.

His agreement to work for the BayTimes comes less than a week after McElroy resigned from the News, in a way that may be a first in the newspaper business — by pasting more than 1,000 copies of his resignation on the front page of the Oct. 20 edition.

The three-by-five announcement McElroy glued on the cover began by stating that publisher John Lindauer is planning to run for governor of Alaska, and invited the public to

See McELROY Page 4



David McElroy

70/40
Bristol
Bay Times
10/27/89

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Cont'd. from Page 1

figure when the original feasibility study was done, I doubt the borough would have been formed."

Under terms of the tax appeal process, Taylor has until Dec. 1 to persuade the assessors to reduce the property evaluation to an amount near the original estimate, "or the borough might have to be dissolved."

"That is an option if it turns out the borough is not feasible," she said.

Taylor is questioning the state's full value determination conducted in September, when bad weather prevented a physical survey of the southern portion of the borough. She says too that the state's figures on the value of lodge property in

the Iliamna Lake, Kvichak and Naknek River sections are too high.

Revenues from raw fish taxes are down from original projections because of lower salmon prices and the closure of most of the Chignik district as a result of the Exxon Valdez oil spill.

According to Chris Follis, an assistant state assessor, bad weather in September prevented travel to the Chigniks, Perryville and Ivanof Bay, so the evaluation is "a preliminary figure based on our best estimate."

The \$32 million figure included in the preliminary borough feasibility study was provided by the state.

Sea otters

and Anchorage have we gotten comments in favor of the proposed change."

Additional support is likely, however, at a hearing set for later this month in San Francisco, home of the animal rights' group "Friends of the Sea Otter."

According to Knauer, the clarification was intended to prevent the development of new cottage industries built on the commercial harvest of sea otters, which federal officials say was not a part of Native culture when the marine mammal act was approved by Congress.

Clark and others dispute that view.

The "conclusion that (since) sea otters were not taken by Alaska Natives (for) handicrafts and clothing when the Act was passed, therefore future use should be prohibited forever is not conclusively true," Clark said. At that time "many of our people were not sure that they could harvest sea otters."

Cont'd. from Page 1

"Any article, however true to historic detail or ultra modern, is an authentic Alaska Native-made product," Clark said. "No person or administrative unit short of Congress should restrict this."

"Our people on the whole are very poor, yet we are very dependent on a cash economy," said Clark. "Without many viable alternatives for jobs in our villages, it is natural to make maximum use of our locally available resources."

Mancuso wins

NAKNEK — Roy Lee Mancuso won a three-year term on the Bristol Bay Borough School Board in Tuesday's run-off election.

Mancuso won with 114 votes to Larry Bradley's 84.

Seven questioned votes and an absentee ballot will not affect the outcome of the election.

BOROUGH

- What kind of...
- Can a borough...
- How is a borough...
- How is a borough...
- What kind of...
- Can the state...

For answers and a whole lot more...

The Borough Prediction

An educational... Nushagak Village Department of Community Meetings are open to all.

Everyone is invited...

HALLOWEEN PARTY OCT. 31

We will be closed starting Nov. 1

