

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6549 SENATE RESOURCES

953

- 4. IS IT LEGAL TO USE AIRCRAFT TO TAKE AND TRANSPORT POLAR BEAR?

Aircraft cannot be used in the taking; however, they can be used for transportation.

- 5. IS IT LEGAL FOR A NATIVE LIVING IN THE INTERIOR TO GO TO THE COAST, SET UP A TENT AND HUNT?

YES. This is legal. A tent or wherever he is staying is considered his dwelling place. The question arises because the Act states that only coastal dwelling Indians, Eskimos, and Aleuts can taken marine mammals.

- 6. ARE STATE REGULATIONS REQUIRING SEALING OF POLAR BEAR HIDES STILL IN FORCE?

YES. The state will continue to seal polar bear hides as they have done in the past.

- 7. DO THE REGULATIONS COVERING "TAKE" APPLY TO BEACH DEAD ANIMALS?

Once an animal is dead from natural causes or is washed up on the beach as a result of being lost by hunters, it belongs to whoever finds it.

~~If a Native finds the dead animal, he may use skin, meat, bones, tusks,~~ or any other part of the animal for subsistence or articles of handi-craft and clothing, which may then be sold. Refer to Part 18.23. A non-Native finding a dead animal may only take the bones, teeth, or ivory and must retain them for his own use, providing he registered the parts within 30 days. Once registered, a non-Native may not transfer any of the parts without written consent. See Part 18.26. Walrus tusks, whale bones, etc., can only be sold after they have been turned into authentic Native arts or crafts.

- 8. CAN A NON-NATIVE WHO IS MARRIED TO A NATIVE WOMAN TAKE MARINE MAMMALS FOR SUBSISTENCE FOR HIS FAMILY?

NO. The Act is very specific on this issue and makes provisions for only the Indians, Aleuts, and Eskimos to take marine mammals.

- 9. CAN NATIVES HUNT WALRUS ON OR AROUND WALRUS ISLANDS (TOGIAK AREA)?

The State of Alaska has set aside the Walrus Islands and adjacent waters as a State Game Sanctuary and prohibits the killing of walrus there. The Marine Mammal Act does replace State Hunting Regulations and allows Natives to take marine mammals at any time for subsistence purposes; HOWEVER, since the state OWNS the Islands and adjacent waters, it can prohibit trespassing and thus not allow anyone in that area.

-10. WHO ENFORCES THE MARINE MAMMAL REGULATIONS?

Federal Agents of both National Marine Fisheries Service (Department of Commerce) and the U.S. Fish and Wildlife Service (Department of Interior). In addition State Fish and Wildlife Protection officers have been deputized authorizing them to enforce the provisions of both Commerce and Interior regulations. Violations will be handled in Federal Courts.



KAWERAK, INC.

P.O. BOX 948 • NOME, ALASKA 99762

(907) 443-5231

SERVING THE
VILLAGES OF:

- BREVIG MISSION
- COUNCIL
- DISHMEDE
- EUM
- GAMBELL
- GOLOVIN
- KOYUK
- NOME
- SAVOONGA
- SHAKTOOLIK
- SHISHMARDF
- SOLOMON
- STEBENS
- ST. MICHAEL
- TELLER
- UNALASKET
- WALER
- WHITE MOUNTAIN

March 23, 1990

Senator Al Adams
 P.O. Box 4
 State Capitol
 Juneau, Alaska 99811

Dear Senator Adams;

Kawerak Inc., and the Eskimo Walrus Commission wholeheartedly supports SJR 50. The present proposed rule by the U.S. Fish and Wildlife Service would only allow the sale of sea otters to natives. The intent of the proposal should also include sales of the finished products to non-natives, as long as it satisfy the intent of the Marine Mammal Protection Act. We cannot imagine that any country, other than dictatorship countries, could try to impose restrictions for creation of arts and craft, especially to their indigenous people.

The proposed regulations failed to show, other than trying to impose restriction on the creation of handicraft produced by the Native people, that the ruling will protect the sea otters. We would have really tried to understand the proposed ruling if the ruling showed that the restrictions would help the management of sea otters. The regulations, in place now, governing the marking, tagging, and reporting of marine mammals for Alaskan Natives is an excellent management tool that the Service will use to determine how many sea otters are removed.

The Service should work with the Sea Otter Commission in preparing a sea otter management program that would enhance the conservation and the abilities of the Alaskan Natives to harvest sea otters. Perhaps one of the management tools that would be accomplished would be to establish a zonal management program in Alaska, since sea otters are more than abundant in certain areas. The zonal management idea is taken from the Service report to Congress on the "Administration of the Marine Mammal Protection Act of 1972, January 1, 1967 to December 31, 1987".

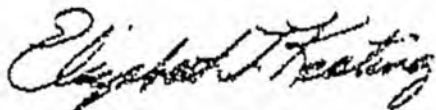
We believe that sea otters should be treated like other administered species managed by the U.S. Fish and Wildlife Service and the National Marine Fishery Service, like the polar bears, walruses, seals, and whales, where it is illegal to sell any raw products to non-natives, but if it falls under Section 101(b), it should be permitted.

Finally, in 1981, Congress further protected the economic interest of the Alaskan Natives by including Section 109(f)(1)(B)(ii) which states "...provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in the subsistence uses of that species."

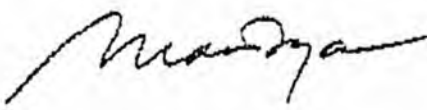
Sincerely,

KAWERPAK, INC.

ESKIMO WALRUS COMMISSION



Elizabeth L. Keating
President



Matthew Iya
Executive Director



Official Business

Alaska State Legislature

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

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.

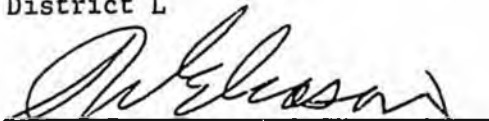
The proposed rule is opposed by many individuals and organizations throughout Alaska including, but not limited to, Alaska's delegation in Congress, the Alaska Department of Fish and Game, the Alaska Federation of Natives, Inc., the Alaska Legal Services Corporation, the Alaska Sea Otter Commission, 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,



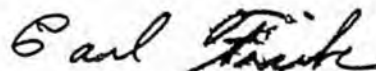
Senator Al Adams
District L



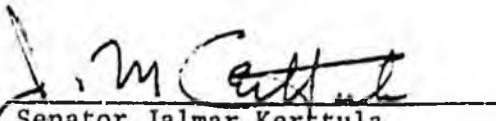
Senator Richard Eliason
District B

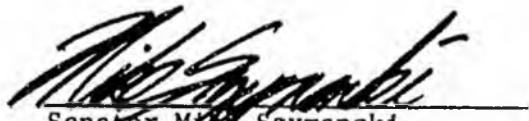


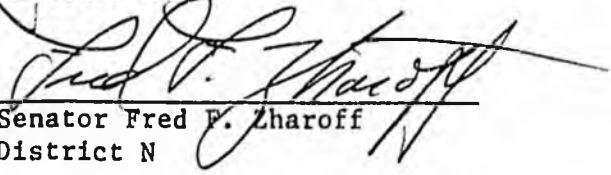
Senator John Binkley
District M




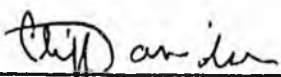
Senator Paul Fischer
District D

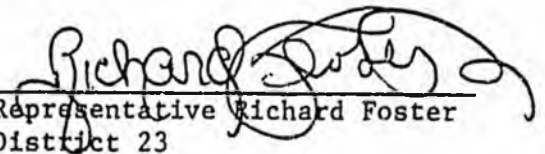

Senator Jalmar Kerttula
District E-A

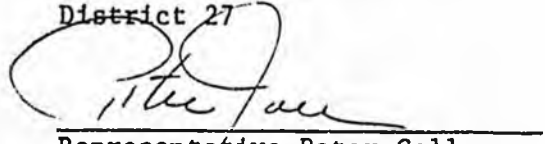

Senator Mike Szymanski
District E-B

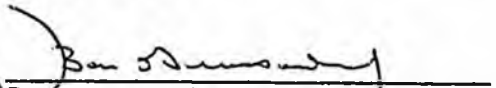

Senator Fred P. Zharoff
District N

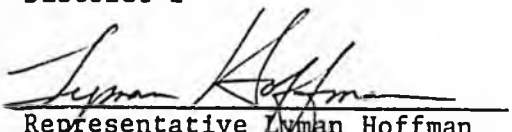

Representative Bette Cato
District 6

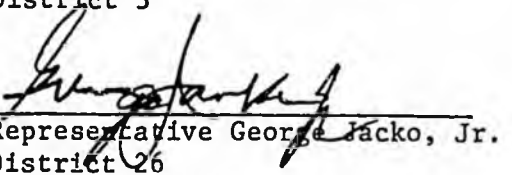

Representative Cliff Davidson
District 27

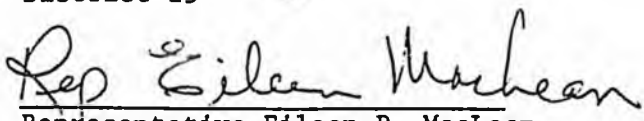

Representative Richard Foster
District 23

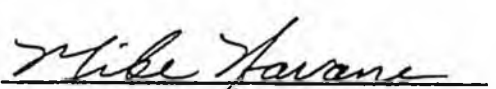

Representative Peter Goll
District 2

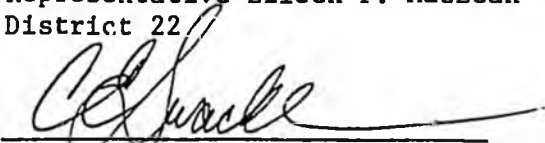

Representative Ben Grussendorf
District 3

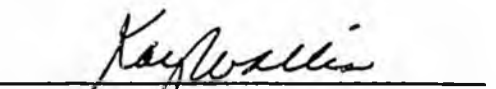

Representative Lyman Hoffman
District 25


Representative George Jacko, 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 24

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

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

RECEIVED JUL 21 1989

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.

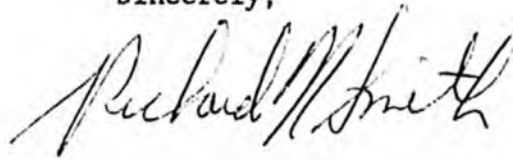
We agree with you that regulations and policy have much broader support when they are developed in cooperation with the people who would be affected. To that end, we hope that the extended comment period and public meetings will help to promote understanding and a consensus of opinion among all interested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

A handwritten signature in cursive script that reads "Richard W. Smith".

Acting
Deputy

DIRECTOR

Enclosure

ALASKA FEDERATION OF NATIVES, INC.
1989 ANNUAL CONVENTION

RESOLUTION NO. 89 - 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 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 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



Citizens' Advisory Commission on Federal Areas

November 29, 1989

DEC 4 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

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

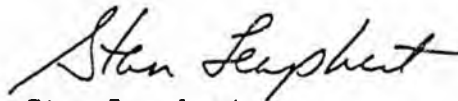
documentation exists for traditional Native use of sea otters (depositions of Dr. William Laughlin, Ph.D. and Dr. Lydia Black, Ph.D. in Katelnikov vs. Dept. of Interior). The FWS has conveniently overlooked this testimony in promulgating its regulation. Inevitably the FWS will encounter this expert testimony 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

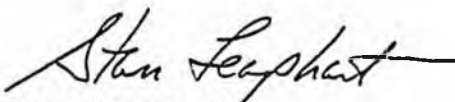
WHEREAS, the proposed regulation is inconsistent with the Marine Mammal Protection Act and exceeds the authority granted by the Congress;

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

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 N BURDICK NORTH DAKOTA
PATRICK J LEAHY VERMONT
JIM SASSER TENNESSEE
DENNIS DICONCINI ARIZONA
DALE BUMPERS ARKANSAS
FRANK R LAUTENBERG NEW JERSEY
TOM HARRIS IOWA
BARBARA A MIKULSKI MARYLAND
HARRY REID NEVADA

MARK O HATFIELD OREGON
TED STEVENS ALASKA
LOWELL P WEICKER JR CONNECTICUT
JAMES A MCCLURE IDAHO
JAKE GARN UTAH
THAD COCHRAN MISSISSIPPI
ROBERT W KASTEN JR WISCONSIN
ALFONSE M D'AMATO NEW YORK
WARREN RUDMAN NEW HAMPSHIRE
ARLEN SPECTER PENNSYLVANIA
PETE V DOMENICI NEW MEXICO
CHARLES E GRASSIEY IOWA
DON NICKLES OKLAHOMA

FRANCIS J SULLIVAN STAFF DIRECTOR
J KEITH KENNEDY, MINORITY STAFF DIRECTOR

RECEIVED JAN 22 1989

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

January 17, 1989

The Honorable Fred F. 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

RECEIVED

ANCHORAGE
U.S. FEDERAL BUILDING
701 C STREET, BOX 1, 99513
(907) 271-3738
FAIRBANKS
U.S. FEDERAL BUILDING
101 12TH AVENUE, BOX 7, 99701
(907) 488-0233
JUNEAU
U.S. FEDERAL BUILDING
BOX 1847, 99802
(907) 688-7400

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

United States Senate

WASHINGTON, DC 20510
(202) 224-6868

February 17, 1989

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

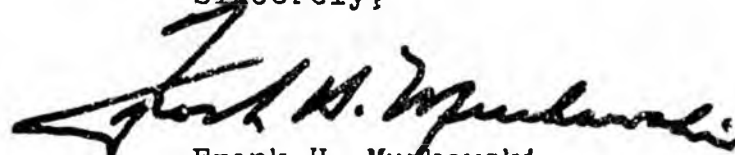
Dear Fred:

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)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
INDIAN AFFAIRS
INTELLIGENCE

United States Senate

WASHINGTON, DC 20510
(202) 224-8888

ANCHORAGE
U.S. FEDERAL BUILDING
701 C STREET, BOX 1, 99513
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101 12TH AVENUE, BOX 7, 99701
(907) 466-0233
JUNEAU
U.S. FEDERAL BUILDING
BOX 1647, 99802
(907) 686-7400

February 2, 1989

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

Dear Frank:

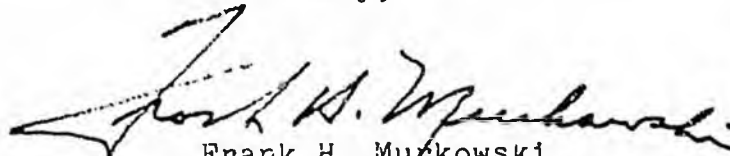
I am writing to advise against proceeding with the Service's proposed regulation on the taking of sea otter under the Alaska Native exemption to the Marine Mammal Protection Act.

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.
continued on page three

Otter commission calls rule change 'devious'

10/16/89
by Alexandra J. McClanahan
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

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:

•Tonight — 6 p.m., U.S. Fish and

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

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 state 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.

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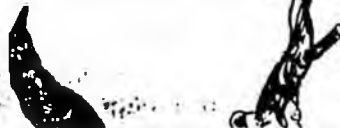
The I Pred

An educational Nushagak Village Department of Co Meetings are open to

Everyone

HALLOWEEN PARTY OCT. 31

We will be closed starting Nov. 1 - Thanks for your



(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 § 18.22.

Dated: October 25, 1988.
Susan Recce,
Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.
[FR Doc. 88-26162 Filed 11-10-88; 8:45 am]
BILLING CODE 4310-65-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-

6179); Ms. Nancy Kaufman, at the above Laguna Niguel, California, Field Station address (telephone 714/643-4270 or FTS 798-4270).

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 pertain 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. 884; 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. 99-625, 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 26, 1988.

Susan Recce
Assistant Secretary for Fish and Wildlife and Parks
[FR Doc. 88-26168 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. 1342, 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

Constituents
 might
 disagree

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. 97-50, 95 Stat. 979 (16 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

FACT SHEET

2

FISH AND WILDLIFE SERVICE U.S. DEPARTMENT OF THE INTERIOR

WHO CAN HUNT SEA OTTER?

Alaskan Natives (Aleuts, Eskimos, and Indians) who dwell on the coast of the North Pacific Ocean or the Arctic Ocean may take Sea Otter and other marine mammals for subsistence purposes or for the creation and sale of authentic Native articles of handicrafts or clothing. Sport or recreational hunting of Sea Otter or other marine mammals is illegal.

CAN RAW (TANNED OR UNTANNED) SEA OTTER HIDES BE SOLD?

These items can only be sold by an Alaskan Native to an Alaskan Native within Alaska or to a registered agent for resale or transfer to an Alaskan Native within Alaska. Alaskan Natives may ship Sea Otter parts to or through a registered tannery for processing. Edible portions of Sea Otter may be sold to anyone if the sale takes place in a Native village or town. Edible portions cannot be sold by anyone, Native or non-Native, for the purpose of interstate commerce, however.

CAN DEAD SEA OTTER BE PICKED UP AND POSSESSED?

Yes, but by Alaskan Natives only. Non-Natives may pick up and possess only the teeth and bones of Sea Otter found on the beach, however, it must be registered with the US Fish and Wildlife Service or the National Marine Fisheries Service within 30 days of picking it up. These parts cannot be sold, and cannot be transferred to another person without authorization from the registering agency.

HOW ELSE CAN SEA OTTERS BE SOLD?

Only authentic Native articles of handicrafts and clothing may be sold or transferred to a non-Native or sold in interstate commerce. The tanning of a hide does not constitute Native handicraft.

WHO CAN MAKE HANDICRAFTS AND CLOTHING (SUCH AS COATS OR PARKAS) FROM SEA OTTER HIDES?

Only Alaskan Natives may make handicrafts or clothing from Sea Otter hides. It would be illegal to have a furrier make clothing from Sea Otter hides.

CAN A NON-NATIVE PURCHASE A NATIVE-MADE SEA OTTER COAT AND THEN HAVE IT RE-MADE BY A FURRIER?

No. Any Native-made article of clothing or handicraft loses its exemption if re-done by a non-Native.

CAN A NON-NATIVE ASSIST AN ALASKAN NATIVE IN HUNTING SEA OTTER?

No. It is illegal for a non-Native to participate in hunting Sea Otters.

IS THERE ANY LIMIT TO THE NUMBERS OF SEA OTTER THAT CAN BE TAKEN?

No. Alaskan Natives are not limited in the number that can be taken. However, numbers should be limited by what can reasonably be utilized for subsistence purposes and making of clothing. No large-scale commercial enterprise can be developed.

CAN SEA OTTER HIDES BE EXPORTED?

Marine mammal parts made into clothing or other authentic Native handicraft may be exported from the United States to a foreign country; however, the exporter must first obtain an export permit from the US Fish and Wildlife Service. Exporters are advised to contact individual countries for rules and regulations.

CAN SEA OTTER HIDES BE IMPORTED?

Importation of Sea Otter and other marine mammals and/or their parts is illegal.

FOR ADDITIONAL AND MORE SPECIFIC INFORMATION CONTACT ONE OF THE AGENTS LISTED:

Special Agent-in-Charge
US Fish and Wildlife Service
1011 E Tudor Road
Anchorage, Alaska 99503
(907) 786-3311

Senior Resident Agent
UC Fish and Wildlife Service
1412 Airport Way
Fairbanks, Alaska 99701
(907) 456-0255

Additional agents listed on back of this page.

3

NATIVE EXEMPTION HIGHLIGHTS OF
THE MARINE MAMMAL PROTECTION ACT OF 1972 & REGULATIONS

DATE OF ENACTMENT:

October 21, 1972

EFFECTIVE DATE:

December 21, 1972 (on this date the moratorium takes effect)

JURISDICTION:

DEPARTMENT OF INTERIOR

Walrus
Sea otters
Polar bear
Manatee

DEPARTMENT OF COMMERCE

Seals
Whales
Sea lions
Porpoises

MORATORIUM:

On December 21, 1972, except as otherwise specified, there will be an indefinite complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products.

NATIVE EXEMPTION TO MORATORIUM:

The provisions of this Act shall not apply with respect to the taking of any marine mammal by an Indian, Aleut, or Eskimo who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking... (1) is for subsistence purposes by Alaskan Natives who reside in Alaska, or

(SUBSISTENCE means the use by Alaskan Natives or marine mammals taken by Alaska Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or for those who depend upon the taker to provide them with such subsistence.)

(2) is done for purposes of creating and selling authentic Native articles of handicraft and clothing.

(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 18.23 (c) may be used so long as no large scale mass production industry results. Traditional Native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional Native groups, such as cooperatives, is permitted so long as no large scale mass production results.)

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

(WASTEFUL MANNER means any taking or method of taking which is likely to result in the killing or injuring of marine mammals whose needed for subsistence or for the making of authentic Native articles of handicraft and clothing or which results in the waste of a substantial portion of the marine mammal and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of a marine

mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.)

DEFINITIONS:

1. ALASKA NATIVE means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1603 (b) (85 Stat. 588) as 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 Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, 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 he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any such citizen enrolled by the Secretary pursuant to Section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

2. NATIVE VILLAGE OR TOWNS means any tribe, band, clan, group, village, community.

3. TAKE means to harass, hunt, capture, collect, or kill any marine mammals, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, or a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which results in the disturbing or molesting of a marine mammal.

RESTRICTIONS:

(1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless: It is being sent by an Alaskan Native directly or through a registered agent or registered tannery for the purpose of processing, and will be returned directly or through a registered agent to the Alaska Native; or

It is an edible portion and it is sold in a Native village or town in Alaska.

No marine mammal taken for purposes of creating and selling authentic Native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut, or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce unless:

It is being sent by an Indian, Aleut, or Eskimo directly or through a registered agent to a purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

It has been first transformed into an authentic Native article of handicraft or clothing; or

It is an edible portion and it is sold (a) in an Alaskan Native village or town or (b) to an Alaska Native for his consumption.

2. No person shall use any aircraft to take any marine mammal in violation of 16 U.S.C. 742j-1, 85 Stat. 480, Publ L. 92-159.

Notwithstanding the preceding provisions of this section, whenever, under the Act; the Secretary determines any species or stock of marine mammals to be depleted,

he may prescribe regulations pursuant to Section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, during the existence of such regulations, all takings of such marine mammals by such persons shall conform to such regulations.

SUMMARY:

In brief, this means Congress has made special provisions for Alaska Natives to continue taking marine mammals for their way of life; however, they require the people to use all of the animals they kill.

Every effort must be made to bring in the meat of all walrus taken and does not allow the killing of animals for just the tusks. It allows the sale or barter of ivory between Natives, but does not provide for non-Natives to buy, acquire, or possess ivory or any other parts of marine mammals until they have been transformed into authentic Native articles of handicraft or clothing. This includes Polar bear hides.

COMMON QUESTIONS:

1. IS IT LEGAL FOR A NATIVE TO SHEAR MARINE MAMMALS SKINS FOR THE PURPOSE OF TANNING AND THEN SUBSEQUENTLY RETURN THE SKINS TO ALASKA FOR USE IN MANUFACTURING TRADITIONAL ITEMS?

YES provided, if they are sent directly to a registered tannery or agent within the United States which may possess and process marine mammal products for Indians, Aleuts, or Eskimos.

- 2. IS IT LEGAL FOR A NATIVE TO GIVE, BARTER, OR SELL RAW IVORY, OR POLAR BEAR HIDES TO A NON-NATIVE?

NO. In order to give, barter, or sell marine mammals to non-Natives, the raw material must be changed into an authentic Native article of arts or crafts. This applies only to animals taken after December 21, 1972.

- 3. IS IT LEGAL FOR A NATIVE TO GIVE, BARTER, OR SELL SEAL HIDES, IVORY, OR POLAR BEAR HIDES TO ANOTHER NATIVE?

YES.

- 4. IS IT LEGAL TO USE AIRCRAFT TO TAKE AND TRANSPORT POLAR BEAR?

Aircraft cannot be used in the taking; however, they can be used for transportation.

- 5. IS IT LEGAL FOR A NATIVE LIVING IN THE INTERIOR TO GO TO THE COAST, SET UP A TENT AND HUNT?

YES. This is legal. A tent or wherever he is staying is considered his dwelling place. The question arises because the Act states that only coastal dwelling Indians, Eskimos, and Aleuts can taken marine mammals.

- 6. ARE STATE REGULATIONS REQUIRING SEALING OF POLAR BEAR HIDES STILL IN FORCE?

YES. The state will continue to seal polar bear hides as they have done in the past.

- 7. DO THE REGULATIONS COVERING "TAKE" APPLY TO BEACH DEAD ANIMALS?

Once an animal is dead from natural causes or is washed up on the beach as a result of being lost by hunters, it belongs to whoever finds it.

~~If a Native finds the dead animal, he may use skin, meat, bones, tusks,~~ or any other part of the animal for subsistence or articles of handi-craft and clothing, which may then be sold. Refer to Part 18.23. A non-Native finding a dead animal may only take the bones, teeth, or ivory and must retain them for his own use, providing he registered the parts within 30 days. Once registered, a non-Native may not transfer ~~any of the parts without written consent.~~ See Part 18.26. ~~Walrus~~ tusks, whale bones, etc., can only be sold after they have been turned into authentic Native arts or crafts.

- 8. CAN A NON-NATIVE WHO IS MARRIED TO A NATIVE WOMAN TAKE MARINE MAMMALS FOR SUBSISTENCE FOR HIS FAMILY?

NO. The Act is very specific on this issue and makes provisions for only the Indians, Aleuts, and Eskimos to take marine mammals.

- 9. CAN NATIVES HUNT WALRUS ON OR AROUND WALRUS ISLANDS (TOGIAK AREA)?

The State of Alaska has set aside the Walrus Islands and adjacent waters as a State Game Sanctuary and prohibits the killing of walrus there. The Marine Mammal Act does replace State Hunting Regulations and allows Natives to take marine mammals at any time for subsistence purposes; HOWEVER, since the state OWNS the Islands and adjacent waters, it can prohibit trespassing and thus not allow anyone in that area.

-10. WHO ENFORCES THE MARINE MAMMAL REGULATIONS?

Federal Agents of both National Marine Fisheries Service (Department of Commerce) and the U.S. Fish and Wildlife Service (Department of Interior). In addition State Fish and Wildlife Protection officers have been deputized authorizing them to enforce the provisions of both Commerce and Interior regulations. Violations will be handled in Federal Courts.



Official Business

Alaska State Legislature

4

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

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.

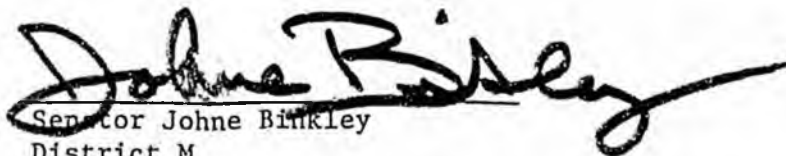
Sincerely,



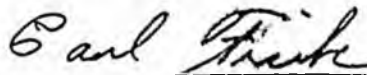
Senator Al Adams
District L



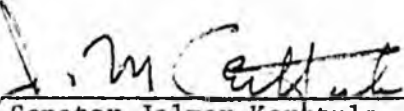
Senator Richard Eliason
District B



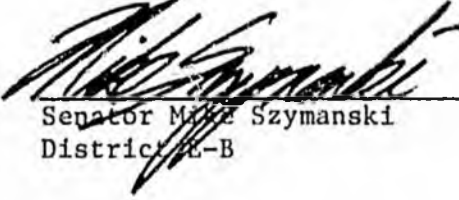
Senator John Binkley
District M



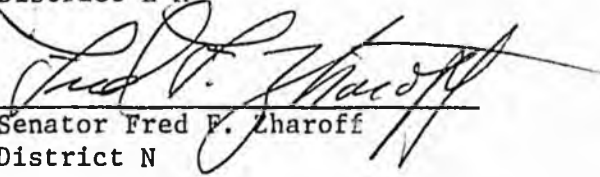
Senator Paul Fischer
District D



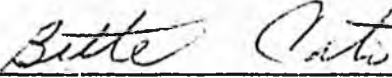
Senator Jalmar Kerttula
District E-A



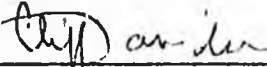
Senator Mike Szymanski
District E-B




Senator Fred F. Zharoff
District N



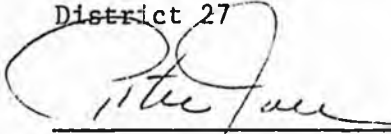
Representative Bette Cato
District 6



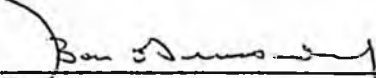
Representative Cliff Davidson
District 27



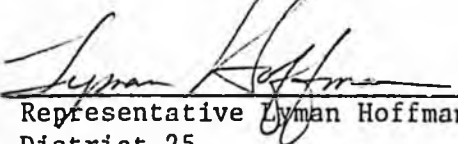
Representative Richard Foster
District 23



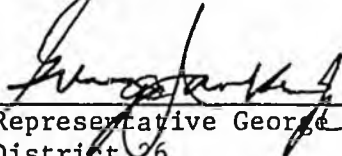
Representative Peter Goll
District 2



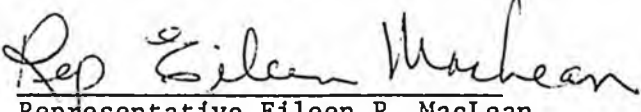
Representative Ben Grussendorf
District 3



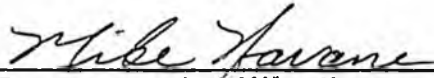
Representative Lyman Hoffman
District 25



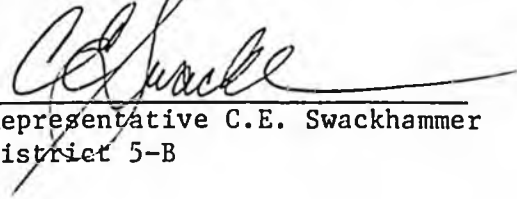
Representative George Jacko, Jr.
District 26



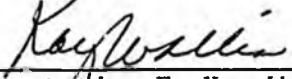
Representative Eileen P. MacLean
District 22



Representative Mike Navarre
District 5-A



Representative C.E. Swackhammer
District 5-B



Representative F. Kay Wallis
District 24

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

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

RECEIVED JUL 21 1989

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.

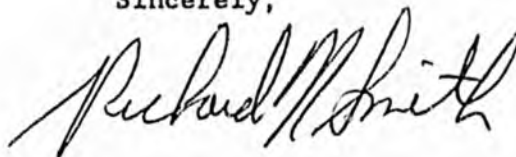
We agree with you that regulations and policy have much broader support when they are developed in cooperation with the people who would be affected. To that end, we hope that the extended comment period and public meetings will help to promote understanding and a consensus of opinion among all interested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

Honorable Fred F. Zharoff

2

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,

A handwritten signature in cursive script that reads "Richard W. Smith". The signature is written in dark ink and is positioned above the typed name and title.

Acting
Deputy

DIRECTOR

Enclosure

ACTION: Extension of comment period.

SUMMARY: In the November 14, 1988, Federal Register (53 FR 45788) the Fish and Wildlife Service (Service) proposed to amend the regulations in 50 CFR Part 18 implementing the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361-1407. The proposed rule would prohibit the taking of sea otters by Alaskan Natives for use in creating and selling authentic Native articles of handicrafts and clothing under the Native Exemptions section of the Act, 16 U.S.C. 1371(b). In the February 15, 1989, Federal Register (54 FR 6940), the Service extended the comment period on the proposed rule to April 13, 1989. The Service gives notice that the comment period will be further extended through November 30, 1989, to allow time for public meetings to be conducted in selected coastal Alaska locations within the range of the sea otter. The Service will also hold a public meeting in California. Meetings will be held starting in October 1989. The exact schedule and location of all public meetings will be announced in a subsequent Federal Register Notice well in advance of the meetings. This additional extension of the comment period and the plan to have public meetings is in response to requests from Native organizations, individuals, and conservation organizations.

DATES: Comments on the proposed rule will be accepted through November 30, 1989.

ADDRESSES: Comments and materials concerning the proposed rule may be sent to the Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503, or delivered in person to the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska. Comments and materials received in response to the proposed rule will be available for public inspection at the above address during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jon R. Nickles, Supervisor, Marine Mammals Management, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503, telephone (907) 786-3492.

Dated: May 22, 1989.

Steve Robinson,

Deputy Director, U.S. Fish and Wildlife Service, Department of the Interior

[FR Doc. 89-12898 Filed 5-30-89; 8:45 am]

BILLING CODE 43 10-65-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ALASKA FEDERATION OF NATIVES, INC.
1989 ANNUAL CONVENTION

RESOLUTION NO. 89 - 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 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 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



Citizens' Advisory Commission on Federal Areas

November 29, 1989

1989

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

8

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

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

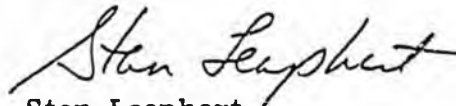
documentation exists for traditional Native use of sea otters (depositions of Dr. William Laughlin, Ph.D. and Dr. Lydia Black, Ph.D. in Katelnikov vs. Dept. of Interior). The FWS has conveniently overlooked this testimony in promulgating its regulation. Inevitably the FWS will encounter this expert testimony 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

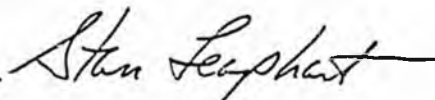
WHEREAS, the proposed regulation is inconsistent with the Marine Mammal Protection Act and exceeds the authority granted by the Congress;

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

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 N. BURDICK, NORTH DAKOTA
PATRICK J. LEAHY, VERMONT
JIM SASSER, TENNESSEE
DENNIS DiCONCINI, ARIZONA
DALE BUMPERS, ARKANSAS
FRANK R. LAUTENBERG, NEW JERSEY
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA

MARK O. HATFIELD, OREGON
TED STEVENS, ALASKA
LOWELL P. WEICKER, JR., CONNECTICUT
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JAKE GARN, UTAH
THAD COCHRAN, MISSISSIPPI
ROBERT W. KASTEN, JR., WISCONSIN
ALFONSE M. D'AMATO, NEW YORK
WARREN RUDMAN, NEW HAMPSHIRE
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHARLES E. GRASSLEY, IOWA
DON NICKLES, OKLAHOMA

FRANCIS J. SULLIVAN, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

RECEIVED JAN 30 1989

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

9

January 17, 1989

The Honorable Fred F. 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

RECEIVED FEB 27 1989 ANCHORAGE
U.S. FEDERAL BUILDING
701 C STREET, BOX 1, 99513
(907) 271-3738

United States Senate

WASHINGTON, DC 20510
(202) 224-8888

February 17, 1989

FAIRBANKS
U.S. FEDERAL BUILDING
101 12TH AVENUE, BOX 7, 99701
(907) 488-0233

JUNEAU
U.S. FEDERAL BUILDING
BOX 1847, 99802
(907) 588-7400

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

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

10

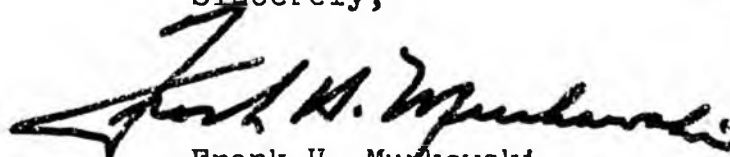
Dear Fred:

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)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
INDIAN AFFAIRS
INTELLIGENCE

United States Senate

WASHINGTON, DC 20510
(202) 224-6065

ANCHORAGE
U.S. FEDERAL BUILDING
701 C STREET, BOX 1, 99513
(907) 271-3738

FAIRBANKS
U.S. FEDERAL BUILDING
101 12TH AVENUE, BOX 7, 99701
(907) 456-0233

JUNEAU
U.S. FEDERAL BUILDING
BOX 1847, 99802
(907) 886-7400

February 2, 1989

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

Dear Frank:

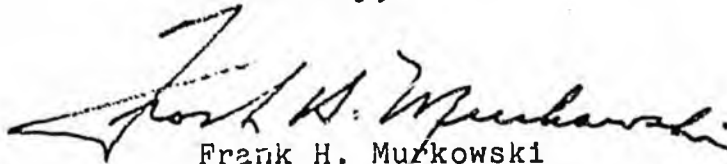
I am writing to advise against proceeding with the Service's proposed regulation on the taking of sea otter under the Alaska Native exemption to the Marine Mammal Protection Act.

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

11

TUNDRA TIMES, December 11, 1989

Murkowski issues protest

T.T. 12/11/89

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.

continued on page three

12

Otter commission calls rule change 'devious'

10/16/89

by Alexandra J. McClanahan
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:

Tuesday — 6 p.m., U.S. Fish and

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.

13



Illurat —

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

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 state 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.

HALLOWEEN PARTY OCT. 31

We will be closed
starting Nov. 1 —
Thank for your



BORO

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- Can a borough if I don't p
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- How is a borough
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Department of Con
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Everyone i



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5250

DURING SESSION:


P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474 • 485-3844 (Labor and Commerce Committee)

DISTRICT N

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

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: February 16, 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 Senate 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. Despite the extensive opposition, the service has not yet made a final decision on the regulation. SJR 50 may 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. U.S. Fish and Wildlife Service fact sheet about sea otters.
3. Native exemption highlights of the Marine Mammal Protection Act of 1972 and regulations.

4. Letter of opposition to the U.S. Fish and Wildlife Service, signed by 18 legislators, dated May 10, 1989.
5. U.S. Fish and Wildlife Service reply to the May 10 letter, dated July 13, 1989.
6. Resolutions passed by the Alaska Federation of Natives.
7. Resolution passed by the Village Participation Conference.
8. Letter and resolution from the Citizens' Advisory Commission on Federal Areas.
9. Letter from U.S. Senator Ted Stevens, dated Jan. 17, 1989.
10. Letter from U.S. Senator Frank Murkowski, dated Feb. 17, 1989.
11. Letter from U.S. Senator Frank Murkowski, published in the Tundra Times, Dec. 11, 1989.
12. Tundra Times article, Oct. 16, 1989.
13. 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.

S J R

52

DATE: January 8 1990

FURTHER:

Date of 5-Day Notice: 3-15-90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-20-90

Resources Committee considered SENATE JOINT RESOLUTION NO. 52

Supporting the establishment of a training and operations center in Anchorage for federal fishery observer programs off Alaska.

and recommended:

- replace with _____ CS 5JR52(Res) same title
- attached amendment(s) new title
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

- fiscal note(s) _____
- _____
- _____

- zero fiscal note(s) FIG
- _____
- _____

- appropriation-no fiscal note
- Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Schrenk

Chris Sturgis

William

Chris Sturgis

[Signature]

Vice Chair: Signature and Recommendation Do - Pass



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commercial Fisheries	BILL NUMBER CS SJR 52	SPONSOR Sturqulewski
SHORT TITLE OF BILL NMFS Observer Training			
DEPARTMENT POSITION Support			
PREPARED BY Bob Clasby	DATE 3/19/90	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 3/19/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL University of Alaska	CONSTITUENT GROUP(S) AFFECTED BY BILL Unknown
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
Provide job opportunities for Alaskans in the observer program.

ANALYSIS OF BILL PROGRAM EFFECTS

None

AMENDMENTS PROPOSED

None

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: NMFS Observer Training
Sponsor: Sturqulewski
Requestor: Governor

Agency Affected: Fish and Game
BRU: Commercial Fisheries
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
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 FY 90 impact

Prepared by: AC Robert C. Clasby
Division: Commercial Fisheries
Approved by Commissioner: [Signature]
Agency: _____

Phone: 465-4210
Date: 3/19/90
Date: 3/19/90

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

Original sponsor(s): SEN. STURGULEWSKI

1 IN THE SENATE BY THE RESOURCES COMMITTEE
 2 CS FOR SENATE JOINT RESOLUTION NO. 52 (Resources)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Requesting the National Marine Fisheries
 6 Service to approve a groundfish observer
 7 training program at the University of
 8 Alaska for federal fishery observer
 9 programs off Alaska.

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

11 WHEREAS the domestic groundfish fishery off Alaska has rapidly ex-
 12 panded in recent years and continues to grow; and

13 WHEREAS there is a requirement for the use of trained observers on
 14 board groundfish vessels to collect essential scientific data necessary to
 15 manage the domestic groundfish fishery; and

16 WHEREAS there have been several recent proposals to greatly increase
 17 the number of observers on board domestic groundfish vessels off Alaska;
 18 and

19 WHEREAS the existing training program conducted by the National Marine
 20 Fisheries Service at its Seattle facilities will not be able to generate
 21 the number of trained personnel necessary to effectively implement the
 22 groundfish observer program; and

23 WHEREAS Sea Grant colleges, such as the University of Alaska, have the
 24 technical capability to train domestic groundfish observers, thus providing
 25 an important service to the federal government; and

26 WHEREAS the University of Alaska has experience in training observers
 27 for domestic fisheries and has expressed interest in becoming an observer
 28 training center in a letter to the National Marine Fisheries Service dated
 29 February 23, 1990; and

1 WHEREAS an observer training program at the University of Alaska would
2 provide the Alaska fishing industry with an alternative source of trained
3 observers, thus increasing the availability of trained observers and fos-
4 tering price competition for observer services; and

5 WHEREAS the lower operating costs of the observer program that will
6 result from competition would reduce the costs of a mandatory observer
7 program that are associated with observer training; and

8 WHEREAS an approved groundfish observer training program at the Uni-
9 versity of Alaska can be used by the National Marine Fisheries Service as a
10 model for other Sea Grant colleges that are interested in conducting train-
11 ing for observers deployed in other fisheries throughout the nation;

12 BE IT RESOLVED that the Alaska State Legislature respectfully requests
13 the National Marine Fisheries Service to approve the University of Alaska
14 groundfish observer training program and establish procedures for certify-
15 ing the Alaska trainees in time for the groundfish fishery off Alaska in
16 the fall of 1990.

17 COPIES of this resolution shall be sent to the Honorable Robert A.
18 Mosbacher, Sr., U.S. Secretary of Commerce; John Knauss, Administrator of
19 the National Oceanic and Atmospheric Administration; William W. Fox, Jr.,
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National Marine Fisheries Service Provides Observer Update

The Council's domestic groundfish observer program took effect on January 1, 1990. Vessels of 125' in length or longer must have a NMFS-certified observer on board. Vessels less than 125' but over 60' must carry an observer for 30 percent of their fishing time. Vessels under 60' must carry observers only if requested by NMFS. NMFS reported that observers are being deployed as soon as they are trained and that the program is running smoothly.

Onshore processing facilities are also required to have observers. A shore plant that annually receives 10,000 mt (round weight) or more of groundfish must have an observer present on each day it receives groundfish in those months with deliveries of 1,000 mt or more of groundfish. Shore plants that annually receive 1,000 mt - 9,999 mt (round weight) of groundfish, must have an observer 30 percent of the days of any month in which they receive 500 mt or more groundfish. Shore plants annually receiving less than 1,000 mt of groundfish do not need observers unless requested by NMFS.

To participate in the 1990 groundfish fishery off Alaska, industry must obtain NMFS-certified observers and pay their costs. Industry must obtain observers from the list of certified contractors. This list may be expanded during the year.

Alaskan Observers, Inc.
150 Nickerson, Suite 104
Seattle, WA 98109
(206) 283-6604

Data Contractors, Inc.
600 West 41st Ave, Suite 203
Anchorage, AK 99503
(907) 561-2055

Oregon State University
Int'l Development & Research
Observer Program
Corvallis, OR 97331
(503) 737-2683

Frank Orth & Associates
10900 N.E. 4th St., Suite 930
Bellevue, WA 98004
(206) 455-9693

Pacific Observers, Inc.
University of Washington/
Fisheries Research Institute
4055 21st Avenue West
Seattle, WA 98199
(206) 285-3480

Saltwater, Inc.
540 L Street, Suite 202
Anchorage, AK 99502
(907) 276-3241



School of Fisheries and Ocean Sciences
Alaska Sea Grant College Program
138 Irving II
Fairbanks, Alaska 99775-5040
(907) 474-7086

February 23, 1990

Dr. William W. Fox Jr.
Assistant Administrator for Fisheries
NOAA/NMFS
1335 East West Highway
Silver Springs, MD 20910

Dear Dr. Fox:

This letter is a proposal by the University of Alaska, a Sea Grant College, to train NMFS certifiable marine resource observers for deployment to the North Pacific fishery. We are initiating the process via this letter with the assumption that subsequent discussions will be necessary as we move to solidify an institutional relationship between NMFS and the University.

The University proposes to provide training in two ways; 1) with a concentrated program located in Anchorage focused on the needs of NMFS and observer contractors for large numbers of observers on a quick turn around basis, and 2) a curriculum based program on campus for training students in the context of a larger program of study. The program as a whole would be administered by the Sea Grant College Program within the School of Fisheries and Ocean Sciences, a part of the University of Alaska Fairbanks. The University of Alaska Anchorage, particularly its College of Community and Continuing Education, will serve as our partnership linkage in Anchorage.

OBSERVER PROGRAM EXPERIENCE

This University and its Sea Grant College Program has experience with fisheries and mammal observer programs and is confident that in partnership with NMFS we will provide the quality training which is so important to the success of the new domestic observer program in the North Pacific.

- We operated the North Pacific Fishery Management Council's Pilot Domestic Observer Program. We were selected to manage that effort because of our successful history of working both with the fishing industry and with federal and state agencies on important and sometimes sensitive issues. Our success in managing the Pilot Domestic Observer Program is seen in the support of the

industry through the North Pacific Management Council for a continued observer process.

- We operated an observer program on the Copper River Delta near Cordova, Alaska for the purpose of observing fisheries/mammal interactions in that region. This program was undertaken by agreement with NMFS, the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and the fishermen of Cordova. Under contract to the NMFS we briefly extended observations into Prince William Sound to monitor whale populations there following the grounding of the Exxon Valdez. Our reports of mammal/fisheries interactions on the Copper River Delta have recently been appended to the NMFS request for proposals for mammal observer services in the Gulf of Alaska because they provide the most comprehensive set of observations in the region.

- We developed the curriculum and provided the training for observers required by the Alaska Department of Fish and Game for their mandatory crab processor observer program. Working with that agency and observer contracting personnel we developed on short notice the necessary training course for that new observer program.

QUALIFIED PERSONNEL

The University will use both faculty dedicated to observer training and specialists already existing on the faculty in the School of Fisheries and Ocean Sciences. Already on the faculty are ichthyologists, two experienced fishery observers, marine safety specialists and marine advisory faculty with substantial experience working on domestic fishing vessels. As special emphasis is needed, other fishery and oceanographic specialists are available on the faculty. To ensure that an observer training course which needs to be taught on a monthly basis receives the constant attention that it will need, a supervising faculty member, and one other, both well attuned to the NMFS observer program, would be selected and dedicated to this instructional program.

CURRICULUM

The Alaska Fisheries Center of NMFS has a long and successful history of observer training. Over the years their curriculum has undergone modification and improvement. We have reviewed that curriculum and feel that it provides a sound basis for training. We would adopt those program elements and continue, as the Alaska Fishery Center has in the past, to build from there. Currently within that curriculum are the following elements:

Introduction to the observer program

- An overview of the northeast Pacific fishery, its history, economic significance, and management under MFCMA

- The life of an observer; duties and life aboard, seasickness, communication difficulties, hardship

Duties and Professionalism

- conduct
- objectives, priorities, workload
- citizenship aboard

Technical Training

- fish identification
- mammal identification
- obtaining haul information and overall catch estimates
- sampling techniques
- data forms, species reports and report groups
- navigation
- computations and reporting ashore and at sea
- radio operations
- special scientific sampling; tagged animals, otolith and scale sampling, etc
- logbook entries, comparison of observer and vessel logs

Safety Training

- general safety aboard
- safe deck operations
- cold water survival
- medical emergencies
- fire control

Debriefing Expectations

As during its use by the Alaska Fisheries Center, the curriculum will continue to be adjusted to meet new demands, or to better serve continuing ones.

Modifications anticipated at this time include:

Safety training: The NMFS trained observers which we employed in the Pilot Domestic Observer Program stated a desire for increased emphasis on safety training. Given the greater variety of vessels in the domestic fleet compared to the foreign and joint venture fleets, we believe that an increased emphasis in this area is justified.

Crab emphasis: It is our experience that NMFS trained groundfish observers need a bit of additional training in order to become ADF&G crab processor observers. This training would include additional crab identification work, biological and legal measurement of crab, and an introduction to the Alaskan fishing laws. The observer contractors with whom we have worked provide observers to both federal and state fisheries. Having increased numbers of observers cross trained would be a benefit to both observer contractors and to the fleet. A more stable employment opportunity for observers will help reduce the current high

turnover rate. We believe that the benefits of the broadened pool will also accrue to the management agencies as well.

Statistical sampling: The sampling environment is substantially more complicated for the new domestic observer program than has been usual in the past, especially for the observers assigned to shore delivery vessels, or for the observer who is switching between shore based vessels, shore based plants, and factory trawlers, and even to crab processors between groundfish assignments. Additional emphasis on sampling strategies will probably be needed to accommodate this new flexible element in observing.

These additional areas of study could be accommodated by two or three additional days of training.

COORDINATION WITH NMFS

We are mindful of the importance of the data being collected via the observer program both to the long term health of the fishery and to its management agencies. The Magnuson Fishery Conservation and Management Act has left private industry, government, and educational institutions playing an unusual set of roles. Private industry and even educational institutions have been undertaking the normal government function of data collection. Government, not an educational institution, has been providing training. Because under this new domestic program the relationship between the fishing industry and the observer contractors may be closer than the relationship between government and those data gathering contractors, there remains the opportunity for errors or even mischief. The quality of education and training provided to the observers is a critical element to the success of the program. The University of Alaska is anxious to be a part of a success story in addressing these unusual circumstances and recognizes that its relationship with NMFS is a key element to that success.

To date there has been considerable advantage in NMFS providing the training of observers in-house. Consistent errors in data collection or transmittal uncovered as observers were debriefed would signal a need for increased emphasis on that particular element in the training program. Close communication must be established between University of Alaska training personnel and the NMFS Alaska Fishery Center in order to ensure the same degree of responsiveness of this training program. With the observer program now focused almost exclusively on the domestic fishery off Alaska, debriefing will necessarily move to Alaska in order to provide both timely debriefing and cost savings to the fleet and its observer contractors. The important linkage between training personnel and debriefing personnel may therefore actually be enhanced by the training taking place in Alaska. We look forward to establishing the cooperative linkages with NMFS which will speed the adaption to these new circumstances.

BUDGET

The present reading of the Magnuson Act leaves the National Marine Fisheries Service without the ability to recover costs directly from the industry for training and deployment of observer personnel, yet the agency is left with the task of administering an observer program required by the North Pacific Fishery Management Council. The costs for observer deployment will be borne directly by the fishing industry. Training costs, at one time funded by receipts from the foreign fishery, have not been provided to NMFS under this expanded domestic program. Neither has budget been provided to the University of Alaska for the training of observers. At the same time, the debriefing of this new Alaska based corps of observers and the new data handling demands are an increased burden on the agency. We believe that the training cost issue is one which we should join together in taking to the Congress. In the short term, the university would be willing to look to other sources of funds to pool with available NMFS funds to get this expanded training program underway.

In summary, the University of Alaska and its Sea Grant College Program looks forward to working in partnership with the National Marine Fisheries Service in providing the necessary training of marine resource observer personnel to ensure a successful domestic fishery/mammal observer program. Our experience with observer programs, our well qualified faculty, and our history of successfully working both with your agency and with the fishing industry provide assurance that we could undertake this new program successfully and to the benefit of your agency and the north Pacific domestic fishing industry. We look forward to continuing this discussion with you.

Cordially,



R.K. Dearborn
Director

RKD

cc: Dr. Patrick O'Rourke, Chancellor UAF
Dr. Donald Behrend, Chancellor UAA
Dr. Vera Alexander, Dean SFOS
Mr. Steven Pennoyer, Dir. NMFS Alaska Region
Dr. William Aron, Dir. NMFS Alaska Science Center
Mr. Donald Collinsworth, Chairman, NPFMC
Dr. William McCaughan, Asst. Vice Chancellor, CCCE

S J R

53

6-1844A
Bradley
12/26/89

BY SEN. COGHILL

1 IN THE SENATE

2 SENATE JCINT RESOLUTION NO. 53

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the "no net loss" of wet-
6 lands policy of the United States Army
7 Corps of Engineers and the United States
8 Environmental Protection Agency.

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

10 WHEREAS Alaska was "declared admitted into the Union on an equal
11 footing with the other States in all respects whatever," with enactment by
12 the Congress of Public Law 85-508 on July 7, 1958; and

13 WHEREAS the Territory of Alaska officially became a state of the
14 United States on January 3, 1959, with the signing of a presidential proc-
15 lamation; and

16 WHEREAS the land deeded, granted, or patented to Alaska since state-
17 hood contains vast areas defined as wetlands using the definition used by
18 the United States Corps of Engineers and the United States Environmental
19 Protection Agency; and

20 WHEREAS this common definition of wetlands most correctly recognizes
21 the importance of marshes, swamps, and bogs in temperate climates for
22 aquifer recharge and discharge, flood control, storm surge protection,
23 erosion, sediment control, and wildlife habitat; and

24 WHEREAS the arctic and subarctic climate experienced in most of Alaska
25 produces a permanently frozen layer of ground that can stretch to hundreds
26 of feet below the surface; and

27 WHEREAS Alaska's permafrost does not allow water to penetrate the
28 surface area during Alaska's short thaw season or to provide the degree of
29 benefits usually attributed to wetlands in other states; and

1 WHEREAS more than 223,000,000 acres of Alaska would not be classified
2 as wetlands without this fundamentally different condition of permafrost;
3 and

4 WHEREAS the United States Congress has acknowledged Alaska's unique
5 permafrost wetlands characteristics through the exemption of "permafrost
6 soils in Alaska with a high potential for agricultural development" from
7 the "swampbuster" provisions of the Food Security Act of 1985; and

8 WHEREAS the November 17, 1989, Memorandum of Understanding between the
9 United States Corps of Engineers and the United States Environmental Pro-
10 tecton Agency fails to distinguish Alaska's fundamentally different wet-
11 lands from those of the other states; and

12 WHEREAS this memorandum of understanding represents a substantial
13 change of federal policy with regard to development activities affecting
14 Alaska's private and statehood entitlement land; and

15 WHEREAS the impediments to economic development represented by the
16 existing federal regulatory framework regarding wetlands pales in compari-
17 son to the adverse effects this new federal wetlands action will have on
18 the economy of Alaska; and

19 WHEREAS this federal action is a substantial departure from the basic
20 tenet that a state may adopt constitutions, republican in form, in confor-
21 mity with the principles of the Constitution of the United States and the
22 principles of the Declaration of Independence in order to achieve home rule
23 governments; and

24 WHEREAS each state, under the equal footing doctrine, should direct
25 its own destiny wherever and whenever possible, particularly with regard to
26 the management of state land and assistance to individual residents of the
27 states in the management of their privately held land;

28 BE IT RESOLVED by the Alaska State Legislature that George Bush,
29 President of the United States, is respectfully requested to rescind the

1 wetlands Memorandum of Understanding, known as the "no net loss of wetlands
2 policy," between the United States Army Corps of Engineers and the United
3 States Environmental Protection Agency; and be it

4 FURTHER RESOLVED that President Bush is respectfully encouraged to
5 call a conference of state governors for the purpose of adopting a national
6 wetlands policy that will recognize the unique wetland conditions of each
7 state and reflect the needs of states to determine their own economic
8 destiny.

9 COPIES of this resolution shall be sent to the Honorable George Bush,
10 President of the United States; Lieutenant General Henry J. Hatch, Chief of
11 Engineers, Commanding General, U.S. Army Corps of Engineers; William K.
12 Reilly, Administrator, U.S. Environmental Protection Agency; and to the
13 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
14 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
15 tion in Congress.

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-8028

ILLIAMS H. (LUTHER), STAFF DIRECTOR
J. KEITH KENNEDY, MANICITY STAFF DIRECTOR

December 1, 1989

The Honorable Richard G. Daxman
Director
Office of Management and Budget
Old Executive Office Building
17th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20503

Dear Dick:

There are serious problems with a recently promulgated Corps of Engineers/ Environmental Protection Agency Memorandum of Agreement [MOA] concerning permits under section 404 of the Clean Water Act. The agencies maintain that this MOA is merely a clarification of existing mitigation policy in light of the national goal of no overall net loss of wetland functions and values. We disagree.

While the application of this MOA to Alaska has the potential for disaster, it is objectionable on much broader grounds. It is not a clarification of existing policy. The Corps admits that the "no overall net loss" goal had not been articulated before this MOA. It is, in fact, a new policy setting an objective of no net loss of wetlands, and directing the agencies to use existing mitigation policies to achieve that objective.

As such, it undercuts and supercedes efforts within the Administration and in Congress to articulate a workable no overall net loss policy for wetlands protection. Further, it has been promulgated without opportunity for public comment, in violation of the Administrative Procedures Act.

Either of these objections would justify revocation of this MOA -- a step which we urge be taken immediately. And in addition to policy and procedural issues, there are substantive problems with it as well. Putting it simply, implementation of this MOA can not be done with the flexibility which the agencies claim to have worked into the document.

ENVIRONMENTALLY ARCO AN O.K. COMPANY, SAYS PRIORITIES COUNCIL

In "Shopping for a Better World: A Quick and Easy Guide to Socially Responsible Supermarket Shopping," ARCO Alaska's parent company, ARCO, is one of hundreds of firms whose corporate conscience has been rated by the Council on Economic Priorities (CEP).

Companies are rated on a variety of topics, from dealings with South Africa and charitable programs to minority and women's advancement.

Regarding environmental issues, ARCO receives a fair mark for its record. The guide cites some positive programs such as encouragement for recycling; waste reduction and alternative energy sources. (ARCO received the 1988 Energy Future Award for its leadership in the development and application of renewable and alternate energy technologies.)

ARCO, however, receives poor marks for conducting animal testing.

ARCO, however, receives poor marks for conducting animal testing.

Randy Roth, ARCO's manager of Toxicology, says companies are required to do a certain amount of testing to determine the human health risks presented by their products.

"I think that's the socially responsible thing to do," said Roth regarding animal testing.

The guide states that non-animal alternatives to traditional testing may offer more reliable scientific results.

Roth disagrees. "At the present time, non-animal tests can't replace traditional tests."

However, in supporting research aimed at replacing animals in testing, ARCO donates roughly \$50,000 annually to the University of Southern California and has been an active supporter of the John Hopkins Center for alternate testing, said Roth.

Tests which use animals to obtain that data are used as a last resort, he added. ■

ALASKA WETLANDS ARE DIFFERENT

Alaska North Slope wetlands are different from other wetlands. As a consequence, there has been no reduction in size or productivity of any wildlife species as a result of oil field development, according to the recently released report, "Effects of Petroleum Operations in Alaska Wetlands."

The report was written by environmental consultant Robert Sennar and Co. for ARCO Alaska and BP Exploration, operators of the North Slope oil fields.

The report consists of a literature review of the functions and values of arctic permafrost wetlands in comparison to wetlands in the Lower 48.

Literature review and an original terrain analysis from aerial photography are used to determine Alaska wetland losses due to development. A preliminary quantification is compared to losses in the Lower 48.

Petroleum industry techniques to mitigate potential wetland loss are described in the report, along with a discussion of the effectiveness of current and proposed wetland mitigation measures on the North Slope.

According to the executive summary, evidence in the report supports the following conclusions:

- Approximately 99.95 percent of Alaskan wetlands remain in their natural state. Human activity has resulted in a loss of an estimated 80,000 acres, or approximately 0.05 percent, of Alaska's wetlands, estimated to be 170,000,000 acres at the time of territorial accession in 1867.
 - Statewide wetland losses due to the petroleum industry are estimated to be about 0.02 percent of Alaska's total wetlands. This reduction is greater than from any other type of development in Alaska, involving about 29,700 acres, or 38 percent of the total wetland acreage lost from man-made causes. The trans-Alaska pipeline and Dalton Highway account for about 20,000 acres, an estimated 67 percent of petroleum-related wetland losses in Alaska (Pamplin 1979). North Slope oil fields account for about 8,326 acres, an estimated 28 percent of petroleum-related losses statewide.
 - Statewide wetland reductions due to other types of development have been similarly low. They are estimated as follows: mining, 13,300 acres, or 17 percent of total statewide wetland reductions; infrastructure, 12,700 acres, 16 percent; settlement, 12,100 acres, 15 percent; agriculture/homestead, 8,500 acres, 11 percent; timber harvest, less than 5,000 acres, or 6 percent; and military installations, 2,400 acres, 3 percent.
 - The most effective types of mitigation used by the petroleum industry in Alaska are avoidance and minimization. The most significant factor in mitigating petroleum-related effects on Alaskan wetlands is pre-construction planning. This requires the close interaction of environmental specialists with design engineers from the beginning of each project. The majority of potential adverse effects are precluded before planned actions reach the permitting and field operations phases. Use of winter construction for petroleum exploration and development minimizes tundra damage; innovations such as modular facility design, reduced wellhead spacing, and directional drilling allow facility consolidation and minimize the cumulative area of tundra covered by gravel pads.
 - There is no biological basis for concluding that wetland management techniques used by industry on the North Slope are insufficient, or that additional mitigation measures beyond continuing refinement or those currently in effect will benefit wildlife. Adverse effects on wildlife populations resulting from petroleum-related wetlands reductions have not been documented for Alaska, either on an individual or cumulative level. ■
- North Slope wetlands are fundamentally different from those in the conterminous United States. They do not provide most of the functions and values associated with temperature-zone wetlands. Aquifer recharge and discharge, flood control, storm surge protection, erosion and sedimentation control, and many other attributes are almost entirely absent from arctic permafrost wetlands.
 - North Slope wetlands have low biological productivity and diversity, compared to temperate-zone wetlands and other wetland areas in Alaska. Wildlife inhabiting the Alaskan arctic are limited in number by length of snow-free season, predation, hunting, recurring severe winters, and conditions in staging of overwintering areas outside of Alaska and the arctic.
 - Petroleum operations have not reduced the size or productivity of any wildlife population present on the North Slope at any time of the year. After 10 years of cumulative development centered on the Prudhoe Bay oil field, there is no evidence for a habitat "fragmentation" effect on birds or large mammals: the same suite of bird species is present within the most heavily developed areas of the Prudhoe Bay oil field as occurs in undisturbed areas, and caribou continued to calve successfully in and around the Kuparuk River oil field. Range abandonment as a result of North Slope petroleum operations has not occurred.