monoxide, Hydrocarbon, Intergovernmental offices.

Authority: 42 U.S.C. 7401–7642.

Dated: April 12, 1990.

William K. Reilly,

Administrator.

Approval and Promulgation of Plans

Subpart KK—Ohio

Title 40 of the Code of the Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1885 is amended by adding paragraph (m) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(m) Disapproval—On May 15, 1986, the Ohio Environmental Protection Agency submitted a revision to its ozone State Implementation Plan allowing compliance to be determined based on a monthly averaging for volatile organic compound emissions for an architectural aluminum extrusion coating line (K001), at Astro Shapes, Incorporated. This operation is located in Mahoning County, Ohio, which is an urban nonattainment area for the national ambient air quality standard ozone.

[FR Doc. 90–9222 Filed 4–19–90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AA20

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: The Fish and Wildlife Service (hereafter the Service) amends the regulations in 50 CFR part 18, implementing the Marine Mammal Protection Act of 1972 (Act), 16 U.S.C. 1361–1407. The Service issues this interim rule to govern the taking of northern sea otters (*Enhydra lutris*) by Alaska Natives for use in creating and selling handicrafts and clothing under the Native exemption section of the Act. It does not affect the take of sea otters by Alaska Natives for subsistence uses. The Service intends to initiate further rulemaking for the purpose of replacing this interim rule after a management plan for the northern sea otter has been developed.

DATE: The amendment to 50 CFR 18.3 becomes effective May 21, 1990.

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

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.

SUPPLEMENTARY INFORMATION: Recent litigation in the U.S. District Court for the District of Alaska prompted the Service to initiate a thorough administrative review to determine whether a special regulation or definitive interpretation of the handicraft definition as it applies to sea otters was needed. The Service, after reviewing available information, concluded that sea otters were not being taken for handicraft purposes when the Act was passed. Noting that the intent of the Act was to preserve existing Native uses of marine mammals, the Service proposed to amend the regulations in 50 CFR part 18 to indicate clearly that the taking of sea otters for the purposes of creating and selling authentic Native articles is prohibited because authentic Native articles of handicrafts and clothing from sea otters were not commonly produced on or before December 21, 1972. Therefore, no items created from sea otters could be sold under the authority of the Alaskan Native exemption.

The Service interprets the Act, its legislative history, and its existing regulations to prohibit the taking of sea otters by Alaska Natives for use in creating and selling handicrafts and clothing. After review of public testimony and written comments, the Service concludes that no handicraft trade using sea otters by Alaska Natives was in existence prior to passage of the Act that would allow the utilization of sea otters under the handicraft exemption.

This interim rule supersedes Service policy guidelines of the past and resolves the existing controversy over allowed Native uses of the sea otter. The intended effect of this rule is to provide a definitive interpretation of 50 CFR 18.3 as it applies to sea otter. Under the interim rule Alaska Natives may continue to take sea otters for subsistence purposes, but not for the purpose of creating and selling handicrafts and clothing.

The Service will initiate a subsequent rulemaking process for the purpose of replacing this interim rule with a final rule after a management plan for the northern sea otter has been completed. The Service proposes to initiate a management planning process for sea otters in the near future to be completed in 1992. The management plan will be developed by the Service in cooperation with representatives from the State of Alaska, Native groups, environmental organizations and other interest groups with numerous opportunties for public involvement. The primary purpose of the plan will be to provide the Service with broad guidance and long-term direction for the management of sea otters. Specific objectives of the plan will be: To document the policies, goals, objectives and strategies for sea otter management; to review the most recent information on the biology, management and current status of sea otters in Alaska; to identify conservation issues; and to identify management and research needs. When the information is reviewed and the management plan is completed, the Service will, if appropriate, develop regulations to supplement or replace this interim rule. The final outcome of this rule will depend on the recommendations formulated in the management plan.

The proposed rulemaking to amend the regulations in 50 CFR part 18 implementing the Act was published in the **Federal Register** on November 14, 1988 (53 FR 45788). It proposed to prohibit the taking 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 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. In the May 31, 1989, **Federal Register** (54 FR 23233), the Service gave notice that the comment period was extended until November 30, 1989, to allow time for public meetings to be conducted in selected coastal Alaska locations within the range of the sea otter. In response to a call for meetings outside Alaska, a public meeting was also scheduled in California. The extension of the comment period and the scheduling of the public meetings were in response to requests from Native organizations, individuals, and conservation organizations.

During the extended comment period and after notice in statewide and local newspapers and radio, public meetings were held in Atka, Sitka, Klawock, Unalaska, Cordova, Anchorage, Homer, Kodiak, Dillingham, and Seldovia, Alaska, and San Francisco, California.

During the comment period, written comments were received from 2,250 sources. Several comments were also received after the comment period had closed. A total of 243 people attended the 11 public meetings. Anchorage had the largest attendance with 55 people, followed by San Francisco with 46 people, and Homer with 29. Attendance at other meetings ranged from 8 to 20 people.

Of the total 2,250 written comments received, there were 1,248 in support of the rule. Approximately 96 percent of these comments were from outside Alaska. A total of 34 conservation organizations submitted comments in support of the proposed rule. Written comments in opposition to the rule numbered 1,002; all but 2 were from individuals or organizations in Alaska. Approximately 700 of these comments were signed petition forms distributed by the Alaska Sea Otter Commission. During the comment period, 22 comments were received from Native organizations and 12 from governmental agencies opposing the proposed rule. These comments are summarized along with responses in the discussion below.

Background

The Act established a moratorium on the taking and importation of marine mammals and marine mammal products (16 U.S.C. 1371(a)). However, the Act exempts from the moratorium the taking of marine mammals, including sea otters, by Alaska Natives under certain conditions (16 U.S.C. 1371(b)):

> Except as provided in section 1379 [of this title], the provisions of this Act 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 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.

The Service promulgated regulations to implement the Act on December 21, 1972 (37 FR 28173) and substantially amended them on February 25, 1974 (39 FR 7262). 50 CFR 18.3 provides in pertinent part:

> "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.

The legality of the December 21, 1972, "cut-off date" was challenged in court. The Service's regulatory definition of "authentic Native articles of handicraft and clothing" requires that in order to qualify for the Act's take exemption, handicraft articles fashioned from marine mammal parts and products must have been "commonly produced on or before December 21, 1972." The validity of that requirement was established by the decision in *Katelnikoff* v. *U.S. Department of the Interior*, 657 F. Supp. 659 (D. Alaska 1986). The court found the cut-off date specified in the regulation was consistent with the Act's purposes. The court noted that the Act's principal purpose was to establish a moratorium on the taking of marine mammals. The court concluded the Act's purpose was to protect traditional ways rather than to provide means of initiating commercial exploitation of marine mammals by Alaska Natives. The court concluded that:

> Limiting native handicraft items to those commonly produced on or before the effective date of the Act will have a tendency to restrict the taking of marine mammals to the "present levels" referred to in the conference report, 1972 U.S. Code Cong. & Ad. News 4187, 4188, thus complying with the spirit and purpose of the Act as expressed in both the statutory language and later case law. (657 F. Supp. at 660.)

Commercial hunting of sea otters began soon after the 1741 discovery of the Commander Islands by Vitus Bering. There began a period of exploitation which ended 170 years later with the extirpation of the sea otter throughout most of its former range. In 1911 sea otters were included in the Fur Seal Treaty, and all hunting, except by Alaska Natives using aboriginal means, was made illegal (36 Stat. 327). From 1959, when a complete ban on hunting at the time of Alaska Statehood passed, until 1972, when the Act was enacted, sea otters were totally protected from harvest, except on an experimental basis by the State of Alaska.

The Service believes that the exemption for Native handicrafts was neither intended to expand opportunities for Native harvest of marine mammals nor was the exemption intended to cover non-traditional handicraft uses of marine mammals. The House Conference Report to the 1972 Act notes that the handicraft exemption was crafted "* * * to allow for the so-called 'cottage industries' of the Alaskan natives" (H.R. Conf. Rep. No. 1488, 92d Cong., 2d Sess. 23, (1972) U.S. Code Cong. & Ad. News 4187, 4188). In formulating the handicraft exemption, the Service believes Congress intended to support "traditional" and "existing" handicraft enterprises of Alaska Natives, rather than promote commercial expansion of such enterprises. The Native exemption was passed with the understanding that the patterns of Native taking and use of marine mammals would remain as they were in 1972, at the time of the passage of the Act. For the sea otter, this would allow no take by Alaska Natives for the commercialization of handicrafts and clothing.

Evidence concerning Alaska Native use of sea otters appears in several publications. The historic use of sea otters by coastal Alaska Natives before Russian contact is documented in the published literature. During the period of Russian domination, the Native harvest of sea otters was discouraged and restricted. Research into the utilization of sea otters by Alaska Natives reveals little use from the early 1700s through the early 1900s, except for commercialization (selling) of hides. The Service does not dispute that sea otter fur was used for clothing by Alaska Natives who lived in contact with sea otter populations prior to Russian occupation in the 1740s. Nor does the Service doubt the anecdotal evidence presented during the comment period that documents some instances in which otters were used by Alaska Natives in recent years. Traditional Native practice has always been to utilize whatever resources have been available to them. However, the Service concludes that the purpose of the handicraft exemption was to allow Natives to continue those cottage industries that existed at the time the Act was passed and that insufficient use was made of sea otters by Alaska Natives prior to 1972 to allow for their utilization under the handicraft exemption.

The interim rule would not limit the use of sea otters for subsistence purposes. Alaska Natives may continue to take sea otters in a non-wasteful manner for subsistence and cultural purposes which includes the making of authentic Native articles of handicraft or clothing. Subsistence is defined in 50 CFR 18.3 as follows:

Subsistence means the use by Alaskan Natives of marine mammals taken by Alaskan 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.

By amending the marine mammal regulations in 50 CFR part 18 to clarify their application to the sea otter, the Service complies with congressional intent and supersedes any inconsistent policy guidelines and rulings, thereby resolving any alleged vagueness regarding the allowable uses of this species. The primary objective of this interim rule is to provide clarification until a statewide management plan provides further direction. A cooperative planning effort and the information collected in conjunction with the planning process will be used to develop a long-term program to manage the taking of sea otters. In addition, the Service plans to conduct statewide surveys for sea otters during the next two years to provide accurate population estimates for the planning process. Once the information and recommendations from the management plan have been reviewed, the rule will be reviewed and revised if necessary. It is possible that the proposed changes may affect the present interim rule.

Comments and Responses

The majority of written comments in support of the rule reiterated the position presented in the proposed rule. Specifically, most commenters stated that the proposed regulation fulfilled the mandate of the Act with respect to Alaska sea otters because it would continue to limit the Native take of marine mammals to those practices that were commonly in existence when the Act was passed. Many of the letters expressed support for subsistence use of sea otters by Natives. A few correspondents were against any killing of sea otters for any reason.

Some commenters held that the proposed rule is a strict, but consistent interpretation of the Act. They argued against withdrawing the rule as it would mean a return to a state of confusion and lead to widescale commercial hunts. One group argued that there are areas in Southeast Alaska where sea otters have not made a comeback and to allow unregulated hunting there would be contrary to the Act. Another group stated that the Native exemption was designed to preserve Native culture dependent on the use of marine mammals, not to allow new Native industries to develop.

The main points made by supporters of the proposed rule were: (1) Historically, no traditional practice of using sea otters to create handicraft articles for sale or barter existed which would meet the requirements of the existing regulatory definition and the Act; (2) this is not solely an Alaskan issue, but rather a wildlife issue of national and international significance; (3) the proposed regulation will codify what has always been the rule of law; and (4) prohibiting Alaska Natives from marketing sea otter clothing and handicrafts will have no impact on legitimate subsistence use of sea otters by Alaska Natives.

Opponents of the regulation argued that the use of sea otters to create handicraft items should be allowed today, because in the past, Alaska Natives may have wanted to make such items for barter or sale, but were prevented from doing so. They stated that Alaska Natives are being penalized by laws and ecological conditions that they had no part in bringing about. In addition, some commenters stated that people were reluctant to reveal their knowledge of use of sea otters to a governmental agency that could prosecute them for an illegal activity.

The wording in the proposed rule regarding "Historic Uses of Sea Otters" provoked the most comments from people opposed to the proposed rule. Many people at the public meetings expressed disagreement with the statements "Since 1741 there has been virtually no use of sea otters by Alaska Natives" and "Alaska Natives have apparently not commonly produced and sold handicrafts or clothing from sea otters within living memory." These statements were consistently challenged at every meeting in Alaska and in many written submissions. Many individuals presented historical references to document Native use of sea otters. Most documentation referred to clothes and were records from the time before Russian dominance. Several commenters stated that Natives have always used the resources available to them and that if sea otters had been abundant they were certainly used.

Another major point made by commenters objecting to this rule was the lack of biological justification to support the rule. They pointed out that the sea otter population is adequate to support the limited hunting Congress authorized in the Native exemption. Several people carried the argument further and asserted that limited harvest may be beneficial to the health of the population as a whole. In addition, complaints were made in several communities that expanding sea otter populations were putting pressure on shellfish resources that are also heavily utilized by local residents for subsistence purposes.

Almost all of the organizations opposed to the rule expressed disagreement with the Service's interpretation of the intent of Congress. In general, commenters argued that the Act says "* * * any marine mammal" and not "* * * any marine mammal except sea otters." Several people expressed the belief that the Service had exceeded its authority in proposing this rule.

In summary, most of the comments from people opposing the rule expressed four major points: (1) Congressional language allows for the taking of sea otters by Alaska Natives for making authentic handicrafts and therefore the Service has no authority to propose a ruling that directly contradicts an Act of Congress; (2) Natives did use sea otters prior to 1972 for handicrafts and clothing; (3) sea otter populations are thriving and therefore the proposed ruling has no biological basis; and (4) the Service should abandon the rule and prepare a sea otter management plan designed and implemented with the cooperation of Native Alaskans.

Substantive comments are summarized below along with the Service's responses.

Issue 1: Many commenters disagreed with the Service's interpretation of Congressional intent of the Act.

Response: The Service has thoroughly reviewed the Act and its legislative history and contends that the interim rule is consistent with the Act. The Act was passed to protect marine mammals from commercial exploitation and to that end, the Act provides for a moratorium on the taking of marine mammals. In addition, the Act provides for a limited exception for Alaska Natives for taking marine mammals for subsistence purposes or for purposes of creating and selling authentic Native articles of handicraft and clothing. The Service believes that the exemption for Native handicrafts was neither intended to expand opportunities for Native harvest of marine mammals nor was the exemption intended to cover non-traditional handicraft uses of marine mammals. The House Conference Report to the 1972 Act notes that the handicraft exemption was crafted "* * * to allow for the so-called 'cottage industries' of the Alaskan natives" (H.R. Conf. Rep. No. 1488, 92d Cong., 2d Sess. 23 (1972), U.S. Code Cong. & Ad. News 4187, 4188). The legislative history of the Act makes clear that the purpose of the Native exemption was the preservation of Native culture and industries dependent on that culture. 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 Native exemption was passed with the understanding that the patterns of Native taking and use of marine mammals would remain as they were in 1972, when the Act was passed. For the sea otter, this would allow essentially no take by Alaska Natives for the sale of handicrafts and clothing to non-Natives.

Issue 2: Many commenters disagreed with the Service's preliminary analysis of historical evidence relating to Native use of the sea otter in handicrafts and clothing.

Response: The Service concurs with the many people who felt that the section on "Historic Uses" in the proposed rule was not clear. The Service did not mean to imply that there have been no uses of sea otters since 1741. Following the arrival of Russians in Alaska, Native harvest of sea otters was prohibited. While it is true that during some periods of history Alaska Natives have been prohibited from taking sea otters, the Service agrees that it is entirely likely that Natives outside Russian control continued to use sea otters for subsistence. The United States purchased Alaska from Russia in 1867 and the harvest prohibitions instituted by the Russians were lifted. However, the historical record shows little evidence of Alaska Natives using sea otters for trade, barter, or other economic purposes that involved the creation of handicraft articles or clothing.

Issue 3: Many commenters felt that use of sea otters and production of handicrafts by Natives is essential to preserving and perpetuating Native culture and identity.

Response: The purpose of the Native exemption to the Act was the preservation of Native culture and industries dependent on that culture. The history of Alaska Native culture provides evidence that sea otters were used for cultural and subsistence purposes. The Service recognizes the importance of preserving traditional culture. The subsistence provision of the Act remains unaffected by this interim rule. Section 101(b) of the Act authorizes Natives to take marine mammals for subsistence, and uses of sea otters for this purpose would still be authorized.

Issue 4: Some commenters argued that a contemporary definition of subsistence, which would encompass the use of resources for economic purposes should be recognized. These commenters felt that subsistence should include the ability to trade, barter, and sell for basic life needs and that economic activity is a legitimate aspect of subsistence.

Response: Congress clearly distinguishes between subsistence use and commercial handicraft and clothing use in section 101(b) of the Act. Those seeking a change in the scope of the exemption must petition Congress.

Issue 5: Opponents claimed that Alaska Natives did not have an opportunity to develop a handicraft trade in sea otters because of restrictions and that Alaska Natives are being penalized because of the existence of laws and ecological conditions that they had no part in bringing about.

Response: Following the United States purchase of Alaska in 1867 there were no legal restrictions imposed on the take of otters by Alaska Natives for many years. Between 1868 and 1905, a period during much of which only Natives or their non-Native spouses could legally take sea otters, 107,121 skins were shipped from Alaska (Kenyon, 1969, *The Sea Otter in the Eastern Pacific Ocean*, 136). There is historical evidence that sea otter pelts were sold in unaltered forms; however, that practice is presently prohibited by the Act.

Issue 6: Several commenters argued that the Native exemption pertains to all marine mammals and there is no basis for singling out one species to be treated differently.

Response: No evidence has been supplied to demonstrate that handicraft and clothing articles made from sea otters were commonly produced for commercial sale by Alaska Natives prior to 1972. This is in contrast to the situation with other marine mammals, where handicraft items were produced before 1972 and formed the basis for the "cottage industries" which are perpetuated by the Act. This interim rule is not intended to, and does not, undermine the Native take exemption of the Act. Alaska Natives will continue to have the same subsistence opportunities that they had upon enactment of the Act in 1972. Legitimate uses of sea otters for subsistence purposes and legitimate use of other marine mammals for subsistence, and handicraft and clothing purposes in accordance with the 1972 cut-off date will be allowed.

Issue 7: Some commenters questioned the legality of the 1972 cut-off date which is found in the regulations but not in the Act.

Response: The legality of the 1972 cut-off date was recognized in the decision in *Katelnikoff* v. *U.S. Department of the Interior*, 657 F. Supp. 659 (D. Alaska 1986). In *Katelnikoff*, the United States District Court affirmed the validity of the 1972 "cut-off date," concluding that "limiting native handicraft items to those commonly produced on or before the effective date of the Act will have a tendency to restrict the taking of marine mammals to the 'present levels' referred to in the conference report, 1972 U.S. Code Cong. & Ad. News 4187, 4188, thus complying with the spirit and purpose of the Act as expressed in both the statutory language and later case law." (657 F. Supp. at 660.) The Service's existing regulations, with the "commonly produced" limitation, have been in effect for 17 years and have not been changed or affected by any modifications in the Congressional amendment process.

Issue 8: Many commenters claimed that there is no biological justification for denying a harvest of sea otters.

Response: The interim rule is not related to biological considerations in the management of the sea otter population. Numbers of otters are not relevant in the consideration of the validity of the proposed regulation. The proposed rule was based solely on legal interpretation that the exemption for Native handicrafts and clothing was not intended to expand or create opportunities for Native harvest of marine mammals. Biological considerations will be addressed during development of a sea otter management plan.

Issue 9: Some commenters were concerned about growing numbers of sea otters which created conflicts with shellfish fisheries. Some asserted that Native harvest would be useful in controlling sea otter population growth.

Response: The interim rule is promulgated to clarify the Service's position on the use of sea otters for the creation and sale of authentic Native handicraft items. Conflicts regarding the sea otters and other resources will be addressed through the management planning process.

Issue 10: Commenters on both sides of the issue emphasized the need to formulate a comprehensive management plan for sea otters.

Response: The Service is working with the Alaska Sea Otter Commission and the State of Alaska in developing a Memorandum of Agreement regarding sea otter management and exchange of information. In addition, the Service will begin a major planning effort this spring to produce a statewide Sea Otter Management Plan. As part of the planning effort, the Service will consult with the Alaska Sea Otter Commission, the Alaska Department of Fish and Game, and other interested parties.

Issue 11: A few commenters called for a total ban on all hunting of marine mammals.

Response: Congress has made special provisions in the Act for Alaska Natives to continue taking marine mammals for their way of life. The Native exemption section provides in relevant part that 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, if such taking is: (1) For subsistence purposes, or (2) for purposes of creating and selling authentic native articles of handicrafts and clothing, and (3) in each case, is not accomplished in a wasteful manner.

Issue 12: Some commenters thought that Alaskan sea otters were endangered.

Response: The Alaska sea otter population has recovered from near extinction in 1911 to healthy population levels throughout most of its historical range. Today the survival of the sea otter as a species is no longer in question and the Alaska population is neither endangered nor threatened. The confusion on this point possibly arose because the California sea otter population is designated as "threatened" under the Endangered Species Act due to its small population size, limited range, and possible environmental threats.

Issue 13: Many commenters expressed concern over the loss of sea otters associated with the 1989 Exxon Valdez oil spill in Prince William Sound and thought otter numbers were now too low to allow any harvest.

Response: Under the Act, if the Secretary of the Interior determines any species or stock of marine mammals to be depleted, the Secretary may prescribe regulations pursuant to Section 103 of the Act governing the take of marine mammals. The extent of the damage done to the sea otter population by the Exxon Valdez oil spill is still being assessed. However, the Prince William Sound sea otter population was estimated at the highest to be about 10,000 animals and there are an estimated 150,000–200,000 sea otters in the State of Alaska. The portion of the Alaskan sea otter population in the path of the spill was a small fraction of the Statewide population. Therefore most of the subpopulations or stocks within the Alaska population are not in danger of being declared depleted.

Issue 14: Various commenters thought that pillows, fur flowers, wind chimes and teddy bears were not representative of authentic Native handicrafts.

Response: The Service's interpretation of the Native exemption provision of the Act holds that the above items are not considered authentic Native handicrafts made prior to passage of the Act in 1972. The validity of the Service's position was challenged in a lawsuit filed in 1985 in the U.S. District Court for the District of Alaska (*Katelnikoff* v. *U.S. Department of the Interior*). In July 1986 the Court upheld the Service's regulatory definition of "authentic native articles of handicrafts and clothing."

Issue 15: A few commenters expressed concern that the Service's position freezes Native handicrafts at pre-1972 status and does not permit them to evolve or grow. One commenter said that the Service's interpretation stifles Native creativity and cuts off natural cultural evolution.

Response: The Act represents a compromise situation regarding the many viewpoints on uses of marine mammals. The U.S. House of Representatives version of the Act did not allow for the taking of marine mammals for handicraft purposes. Alaska Representative Nick Begich proposed an amendment for Native exemption to the moratorium under certain conditions. He stated that the intent of the amendment was to support traditional and existing arts and crafts enterprises rather than promote commercial exploitation (118 Cong. Rec. 7703, March 9, 1972). However, the proposed Begich amendment did not pass. The House bill exempted Alaska Natives from the moratorium to the extent they take an animal for subsistence purposes, or not wastefully and not for direct or indirect sale. The Senate amendment extended the exemption to allow for the so-called "cottage industries" of the Alaskan Natives. The Native exemptions were passed with the understanding that the patterns of Native taking and use of marine mammals would remain as they were in 1972, at the time of the passage of the Act. For the sea otter this would allow essentially no take by Alaska Natives for the commercialization of handicrafts and clothing.

Issue 16: One commenter suggested that the Service relinquish its authority for sea otters and return management to the State of Alaska.

Response: The Act withdrew marine mammal management authority from the States and charged Federal agencies with conservation and management of marine mammals. Section 109 of the Act contains provisions that allow for the transfer of management authority to coastal States. However, as of the date of this rule, no application from the State of Alaska, for the transfer of marine mammal management authority, is pending.

Issue 17: Several commenters pointed out that this is not an Alaskan or Native issue only but is, rather, a national issue regarding a wildlife resource that concerns many Americans.

Response: The Service agrees that this issue is of national interest. The geographic range of the commenters attests to the interest throughout the country. However, those most affected by the rule are Alaska Natives. For this reason the Service conducted public meetings in 10 Alaskan coastal communities named earlier in this document to ensure that those most affected by the rule had an opportunity to present information and comments.

Paperwork Reduction Act

There are no information collection requirements contained in this document that require Office of Management and Budget clearance under 44 U.S.C. 3501.

Economic Effects

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this interim 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.*). 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.

Environmental Considerations

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 interim 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).

Lists of Subjects in 50 CFR Part 18

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

For the reasons set forth in the preamble, part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 is revised to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 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 part (a) of this definition and therefore no such items may be sold."

Dated: March 27, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-9195 Filed 4-19-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska will be taken before the end of the year. The Secretary of Commerce (Secretary) is prohibiting further directed fishing for sablefish by longline vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on April 16, 1990, through December 31, 1990.

DATES: This notice is effective from 12:00 noon, ADT, on April 16, until midnight, Alaska Standard Time, December 31, 1990. Comments will be accepted through May 1, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1990 TAC specified for sablefish in the West Yakutat District is 4,550 mt (January 31, 1990; 55 FR 3223); the portion of the TAC allocated to hook-and-line gear is 4,320 mt. Under § 672.24(b)(3)(i), if the share of the sablefish TAC assigned to any type of gear for any area or district will be taken before the end of the year, further directed fishing for sablefish will be prohibited in order to provide adequate bycatch amounts to ensure continued fishing activity by that gear group.

During the remainder of the fishing year, hook-and-line fisheries in the West Yakutat District are expected to require 100 mt of sablefish for bycatch in other hook-and-line fisheries. Therefore, the Regional Director plans to close the directed fishery when the directed fishing allowance of 4,220 mt have been taken. The directed hook-and-line fishery for sablefish started April 1, 1990. The Regional Director reports that vessels using hook-and-line gear have landed 1,993 mt of sablefish through April 10 in the West Yakutat District. The longline fleet in this area has recent average daily sablefish landings of 419 mt per day. At this rate, the balance of the 4,220 mt will be harvested by 12:00 noon, ADT, April 16, 1990.

Therefore, pursuant to § 672.24(b)(3)(i), the Secretary is prohibiting further directed fishing for sablefish caught with hook-and-line gear in the West Yakutat District effective 12:00 noon, ADT, April 16, 1990. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish on board a hook-and-line vessel in the West Yakutat District at any time must be less than 4 percent of the total amount of fish and fish products retained on board the vessel, as calculated from round weight equivalents.

Allocation of the sablefish resource between hook-and-line and trawl gear in the West Yakutat District area, and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until May 1.

Classification

This action is taken under §§ 672.20 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 16, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-9137 Filed 4-16-90; 4:30 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 77
Friday, April 20, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to an exemption for the extraction of coal incidental to the extraction of other minerals. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. May 21, 1990. If requested, a public hearing on the proposed amendment will be held on May 15, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on May 7, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 N. Lincoln, Oklahoma City, OK 74103, Telephone: (918) 521-3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, at telephone number (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981 the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program, can be found in the copies of the **Federal Register** January 19, 1981 (46 FR 4910), April 2, 1982 (47 FR 14152), May 4, 1983 (48 FR 20050), and August 28, 1984 (49 FR 34000). Subsequent actions concerning the Oklahoma program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated March 30, 1990, (administrative record No. OK-914), Oklahoma submitted a proposed amendment to its program under SMCRA. Oklahoma submitted the proposed amendment in response to (1) a February 7, 1990, letter (administrative record No. OK-909 that OSM sent in accordance with 30 CFR 732.17(d) and (2) a required program amendment at 30 CFR 936.16(a). The regulations that Oklahoma proposes to amend concern an exemption for operations where the extraction of coal is incidental to the extraction of other minerals. Specifically, Oklahoma proposes to amend the Oklahoma Permanent Regulatory Program Regulations (OPRPR) at the following sections: 700.5, concerning the definition of surface coal mining operations as it applies to operations were the extraction of coal is incidental to the extraction of other minerals; and 700.11(b)(4), concerning the applicability of OPRPR to operations where the extraction of coal is incidental to the extraction of other minerals. Oklahoma also proposes to add a new part 702 entitled "Exemption for Coal Extraction Incidental to the Extraction of Other Minerals."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., c.d.t. on May 7, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 11, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90-9200 Filed 4-19-90; 8:45 am]

BILLING CODE 4310-05-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Designation of Pollutants; Permitting Requirements

AGENCY: National Science Foundation.

ACTION: Advance Notice of Proposed Rulemaking; Public Hearing.

SUMMARY: This notice announces a public hearing to examine several issues concerning the designation and regulation of pollutants in Antarctica. The National Science Foundation ("NSF") proposes to issue regulations pursuant to the Antarctic Conservation Act of 1978, 16 U.S.C. 2401 et al., which will define pollutants and regulate the introduction into Antarctica of any pollutant that may create hazards to human health, harm living resources of marine life, damage amenities, or interfere with other legitimate uses of Antarctica. Once an appropriate definition for pollutants is established, no United States citizen, including officials of the Federal government, may discharge, release, or abandon designated pollutants except pursuant to an NSF permit. Development of an effective pollution permit program under the Antarctic Conservation Act ("Act") will enable NSF to synchronize United States Antarctic Program operations with sound environmental practices, to prevent potential environmental harm by U.S. citizens, and to fulfill its statutory obligations under the Act.

Issues to be discussed at the hearing include (1) tentative definitions of pollutants, (2) prohibited acts under an NSF permitting program, and (3) any other options for addressing these environmental issues in the United States Antarctic Program.

DATES: The public hearing will be held on Friday, May 18, 1990, at 9:30 a.m.

ADDRESSES: Written requests to participate in the public hearing must be mailed to the Office of General Counsel, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, or hand delivered to the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday. Requests must include the information specified below and be received no later than 5 p.m. on Tuesday, May 15, 1990.

Hearing Location: National Science Foundation, Room 540, 1800 G St., NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, Deputy General Counsel; Lawrence Rudolph, Assistant General Counsel, Office of the General Counsel, (202) 357-9435; or Gary Staffo, Safety, Environment, and Health Officer, Division of Polar Programs, (202) 357-7766, National Science Foundation, at the above address.

SUPPLEMENTARY INFORMATION: The Antarctic Conservation Act of 1978 ("Act") requires the National Science Foundation ("NSF") to "designate as a pollutant any substance which the Director [of NSF] finds liable, if the substance is introduced into Antarctica, to create hazards to human health, to harm living resources of marine life, to damage amenities, or to interfere with other legitimate uses of Antarctica." 16 U.S.C. 2405(b)(6). In addition to the designation of pollutants, the Act also requires NSF to "specify those actions which must, and those actions which must not, be taken in order to prevent or control the discharge or other disposal of pollutants, from any source within Antarctica." 16 U.S.C. 2405(b)(7).

The Office of the General Counsel, together with the Division of Polar Programs, is holding this public hearing to consider specific issues concerning the designation and regulation of pollutants in Antarctica. A task force within NSF has completed some preliminary work on the issues inherent in defining pollutants and regulating pollutant discharges. These actions were taken pursuant to the Director's instructions to implement the recommendations contained in the December 1989 report entitled "A National Science Foundation Strategy for Compliance with Environmental Law in Antarctica."

Preliminary discussion within NSF's task force focussed on the following possible approach: (1) NSF should ban substances such as nuclear and hazardous wastes from entering Antarctica; (2) substances such as pesticides may be imported only with a special permit; (3) potentially hazardous or toxic substances may be imported and used in Antarctica, but the resulting waste product cannot be left in Antarctica; (4) certain substances, that ultimately result in "conventional" pollutants (non-hazardous, non-toxic waste), may be imported, used, and disposed of in Antarctica, but only in permitted amounts and in accordance with required disposal conditions; and (5) certain substances will be exempt from NSF permit requirements, particularly if they are subject to other permits or regulated conditions.

This approach would result in the following prohibitions:

(1) It is unlawful for any United States citizen to discharge, release, or otherwise dispose of, any designated pollutant within Antarctica, unless authorized by these regulations or a permit issued by NSF under the Act and these regulations.

(2) It is unlawful for any United States citizen to abandon, discharge, release, or otherwise dispose of any hazardous waste in Antarctica.

(3) It is unlawful for any United States citizen to transport hazardous waste to Antarctica with the intent to abandon, discharge, release, or otherwise dispose of the hazardous waste in Antarctica.

(4) It is unlawful for any United States citizen to treat or store hazardous waste within Antarctica without an NSF permit.

The definition of pollutants prohibited discharge levels, and hazardous waste will also be critical to these regulatory efforts. In addition to the approach outlined above, we set forth the following tentative definitions for discussion at the public hearing:

Pollutant—any substance that has potential to create hazards to human health, to harm living resources or marine life, to damage amenities, or unreasonably interfere with other legitimate uses of Antarctica if the substance is introduced or disposed of in the Antarctic environment.

Designated Pollutant

(a) Any pollutant which the Director has determined, by the weight of the available scientific and other evidence, is liable to create one of the harmful effects listed in section 2405(b)(6) of the Act and which has been placed on the