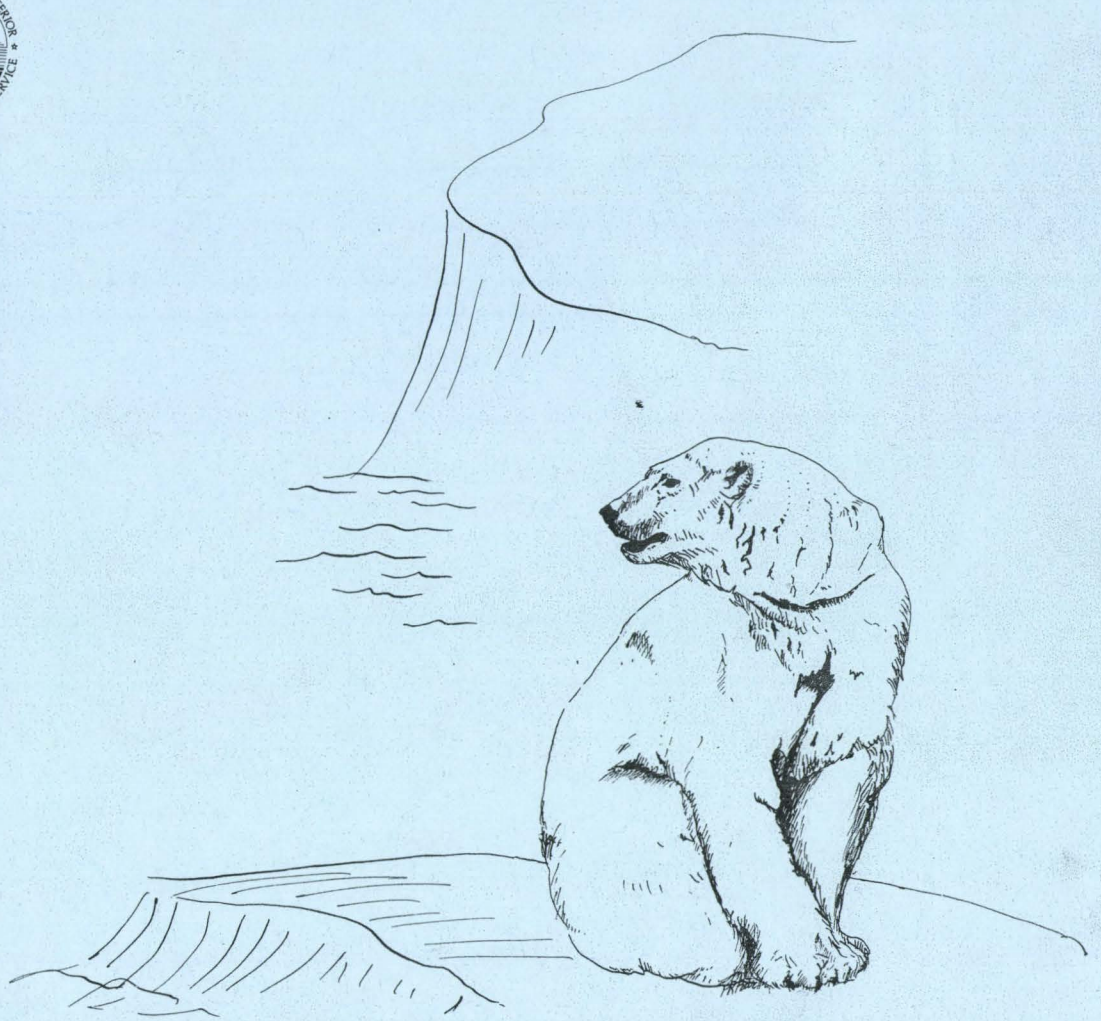
ADMINISTRATION AND STATUS REPORT OF THE MARINE MAMMAL PROTECTION ACT OF 1972

June 22, 1975 to June 21, 1976



Prepared by the U.S. Fish and Wildlife Service, Washington, D.C. 20240, November 1976

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

MARINE MAMMAL PROTECTION ACT

Report of the Department of the Interior

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, 86 Stat. 1027 (1972)) states in Section 103(f) that "Within six months after the effective date of this Act (December 21, 1972) and every twelve months thereafter, the Secretary shall report to the public through publication in the FEDERAL REGISTER and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals."

The responsibility of the Department of the Interior is limited by Section 3(12)(A) of the Act to those mammals which are members of the order Carnivora (polar bear and sea otter), Pinnipedia (walrus), and Sirenia (dugongs and manatee). Accordingly, there is published herewith the report of the Department of the Interior for the period June 22, 1975, to June 21, 1976, on the administration of the Act with regard to those mammals.

Issued at Washington, D.C., and dated NOV 2 2 1976

Lynn A. Greenwalt

LYNN A. GREENWALT
Director

ADMINISTRATION OF THE MARINE MAMMAL PROTECTION ACT OF 1972

June 1976

Report of the Department of the Interior

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Prepared by
U.S. Fish and Wildlife Service
Department of the Interior
Washington, D.C. 20240
1976

Administration of the Marine Mammal Protection Act of 1972

June 22, 1975 to June 21, 1976

Introduction

Authority:

Pursuant to the requirements of Section 103 (f) of the Marine Mammal Protection Act of 1972 (86 Stat. 1027; hereinafter, the "Act") this report describes administrative actions and the status of certain species of marine mammals. The report covers the period June 22, 1975, through June 21, 1976, and is presented in three parts: administrative actions; species status reports; and appendices.

Under Section 3(12)(B) of the Act, the Department of the Interior is responsible for the following marine mammals: walrus, polar bear, sea otter, manatee, and dugong. The Secretary of the Interior has delegated authority for the functions prescribed by the Act to the Director, U.S. Fish and Wildlife Service, as prescribed in 242.1.1 of the Departmental Manual.

Congressional Oversight Hearings:

The Honorable Robert L. Leggett, Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, called an oversight hearing on October 21, 1975, on the Marine Mammal Protection Act of 1972 and a wrap-up session on December 9, 1975; Director Lynn A. Greenwalt, U.S. Fish and Wildlife Service, testified on Federal/State cooperation, marine mammal research,

enforcement of the Act, issuance of permits and the State of Alaska request to waive the moratorium and return management of nine species of marine mammals.

Marine Mammal Commission:

Title II of the Act established a Marine Mammal Commission and a nine member Committee of Scientific advisors. The Act prescribes extensive consultative roles for the Commission and the Committee with the Secretaries of Interior and Commerce. Contact with the Commission, through its staff, is on an almost daily basis. The formal review of permit applications, section 110 grant proposals and waiver of the moratorium requests are accomplished through established procedures.

The Commissioners are:

Victor Scheffer, Chairman, Bellvue, Washington, Mr. Scheffer is a marine mammal biologist retired from the U.S. Fish and Wildlife Service.

Donald B. Siniff, St. Paul, Minnesota. Dr. Siniff is a Professor in the Department of Ecology and Behavioral Biology, University of Minnesota, St. Paul, Minnesota.

Richard A. Cooley, Santa Cruz, California. Dr. Cooley is the Academic Assistant to the Chancellor at the University of California, Santa Cruz, California.

The Marine Mammal Commission is an independent body and reports to Congress annually.

Part I - Administrative Actions

Regulations:

Four significant sets of regulations pertaining to the Act were published in the Federal Register by the Fish and Wildlife Service during the period covered by this report.

On December 24, 1975, the Director of the Service published a final decision in the proceeding concerning waiver of the moratorium on the taking of Pacific walrus (40 FR 59459) (Appendix A). The Director determined that it was appropriate to waive the moratorium but conditioned lifting the moratorium and returning management to the State of Alaska on his approval of the State's laws and regulations relating to management. As part of the Director's decision, a draft of a new subpart H was published for use by the Service as a guide in the development of regulations imposing specific Federal limitations on the taking and importation of Pacific walrus.

On the same day the Service published in final form a new subpart F entitled "Waiver of the Moratorium - State Laws and Regulations." (40 FR 59442) (Appendix B). These regulations had been revised in accordance with the Director's decision and the recommended decision of the administrative law judge who served as a presiding officer at the hearings which were held to consider the waiver.

On February 6, 1976, the Service published procedural regulations (Appendix C) applicable to hearings held under section 103(d) of

the Act (40 FR 5395). These regulations, which became effective on March 8, 1976, expanded the application of existing procedural rules from Pacific walrus to all marine mammals over which the Service has jurisdiction.

On April 5, 1976, the Director published notice of his final approval of the State of Alaska's laws and regulations (Appendix D) governing management of Pacific walrus. (41 FR 14372). In the same publication, final regulations limiting the taking and importation of Pacific walrus managed by the State of Alaska were promulgated. These regulations were contained in a new subpart H entitled "Waiver of Moratorium of Taking and Importation of Individual Marine Mammal Species." Publication of the Director's approval of State laws and regulations, along with promulgation of the new subpart H, affected return of management of the Pacific walrus to the State of Alaska. Because immediate implementation of the State's management program was considered essential to control the flow of raw walrus ivory, subpart H became effective upon publication.

On April 9, 1976, the Service published proposed regulations to amend the existing subpart F, "Waiver of the Moratorium - State Laws and Regulations," and subpart H, "Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species," to apply to all marine mammals over which the Service has jurisdiction (41 FR 15166) (Appendix E). The proposed amendment would allow any State to submit a request for return of

management of Pacific walrus, polar bears, or sea otters within its jurisdiction and provides specific Federal limitations on the management by a State of those species. Public hearings were held on subpart H, as required by Section 103(d) of the Act. The first hearing was held in Alaska in July 1976 and the second in October in Washington, D.C. Notice of the times and places for the public hearing was published by presiding officer Malcom P. Littlefield on May 28, 1976 (41 FR 21832) (Appendix F). After conclusion of the required hearings and review of the presiding officer's recommended decision, the Director will, if appropriate, publish the proposed rules for subpart H as final rules. Subpart F, as amended by the proposal, will be published in final form in the near future.

Waiver of the Moratorium

The State of Alaska has applied to the Secretary to waive the moratorium with respect to walrus, sea otter, and polar bear, and return management of these species to the State. A similar request has been made of the Secretary of Commerce with respect to northern sea lions, harbor and spotted seals, ringed seals, bearded seals, ribbon seals, and beluga whales. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service are jointly considering the request and have issued

a draft environmental impact statement (DEIS) covering all species requested. This DEIS was filed with the Council on Environmental Quality on March 5, 1976. Consideration of the waiver will involve an agency hearing before an Administrative Law Judge regarding the extent that a waiver that may be granted and whether State laws and regulations are consistent with the purposes and policies of the Act under Section 109 before management can be returned to the State.

A major problem in preparing the DEIS related to application of the terms "optimum sustainable population" (OSP) and "optimum carrying capacity" as used in the Act. The major objective of the Act, in the management of marine mammals, is to insure that such species and population stocks not be permitted "to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part." Consistent with this major objective, they should not be permitted to diminish below their OSP. There is not yet wide agreement within the scientific community on the meaning of OSP or its relationship to maximum sustainable yield. Another problem in preparing the DEIS was the lack of published scientific information on some species of marine mammals involved in the Alaska request for a waiver.

Enforcement

United States Fish and Wildlife Service Special Agents initiated 183 Marine Mammal Cases during this report period. Fifty-one of these

cases, primarily importations through Interior-designated ports, were referred to the National Marine Fisheries Service. To date 118 cases have been closed.

The following is a partial breakdown of the types of investigations handled by FWS Special Agents:

11 investigations involved walrus

10 investigations involved polar bear

2 investigations involved sea otters

Half of the approximately 88 cases now pending involve gift shops. These will be routinely inspected for dealers' sources of types of marine mammal products for sale, and for possible violations of the Marine Mammal Protection Act.

Public Display and Scientific Research Permits:

Section 101(a)(1) of the Act and Section 18.31 of the regulations governing the taking and importing of marine mammals authorize the Director (by delegation) to issue permits to take and import marine mammals and marine mammal products for the purposes of scientific research and public display.

The Act declares a moratorium on the taking or importing of marine mammals and marine mammal products, however, the Act included exceptions that allow research on marine mammals and taking of marine

mammals for public display, providing that the health and well-being of the marine mammal species and populations involved as well as the marine ecosystem are not adversely affected. Permits may, however, be granted only after a review of the applications by the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals.

The Fish and Wildlife Service has been working in close cooperation with the Marine Mammal Commission, the National Marine Fisheries Services, and the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture, as well as representatives of the display industry, to develop standards for the care and maintenance of captive marine mammals. In October 1975, these efforts resulted in a set of standards and guidelines, prepared by the Marine Mammal Commission. The Fish and Wildlife Service, National Marine Fisheries Service and Animal and Plant Health Inspection Service under the authority of the Animal Welfare Act of 1970 have been developing means by which these standards and guidelines will be implemented by the involved Federal agencies.

The Fish and Wildlife Service received 19 applications for scientific research and public display permits during the period of this report. Eight permits were issued; one application was denied; one was withdrawn; and nine are pending. Actions taken on these applications are summarized below:

Scientific Research Permit Applications

To capture and tag up to 10 sea otters; to attach telemetry equipment to no more than 3 of these 10; and to possess carcasses of sea otters killed accidentally or found dead. (University of California, Los Angeles, California). Issued 6/23/75. An amendment was issued January 19, 1976, stating Block 11 D: Number of permitted subjects is increased from 10 to 40 for capturing and tagging; from 3 to 15 for attaching telemetry equipment. All subjects are to be released at capture site.

To capture, hold, attach radio telemetry equipment, anesthetize if necessary, color mark and make scientific studies on no more than 25 sea otters from the Pacific Coast off Monterey and Santa Cruz counties, California. The permit holder may salvage any sea otters found injured or dead and any sea otters injured or killed as result of permitted activity. Dead sea otters are to be preserved to facilitate scientific research - Amendment to 9-22-C. (Daniel P. Costa, Coastal Marine Lab, University of California, Santa Cruz, California). Issued 8/29/75.

An amendment was issued October 7, 1975, stating the number of subjects of the study reduced from 25 to 10.

To capture and tag 10 Pacific walrus per year by means of a "limpit" device. The permit holder may collect 12 skin samples per year from Pacific walrus which have been taken by Alaskan natives for subsistence purposes. Any walrus accidentally injured or killed may be salvaged. (Dr. G. Carleton Ray, Department of Pathobiology, John Hopkins University, Baltimore, Maryland). Permit No. 9-23-C issued 7/3/75.

To capture, hold, transport and release no more than 12 West Indian manatees to develop and implement tagging techniques. The permit holder may salvage and care for any manatees found dead or injured or accidentally killed or injured in course of study - Amendments to 9-25-C. (Howard W. Campbell, Gainesville Substation, Gainesville, Florida National Fish and Wildlife Laboratory). Issued 9/25/75.

An amendment was issued January 20, 1976. Authorized to collect blood and urine samples from 12 manatees. Authorized to tag with aerosol spray paint utilizing the technique of underwater application.

To take up to fifty (50) dead Florida manatees for the purpose of scientific research. (Daniel K. Odell, Division of Biology and Living Resources, School of Marine and Atmospheric Science, University of Miami). Permit No. 2-88 issued 5/25/76.

May capture up to 35 adult sea otters in Alaska, and up to 20 in California for: (a) weighing and sexing; (b) marking with human hair dye and/or flipper tags; (c) attaching telemetric equipment, and (d) taking blood samples. The permit holder may salvage and care for any sea otters found dead or injured, or killed or injured in course of study. (University of Minnesota, BioScience Center). Permit No. 2-122 issued 6/12/76.

To capture 4 female and 1 male sea otters at Pacific Coast off Monterey and Santa Cruz Counties, California; to transport to and hold at Sea World, for scientific studies and public display. The permit holder may salvage dead or injured sea otters; if dead, should be preserved to facilitate scientific research. (Sea World, Inc., San Diego, California). Permit No. 9-24-C issued 9/4/75.

Public Display Permit Application

May import through any designated port of entry two polar bear cubs from Calgary Zoo. (Louisville Zoological Garden - Robert B. Bean, Director, Louisville, Kentucky). Permit No. 9-15-C issued 8/27/75.

Certificates of Registration

Section 18.23 of the regulations provides that marine mammals taken by an Indian, Aleut, or Eskimo for the purpose of creating and selling authentic native articles of handicraft and clothing may be transferred to a registered tannery, either directly by the Indian, Aleut, or Eskimo or through a registered agent. Similarly, marine mammals taken by Alaskan natives for subsistance may be sent to a registered tannery for processing and subsequent return to an Alaskan native.

Any tannery or person who wishes to act as an agent may apply for registration. The Service has processed the following applications for certificates of registration:

Roy Hendricks (RA-1), Anchorage, Alaska

The renewal of a certificate of registration to deal in walrus ivory was issued on January 9, 1976, effective through December 31, 1977.

Dennis R. Corrington (RA-3), Corrington's Alaskan Ivory Co., Anchorage, Alaska

The renewal of a certificate of registration to deal in walrus ivory was issued on January 20, 1976, effective through December 31, 1977.

Richard E. McGuirl (RA-5), Taxidermy, Anchorage, Alaska

Was denied a certificate of registration to receive and handle marine mammals (walrus, polar bear, and sea otter). Denial was issued on July 21, 1975.

Martin James, Jr. (RA-6), Maruskiya's of Nome, Nome, Alaska

The renewal of a certificate of registration to deal in walrus ivory was issued on February 23, 1976. This certificate was then amended to also authorize the registered agent to deal in polar bear hides. The amendment was issued of June 9, 1976. The certificate is effective through December 31, 1977.

Jack Wood (RA-8), Alaskan Custom Taxidermy, Anchorage, Alaska

A formerly issued certificate of registration to deal in polar bear hides was amended to clarify applicant's authority; the amendment was issued on July 10, 1975, and the certificate remains effective through December 31, 1977.

New Method Fur Dressing Company (RA-9), Renaldo Pepi, Owner, South San Francisco, California

Was issued a certificate of registration to receive, store, and ship polar bear hides. Effective from July 3, 1975, to December 31, 1977.

Jonas Brothers, Inc. (RA-11), Denver, Colorado, and Anchorage, Alaska

Was issued a certificate of registration to receive, store, process and ship polar bear, sea otter, and walrus hides. Effective from October 17, 1975, to August 31, 1978.

The Colorado Tanning and Fur Dressing Company (RA-12), Denver, Colorado

Was issued a certificate of registration to receive, store, process and ship polar bear, sea otter, and walrus hides. Effective from October 17, 1975, to August 31, 1978.

Arctic Trading Post (RA-13), Howard and Mary Knodel, Nome, Alaska

Was issued a certificate of registration to receive, store, cure, and sell walrus ivory. Effective from February 23, 1976, to December 31, 1977.

Teller Commercial Company (RA-14), Helen M. and Robert R. Blodgett, Teller, Alaska

Was issued a certificate of registration to deal in polar bear skins and/or walrus ivory. Effective from February 27, 1976, to December 31, 1977.

Alaskan Unorganized Borough School District (RA-15), George H. White, Superintendent, Nome, Alaska

Was issued a certificate of registration to deal in polar bear skins and/or walrus ivory. Effective from April 14, 1976, to December 31, 1977.

Chase Arctic Taxidermy (RA-16), Fred E. Chase, Owner, Fairbanks, Alaska

Was issued a certificate of registration to deal in polar bear hides. Effective from May 19, 1976, to December 31, 1977.

Research

The objectives of the Fish and Wildlife Service research program relating to studies of marine mammals are to actively carry out the Service's mandates of the Act; and to determine the ecological effects on marine wildlife of man's activities related to the development of energy resources.

In order to meet these objectives, considerable survey work, accumulation of information, and detailed analyses of population data remain to be accomplished. Review of worldwide marine mammal research literature and preparation of status reports continue to be important efforts in the overall research program. Research, conducted in-house, by contract, and by grants-in-aid, is summarized below:

In-house:

1. Sea Otter Investigations
   a. To determine the biology and management needs of the California sea otter.
   b. To determine annual and seasonal distribution, abundance, and composition of populations of sea otters and other marine mammals in Prince William Sound, Alaska.
   c. To determine the distribution and abundance of recently established sea otter populations.

2. Walrus Investigations

   a. To determine the biological activities of the Pacific walrus.

3. Polar Bear Investigations

   a. To conduct satellite tracking of polar bears.

   b. To determine parasites and environmental contaminants in polar bears.

   c. To determine discreteness of populations of polar bears.

   d. To develop a telemetry system for long range monitoring of movements and physiological parameters of polar bears.

   e. To determine polar bear den ecology and distribution.

   f. To determine biology and ecology of Alaska coastal polar bear populations.

   g. To determine biology and ecology of polar bears of the Arctic Ocean.

   h. To estimate Alaska polar bear population size and productivity.

   i. To determine biological parameters of polar bears of the Chukchi Sea.

   j. To conduct multivariate analysis of cranial measurement data of polar bears as part of the systematic study of polar bears.

4. Manatee and Dugong Investigations

   a. To determine the effects of vegetation control programs on the Florida manatee.

   b. To evaluate the biological consequences of manatee uses of sanctuaries and unprotected environments.

   c. To develop manatee tagging and tracking technology.

   d. To define manatee habitat requirements and assess habitat alterations.

   e. To determine basic sensory and physiological parameters of manatees as related to technical needs.

   f. To determine marine mammal capability with urbanization.

   g. To survey the distribution, status, and conservation problems of the dugong.

   h. To study and salvage stranded manatees and other marine mammals.

   i. To determine the distribution status of all taxa and populations of manatees.

5. Other Marine Mammals - To determine, in cooperation with NMFS, the status of the Hawaiian Monk Seal.

Contract

1. Status Survey of the Dugong

   Investigator - Martini, F. ($2,650)

2. Environmental pollutants in marine mammals

   Investigator - Brownell ($15,000)

   Collection and analysis of marine mammal tissues as indicators of pollutant levels in the ecosystem.

3. Development of Radiotelemetry Package for the Polar Bear.

   Investigator - Haugstadt ($12,000)

   Develop radio Transmitter for attachment to polar bears in order to monitor their movements.

4. Ecological investigations of sea otter habitats in Prince William Sound, Alaska.

   Investigator - Daves and Moore ($29,500)

5. Survey of Monk Seal

   Ship Charter - Skip Nastel ("Easy Rider") ($22,483)

6. Nearshore studies of fish communities of Otter Island.

   Investigator - Fishery Research Institute, University of Washington ($14,527)

7. Development of Satellite telemetry Package for polar bears.

   Investigator - Handar ($52,144)

   To develop and produce 3 transmitters for use with Nibus F.

Grant-in-Aid

Five proposals were received for research grants from researchers outside the Fish and Wildlife Service. Two of these proposals were funded, one 1975 grant was extended in accordance with the original proposal and three were not funded. These proposals are summarized below:

1. Age Determination of the Manatee. (Daniel K. Odell, School of Marine and Atmospheric Science, University of Miami, Miami, Florida. Funded - $16,048).

   The manatee is listed as an endangered species throughout its range, yet little is known about its biology. In order to provide proper conservation and management measures, information must be obtained about the biology of the species, particularly population biology. This includes such parameters as longevity, age of sexual maturity, calving interval, and overall growth rates. However, a determination of the absolute age of the manatee is prerequisite to insure precision in the above parameters. This research seeks a technique for determining relative and absolute age of the manatee. Live animals will not be sacrificed; only stranded animals and museum specimens are used.

2. Sea Otter Energetics. (Dr. Kenneth Norris, Coastal Marine Institute, University of California, Santa Cruz, California, $17,354) of which $5,400 is Fish and Wildlife Service the remainder is Marine Mammal Commission funds.

The impact of the sea otter on commercial fisheries has been an issue of controversy for a number of years, and is not completely understood. Specifically, food intake in terms of calories, nutrients, and utilization by animals in nature remains unknown. The proposed research attempts to discover what role availability of food items plays in the range and preference in otter feeding by analyzing the energetics of the sea otter, using a double labled water technique.

3. An Analysis of Polar Bear Predation of Ice Pinniped Populations of Alaska. (Alaska Department of Fish and Game - $63,314) a cooperative study with Fish and Wildlife Service biologist to assess the impact of polar bear predation upon ice-inhabiting pinniped populations of the Bering, Chukchi and Beaufort Seas of Alaska.

4. Preliminary Assessment of Atlantic Walrus Stock Size, Seasonal Distribution, and Exploitation along the West Coast of Greenland. (Randall R. Reeves) to survey and summarize what is known about Atlantic walruses and their exploitation off West Greenland; and to determine the feasibility and methodology for further field studies in this area. - Not funded.

5. Recording and Acoustic Analysis of the Vocalizations of *Trichechus manatus latirostris* (Harlan). (Dr. Stephen H. Feinstein, University

of Florida) to study vocalizations of the manatee with the object of developing a warning system to reduce manatee boat collisions. - Not funded.

6. The Helminth Fauna of the Florida Manatee (Dr. Donald J. Forrester, University of Florida) to determine the baseline parasite load of manatees in order to determine their role in debilitation and/or death in wild animals. - Not funded.

Endangered Species:

In the Federal Register of December 16, 1975 (40 FR 58308-58312), the Fish and Wildlife Service proposed determining critical habitat for six species, including the Florida manatee. This measure was taken pursuant to Section 7 of the Endangered Species Act of 1973 which requires all Federal agencies to insure that their actions do not adversely affect the critical habitat of endangered and threatened species. The general areas proposed for the manatee, all in Florida, are: the Crystal River and its King's Bay headwaters; portions of the Little Manatee, Manatee, Myakka, and Peace Rivers, and Charlotte Harbor in west-central Florida; the Caloosahatchee River and associated coastal waters; waters off the coast of Collier and Monroe counties, including Whitewater Bay; the waterway formed by Card, Barnes, Blackwater, and Buttonwood Sounds; Biscayne Bay and adjoining waterways; Lake Worth; Loxahatchee River; the intracoastal waterway from Sewalls Point to Jupiter Inlet, and from the St. Marys River to State Highway A1A; the Indian and Banana Rivers;

and the St. Johns River and certain associated waters. These areas are utilized by the largest concentrations of manatees in the United States and are the only areas that presently can be defined as having major dependent populations. A final rulemaking was expected in 1976.

A recovery team for the Florida manatee was appointed July 19, 1976.

On June 23, 1976, the Director, Fish and Wildlife Service signed a Cooperative Agreement with Florida pursuant to Section 6 of the Endangered Species Act of 1976. The Executive Director of the Department of Natural Resources and Director of Game and Fresh Water Fish Commission were both a signatory to the Cooperative Agreement. Florida may now request, through an application for Federal Assistance, a priority allocation portion of the 2 million dollars ($2,000,000) the Service has in Grant-in-Aid funds for FY 1976.

Outer Continental Shelf Baseline Studies

Approximately $977,251 will be spent for marine mammal research in Alaska waters during FY 76 as part of the Interior Department's Outer Continental Shelf (OCS) baseline studies for offshore oil and gas development. The studies are funded by Interior's Bureau of Land Management (BLM). Interior's Fish and Wildlife Service (FWS) has been designated as coordinator for the marine mammal and sea bird portion of OCS baseline studies. In addition to serving in a continuing advisory capacity and participating directly in the baseline studies, the Service is also assisting Commerce's National Oceanic and Atmospheric Administration (NOAA) which is the principal program manager for all baseline studies in Alaska, with the continuing development of programs for the Beaufort Sea, Bering Sea, and the Gulf of Alaska.

The following is the listing of marine mammal projects now planned:

1. Analysis of Marine Mammal Remote Sensing Data; G Carlton Ray and Douglas Wartzok, the Johns Hopkins University. $12,000 in FY 76.

2. Baseline Characterization of Marine Mammals; Clifford H. Fiscus and Alton Y. Roppel, NMFS. $81,700 in FY 76.

3. Abundance and Seasonal Distribution of Marine Mammals in the Gulf of Alaska; Clifford H. Fiscus and George Y. Harry, NMFS. $56,600 in FY 76.

4. Resource Assessment: Abundance Seasonal Distribution of Bowhead and Bulukha Whales - Bering Sea; Clifford H. Fiscus and W. Bruce McAlister, NMFS. $38,310 in FY 76.

5. Abundance and Seasonal Distribution of Bowhead and Belukha Whales - Beaufort Sea, Northeastern Chukchi Sea; William M. Marquette and George Y. Harry, NMFS. $49,800 in FY 76.

6. Physiological Impact of Oil on Pinnipeds; R. L. Gentry and W.B. McAllister, NMFS. $91,507 in FY 76.

7. Morbidity and Mortality of Marine Mammals; Francis H. Fay, University of Alaska, $83,787 (obligated in FY 75).

8. Biology of the Harbor Seal - Phoca vitulina richardi; Kenneth W. Pitcher, ADF&G. $65,000 in FY 76.

9. The Natural History and Ecology of the Bearded Seal, Erignathus barbatus and the Ringed Seal, Phoca (pusa) hispida; John J. Burns ADF&G. $106,041 in FY 76.

10. An Aerial Census of Spotted Seals, Phoca vitulina largha; John J. Burns, ADF&G. $17,997 in FY 76.

11. Trophic Relationships Among Ice Inhabiting Phocid Seals; John J. Burns, ADF&G. $60,041 in FY 76.

12. Assessment of the Distribution and Abundance of Sea Otters long Kenai Peninsula, Kamishak Bay and the Kodiak Archipelago; Karl Schneider, ADF&G. $11,075 in FY 76.

13. Distribution and Abundance of Sea Otters in Southwestern Bristol Bay; Karl Schneider, ADF&G. $9,980 in FY 76.

14. Population Assessment, Ecology and Trophic Relationships of Steller Sea Lions in the Gulf of Alaska; Karl Schneider and Kenneth Pitcher, ADF&G. $157,100 in FY 76.

15. The Relationships of Marine Mammal Distributions, Densities and Activities to Sea Ice Conditions; John J. Burns, Francis H. Fay and Lewis H. Shapiro, ADF&G. $109,568 in FY 76.

16. A Survey of Cetaceans of Prince William Sound and Adjacent Vicinity their Numbers and Seasonal Movements; John D. Hall, $26,745.

International Activities

The international marine mammal program is an integral part of the Service's overall program. The Service continues its efforts to achieve the objectives of the Marine Mammal Protection Act through international cooperation. The following details the principal thrust of the international program during this past year.

U.S.-U.S.S.R. Marine Mammal Project, Environmental Protection Agreement

The international marine mammal project is to develop collaborative research on the biology, ecology, and population dynamics of marine mammals of mutual interest to both nations. This project will contribute toward sound management and conservation of these mammals.

A project meeting was held in Leningrad, U.S.S.R., on June 2-12, 1975. Principal accomplishments were: final agreement for coordinated aerial surveys of walrus and bowhead whales in the Bering and Chukchi Seas in the fall of 1975; final agreement for participation of at least two and possibly four U.S. scientists in the spring of 1976, walrus-ice seal cruise in the Bering Sea (final arrangements were concluded in January 1976, with three U.S. scientists participating in the ice edge studies aboard the Soviet vessel "ZAGORIANI" from mid-March to early May 1976), and agreement to hold the walrus-ice seal biology meeting in January 1976 in Moscow.

The special conference on Walrus and Ice Seal Biology convened by the U.S.-U.S.S.R. Marine Mammal Project was held in Moscow, U.S.S.R., January 12-20, 1976.

The Protocol summarized the direction of a long range research plan for walrus and ice seals. The Protocol calls for increased emphasis on studies at the community and ecosystem levels, evaluation of current aerial survey techniques, and development of joint studies in Alaska

and the Chukotka region of Siberia. Special attention was drawn to the Bering Strait region as an important location for studying migratory species.

The need for a conservation convention on walrus and ice seals was discussed at length. The Soviets pointed out that national protective measures by both nations during the past decade had reversed the declining population trends of walrus and ribbon seals and that the populations of all five species dealt with were either increasing or already high and stable. The United States discussed the need for international management of these pinniped species, particularly in view of potential environmental degradation. The Soviets wanted additional time to consider the issues involved. Therefore, it was agreed that the question would be reconsidered at the next project meeting.

Food and Agriculture Organization (FAO)

The Advisory Committee on Marine Resources Research (ACMRR) is a working party on marine mammals to examine available data on the status of all marine mammals. All four groups of experts--Group I (Large Whales), Group II (Small Cetaceans and Sirenians), Group III (Pinnipeds and Sea Otters), and Group IV (Ecological Aspects)--have met, and reports are in varying stages of completion. Reports of the first three groups will describe (1) the status of marine mammal populations

and (2) research priorities in each of the three marine mammal groupings. Research priorities are designed to provide information needed for proper conservation of all species. Review of the status of marine mammal populations was conducted through specifically prepared scientific papers which are part of the reports of the first three groups.

The Scientific Consultation on the Conservation and Management of Marine Mammals and Their Environment to be held in Bergen, Norway, August 31 to September 9, 1976, is the final step in ACMRR's responsibility to provide an objective report on status of marine mammals to FAO. The Consultation will be attended by a large number of scientists from around the world. These scientists will critically review and discuss the reports of Groups I, II, and III on status of all species. Other major discussions of the Consultation will involve consideration of the ecological relationships of marine mammals. Research proposals concerning marine mammals will be reviewed and assembled into a single worldwide program. The final report and recommendations of the Consultation will be published.

Part II - Species Status Report

Introduction

Status reports have been prepared for the seven species which are the responsibility of the Secretary of the Interior under the terms of the Act. Information about each species is summarized under seven major headings. They are: distribution and migration; abundance and trends; general biology; ecological problems; allocation problems; regulations; and current research. A partial bibliography is listed at the end of this part.

The Act defines a marine mammal as "any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or (B) primarily inhabits the marine environment (such as polar bears); and for the purpose of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin."

Species List

Carnivora

Ursidae

Ursus maritimus (Polar Bear)

Mustelidae

Enhydra lutris (Sea Otter)

Lontra felina (Marine Otter)

Pinnipedia

Odobenidae

Odobenus rosmarus divergens (Pacific Walrus)

Odobenus rosmarus rosmarus (Atlantic Walrus)

Sirenia

Trichechidae

Trichechus manatus (West Indian Manatee)

Trichechus senegalensis (African Manatee)

Trichechus inunguis (Amazonian Manatee)

Dugong dugon (Dugong)

POLAR BEAR

(*Ursus maritimus*)

Distribution and Migration: Polar bears occur only in the northern hemisphere, nearly always in association with Arctic sea ice. Centers for six geographically isolated polar bear populations identified in the main polar basin are Wrangel Island-western Alaska, northern Alaska, northern Canada, Greenland, Spitsbergen-Franz Josef Land, and central Siberia. Separate populations also occur further south in Hudson Bay in Canada.

Bears are most abundant near the southern edge of the sea ice but do occur throughout most of the polar basin and have been recorded as far north as 88° N. latitude. They make extensive north-south movements related to the seasonal position of the southern edge of the ice. In winter, bears off Alaska commonly occur as far south as Bering Strait and occasionally reach St. Lawrence Island and even St. Matthew Island in the Bering Sea. In the summer, north of Alaska, the edge of the ice pack and bears commonly occur between 71° and 72° N. latitude. Pregnant females concentrate for winter denning and bearing young on large offshore Russian islands, northern Canadian islands, and certain of the Spitsbergen islands.

Abundance, Trends, and Harvest: Total world population estimates, which range from a low of 10,000 by the Soviets to a high of 20,000 by the Norwegians, are based on broad assumptions and should be considered as very general. Abundance of bears off the Alaska coast and the magnitude of sustained long-term harvests suggest that the 20,000 figure may be low.

During the 1930's, 1940's, and 1950's, Alaska Natives harvested about 120 bears annually. Trophy hunting with use of aircraft developed in the 1950's, and the average annual kill gradually increased to 250 for 1961-72. The number of bears reported per hour of flying by Alaska hunting guides did not show a trend during 1956-69, the period when guides provided reliable data. Sex composition for 1961-72 when 87 percent of the bears were taken with the use of aircraft was 70-80 percent males. Selective hunting with use of aircraft reduced the percentage of mature males in the population. A high percentage of females with young in the population indicated a healthy rate of reproduction however. Age composition of bears harvested west of Alaska during the aircraft hunting era did not show a trend. Age composition of bears harvested north of Alaska declined in 1970 and 1971 and then increased in 1972, reflecting high harvests in 1966 and 1967, followed by hunting restrictions and reductions in harvest after 1967. Approximate harvests after passage of the Marine Mammal Protection Act of 1972, which permits hunting only by Natives for subsistence or as a source of material for traditional articles of Native handicraft or clothing, were 7 in 1973, 50 in 1974, 60 in 1975, and 150-160 in 1976.

The higher harvest in 1976 is largely the result of heavy ice conditions making more bears available to Eskimos on St. Lawrence Island and in villages along the northwest coast.

Russians believe that polar bear populations in the Soviet Arctic declined during the first half of this century and have now stabilized since hunting was stopped in 1956 and harvests limited to 10-15 cubs per year for zoos. There is a 5-year moratorium by the Norwegian government on the hunting of bears in Spitsbergen, where formerly about 300 were taken each year. The annual harvest in Canada is about 600 and in Greenland is 125-150. Thus the annual world harvest is now about 900.

General Biology: Polar bears other than family groups of females and young are solitary most of the year. During the breeding season in late March, April, and May, males actively seek out females by following their tracks on the sea ice. Bears are polygamous, and a male remains with a female a relatively short time and then seeks another female. Delayed implantation probably occurs.

Pregnant females seek out denning areas in October and November. Known denning concentration areas occur on Russian, Canadian, and Spitsbergen islands. Bears den along sections of the Greenland coast and the north Alaska coast. Some denning occurs on heavy pack ice north of Alaska. Bears most commonly den under banks along the coast or rivers, or on slopes where snow drifts. A denning female commonly forms a depression

in the snow and then enlarges a denning chamber as snow drifts over her. Young, weighing less than a kilogram, are born in December. A litter of two is the most common, one is quite common, and three is rare. The female and cubs break out of the den in late March or early April when cubs weigh about 7 kilograms. They make short trips to and from the opened den for several days as the cubs become acclimated to outside temperatures. If the den is on land the family group then travels to the sea ice. In most sections of the Arctic, young remain with the mother until they are about 28 months old.

Age at which females produce their first litter ranges from 4 to 8 years. Some females breed again at about the time they separate from their young so can produce litters every third year. Other females have longer intervals between litters. Males can first breed when 4 years old. Most bears do not live beyond 25 years. Mature females off the Alaskan coast weigh 200 to 300 kilograms and mature males 300 to 600 kilograms. Animals west of Alaska are larger than animals north of Alaska. Polar bears feed primarily on ringed seals and also on bearded, harp, and bladdernose seals. They occasionally eat carrion, including whale, walrus, and seal carcasses, and small mammals, birds, eggs, and vegetation when other food is not available. Approximately 60 percent of Alaskan bears harbor Trichinella spiralis, apparently obtained from eating seals and other marine mammals, garbage, and possibly carcasses of other bears. Polar bear liver is toxic if eaten because of high vitamin A content.

Ecological Problems: Long term climatic trends probably have a major impact on bear populations. Warming trends restrict areas that are suitable for denning and feeding, and cooling trends favor expansion of populations. Ice movement, especially in the fall when females are seeking maternal den sites, may also affect populations. Females may be forced to bear young in locations less favorable for denning when ice providing access to favorable denning sites forms late in the season. Years of light snow, or wind conditions which prevent formation of deep snow drifts, may also affect denning success, both for polar bears and ringed seals, one of their principal foods. Because of this dependency on ringed seals, any ecological change affecting seals could also affect bears.

Human development, especially that associated with oil and gas extraction, poses the greatest immediate threat to polar bears. Oil exploration and drilling in denning areas could cause bears to den in less suitable areas. Oil spills from offshore drilling or transporting of oil through ice covered waters could reduce insulating value of bears' fur and adversely affect the food chain below them. Ice would hinder or prevent containing of a spill, and currents could distribute oil over large areas.

Recent studies indicate that a significant number of bears have traditionally denned and produced young along Alaska's north coast. Increased human activity will perhaps cause fewer bears to come ashore to den and therefore den in less favorable sea ice sites, or cause animals to desert land dens earlier than normal when cubs would be less able to survive. Areas where oil and gas development may be having an

impact now or could impact in the future include Naval Petroleum Reserve No. 4, the Arctic National Wildlife Range, State coastal and nearshore oil and gas lease lands, Federal Outer Continental Shelf oil and gas lease lands, and lands eligible for selection under terms of the Alaska Native Claims Settlement Act. Thus there is potential for development along the entire north Alaska coast from Pt. Hope to the Canadian border.

Mercury and low levels of DDT and PCB's have been found in tissue samples of all Alaskan bears checked for these contaminants.

Allocation Problems: In the United States, the polar bear evokes varied and often emotional feelings about its management and use, ranging from complete protection, to limited harvest for subsistence, to maximum sustained harvest primarily by trophy hunters. At present, non-Native residents of the arctic coast believe they are being discriminated against because only Natives are allowed to hunt. New conflicts will arise as development proceeds in the arctic and causes more direct encounters between bears and people and more disturbance to bears during critical stages in their life history.

The U.S.S.R. believes that bear stocks off the Siberian coast have been reduced, and restricts taking to a few cubs for zoos. Until recent years, Norwegian sealers killed bears as predators, Spitsbergen trappers used baited set guns to obtain hides to sell, and trophy hunters took bears from Norwegian boats in the summer. The present feeling in Norway is that these uses should no longer be permitted. In Greenland the harvest is limited to Eskimos or long term residents primarily for subsistence and personal use of skins. The Canadian harvest has traditionally been by Eskimos for subsistence and to obtain skins for sale.

Trophy hunting from the ground, although encouraged by managing agencies in part of Canada, has not developed to any great extent because Natives, who trophy hunters must employ as guides, can realize more profit from selling skins than from guiding.

Regulations: Past management practices in Alaska have included seasons, bag limits, a permit system, limit on the number of hunts individual guides could participate in, and protection for females with young and young. Two management areas were established, one to the west of Alaska and one to the north of Alaska. Residents were allowed to hunt bears at any time for food provided aircraft were not used. Hides and skulls of all bears taken had to be presented to the Alaska Department of Fish and Game within 30 days for examination, sealing, and removal of a tooth for age determination. The State of Alaska banned the use of aircraft for hunting polar bears after July 1, 1972, and lengthened the season to encourage sport hunting from the ground.

The Federal Marine Mammal Protection Act of 1972 transferred management authority for polar bears to the Federal government and limited the harvest to Alaskan coastal Eskimos for subsistence or for manufacture of traditional Native articles of clothing or handicraft. The Marine Mammal Act removed restrictions on harvest of females with young and their young by Natives. A request by the State of Alaska for return of management authority for polar bears and certain other marine mammals as provided for in the Marine Mammal Act is under review, part of which will be public hearings the summer of 1976. The management plan proposed by the State of Alaska would provide for both recreational and subsistence

hunting. The open season for both types of hunting would extend from 1 January through 31 May. Hunting with use of aircraft would be specifically prohibited. The closed season during the summer would preclude use of boats. The bag limit for recreational hunting would be one bear every 4 years by permit only. Residents utilizing bears for food could take one bear each year without a permit. Young and females accompanied by young would be protected.

The U.S.S. R. has not allowed polar bear hunting since 1956. Norway stopped set gun and trophy hunting in 1971 and enacted a 5-year moratorium in 1973 on all harvesting because of a change of attitude in Norway and because studies indicated the bear population was smaller than previously believed. In Greenland only Eskimos or long term residents may take bears and must use traditional ground methods of hunting. In Canada, prior to 1968, Eskimos hunting from the ground took bears with few restrictions. Since then, harvests have been regulated by establishment of hunting districts with quotas. In certain districts, trophy hunters may purchase a permit to take a bear from its quota provided a Native resident is used as a guide. In November 1973 the five polar bear nations -- Canada, Denmark, Norway, Russia, and United States -- drafted an Agreement on Conservation of Polar Bears to allow bears to be taken only in areas where they have been taken by traditional means in the past, and to prohibit use of aircraft and large motorized vessels as an aid in taking. The agreement also calls for both national research and cooperative international research and management, especially on populations occurring on the high seas or within more than one national

jurisdiction; provides protection for ecosystems of which polar bears are a part; by resolution seeks special protection from hunting for denning females, females with cubs, and cubs; and by resolution asks for an international system of hide identification to better control traffic in hides.

Current Research Effort: The governments of Canada, Denmark, Norway, Russia, and the United States are conducting intensive long term investigations. In most countries shorter term projects funded by universities and grants complement government programs. Research programs are coordinated internationally by the Polar Bear Specialist Group under the auspices of the International Union for the Conservation of Nature.

SEA OTTER

(*Enhydra lutris*)

Distribution and Migration: Populations in waters of the United States are resident (the sea otter is not migratory) along the west coast of North America from central California north to Prince William Sound and westward along the Aleutian Chain to the Commander Islands, along the southern Kamchatka Peninsula, and among the Kuril Islands. The sea otter seldom ranges offshore beyond the 30-fathom (180 feet) depth curve.

Abundance and Trends: Since sea otters were completely protected early in the 20th century, they have increased and become reestablished in a substantial portion of their historic range. In the late 19th century sea otter populations had been reduced by the fur trade to a few hundred animals at widely scattered locations. In 1973 Alaska Department of Fish and Game published estimates of sea otters in each Game Management unit. The total of these estimates are 101,050 to 121,050 otters. From recent surveys the sea otter population in California was estimated to be about 1,600 to 1,800 animals and ranged from Ano Nuevo Island north of Santa Cruz to beyond Point Buchon on the south.

During the period 1965 to 1972 sea otters from Amchitka Island and Prince William Sound were translocated to Southeastern Alaska, British Colombia, Washington, Oregon, and the Pribilof Islands. Among translocated otters, young have been observed in Southeastern Alaska, British Colombia, Washington, and Oregon. Recent surveys of these areas indicate a thriving population of more than 500 animals north of Sitka in Southeast Alaska but the number at other sites remain low--from about 10 to 60 animals--and the success of translocation remains questionable.

General Biology: The sea otter is the largest member of the family Mustelidae, reaching a length of 148 cm and a weight of 45.5 kg. It becomes sexually mature at about 4 years of age and bears a single young, weighing approximately 2.3 kg, about every 2 years. The pup nurses for 10 to 12 months, but during this period often takes solid food gathered by the mother. The mother is very attentive to her young. Most of the young are born during the summer, but births and mating may occur at any season. Breeding behavior is promiscuous; mating male and female remain together for as long as 3 days. The dense underfur is about 1 inch long; the guard hairs are about 0.25 inch longer. A healthy animal may accumulate considerable body fat but there is no layer of blubber. The sea otter is, therefore, dependent for insulation from cool (35° to 50° F) marine waters on the air blanket retained among the dense underfur fibers.

Mortality at Amchitka Island (the only area studied intensively) is greatest in winter and early spring. A dense population there depleted food organisms, and starvation occurred during stormy weather. Young animals accounted for 70 percent of the mortality. The remaining 30 percent were predominantly animals showing signs of old age. Most of the dead animals exhibited signs of starvation and enteritis. Internal parasites include Trematoda (4 spp.). Cestoda (2 spp.), Nematoda (1 sp.) and Acanthocephala (5 or possibly 6 spp.).

Ecological Problems: Human activities which are changing the environment will no doubt affect sea otters. Oil pollution of waters occupied by sea otters probably would be fatal to them. Pesticide residues have been found in California sea otters but the effect is unknown.

Allocation Problems: There is conflict over management of the sea otter population off the coast of California. Because sea otters reduce the abundance of prey species, some of which are desired by humans, commercial and sport users of these resources prefer that the abundance and range of sea otters be limited. Preservation groups would like sea otters reestablished throughout their historic range.

There is no commercial or subsistence harvest of sea otters at present.

Regulations: The sea otter is protected by the Marine Mammal Protection Act of 1972 (PL 92-522). In California it is listed as a completely protected animal.

Current Research and Funding: The U. S. Fish and Wildlife Service employs two full time biologists on sea otter studies. The States of Alaska and California no longer employ biologists full time on sea otter studies but do carry out censuses. The Owings Foundation, privately endowed, employs a full time sea otter naturalist. Additional research is supported by the Marine Mammal Commission.

PACIFIC WALRUS

(*Odobenus rosmarus divergens*)

Distribution and Migration: The entire population spends winters in the seasonal pack ice of the Bering Sea where they are distributed from eastern Bristol Bay to the area south and west of St. Lawrence Island. Traditionally walruses concentrate southwest of St. Lawrence Island and in central Bristol Bay although the exact distribution may vary upon the extent and quality of sea ice. The majority of breeding females apparently occur in the northwestern Bering Sea, although pregnant females have been observed in Bristol Bay.

The northward migration begins in April; the exact timing of migration probably is heavily dependent upon the pattern of sea ice recession which may vary greatly from year to year. At least 5,000 males presently remain on or near Round Island in northern Bristol Bay. This number has increased by 2,000 to 3,000 over the past several decades. During the southern migration, walruses frequently haul out to rest at Big Diomede and Punuk Islands, and along the Soviet coastline, until the pack ice becomes accessible. During the fall of 1975, biologists from the Soviet Union located 9 such coastal haulout areas between the north coast of Chukhotka and Cape Olyutorski.

Following the northward migration into the Arctic Ocean, walruses disperse along the ice edge from about Pt. Barrow west to the Kolyma

River in the east Siberian Sea. Apparently the routes of migration and summer distribution vary considerably among years, depending upon seasonal ice conditions.

Abundance and Trends: The Pacific walrus population has increased during the past several decades following a decline in abundance caused by over-exploitation. The population may have numbered as few as 40,000 to 50,000 by about 1950. Aerial surveys of walruses were begun in 1960, the most recent survey being a coordirated effort between the United States and the Soviet Union. Over 96,000 walruses were counted at coastal hauling areas along the Soviet coastline and another 30,000 to 40,000 were estimated to occur along the ice edge west of the International Date Line. Another 75,000 were estimated to occur east of the Date Line. However these estimates, are at best, very crude.

The take of walruses by the Soviet Union in 1975 was 1,265 animals. The number killed or wounded but lost is not included. The harvest cannot exceed 2,000, the present annual quota. The hunter take of walruses in Alaska in 1975 presently is not available.

Union

General Biology: Only one group of pinnipeds, the elephant seals, is larger than the Pacific walrus. Adult males weigh an average of about 1,160 kg with a mean standard length of about 316 cm. Adult females weigh an average of about 900 kg with a mean standard length of 270 cm. From a sample of new born young the maximum weightwas 77 kg and the maximum length 137 cm.

The first ovulation of females usually occurs between 5 and 8 years of age. Males become fertile at 7 to 8 years but are not physically mature until they are at least 10 years old. The walrus is polygamous, in what is apparently the main breeding area (southwest of St. Lawrence Island). The gestation period is about 15 months, including approximately a 3 month period of delayed implantation. The young are usually born in May, during the spring migration northward. The females and young are very gregarious; males are gregarious outside the breeding season. Walruses often attain ages of 30 years or more.

Walruses are not buoyant, and must rest on ice or land at fairly frequent intervals. However, by means of pharyngeal pouches that may be inflated, walruses are able to sleep while floating upright at sea for short periods of time.

Clams are the most important food species. The stomach of one adult male contained 50 pounds of Mya truncata siphons and 35 pounds of Clinocarduim nuttalli feet. Other food includes echinoderms, annelids, coelenterates, sepunculids, echiurods, priapulids, arthropods, and tunicates. Occasionally, adult males may eat the flesh of other pinnipeds or cetaceans. The walrus diet appears to be seasonally variable.

Internal parasites recorded from walruses include the following: Trematoda (3 spp.), Cestoda (3 spp.), Nematods (6 spp.), and Acanthocephala 4 spp.). All walruses except calves are infested with external parasites,

including three species of sucking lice. A small percentage of adult male walruses become carnivorous and feed on seal flesh. Probably it is this abnormal feeding behavior that accounts for trichinosis infection of from 1 to 10 percent of over 1,000 male walruses sampled from four arctic regions. Incidence of uterine cysts and other disease conditions is low, as far as is known, and such diseases and abnormalities appear to be unimportant.

Ecological Problems: Petroleum will undoubtedly be exploited from the Bering Sea and Arctic Ocean. The effect of this activity on walruses or other requisite resources is unknown. The extensive benthic food resources of the walrus are not yet subject to human exploitation. Such human activities could be competitive with walruses. However, the relationship between walruses and the benthic community are virtually unknown. Also of concern is the harassment of walruses when they are hauled out in summer on the Walrus Island State Game Sanctuary (Togiak Bay), Bristol Bay. During summer of 1975 Alaska Department of Fish and Game maintained a protection agent at Round Island.

Allocation Problems: Siberian and Alaskan natives kill 5,000 to 6,000 walruses annually for subsistence. None were taken during 1975 for display. Loss of walruses during hunting is about 40 to 50 percent.

Additional waste occurs in the utilization of the products of retrieved walruses. If ivory is the primary objective, utilization amounts to as

little as 1 to 3 percent of the potential. When meat and hides are used, utilization is as high as 90 percent of the carcasses taken. During recent years, ivory hunting has become an increasingly important problem. Regulations: During 1975, management of Pacific walruses was returned to the State of Alaska. Current regulations restrict the take of females although this restriction was not in affect during the spring hunting season of 1975.

Current Research: The U.S. Fish and Wildlife Service has an ongoing research program on Pacific walruses. Investigators from the University of Alaska and Johns Hopkins University are currently studying walruses under funded grants from several agencies. The Alaska Department of Fish and Game will maintain observers during the hunting seasons at coastal villages of Alaska to monitor the kill and to collect information on the population.

ATLANTIC WALRUS

(*Odobenus rosmarus rosmarus*)

Distribution and Migration : Walruses are circumpolar in distribution. In the north Atlantic area, a small population occurs along the east coast of Greenland, Spitsbergen-Franz Josef Land, and east to the Barents and Kara Seas. A larger, geographically isolated population, occurs in the eastern Canadian Arctic and western Greenland. Presently, walruses are rarely found along the coast of North America south of Labrador. Scattered groups are located in Angava Bay and on the southeast coast of Baffin Island. In Hudson Bay, the main population is found around Coats Island, southern Southhampton Island, and northern Foxe Basin. North of Baffin Island, walruses are scattered northeast from Kane Basin between Ellesmere Island and Greenland and west to Melville Island. Along the west coast of Greenland, the principal population is located in the Thule area. There is no evidence of extensive migration, except in the west Greenland area. This situation contrasts sharply with the strongly migratory Pacific walrus.

Abundance and Trends: Only the status of the population around Southhampton Island is well known. This population was estimated by the Fisheries Research Board of Canada and the Canadian Wildlife Service to be about 3,000 animals in 1947. An aerial survey

in 1961 indicated a similar status at that time. The population in Foxe Basin appears to be larger, although no reliable estimate is available. Little is known of the status of walruses in other areas of the eastern Canadian arctic. They are relatively inaccessible and remain unaffected from predation by man. In western Greenland, the population has apparently declined considerably since the early 1940's because of human encroachment and predation. Catches in this area have declined from around 600 per year to 19 in 1967. No subsequent data from this area are available. This decline was apparently the result of Norwegian hunting which was prohibited by law in 1952. The status of the population in the Thule area is less well understood, although hunting activities there apparently are not affecting adversely that population.

General Biology: The Atlantic walrus is generally smaller than the Pacific subspecies. Calves average 122 cm and weigh about 67 kg at birth. Adult females have an average length of about 260 cm and an average weight of about 570 kg, while males attain an average length of 305 cm and an average weight of about 910 kg. Seldom do the tusk lengths exceed 36 cm for males and 25 cm for females. Adult males may be distinguished from females by cutaneous tubercles of the head and neck, a broader muzzle, and more powerful muscles of the neck and shoulders.

Reproductive biology of the Atlantic walrus is not well understood. During most of the year, herds of adult males are spatially segregated from the herds of adult females with calves and immatures. Females apparently reach sexual maturity at about 4 years and males at about 6 years, although neither may become reproductively active until several years later. The gestation period lasts about 15 months with births occuring over a two month period with a peak in mid-May.

Ecological Problems: Disturbance to the benthic food resources may affect the Atlantic walrus although limiting resources and relationships between walruses and the benthic community are virtually unknown. The results of recent exploration for oil and gas indicate that greatly increased human activity associated with the development of this resource may occur in northeastern Hudson Bay. The effect of these activities on walruses or their requisite resources is unknown.

Allocation Problems: In Canada the most successful hunting occurs in autumn from "Peterhead" boats in shallow bays along the coast where walruses are hauled out on land. Few wounded animals escape during these operations. Much hunting occurs from canoes and whaleboats amongst the loose ice in spring and summer. Losses are estimated to be as high as 30 percent during this time, and many wounded animals escape the hunters. Some of the meat is

consumed by humans. Much of the meat, skin, guts, and blubber is used as dog food. An ivory trade is maintained with the Hudson's Bay Company and much is sold privately.

Regulations: Canada established regulations in 1928 which limited the killing of walruses to Eskimos for food and clothing. These regulations have since been amended several times, but have not been changed in their main intent. Walrus hunting regulations were established in Greenland in 1957. These limit hunting to Danish citizens resident in Greenland. From 1 June to 1 January all hunting of males in the West Ice is forbidden, and from 1 April to 1 January no females and calves may be taken in the same area. Hunting from land is also forbidden in certain areas at certain times.

Current Research: No field studies of the Atlantic walrus have been carried out since 1961.

WEST INDIAN MANATEE

Trichechus manatus

Distribution and Migration: *T. manatus* inhabits rivers, estuaries, and coastal areas of the tropical and sub-tropical regions of the New World Atlantic (Fig. I). It is commonly found from northern Florida in the U.S. to the northern coast of Brazil, in South America. Manatees are seasonally present in Georgia, and rarely in South and North Carolina, with occasional stragglers historically reported as far north as Old Orchard, New Jersey (40°N.) (Fig. I), and as far south as Esprito Santo, Brazil (20°S.).

Within the U.S., the year-round range of *T. manatus* is largely confined to peninsular Florida, but varies seasonally (Fig. II), with most manatees grouped near sources of warm water during the winter. Along the west coast, they congregate in a series of populations located near Crystal River and adjacent rivers in Citrus County, in east Tampa Bay, in the Caloosahatchee River and along the extreme southwest coast from Naples to the Everglades National Park. On the east coast, large populations congregate at Merritt Island, in Lake Worth and in Port Everglades, while smaller groupings are found in the upper reaches and near the mouth of the St. John's River, and at several points along the coast. One group of at least 50 manatees is essentially landlocked in the Miami canal system in southeast Florida. In one survey, 37% of the manatees were in salt water, while 45% were in brackish and 17% were in fresh water.

Manatees in Florida apparently cannot withstand cold winter temperatures. Warm water springs or localities where factories discharge heated water into the rivers are the focus of most winter congregations. Except in

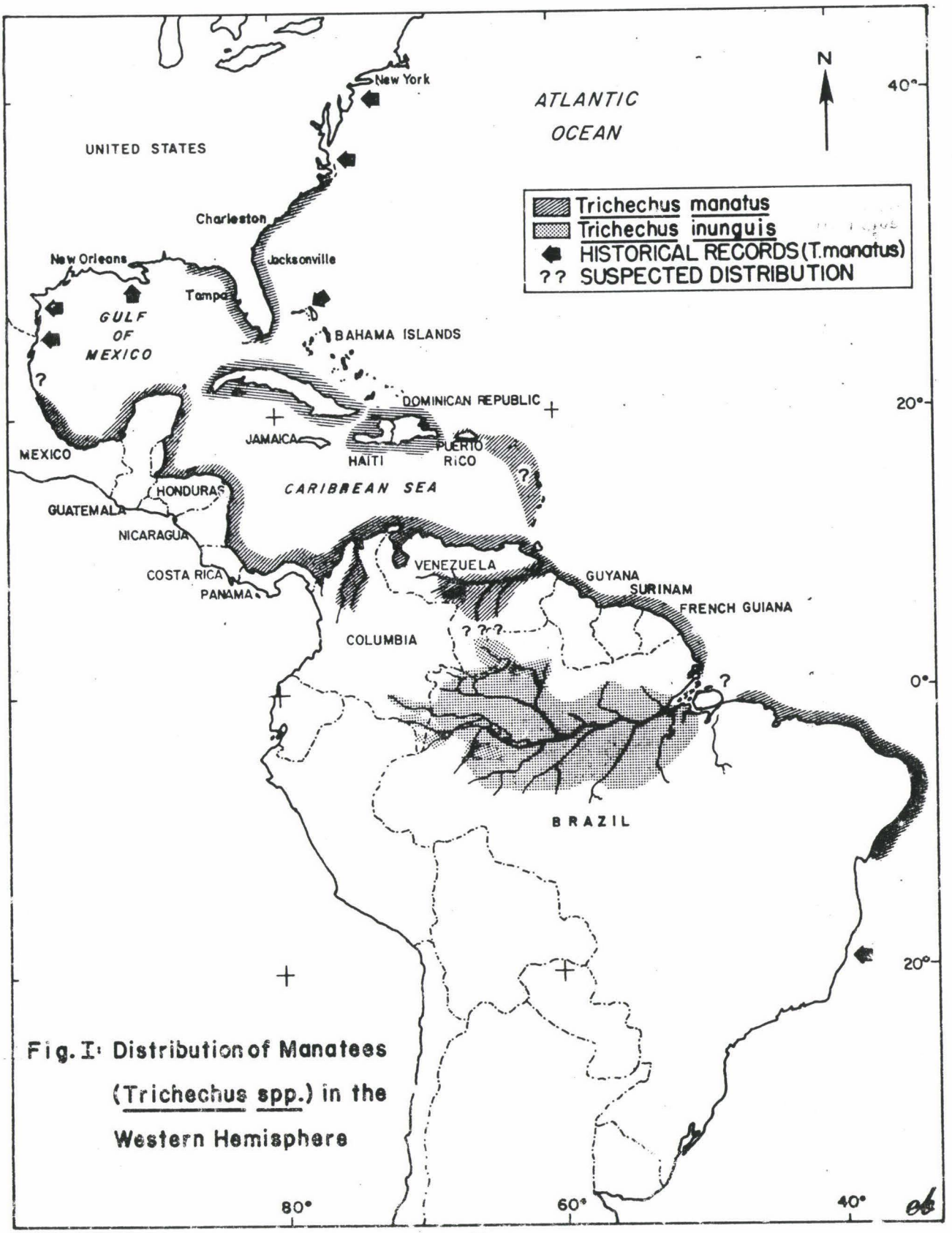

Fig. I: Distribution of Manatees (Trichechus spp.) in the Western Hemisphere

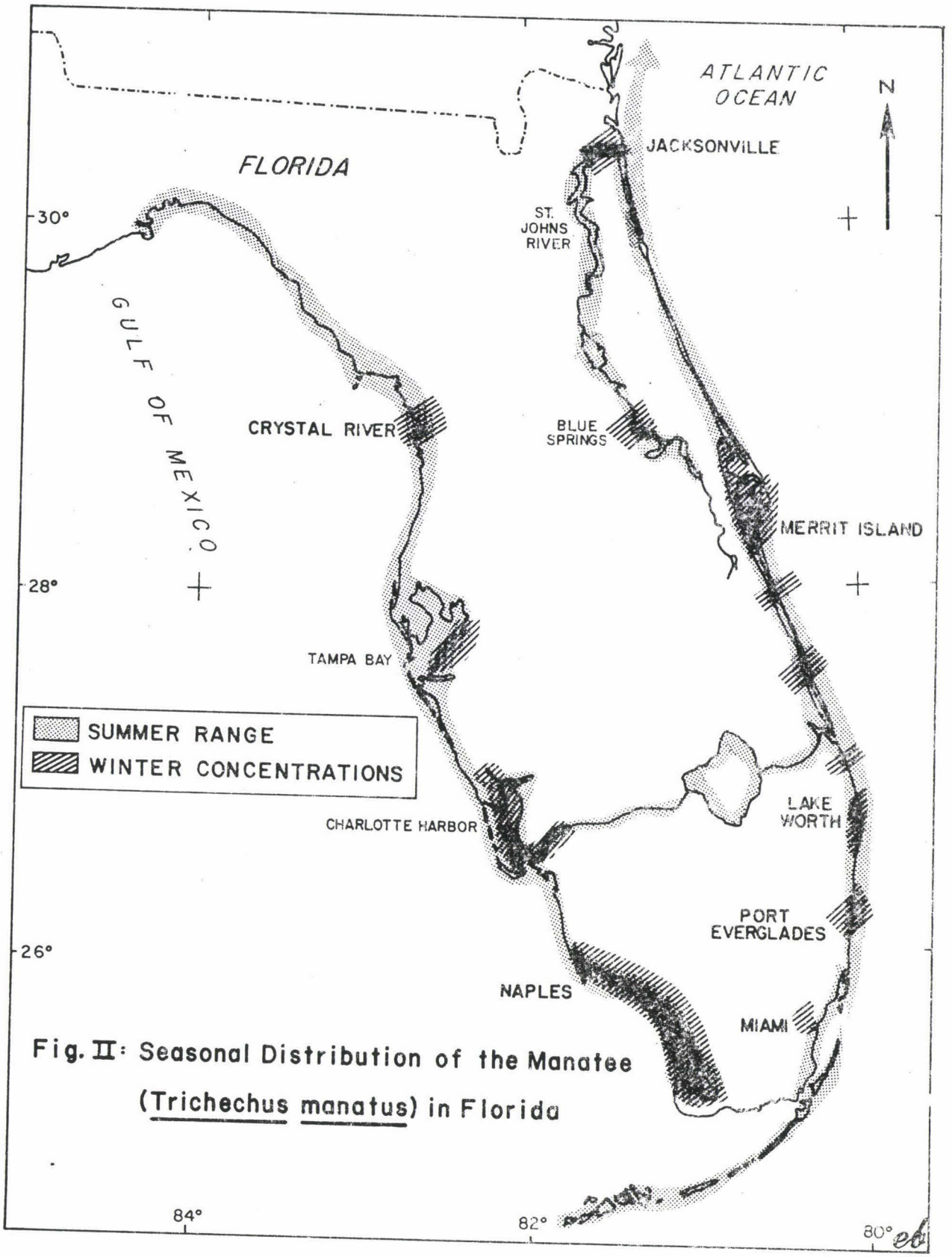

Fig. II: Seasonal Distribution of the Manatee (Trichechus manatus) in Florida

extreme southwest Florida and the landlocked manatees in Miami, most manatees were within 5 km. of a warm water source during a 1976 cold weather aerial survey. There are more than twenty-five such warm water refugia used by manatees on the Atlantic and Gulf coasts. Arrival at these congregating sites usually begins in November; many animals remain nearby for the winter, but there is continuous movement and probably exchange of old and new members of the congregations during warm periods.

As the water warms with spring, the congregations disperse throughout Florida into most accessible water more than one meter deep. Some move north into Georgia and beyond, while others go west along the Florida Panhandle, generally no farther than the Aucilla and Port St. Joe Rivers, although single sightings from Pensacola, Florida and Lake Pontchartrain, Louisiana were reported in 1975-76. Summer observations of manatees at northern Florida and south Georgia localities are common, whereas the animals are absent during the winter, thus strongly suggesting northerly movements in spring and a southward migration to avoid the cold in the fall. One manatee with large salt water barnacles arrived at Blue Spring, 170 km. up (south) the St. John's River in winter 1975. Offshore movements may also occur.

In Mexico, occasional manatees are thought to range along the Gulf Coast nearly to the U.S. border, but they are more commonly found south of Tamulipas or Veracruz, within the Bay of Campeche and on both sides of the Yucatan Peninsula. Distribution appears to be continuous along the coast from Belize to Costa Rica, including Lake Isabella of Guatemala. Only isolated populations remain in Panama, and are located in Chiriqui Bay, the Changuinola River, Gatun Lake, the Sicaola River, and possibly

the Cocle River. Manatees may be found along the eastern coast of Colombia and in the Atrato, Leon, Suriqui, Meta Rivers and the Magdalena River and tributaries. T. manatus frequents the lower Orinoco drainage of Venezuela including its tributaries, the Apure, Arauca, Payara, Capanaparo, and the Claro, as well as Lake Maracaibo. In Guyana and Surinam, manatees are found primarily in the rivers of the coastal plain. In Brazil, manatees range along the coast as far south as Mangue Seca (12°S.), but may not be continuous along the north coast due to unsuitable habitat.

Manatees are found throughout the Caribbean Sea, usually in small numbers, in coastal regions near rivers and away from population centers. They are distributed along both coasts of Cuba and are seen most frequently at the Hatiguanico River in the Zapata Swamp, and in the Ensenada de la Bara. In Jamaica, manatees are most frequently found in the Black River area in the southwest, and Portland Point area of the south central coast. The Dominican Republic distribution is nearly continuous along the north coast with concentrations occurring around Monte Criste, on the north side of the Samana Peninsula, on the south and eastern shores of Bahia de Samana, around the Tres Hermanas Springs area near the southeast tip of the island, and in the southwest from Azua to the Perdenales Peninsula. Nothing is known of manatees in Haiti, but at least some animals probably interchange with those from the Dominican Republic. Little is known of manatees in Puerto Rico, but isolated groups have been located on the south coast near Guanica, Guayanilla, La Parguerra, Jobas Bay and at Roosevelt Roads Naval Base on the east coast and Guanajibo on the west coast. One sighting has recently been reported from Trinidad.

Abundance and Trends: Aerial surveys of Florida coasts and rivers during 1972-76 and interview data in 1975-76 indicate a manatee population numbering between perhaps 1,000 and 2,000. Over 740 manatees were counted in a concentrated aerial survey in late January 1976, but the percentage of the population not observed is not known. Numbers have been reported to be increasing along the west coast of Florida and similarly increasing or stable along the Atlantic coast.

Manatee numbers in Mexico are markedly reduced and reports are rare; however, their current local status appears to be stable. Likewise, populations in Belize seem to be decreased but stable. Manatees are reported to be fast decreasing in Guatemala, but are still present at least in Lago Isabela. Present status in Honduras is unknown, and estimates for Nicaragua range from a few score to several hundred. Numbers are believed to be low in Panama and Costa Rica.

Manatees are currently decreasing in many Colombian rivers and are extremely rare in the Santa Marta District and in the Llanos of eastern Colombia. They have been extirpated from Taganga Bay, the Canal de Dique, and the Cienaga de Guajaro. In Venezuela, manatees are considered neither abundant nor rare in the lower Orinoco Basin. Estimates of some thousands but not tens of thousands of manatees have been made for Guyana, but populations are reportedly reduced for both Guyana and Surinam.

In the Caribbean, manatees are uncommon to rare in most areas, and are thought to be declining in many locales.

It can be generally concluded that hunting pressures in the Caribbean, Mexico, Central and South America have resulted in the present diminished

manatee populations. In most cases, hunting is now on a subsistence basis and little commercial exploitation occurs. Hunting efforts have decreased somewhat in many areas, partially due to the scarcity of manatees, permitting remaining populations to stabilize.

General Biology: The West Indian Manatee is large, fusiform in shape, and thick-skinned with little hair. The forelimbs are modified paddles with rudimentary nails, and the spatulate tail is horizontally flattened. Adults range in size from 2.5 to over 4.5 m. in length and corresponding weights vary from 200 to 600 kg. However, average adults are between 3 and 4 m. in length and weigh less than 500 kg. Sexual dimorphism in size has not been documented.

Breeding occurs throughout the year. The cow is polyandrous, allowing several bulls to copulate with her during her relatively short period of receptivity. Mating has been observed in water about 2.5 m. in depth as well as in shallows less than 1 m. deep. Most calves are born between December - June, with a majority born in the spring. The gestation period is probably about 385 to 400 days and parturition is thought to occur in secluded shallows. Successful breeding has occurred under captive conditions only once but full documentation of the event is lacking. One is the usual number of young; however, twins and a case of foster parenthood have been recorded. Newborn calves usually measure over 1 m. in length and weigh between 11 and 27 kg. Suckling from the pectoral teats occurs underwater. Calves may begin grazing within weeks of birth, but nursing may continue for 1 or 2 years. Therefore, breeding probably occurs every 2.9 to 3 years.

Manatees have been classified into the following age groups: calves, any young animal associating with a cow; juveniles, independent but not yet sexually mature; and adults, animals taking part in reproduction. Transition to adulthood is gradual and sexual maturity may not be attained until 4 or possibly 6 years of age. Manatee longevity in the wild is unknown, but a captive has been successfully maintained in Florida for 24 years.

Preliminary studies of social behavior indicate that the most obvious close bond is between cow and calf. Estrus herds of bulls may last from one week to more than a month. Small herds of less than 5 animals are the most commonly encountered non-estrus groups except during cold winter periods when groups of as many as 140 animals are found in warm water refugia in Florida. Intragroup social interactions including "play" and nonspecific sexual behavior (including homosexual) are reported.

T. manatus is reported arythmical with no specific daily patterns of behavior. Adults may spend from 6 to 8 hours daily in feeding. Manatees are wholly herbivorous, consuming a variety of food plants in the following order of preference: (1) submerged plants, (2) surface floating vegetation, and (3) emergents. Quantities of incidentally ingested insect larvae, amphipods, mollusks, shrimp, and other invertebrates probably provide necessary amounts of protein for the manatee. Captive adults consume 30 to 50 kg. of vegetation each day. It has been suggested that manatees must return to freshwater occasionally for drinking.

Internal parasites of T. manatus include two species of trematodes (Opiosthotrema and Chiorchis) and one species of nematode (Plicatolabia).

A single copepod (Harpacticus) was also reported on the skin. Manatees in saltwater become covered with marine diatoms (Zygnema and Navicula) and barnacles, whereas animals remaining in freshwater develop a coat of algae (Lyngbya and Compsopogon). Manatees appear to be susceptible to pneumonia and other bronchial disorders when exposed to unusually low temperatures. To date, there is no documentation of predation upon the manatee by any animals other than man, but attacks by alligators and giant squid in Florida have been reported. Sharks have also been suggested as likely predators.

Ecological Problems: In the United States, wounds inflicted by motor boat propellers and keels pose a major problem and are the prime cause of known manatee mortality. Water contamination by industrial effluents is responsible for the destruction of proper manatee habitat and food supplies, but does not appear to directly affect the animals who often congregate near polluted outfalls in winter. In upper Tampa Bay, the natural submergent vegetation has been eradicated by this pollution, resulting in the absence of manatees in the upper bay. Dredging may also have detrimental effects, increasing the water turbidity to a point where submergent plants can no longer survive. Natant plants seem to thrive under these conditions, and in the absence of the preferred submergents, manatees do consume these natants. However, the floating plants present a problem to boat traffic and (as in the St. John's River) are sprayed with herbicides, such as 2-4-D, which is then directly ingested by manatees. No direct effects of this or other herbicides have been documented. Oil spills from offshore drilling may also have detrimental effects on the

manatee's food supplies. Vandalism, poaching, accidental nettings, and flood control structures are additional threats to the manatee.

Blue Springs Park (a winter congregating site) has been designated a Manatee Sanctuary by the Florida Department of Natural Resources and is the only locality in Florida with lowered boat speed limits and swimming restrictions for manatee protection. As many as 25 manatees take refuge in this spring during cold periods. Manatees also inhabit the Everglades National Park and several National Wildlife Refuges, being especially abundant in the Merritt Island NWR. They are found within the Parque Nacional Isla de Salamanca of Colombia, and in Tortuguero National Park, Costa Rica, but their occurrence in other foreign reserves or sanctuaries is unknown.

Allocation Problems: Manatees have long been hunted for their meat, hides, oil and ivory. Protective legislation is nearly complete. The meat is still sold occasionally in local markets of Colombia, Brazil and Venezuela, but kills are usually the result of fortuitous encounter by natives or fishermen. *T. manatus* has been used with mixed success in small scale aquatic weed clearance projects in Guyana, Mexico, and Panama, but at this point, large-scale utilization of manatees for weed control does not seem feasible, for large numbers of animals are required. The manatee has also been suggested for domestication for meat in the distant future. Current decimated populations, plus a low reproductive rate, deem this project as unrealistic.

Regulations: Protective legislation for the manatee now exists in the following countries: U.S., Brazil, British Honduras, Costa Rica, Panama,

Colombia, Venezuela, Guyana, Cuba, Jamaica, Puerto Rico, Trinidad, Haiti, Mexico and the Dominican Republic.

Current Research: The National Fish and Wildlife Laboratory (NFWL) of the U.S. Department of the Interior has initiated a broad scope research program into the ecology and physiology of T. manatus. Survey efforts are being expanded in Florida and the southeastern United States and initiated throughout the Caribbean, Central America, and southern Brazil. Tracking studies of movements and seasonal habitat utilization were initiated in Fall 1975 in the southeastern United States. Suitable tagging techniques are also being developed. Detailed analysis of the environmental relationships of T. manatus in the Blue Springs Park has been initiated with the cooperation of the Florida Department of Natural Resources. Studies of basal metabolism and osmoregulation are underway, while programs to investigate sensory physiology are planned. Dr. D. Odell of the University of Miami Marine Laboratory is cooperating with the NFWL in studies of mortality factors and is conducting a study to develop a methodology for aging dead manatees. Cooperative programs between the University of Florida School of Veterinary Medicine and the NFWL are studying manatee parasites (Dr. Donald J. Forrester), hematology (Dr. John W. Harvey), and fungal skin infections (Dr. Fred Neal). Dr. Kermit C. Bachman of the Dairy Sciences Department is working with the NFWL to study the components of manatee milk. An in depth study of manatees in Puerto Rico is projected for F.Y. '77-78, with at least preliminary surveys scheduled for Panama, Belize, Costa Rica, Mexico and northern South America.

E. Mondolfi of Venezuela is compiling records of this species in his country to determine their local range and P. van Bree of Amsterdam is supervising

a taxonomic study comparing T. manatus to T. senegalensis. The U.S. National Academy of Sciences, the National Research Council of Canada, and the National Science Research Council of Guyana are considering the joint establishment of an international manatee research center in Guyana. They hope to direct their research toward reproduction, physiology and nutrition of the West Indian Manatee.

AFRICAN MANATEE

(Trichechus senegalensis)

Distribution and Migration: The African Manatee occurs in coastal waters and in adjacent rivers along the coast of West Africa from the mouth of the Senegal River (16°N) to the mouth of the Cuanza River to Angola (Fig. III). They have been reported from the Faleme, Cambia and Casamance Rivers of Senegal and Gambia, and from the coasts of Guinea. Other rivers known to support manatees are the Sierra Leone, the Missunado, the St. Paul's and the Cavalla Rivers. In Ghana, they are now apparently restricted to Lake Volta and the upper reaches of the Volta River. Manatees have been taken at Benin and Lagos, Nigeria, and are numerous in most of the larger rivers of southern Nigeria. They occur in the Niger River and are commonly known as far upriver as Idah, on the western border. They travel even further upriver, and have been noted in Segou, Mali, approximately 200 miles southwest of Timbuktu. Manatees also ascend the Benue River, a large tributary of the Niger. They have been reported in this waterway as far east as Numan (9°N 12°W). It is not thought that manatees occur in Lake Chad, although specimens have been collected from its principal tributaries, the Baningi, the Bahr Keeta and the River Shari. In Cameroon, they are found within the Korup Reserve and have been reported from the Mungo and Wouri Rivers. It is also likely that they inhabit the Campo River in southern Camercon. Specimens have been taken from the Rio Muni, Gabon and Ogooue Rivers and may also be found in the Loeme River of Congo Brazzaville. In Zaire, T. senegalensis occurs in the lower Congo River, and also in the upper drainage of the Uele River, east to Kibali. The Loge, Dnade,

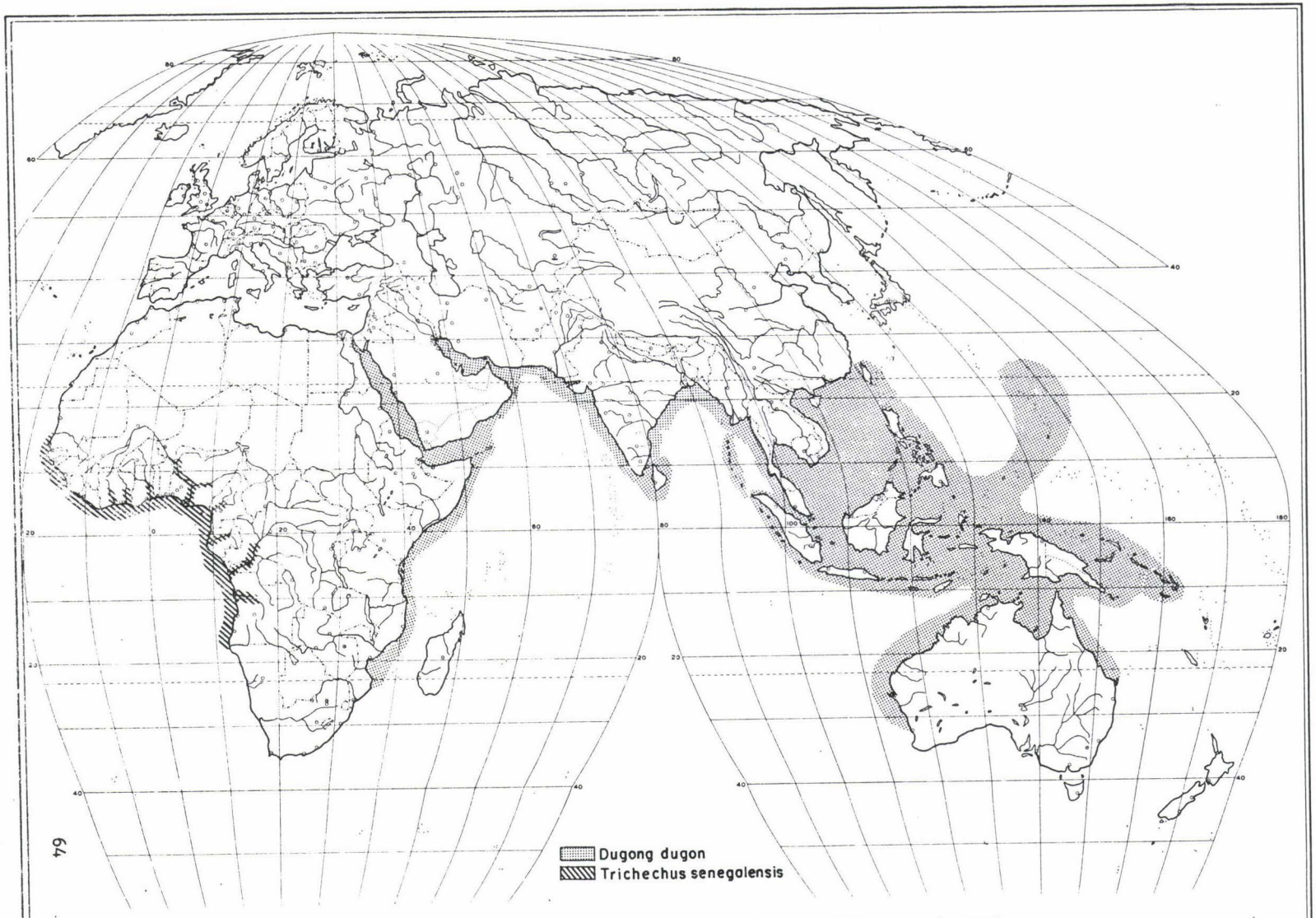

Fig. III: Present Distribution of the Dugong (Dugong dugon) and the African Manatee (Trichechus senegalensis)

Bengo, and Cuanza Rivers of Angola all reportedly contain manatees. No migrational movements have been noted for this species.

Abundance and Trends: No population estimates are available for this species. The African Manatee was reported as rare in the Senegal, Faleme and Casamance Rivers of Senegal as early as 1900. Recent reports of manatee abundance in Senegal, Guinea and Portugese Guinea are lacking. Manatees remain common enough in the Sierra Leone River estuaries today to be trapped for food, but no information is available on the current status of manatees along the coast from Liberia to Nigeria. Manatees have been extirpated from the Mekrou River of Dahomey and the portion of the Niger River on the Niger-Dahomey border, although they are thought to still be numerous in most of the larger rivers of southern Nigeria. Populations seem to be stable in the lower Niger, the Benue River, and the Anambra system of creeks, but manatees are rare in the Izichi River of Nigeria. *T. senegalensis* has apparently been extirpated in Lake Chad and is classified as rare in the Cameroons. The lower reaches of the Congo River reportedly support considerable numbers, but populations have diminished in the upper rivers. In general, the manatee population of Zaire is much reduced. *T. senegalensis* is classified as a vulnerable species, but little data is available on the recent distribution or abundance of this animal.

General Biology: Externally, this manatee is indistinguishable from the West Indian Manatee. It is large, fusiform and nearly hairless, with paddlelike flippers and spatulate tail. Average adults measure from

2.5 to 3.4 m. in length and weigh from 400 to 500 kg. It has been hypothesized that breeding occurs during the late dry season in weedy swamps and lagoons, but documentation has not been provided. The gestation period is unknown but is probably about one year. One is the usual number of young. Newborn calves are approximately 1 m. in length, and they are believed to remain with the parent cow for a long period of time. There is no further information available on reproductive or population biology of this species. African Manatees favor weedy swamps and mirigots. They are believed to be active throughout the day, but feed mostly at night. Their diet includes mangrove leaves, Cymodocea nodosa, Polygonum, and Eichornia crassipes, but they have also been reported feeding on Rhizoph a terrestrial plant which often hangs over water. A 1.85 m. captive male consumed 12 kg. of vegetables daily. Upon reaching 2.4 m. in length, he regularly ate 17 to 18 kg. of vegetables, Elodea, and legumes daily. The only information available of the social behavior of T. senegalensis is that groups of four animals, including half-grown calves, have been observed

The one internal parasite reported for the African Manatee is Chiorchis fabaceus, a trematode found in the large intestine. No diseases of this species have been reported from the wild, but one captive died as a result of acute enteritis. There is no evidence of predation on T. senegalensis by any species other than man.

Ecological Problems: Propellers and keels of boats striking submerged manatees may inflict mortal wounds. While there has been no evidence presented indicating that this is a real problem in West Africa as it is in Florida, the Ijaw fishermen of the Anambra system of creeks in Nigeria

considered manatees a nuisance to their boat traffic. In 1932, they began trapping and killing manatees, and within three years, managed to exterminate the local population. Killing of manatees for food is reported to have reduced this species in rivers in Ghana after water clarity improved following the construction of dams. These dams are also believed to have isolated populations and may disrupt normal migratory movements. Manatees inhabit the recently formed Lake Volta in Ghana and Lake Kainje in Nigeria, which are currently being swamped by growth of aquatic weeds. Use of herbicides on the weeds which are consumed by the manatees presents a potential threat to manatee. Pollution of waters in areas of human development would be expected to adversely affect the food sources of manatees. This species occurs within the Doro River Forest Reserve of Nigeria and in the proposed Korup and Campo Reserves of Cameroon.

Allocation Problems: The African Manatee has long been hunted throughout its range, largely for its meat. Nets, harpoons and guns are used in taking manatees and the hunting is usually done at night. Manatee hunting has been a regular occupation in the lower Congo, Angola and in northern Nigeria. No estimates are available as to the current take. An additional problem is the accidental netting of manatees in shark nets. These are set along many coastal areas of West Africa. *T. senegalensis* has been considered as a potential solution to the problem of aquatic weed control in man-made lakes and river systems. Experiments carried out on the West Indian Manatee indicate that successful weed control by manatees is feasible under certain specialized circumstances. It is likely

that the use of manatees in conjunction with the alternative mechanical weed removers, would provide the best means of control.

Regulations: The African Manatee is currently protected in Senegal, Guinea, Sierra Leone, Liberia, Ivory Coast, Ghana, Togo, Dahomey, Nigeria, Cameroon, Gabon, Congo Brazzaville, Zaire and Angola.

Current Research: There are no current survey programs underway to determine the status and distribution of this species, but the National Fish and Wildlife Laboratory of the U.S. Department of the Interior considers this a critical area for research in F.Y. '77. Peter van Bree of Amsterdam is supervising a taxonomic study comparing *T. senegalensis* to *T. manatus*. The National Fish and Widllife Laboratory of the U.S. Department of the Interior has compiled a report on the distribution, conservation and natural history of *T. senegalensis*.

AMAZONIAN MANATEE

(*Trichechus inunguis*)

Distribution and Migration: The Amazonian Mnaatee is strictly fluviatile, apparently being confined to the Amazon Basin and possibly the Orinoco drainage. (Fig. 1). In Brazil, it occurs in the Amazon River and the following tributaries: the Rio Tocantins, the Rio Xingu, the Tapajos, the Nhamunca, the Rio Madeira and the Rio Negro. They have also been reported in the Rio Branco, which is almost continuous with the Essequibo and Rupununni Rivers of Guyana during flooding, thus allowing manatees access to these rivers. It is thought that *T. inunguis* also inhabits the upper Orinoco and the Cano Casiquiare of Venezuela, but records are lacking. In Colombia, Amazonian Manatees may be found in the Amazon, the Pupumayo River (west to the Araracuara rapids). They may also frequent the Apaporis River. Peruvian rivers supporting manatees are: the Rio Napo, the Rio Tigre, the Rio Maranon (as far as its confluence with the Rio Pastaza), the Rio Samiria and the Rio Pacaya. They also inhabit the Ucayli and Huallago River drainages, but are absent from both the Madre de Dios and the Purus systems. No information is available on migration of this species.

Abundance and Trends: Amazonian Manatees were formerly abundant in the Brazilian Amazon. Thousands of skins were brought yearly to Manaus for trade in the 1930's and 1940's. *T. inunguis* is consequently less abundant today in most of the Amazon and its tributaries. They are, however, still fairly common in some lakes on the lower Tapajos, and in the Nhamunca River. In general, this manatee is regarded as rare in Colombia. This species is nearer to extinction in Peru than any other mammal, although modest numbers do remain in the Rio Samiria and the Rio Pacaya. All reports

indicate dramatic decline in numbers of Amazonian Manatees throughout their range. Population estimates are not available, but extinction has been predicted within the next few decades if local hunting pressures continue.

General Biology: T. inunguis is a large, fusiform, nearly hairless marine mammal with paddlelike flippers and a spatulate tail. It is distinct from other manatee species (T. manatus and T. senegalensis) in both appearance and habitat. It is characteristically more slender in form with elongated flippers lacking nails, and it is marked by a unique white breast patch. This species is the only entirely fluviatile manatee. Adults may reach lengths of 2.8 m. and estimated weights are between 125 and 250 kg. Breeding apparently occurs throughout the year. The gestation period is thought to be about one year, and one is the usual number of young born. Newborn calves are less than one meter in length and weigh less than 20 kg. Further information on reproduction, ontogentic variation and population structure are lacking. Longevity in nature is unknown, but a captive pair survived for 12½ years before they died.

Amazonian Manatees feed upon a variety of aquatic vegetation including Statiotes, Potamogeton, Vallisneria, Ceratophyllum, Ulva, Myriophyllum and Zostera. Daily consumption of food plants has not been measured under natural conditions, but captive adults generally require 9 to 15 kg. of lettuce and vegetables daily. There is no documentation of any natural predation on T. inunguis, but jaguars, sharks, piranha and caiman have been suggested as likely predators. The trematode, Chiorchis fabaceus, occurring in the large intestine, is the only internal parasite reported

for this species. Bronchial disorders, pneumonia and skin problems have been noted in captives, and one captive developed a case of osteomyelitis as a result of a harpoon wound.

Allocation Problems: Many Indian tribes of Amazonia have hunted manatees in the past, both for meat, and for the hides which were used in making shields. Harpoons and nets were used in capturing the animals, but the final killing was done by driving wooden plugs into nostrils causing suffocation. In the 1930's and 1940's, the Amazonian Manatee was commercially exploited for the skins, which were shipped to Portugal and Rio de Janeiro to be used primarily in the manufacture of machine belting and water hoses. A meat preparation called "mixira" consisting of meat boiled in its own fat, was canned and also shipped abroad. Thousands of manatees were slaughtered yearly. Protective legislation has since been enacted and the present rate of exploitation is reportedly reduced. However, poaching continues at a reduced rate and manatee meat is still occasionally available in Colombia and Brazil. In Leticia, Colombia, a large manatee today is worth about 40 Colombia pesos. The price has reportedly slumped in other areas.

Regulations: *T. inunguis* is totally protected in Brazil (1968), Venezuela (1970), Colombia (1969), Peru (1973) and Guyana (1961).

Current Research: Diana Magor is the only individual currently studying *T. inunguis*. She is based in Manaus, Brazil, and is collecting data on growth, distribution, and the natural history of the Amazonian Manatee.

DUGONG

(*Dugong dugon*)

Distribution and Migration: The dugong occurs in tropical and subtropical waters of the Indo-Pacific (Fig. III). It is totally marine and is usuall found in near-shore coastal waters from two to three fathoms in depth. Along the east coast of Africa it ranges from Egypt in the Red Sea, south to Delagoa Bay (26°S), Mozambique. This distribution is discontinuous due to local extirpation in certain areas. Dugongs have been reported from the Persian Gulf and they also range along the west coast of India, south of the Gulf of Kutch. They occur in Ceylonese waters and are present in the Andaman Islands, the Mergui Archipelago, Burma, Malaysia, the Moluas and Sumatra. They may still be found in the Ryuyu Archipelago. and specimens have been taken in Formosa and Hong Kong. The present range extends south and east to include Guam, the Palau Islands, the Carolines, New Britain, New Guinea, the Solomons, New Caledonia and New Hebrides. In Australia, dugongs occur all along the northern coast from Perth (32°S), on the west coast, to Brisbane, in the east. They are absent from the Marshall, Gilbert, Ellice and Fiji Islands.

Long distance migrations are unknown for this species, but local, offshore movements are apparent. These correlated with the changing monsoon seasons and possibly with resulting shifts in abundance of food sources. During the season of rough seas and extreme winds, the animals move to shore, apparently seeking shelter. Such movements have been reported in east Africa, India, and the Phillipines (where they are no longer present). Similar migrations have not been noted in Australia.

Abundance and Trends: Populations are thought to be much reduced and continuing to decline through much of the range, excepting Australia and Papua-New Guinea. Numerical estimates of dugongs are unavailable except for northeastern Australia. A population of 1,000-2,000 dugongs is estimated along the Queensland coast.

Dugongs are more abundant in Kenya and the Somali Republic than elsewhere along the coast of Africa. They are now extremely rare in the Red Sea and the Gulf of Aqaba. They were once abundant enough in the Gulf of Mannar (between Ceylon and India) to support a large commercial dugong fishery. The only remaining remnants of this population are restricted to the region near the Mannar Peninsula of Ceylon, from Jaffna to Puttalam. Numbers have declined along the Sarawak coast of Malaysia, and few dugongs can be found today in the Ryuyu Archipelago. The only stable populations occur along the northern Australia coast, Shark Bay, Broome, the Gulf of Carpentaria, the northern coast of Queensland, and along the coast of Papua-New Guinea. These stocks appear to be maintaining themselves and may even be increasing. At present, dugongs occur only in Lamu Park in Kenya.

General Biology: Dugongs are large fusiform marine mammals with flipper-like forelimbs and a broadly notched, horizontal tail fluke. Adults range from 2.4 to 2.7 m. in length and corresponding weights are 230 to 360 kg. The thick, nearly hairless skin is deep slate to brown in color and is frequently marked with numerous scars and scratches. Dugongs were quite social in the past, occurring in large herds of several hundred animals. Today, groups of one to six animals are the usual number, although groups

of up to fifty animals are still seen along the coast of Australia. Breeding apparently occurs throughout the year. The gestation period is thought to be about one year and one is the usual number born. Twins have been rarely reported. Newborn calves are about 1.1 m. in length. Calves begin grazing within the first three months after birth, but continue to nurse for over a year, reaching a length of up to 1.8 m. Sexual maturity is attained when animals reach approximate length of up to 2.4 m. (estimated five to ten years of age). Sexual dimorphism in size of adults is not evident. Longevity of the dugong in the wild is unknown, but analysis to tooth growth layers suggests a maximum age of thirty to sixty years, depending on whether growth rings are annual or biannual. A pair of captives were successfully maintained for ten years.

Dugongs are largely herbivorous and rely primarily upon marine sea grasses of the families Potamogetonaceae and Hydrocharitaceae, occurring in upper subtidal and lower intertidal waters which range from 21° to 38° C. throughout the year. Diplanthera and Cymodocea are the most heavily utilized genera. Brown algae (Sargassum) may also be consumed in significant amounts when sea grasses are locally in short supply. Dugongs reportedly prefer to feed at night or with the rising tide.

There are few observations of predation upon the dugong by animals other than man. Fishermen have claimed the shark is a predator, but in over 100 dugongs netted and drowned in Queensland, none ever showed any sign of attack by sharks or any other predators. Large saltwater crocodiles are known to eat dugongs on occasion but the extent of this predation is unknown.

Internal parasites include Termatoda (10 spp.) and Nematoda (2 spp.). Barnacles and green filamentous algae have been observed on dugongs but do not appear harmful. No diseases have been reported.

Allocation Problems: Man is the major threat to the dugong's existence. Boat traffic in offshore areas may inflict mortal wounds. Increased marine fishery activities in the India-Ceylon area have resulted in accidental nettings, drowning substantial numbers of dugongs. Dynamiting for fish is also assumed to affect dugongs adversely. In Queensland, Australia, a shark netting program has resulted in large dugong mortality; similar netting programs exist in Africa.

Dugongs have been hunted throughout their range. Their meat is similar to veal or pork, and "keeps" for long periods of time. Average sized adults yield from five to eight gallons of oil similar to cod liver oil, and the hide makes excellent leather, especially suitable for sandalmaking. Tusks and bones are used as ivory and several body parts were once thought to have medicinal or aphrodisiac properties. Today, hunting pressures are much reduced, in part due to the decline of dugongs. In spite of legislative protection, however, poaching continues. In Australia, the aborigines and Torres Islanders may still legally hunt the animals. One village (250 people) caught an average of about 70 animals per year during the early 1960's. In Papua-New Guinea at least one animal a week is killed for local consumption along the southwestern coast.

Regulations: The dugong is totally protected in Egypt, Anglo-Egyptian Sudan, Ethiopia, Somalia, Kenya, Tanzania, Mozambique, Madagascar, South Africa, Natal, India, Ceylon, Sabah, Sarawak, the Philippines, Japan,

Formosa and New Caledonia; in Australia and Papua New Guinea, only aborigines and natives may hunt the dugong and they only for local consumption and use. While protection is near complete, effective enforcement is virtually impossible in most areas.

Current Research: George Heinshon is continuing his study of dugongs in Townsville, Queensland. Animals accidentally drowned in shark nets are providing population and reproduction data, as well as information on food habits. Studies of nutrition, general ecology and behavior, and histology are also being conducted. Robert Kater and Adrian Hillier are also reportedly studying dugongs in Kenya, but the nature of their investigations is unknown. The National Fish and Wildlife Laboratory of the U.S. Department of the Interior has assembled a report on the distribution, status, and natural history of this species and recently conducted surveys along the north Australia coast, in Papua-New Guinea and in Kenya. Surveys are underway to determine dugong distribution in many areas of the Pacific where data are lacking and tagging and tracking studies to determine movements and migratory habits are planned for F.Y. 1977-78.

MARINE OTTER

(*Lontra felina*)

Local Common Names: Gato marino, chungungo, hullaque, nutria de mar, and chinchimen.

Taxonomy: Two subspecies of the marine otter are recognized; *L. f. felina* from southern Chile is slightly darker brown on the ventral surface when compared to *L. f. peruviensis* from northern Chile and Peru. Sufficient specimens are not currently available to permit detailed studies on the validity of these subspecies.

Distribution and Migration: This species inhabits the coastal waters along the west coast of South America from central Peru (north at least to 12°S) south to Cape Horn, Chile. Nothing is known about its seasonal movements. It occurs mainly in the littoral region, but it is also known to ascend rivers to at least 650 meters above sea level.

Abundance and Trends: Darwin found this otter abundant in the Chonos Archipelago and among the islands off the southwestern shores of Tierra del Fuego. It has been greatly diminished in numbers since Darwin's time, but in 1923 the Chicago Field Museum expedition found it to be common along the southern end of Chiloe Island, Chile. Nothing is known about numbers of the marine otter along the northern coast of Chile, but in Peruvian waters the population is estimated to be between 200 to 300. In the Cape Horn and southern Tierra del Fuego region this species

has been practically exterminated. One specimen was collected at Wollaston Islands, Tierra del Fuego about 25 years ago.

General Biology: The following external measurements have been recorded for the marine otter: head and body 570 to 787 mm; tail, 300 to 362 mm; and total length, 910 to 1149 mm. An adult male taken at the southern end of Chiloe Island weighed 9 pounds. The fresh water prawn, *Criphiops caementarius*, is included in the diet of the species. Darwin reported that this otter feeds also on fish, "small red crab", "cuttle-fish", and the inhabitants of "volute shells". Sexual dimorphism was not detected in a small sample of this species. All species of *Lontra* except *L. provocax* and *L. felina* are allopatric (occupying different geographic areas), and all except *L. felina*, a littoral marine species, are probably ecological equivalents. *Lontra felina* is the smallest and the most distinct species in the genus and, according to one investigator, "probably evolved from a stream-dwelling species that adapted to a marine environment after isolation in coastal habitats as a consequence of progressive aridity in middle latitudes of South America's west coast."

Parasites and Diseases: Nothing is known about parasites or diseases in this species.

Allocation Problems: In Peruvian waters these otters are often shot by fishermen because of the alleged damage they do to the stocks of freshwater prawns. In Chile the species is hunted regularly by fishermen for their skins, especially south of Isla Chiloe.

Ecological Problems: No specimens have been examined for pesticide residues or heavy metal contaminants.

Regulations: This species is listed as endangered in the Red Data Book of the International Union for the Conservation of Nature, but *L. felina* is not listed in the U. S. Endangered Species Act of 1973, which prohibits the importation into the United States species listed except for scientific, education or propagation purposes. The Marine Mammal Protection Act of 1972 assumed management authority for all marine mammals, but the marine otter for some reason was not listed under the jurisdiction of the Act. In Peru, the marine otter has been found in three areas being considered as a coastal park, but it is not known if the species is local enough in habits to remain in any one of these areas throughout the year.

Current Research and Funding of Marine Otter Studies: Contracts are being established by U. S. Fish and Wildlife Service in Peru and Chile. Carlos Cabello of the Corporacion Nacional Forestal, Chile, is studying marine otters around Isla de Chiloe, Chile.

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Part III. Appendix

Appendix A - Decision on Waiver of Moratorium and Return of Management of the Walrus to the State of Alaska.

Appendix B - Subpart F Approval of Alaskan Laws and Regulations.

Appendix C - Procedural Regulation for Hearings.

Appendix D - Subpart H - Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species.

Appendix E - Proposed Waiver of Moratorium on the Polar Bear, Sea Otter, and Pacific Walrus.

Appendix F - Revised Notice of (I) Public Hearings and (II) Prehearing Order; Revised Notice of Public Hearings.

APPENDIX A

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federal register

WEDNESDAY, DECEMBER 24, 1975

Fish and Wildlife Service

Taking of Walrus

Decision on Waiver of Moratorium

Fish and Wildlife Service

TAKING OF WALRUS

Decision on Waiver of Moratorium

Pursuant to 50 CFR 18.75(c), 40 F.R. 6663 (February 13, 1975), the decision of the Director on the proceeding to waive the moratorium imposed by the Marine Mammal Protection Act of 1972 on the taking and subsequent importation of Pacific walrus is herewith published. There is also published below, a draft of Subpart H which will be used by the Service as a guideline in the development of regulations to implement the Administrative Law Judge's recommendation for a new subpart to set forth specific limitations concerning the taking and/or importation of each species of marine mammal for which the moratorium is waived. Simultaneously published[1] are subpart F regulations as revised in accordance with the Director's decision and those portions of the Administrative Law Judge's recommendations accepted by the Director. Those regulations provide for the implementation of a waiver of the moratorium and establish standards by which a state's management program for the protection and taking of a species of marine mammal within the state's jurisdiction will be evaluated.

The Director's decision to waive the moratorium imposed by section 101(a) of the Act, 16 U.S.C. 1371(a), on the taking of Pacific Walrus is final. However, the waiver of the moratorium will not be implemented, and Pacific Walrus may not be taken, unless the conditions set forth in the decision are satisfied and the State of Alaska's management program, as revised in accordance with the Director's decision and those portions of the Administrative Law Judge's decision adopted by the Director, is approved by the Director. Upon approval by the Director of the revised management program to be submittted by the State of Alaska, final regulations in subpart H will be promulgated to implement the waiver.

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

DECEMBER 17, 1975.

DECISION CONCERNING WAIVER OF MORATORIUM ON WALRUS UNDER REGULATIONS FOR A COOPERATIVE STATE/FEDERAL CONSERVATION PROGRAM (DOCKET NO. WASH 75-1)

Following review of the record and exhibits in the proceeding In Re: Waiver of Moratorium on Walrus, Docket No. Wash 75-1, I hereby adopt and incorporate by reference those portions of the Administrative Law Judge's decision that are not inconsistent with my discussion of the proceeding hereinbelow.

The history of this proceeding is found in the Administrative Law Judge's recommended decision (pages 4-8) on file at the Office of the Director, U.S. Fish and Wildlife Service, Washington, D.C.

Following the Administrative Law Judge's recommended decision opportunity was provided to all parties for the filing of exceptions.

Exceptions were filed by the following parties:

The Environmental Defense Fund, Project Monitor, Inc., and affiliated groups; Friends of Animals, Inc., and Committee for Humane Legislation; The Alaska Professional Hunters Association; the Marine Mammal Commission; the State of Alaska; and the United States Fish and Wildlife Service.

As all parties are aware, since enactment of the Marine Mammal Protection Act actually no total moratorium on the taking of walrus has existed as native Alaskans were allowed to take walrus for subsistence and cottage industry purposes, without bag limits or restrictions, as long as the taking was not in a wasteful manner and there was no finding of depletion of the resource.

As I interpret my duty under the Act, to waive the moratorium or to allow importation of marine mammals or marine mammal products, I must, in making such determination, be assured that the taking of such marine mammals is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of the Act.

This determination is to be made on the best scientific evidence available and in consultation with the Marine Mammal Commission. The record indicates that all parties agree the testimony offered in evidence was the best scientific evidence available. I am satisfied that the testimony offered was the best scientific evidence available.

The Act provides that the resource shall not be permitted to diminish below optium sustainable population. The term optium sustainable population is defined in the Act as.

> * * * with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

The evidence from experts in the field showed that the resource exceeded the population level at which the maximum productivity rate was achieved and was above the minimum range of the optimum sustainable population.

Although the condition of habitat for walrus has not evidenced any obvious problems related to carrying capacity, it is inconsistent with the principles of sound wildlife conservation to base management actions on a clear indication of habitat deterioration alone. Rather, it is important to consider that proper re-

[1] See FR Doc. 75-34637, Title 50, Chapter I, Part 18, in the Rules and Regulations section.

source conservation must be predicated on avoiding a situation that will lead to habitat deterioration. Evidence presented suggests that the herds of walrus are becoming crowded and that population estimates suggest that in the very near future the habitat will be adversely affected.

The vast majority of witnesses testifying stated that the walrus population had substantially increased under State regulations and indeed there was more regulation and control of the taking of the resource than under the Federal Act.

The judge found that the scientific evidence available supported my preliminary determination that a waiver of the moratorium was appropriate from the standpoint of population and habitat dynamics. However, in his recommended decision he also found that several amendments and additions to the proposed State regulations would be required to insure the population level and to prevent commercial exploitation of the resource.

It is my decision to proceed in that manner and waive the moratorium upon satisfactory amendments to the State regulations to guarantee the health and welfare of the species and the well-being and stability of the marine ecosystem.

My decision is to let the procedural issues brought to the attention of the Administrative Law Judge stand per the judge's decision, as that was the forum for those matters and arguments of counsel were put forth on the record.

THE FEDERAL REGULATIONS

With respect to the proposed Federal regulations, I reject the Administrative Law Judge's recommendation that subpart F apply generally to all species. This proceeding is limited to walrus. We intend to publish in the future regulations of general applicability which will pertain to all species.

Additionally, I reject the Administrative Law Judge's recommendations as to the following sections:

Section 18.3 (R.D. at 20) Placing the definition of population stock in section 18.3 would be redundant and serve no useful purpose since the expression is defined in section 3(11) of the Marine Mammal Protection Act of 1972.

Section 18.54(e) (R.D. at 25). In the fifth line of this section, the "if any" is superfluous. Because this Subpart F deals exclusively with approval of state laws and regulations pursuant to a waiver of the moratorium, at the least the moratorium provision of section 101 will be waived. Thus there will always be at least one provision of section 101 waived and the "if any" is inappropriate.

Section 18.54(h) (R.D. at 28). The Administrative Law Judge recommends that the State laws and regulations be adopted as Federal regulations. I believe that the language below provides for a more workable regulatory framework, and I adopt that language:

> If the Director has approved State laws and regulations pursuant to this subpart, all activities conducted pursuant to a waiver of the moratorium, including those carried out on the high seas adjacent to the coast of the State must be in accordance with the approved State laws and regulations. Any violation of State laws and regulations occurring beyond the jurisdiction of the State shall be punishable in accordance with section 105 of the Act.

Thus, the Federal regulation would require all activities conducted pursuant to a waiver of the moratorium, including those carried out on the high seas, to be in accordance with the approved State laws and regulations.

I am in agreement with the recommendation for a new subpart F to more specifically delineate the scope and nature of the waiver as it applies to walrus and the conditions precedent to approval and adoption of the State law and regulations; however it is my decision to modify those recommendations relating to subpart H as attached.

Reconsideration of waiver on walrus. I have determined that continuance of the waiver of the moratorium on walrus should be reconsidered in connection with the application of the State of Alaska for return of management of the 8 other species; such reconsideration, however, to be to the extent that any new evidence has been developed between the closing of the record in this proceeding and the opening of the record in the proceeding on the other 8 species. Recommendation number 4 (R.D. at 69) is hereby modified and adopted as follows:

4. Continuance of the waiver of the moratorium and approval of the cooperative State/Federal management program for Pacific Walrus be reconsidered in connection with the application of the State of Alaska for return of management responsibility for marine mammal species within its jurisdiction; such reconsideration to be limited to (1) new evidence developed subsequent to the close of the record in the walrus proceeding, and (2) the interrelationships between walrus and the other species under consideration.

THE STATE PROGRAM

The areas in which it is my decision to vary from the Administrative Law Judge's recommended decision with respect to the State management program are based on the extensive record.

1. *Use of High Caliber Rifle* (R.D. at 49). It is my decision to restrict the taking of walrus by non-subsistence hunters to a hand held rifle using a center fire cartridge of not less than 2,500 foot pounds of muzzle energy. As the record reflects, other than for hunting walrus, such a weapon would be of very little use to the Native and other subsistence hunters, and would be very expensive for them to acquire. I therefore reject the Administrative Law Judge's recommendation of a 30.06 rifle for all hunters.

2. *Shooting Walrus in Water* (R.D at 50). The recommendation that walrus be taken only on ice would impose undue hardship on those Native hunters who might find walrus only in water. Many walrus shot on ice will tumble into the water whence they must be retrieved. If a harpoon is available, and its availability is required by this decision, the problem of retrieval from water will be minimized. Thus, the hunter is properly equipped and able to retrieve walrus from water. I reject the Administrative Law Judge's recommendation that there be a prohibition against shooting walrus in water.

3. *Prohibition on killing a pregnant or nursing cow, nursing calves or calves less than eight months* (R.D. at 51). The ALJ based this recommendation upon section 102(b) of the Act which prohibits, inter alia, importation of pregnant, nursing or less than eight months old marine mammals. However, upon approval of state laws and regulations, section 109 of the Act provides that the "Provisions of this Act * * * shall not apply * * *." Thus, section 102 is not applicable upon approval of state laws and regulations.

Moreover, calf hides and other parts are utilized by Natives for various purposes. Again, the State has recognized such use and its bag limits accommodate those uses. Additionally, to distinguish a 3,000 pound pregnant female from a non-pregnant one, particularly in the early stages of pregnancy, is a task of no easy accomplishment. I reject the ALJ's recommendation that there be a prohibition on killing a pregnant or nursing cow, nursing calves or calves less than eight months.

4. *Marking of Raw Ivory* (R.D. at 48). While the recommendation that raw ivory be marked is laudable and was suggested by the Fish and Wildlife Service, the Service testified that at the present there is no existing satisfactory method for marking and accounting for ivory. This recommendation of the ALJ will be held in abeyance pending a study which will be undertaken by the Fish and Wildlife Service to devise a satisfactory method of marking raw ivory.

5. *Prohibition on Taking of Females for Ivory Alone* (R.D. at 50). The record indicates that for certain purposes ivory from females is more desirable than that from males. The State has recognized this fact and allows the taking of a limited number of walrus for ivory alone. The State's bag limit of 5 female walrus has resulted in a great increase in the walrus population over the 15-year period during which the State had jurisdiction over walrus. Thus, I believe that a prohibition on the taking of female walrus for ivory alone is unnecessary and I reject that recommendation of the ALJ.

U.S. Fish and Wildlife Service enforcement personnel will enforce the State regulations and State officials will enforce Federal regulations. This is presently accomplished by the deputization of State officials as Federal officers and Federal officers as State officers.

CONCLUSION

I am required by section 109(a)(3) of the Act, to continuously monitor and review the laws and regulations of the State to insure that such laws and regulations are in substantial compliance with the provisions of the Marine Mammal Protection Act and to resume responsibilities under the Act upon a finding of non-compliance.

It is my decision to waive the moratorium, and implement the Federal/State management program in accordance with the Federal regulations developed by the Fish and Wildlife Service.

This determination is contingent upon my approval of Alaska State laws and regulations revised in accordance with the foregoing discussion and those portions of the Administrative Law Judge's decision pertaining to the State's management program (Administrative Law Judge decision at 44–51) which I have adopted. A final notice of waiver will be published in the FEDERAL REGISTER upon my approval of the revised State laws and regulations.

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

DECEMBER 17, 1975.

NOTE: The regulations in draft form as set forth below are issued for guidance only.

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

§ 18.90 *Purpose of regulations.* The regulations contained in this subpart fulfill the requirements of section 103 of the Act for regulations to govern the taking and importation of each species of marine mammal for which the moratorium imposed by section 101 has been waived.

§ 18.91 *Scope of regulations.* (a) The provisions in this subpart apply only after (1) the Director has made a decision to waive a moratorium pursuant to section 101(a)(3)(A) of the Act, (2) the opportunity for a hearing required by section 103(d) of the Act has been provided, and (3) the Director has made a determination, in the case of State laws and regulations, to approve such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than takings for scientific research or public display, which are governed by section 18.31, of this part, or takings incidental to commercial fishing operations which are governed by section 18.24 of this part.

§ 18.92 *Pacific walrus (Alaska).*

(a) Pursuant to sections 101(a)(3)(A), 103, and 109 of the Marine Mammal Protection Act of 1972, the moratorium on the hunting and killing of Pacific walrus (*Odobenus rosmarus*) in waters or on lands subject to the jurisdiction of the State of Alaska, the United States, or on the high seas by any person, vessel, or conveyance subject to the jurisdiction of the State of Alaska or the United States, is waived, effective with publication of a notice of approval of the laws and regulations of the State of Alaska, subject to the following terms and conditions:

(1) The exemption for hunting and killing of Pacific walrus by Alaskan natives under section 101(b) of the Act is rescinded and superseded by the regulations relating to the hunting and killing of Pacific walrus as set forth in this section.

(2) Hunting and killing of Pacific walrus by Alaskan natives will be accomplished in the manner and in accordance with the limitations set forth in this section.

(3) Sport hunting of Pacific walrus by licensed sport hunters will be accomplished in the manner and in accordance with the limitations set forth in this section.

(4) Officers, employees or agents of the State of Alaska may take Pacific walrus in accordance with a State research or conservation program approved by the Director in connection with the approval of the State's laws and regulations pursuant to subpart F of these regulations.

(5) Importation of Pacific walrus taken on the high seas will be permitted only when imported into the State of Alaska, and when taken in accordance with the limitations of this section.

(6) No part or product of a Pacific walrus taken under the provisions of this section may be shipped on interstate or foreign commerce unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product until the final stages of processing.

(7) The taking or importation of Pacific walrus by all other persons, vessels, or other conveyances remains subject to the moratorium and the prohibitions set forth in the Marine Mammal Protection Act and subpart B of these regulations.

(8) Whenever retrieved takings exceed 3,000 walrus in any regulatory year, or the walrus herds diminish below the range of optimum sustainable population, the moratorium on the taking of walrus provided for in section 101(a) of the Marine Mammal Protection Act, 16 U.S.C. section 1371(a) will automatically be reimposed.

(b) All activities conducted pursuant to a waiver of the moratorium, including those carried out on the high seas adjacent to the coast of the State of Alaska must be in accordance with title 16 of the Alaska Statutes and the approved regulations promulgated thereunder.

(c) A violation of the provisions of the preceding subsection which occurs beyond the jurisdiction of the State of Alaska shall be punishable in accordance with section 105 of the Act.

[FR Doc.75-34636 Filed 12-23-75;8:45 am]

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APPENDIX B

WEDNESDAY, DECEMBER 24, 1975

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

Fish and Wildlife Service

Subpart F - Approval of Alaska Laws and Regulations

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 18—MARINE MAMMALS

Subpart F—Approval of State Laws and Regulations

On February 13, 1975, a document was published in the FEDERAL REGISTER (40 FR 6664) proposing to amend Part 18, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, by (1) the addition of a new subpart F to the table of sections, (2) the addition of a new § 18.32 entitled "Waiver of the Moratorium", (3) the addition of a new subpart F entitled "Waiver of the Moratorium; State Laws and Regulations," and (4) the amendment of § 18.23 entitled "Native exceptions."

The proposal contained a detailed description of each of the four elements of the proposal, gave notice of the availability of the State of Alaska's regulations concerning Pacific walrus and the statements required by section 103(d)(1)–(4) of the Marine Mammal Protection Act of 1973 ("the Act"), set forth a concise summary of procedures and a reference to the procedural regulations which would be applicable to a hearing concerning the proposal, and gave notice of the times and places where a prehearing conference and subsequent hearing would be held if requested as well as the name and address of the Presiding Officer and the means by which participation in a hearing could be secured.

At the request of interested parties, a hearing was held in two stages. The first stage was held in Anchorage, Alaska, on March 18–22, 1975, at which the proponents presented their case in support of the proposed cooperative State/Federal conservation program. At the second stage held in Arlington, Virginia, on April 8 and 9, 1975, the opponents and the Marine Mammal Commission were afforded an opportunity to voice their objections and to make their suggestions for changes, additions, and modifications to the proposal. Forty-five documentary exhibits and the testimony of fourteen witnesses were received in evidence; a total of 1,152 pages of transcript were amassed. Six parties proponent, three parties opponent supported by a number of affiliated groups, and one non-aligned party, the Marine Mammal Commission, actually participated in the proceeding.

Presiding Officer Joseph B. Kennedy, in a recommended decision issued on July 10, 1975, found that waiver of the moratorium on the taking of Pacific walrus was appropriate and that, subject to suggested changes in the proposed regulations and the State's management program, the cooperative State/Federal management program for Pacific walrus should be promulgated. [In Re: Waiver of the Moratorium on Walrus Under Regulations for a cooperative State/Federal Conservation Program, Docket No. Wash. 75–1, July 10, 1975.] The United States Fish and Wildlife Service excepted to certain recommendations made by the Presiding Officer concerning the Federal regulations, the State management program, and the contents of a new subpart which was suggested by the decision. [Exceptions to Recommended Decision on Behalf of United States Fish and Wildlife Service, Docket No. Wash. 75–1, July 31, 1975]. Exceptions to the recommended decision were also filed by the Environmental Defense Fund, Project Monitor, Inc., and affiliated groups; Friends of Animals, Inc., Committee for Humane Legislation; The Alaska Professional Hunters Association; the Marine Mammal Commission; and the State of Alaska. Copies of the Presiding Officer's decision and of the exceptions filed thereto are available for public inspection at the Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203, or may be obtained by writing to the Director, U. S. Fish and Wildlife Service, Washington, D.C. 20240.

On December 2, 1975, the Director of the U.S. Fish and Wildlife Service issued a final decision in the proceeding concerning waiver of the moratorium on the taking of Pacific walrus. That decision is published simultaneously with these regulations. As part of the Director's decision, the proposed regulations are modified in accordance with the recommended decision of the Presiding Officer, *supra*, and the exceptions thereto filed by the U.S. Fish and Wildlife Service, *supra*, both of which are hereby incorporated by reference.

Accordingly, Part 18 of Subchapter B, Chapter I of Title 50, CFR, is amended as follows:

1. In the table of sections, a new Subpart F is added, reading:

Subpart F—Waiver of the Moratorium; State Laws and Regulations

Sec.
18.51 Purpose of regulations
18.52 Scope of regulations
18.53 Effective waiver of the moratorium
18.54 Approval of State laws and regulations—procedures
18.55 Approval of State laws and regulations—criteria
18.56 Review of approved State laws and regulations
18.57 Enforcement
18.58 List of waivers and States approved species

2. Section 18.32 is added to read as follows:

§ 18.32 Waiver of the moratorium.

See subpart F (Waiver of the moratorium; State laws and regulations) and subpart G (Notice and Hearing on Section 103 Regulations) for procedures regarding waivers of the moratorium in those circumstances where a state provides an acceptable management program for a species or population stock within its jurisdiction.

3. A new subpart F is added, reading as follows:

[1] See FR Doc. 75-34636 in the Notices section.

Subpart F—Waiver of the Moratorium; State Laws and Regulations

§ 18.51 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of sections 101, 103, and 109 of the Act for regulations to implement a waiver of the moratorium in those circumstances where a State provides an acceptable management program for a species or population stock within its jurisdiction.

§ 18.52 Scope of regulations.

(a) The provisions in this subpart apply only when the Director has made a decision to waive the moratorium, and when a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's laws and regulations relating to the protection and taking, within its jurisdiction, of any species or population stock of marine mammals, are consistent with the waiver of the moratorium, the Act and the regulations in this subchapter which apply to such species or population stocks. The provisions set forth standards and criteria for such determination by the Director and for subsequently waiving the moratorium.

(b) The provisions in this subpart apply to all takings of marine mammals subject to a waiver of the moratorium and approved State laws and regulations implementing the waiver and to importation subsequent to such takings except takings for scientific research, for public display, and incidental to commercial fishing operations.

§ 18.53 Effective waiver of the moratorium.

(a) The Director shall, in response to a request by a State under § 18.54 for approval of its laws and regulations implementing a waiver of the moratorium, make such waiver as is consistent with the goals, policies, and provisions, and pursuant to the procedures of the Act. Such waivers shall be published as notices in the FEDERAL REGISTER.

(b) Any waiver granted in response to a request by a State under this subpart shall not be effective until the Director has approved the relevant State laws and regulations pursuant to § 18.54.

(c) Upon waiver of the moratorium and approval of State laws and regulations implementing the waiver under this subpart, subpart B of Part 18 shall not apply to any activities subject to such laws and regulations.

§ 18.54 Approval of State laws and regulations—procedures.

(a) Any state may request a determination that its laws and regulations are consistent with the Act and the regulations in this part, and may request a waiver of appropriate portions of section 101 of the Act in order to allow such laws and regulations to take effect.

(b) The request must be submitted in accordance with section 18.4(c) of this part.

(c) Upon receipt of a request in accordance with § 18.4(c) of this part, the Director shall publish in the FEDERAL

REGISTER a notice of consideration of the laws and regulations submitted and a summary of the substantive ecological and biological statements required by section 103(d) of the Act. Such notice shall also set forth relevant information concerning the right afforded interested persons to request a public hearing in accordance with subpart G.

(d) The Director may approve such State laws and regulations if they implement a waiver of the moratorium and he determines them to be consistent with any regulations promulgated under section 103 with respect to such marine mammals, provisions of the Act, any other rule or regulation promulgated pursuant to the Act with respect to such marine mammals, and the provisions of § 18.55 and other provisions of this subpart.

(e) Upon approval, the Director shall publish a notice in the FEDERAL REGISTER stating such approval, briefly summarizing the management program established by the State laws and regulations, stating which provisions of section 101 of the Act are waived in order to allow such State laws and regulations to take effect, and the date of submission of the State's annual report.

(f) Any modifications, amendments, deletions or additions to laws or regulations previously approved shall require review and approval by the Director pursuant to paragraphs (c) through (f) of § 18.56 of these regulations before their adoption.

(g) All determinations by the Director shall be final.

(h) If the Director has approved State laws and regulations pursuant to this subpart, all activities conducted pursuant to a waiver of the moratorium, including those carried out on the high seas adjacent to the coast of the State, must be in accordance with the approved State laws and regulations. Any violation of State laws and regulations occurring beyond the jurisdiction of the State shall be punishable in accordance with section 105 of the Act.

§ 18.55 Approval of State laws and regulations—criteria.

Any State which applies to the Director for approval of its laws and regulations pursuant to § 18.54 must demonstrate, to the Director's satisfaction, that such laws and regulations:

(a) Provide for a modern scientific resource management program, including, but not limited to, research, census, law enforcement, habitat acquisition and improvement and, when and where appropriate, the periodic or total protection of the marine mammals in question;

(b) Establish a program which is based upon the best scientific evidence available on the relevant marine ecosystem and the role of the marine mammals in question in that ecosystem;

(c) Establish a program which is consistent with the primary goal of the Act, to maintain the health and stability of the marine ecosystem;

(d) Establish a program which insures that the species or population stock of marine mammals in question will be maintained at its optimum sustainable population, unless the State can show that some other population level more properly maintains the health and stability of the marine ecosystem;

(e) Provide appropriate maximum quotas and seasons, whenever a taking or importation is proposed, unless the State can show that it is consistent with these criteria to have no quota or season;

(f) Require the automatic imposition of a moratorium on all taking and/or importing of the marine mammals in question whenever their number drops below the range of optimum sustainable population levels unless such diminution in the population is consistent with the health and stability of the relevant marine ecosystem.

(g) Establish quotas, seasons, and other allowances and restrictions as necessary in accordance with the following factors:

(1) The seasonal distribution of populations;

(2) Segregation within populations by sex and age;

(3) Discreteness of populations;

(4) Population density;

(5) Critical periods in the species life cycle;

(6) Critical habitat areas;

(7) Productivity of the population;

(8) Species interactions;

(9) Percentage of retrieval by hunters;

(10) Maximization of the utilization of the species;

(11) Other uses of the species, such as recreational use or incidental catch; and

(12) Enforceability of the limitations.

(h) Contain suitable limitations on the means and methods of taking which assure that taking will be by humane means and will maximize the utilization of each animal taken.

(i) Contain provisions for significant public participation within the State in the process of making the rules in question.

(j) Meet the criteria specified in § 18.4(d) of this part, to the extent such criteria may differ from those prescribed in this section.

§ 18.56 Review of approved State laws and regulations.

(a) All State laws and regulations which have been approved shall be reviewed annually, unless a major modification indicates that an earlier review is appropriate.

(b) In order to facilitate such a review, each State having approved laws and regulations must submit an annual report containing the following information current for each reporting period:

(1) Any changes in the State laws or regulations;

(2) Any new data on the marine mammal stocks or the marine ecosystems in question;

(3) All available harvest data;

(4) A summary of all research activity on the stocks or ecosystem in question;

(5) Any changes in the information provided with the original request for approval;

(6) A summary of all enforcement activity, including permits issued, skins sealed, reports under permits, investi tions undertaken and their dispositio

(7) Present budget and staffing le for the marine mammal activities;

(8) Any other information which Director may request, or which the St deems necessary or advisable.

(c) Each State having approved l and regulations shall file a special rep within 30 days whenever any of the f lowing information is available:

(1) A proposed change in a relev State law or regulation (amendments, pealers, or new legislation or regu tions); or

(2) A significant natural or m made occurrence affecting the ma ecosystem or the stock in question; c

(3) An apparent over-harvest or ot significant violation of the State m agement program.

(d) Upon receipt of any other re described in § 18.56(b) or 18.56(c) Director shall, in consultation with Marine Mammal Commission determ whether or not the State laws and re lations continue to comply with the quirements of this subpart.

(e) Whenever the Director preli narily determines, in consultation the Marine Mammal Commission, the State laws and regulations are no compliance with the requirements of subpart, he shall publish notice of s determination in the FEDERAL REGIS inviting submission from interested sons, within 30 days of the date of notice, of written data, views or c ments, and requests for hearing, with spect to such preliminary determinat

(f) As soon as practicable after the day comment period described in § 1 (e), the Director, in consultation the Marine Mammal Commission, s determine whether or not to finally approve the State laws and regulat The Director's determination shal made within 90 days after publica of the notice described in § 18.56(e), less a hearing is held, in which case determination shall be made in acc ance with the provisions of the Adm trative Procedure Act and the pr dural regulations of subpart G of part.

(g) If the Director makes a final termination to disapprove prop changes in State laws and regulat the State shall, at the Director's di tion, have the option of retaining its tially approved laws and regulatio which case the waiver shall remai effect. All final determinations of approval shall be published in the ERAL REGISTER; upon such public unless a State elects within 30 da retain its originally approved laws regulations, any waiver conditioned approval of State laws and regula as provided in § 18.53(b) shall termi and the moratorium of section 101 c Act shall be reinstated and supe such State laws and regulations.

§ 18.57 Enforcement.

(a) The appropriate official in State shall utilize such methods deems appropriate to assure to the

imum extent practicable that the quotas, seasons, and other limitations in approved State laws and regulations are not exceeded.

These methods may include, but are not limited to, patrols, surveillance, investigation, permit record-keepings and reporting requirements, and tagging and marking requirements.

(b) The hides or skins of marine mammals taken pursuant to approved State laws and regulations, and tanned commercially, must be tanned at a tannery registered pursuant to this part. Lists of such tanneries may be obtained from agents of the Service.

(c) Any seals attached by State officials under approved State laws and regulations must remain affixed until removed for tanning.

§ 18.58 List of waivers and States approved. [Reserved]

4. Section 18.23 is amended by redesignating the existing subsections (c) and (d) as subsections (d) and (e), respectively, and a new subsection (c) is added, reading as follows:

§ 18.23 Native exception.

(c) The restriction in subsection (b) shall not apply to parts or products of the Pacific walrus (*Odobenis rosmarus*) to the extent that the waiver of the moratorium and the approved State/Federal regulations relating to the taking and importation of walrus permits the delivery, sale, transportation or shipment of parts or products of the Pacific walrus in interstate or foreign commerce.

Dated: December 17, 1975.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc.75-34637 Filed 12-23-75;8:45 am]

APPENDIX C

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federal register

FRIDAY, FEBRUARY 6, 1976

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

RULES AND REGULATIONS

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 18—MARINE MAMMALS

Procedures for Hearings

On May 29, 1975, the Director of the United States Fish and Wildlife Service published a document in the FEDERAL REGISTER (40 FR 23307) proposing to amend Subpart G of Part 18, Subchapter B, Chapter I of Title 50, CFR, by deleting it entirely and replacing it with new language. The proposed amendment expanded the application of Subpart G

hearing procedures from walrus to all marine mammals and adopted regulations published in final form by the National Marine Fisheries Service on March 5, 1975 (40 FR 10182), as the procedural regulations used by the U.S. Fish and Wildlife Service to govern hearings on the record which are required by Section 103 of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.). The proposed amendment allowed the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to simultaneously accommodate joint requests for waivers of the moratorium and hearings required by Section 103 of the Act. Comments with respect to the proposed amendment were received from the Environmental Defense Fund (EDF) and from the Office of Hearings and Appeals, U.S. Department of the Interior (OHA).

A. After due consideration of the comments received, the following changes are made in the proposed amendment in addition to minor language changes for clarification:

1. The definition of "witness" in § 18.71(c) is expanded to allow the receipt of direct oral testimony and to allow testimony concerning a proposed waiver.

2. A definition of "preesiding officer" is added to § 18.71 for the purpose of clarification.

3. Section 18.73 *Burden of proof* is added to specify the allocation of the burden of proof which is implicit in the Act. Subsequent sections are renumbered accordingly.

4. The terms of § 18.74(b)(6) are broadened to apply to final Environmental Impact Statements as well as draft Environmental Impact Statements.

5. Reference to the time when records and submitted direct testimony will be available for public inspection and appropriate reference to other documents are added to the requirements of § 18.74(b)(8) in order to facilitate public access to that material.

6. The words "of hearing" are added after the word "notice" in § 18.75 for clarity.

7. In § 18.76(a) reference to OHA is added for clarification and to conform with actual practice.

8. Reference to OHA is added to § 18.76(c) for clarification.

9. Reference to recognized canons of judicial ethics is added to § 18.76(d) in order to provide more specific and satisfactory guidelines for withdrawal by a presiding officer.

10. Section 18.76(e) is reworded and reference to OHA is added for clarification purposes.

11. The term "prehearing order" is substituted for the term "final hearing agenda" in § 18.77(a) for consistency with § 18.81.

12. The prohibition of § 18.80(c) is reworded for clarification to apply to all communications of a presiding officer.

13. Section 18.81(e) is deleted and relocated for clarity as § 18.82(d).

14. The title of § 18.82 is changed to "prehearing order" and all references to the "final agenda" in the text of that section are changed to "prehearing order" in order to conform to actual practice and for continuity with the preceding section.

15. The phrase "and shall also publish a date for filing written comments on the proposed regulations" and the last sentence of § 18.83(a) are deleted from that section and the remainder is reworded for clarity.

16. The term "prehearing order" is substituted for the term "final agenda" throughout § 18.84 for consistency with § 18.81.

17. Section 18.85 is reworded for clarification purposes.

18. The terms of § 18.86(b) are broadened to apply to final Environmental Impact Statements as well as draft Environmental Impact Statements.

19. The provisions of §§ 18.88(a) (2) and (3), which are implicit in § 18.88(a)(4), are deleted to avoid redundancy.

20. Section 18.90 is rewritten for clarification.

21. In § 18.90(d) the time limit within which written comments on the recommended decision may be filed is increased to 30 days in order to facilitate submission of such comments.

B. Other recommended changes in the proposed amendment have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons assigned:

1. The recommendation that the title "administrative law judge" be substituted throughout the subpart for the title "presiding officer" is rejected. As the definition added to § 18.71 by these amendments makes clear, an administrative law judge must be employed by the Office of Hearings and Appeals and appointed in accordance with 5 U.S.C. 3105 to be a presiding officer. Use of the title "administrative law judge" in this subpart would therefore be inaccurate and misleading.

2. It was suggested that § 18.74(b) be revised to require the notice of hearing to include the following: a description of the nature and extent of any proposed waiver of the moratorium; an estimate of the existing levels of the species and population stocks of the marine mammal or mammals concerned; a description of the expected impact of the proposed regulations on the optimum sustainable population of the species or population stocks concerned; a description of the evidence before the Secretary upon which he proposes to base the regulations; a description of any studies made by or for the Secretary which relate to the establishment of the proposed regulations and the place where such studies are available for public inspection; and any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of the proposed regulations. This recommendation is rejected on the grounds that § 18.74(b)(4) now requires the notice of hearing to include a summary of all the information referred to by the recommendation and that § 18.74(b)(8) as amended encompasses such information and facilitates access to it by interested members of the public.

3. The recommendation that the first sentence of each subsection of § 18.87 be prefaced with the phrase "unless otherwise ordered by the presiding officer" is rejected. The flexibility in hearing procedures which the recommendation is intended to provide is afforded by § 18.76(b)(5).

4. It was recommended that § 18.89 include a provision that an interested person need not be a party to submit comments on the proposed regulations and waiver. Such an addition is considered unnecessary in view of established procedure with respect to proposed regulations and the language of § 18.90(d).

Accordingly, Subpart G of Part 18, Subchapter B, Chapter I of Title 50, Code of Federal Regulations, is revised as set forth below. These regulations shall become effective March 8, 1976.

Dated: January 27, 1976.

LYNN GREENWALT,
Director,
Fish and Wildlife Service.

Subpart G of Part 18 is revised to read as follows:

Subpart G—Notice and Hearing on Section 103 Regulations

Sec.	
18.70	Basis and purpose.
18.71	Definitions.
18.72	Scope of regulations.
18.73	Burden of proof.
18.74	Notice of hearing.
18.75	Notification by interested persons.
18.76	Presiding officer.
18.77	Direct testimony submitted as written documents.
18.78	Mailing address.
18.79	Inspection and copying of documents.
18.80	Ex parte communications.
18.81	Prehearing conference.
18.82	Prehearing order.
18.83	Determination to cancel the hearing.
18.84	Rebuttal testimony and new issues of fact in prehearing order.
18.85	Waiver of right to participate.
18.86	Conduct of the hearing.
18.87	Direct testimony.
18.88	Cross-examination.
18.89	Oral and written arguments.
18.90	Recommended decision, certification of the transcript and submission of comments on the recommended decision.
18.91	Director's decision.

AUTHORITY: Sec. 103 of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.).

Subpart G—Notice and Hearing on Section 103 Regulations

§ 18.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Director, U.S. Fish and Wildlife Service, to: (1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his

jurisdiction; and (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the act refers the Director to section 103 (16 U.S.C. 1373). In accordance with § 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)).

§ 18.71 Definitions.

Definitions shall be the same as in subpart A of this Part except as follows:

(a) "Party" means for the purposes of this subpart:

(1) The Director or his representative; or

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 18.75 and 18.84(b).

(b) "Presiding officer" means, for the purposes of this subpart, an administrative law judge of the Office of Hearings and Appeals appointed in accordance with 5 U.S.C. 3105.

(c) "Witness" means, for the purposes of this subpart, any person who provides direct testimony on the proposed regulations and waiver.

A person may be both a party and a witness.

§ 18.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557). The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver and/or regulation proposed pursuant to section 103(d) of the act in a manner which gives full protection to the rights of all persons affected thereby.

§ 18.73 Burden of proof.

The proponents of the proposed regulations and waiver must demonstrate that any taking or importation of any marine mammal under such proposed regulations and waiver would be consistent with the act.

§ 18.74 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If an Environmental Impact Statement is required, the date of publication of the Statement and the times and place(s) where the Statement and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The times and place(s) where records and submitted direct testimony will be kept for public inspection, along with appropriate references to any other documents;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 18.75;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the prehearing conference.

§ 18.75 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice of hearing.

§ 18.76 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 18.74, the Office of Hearings and Appeals shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer by the Office of Hearings and Appeals unless otherwise ordered by the Director.

(d) The presiding officer shall withdraw from the proceeding upon his own motion or upon the filing of a motion by a Party under § 18.76(e) if he deems himself disqualified under recognized canons of judicial ethics.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. If there is filed by a party in good faith a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director of the Office of Hearings and Appeals shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 18.77 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 18.74), the prehearing order (§ 18.82), or within 15 days after the conclusion of the prehearing conference (§ 18.84) as the case may be. All direct testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Di-

rector's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 18.78 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 18.79 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240, unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 18.80 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, U.S. Fish and Wildlife Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at times and place(s) specified in the notice of hearing.

(c) The presiding officer shall not communicate with any party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 18.81 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 18.77, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 18.74(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference, and a party may appear in person or be represented by counsel.

§ 18.82 Prehearing order.

(a) After the prehearing conference, the presiding officer shall prepare a prehearing order which shall be published in the FEDERAL REGISTER within ten days after the conclusion of the conference. A copy of the prehearing order shall be mailed to all Parties.

(b) The prehearing order shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The prehearing order may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the prehearing order a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties interests are adverse on the issues presented.

(d) All parties shall be bound by the prehearing order.

§ 18.83 Determination to cancel the hearing.

(a) If the presiding officer determines that no issues of material fact are presented by the direct testimony submitted prior to the date of the hearing, he may publish in the FEDERAL REGISTER such determination and that on issues of material fact a hearing shall not be held. The presiding officer may provide an opportunity for argument on any issues of law presented by the direct testimony.

(b) Promptly after oral argument, if any, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and any oral argument presented. He shall transmit to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony. The Director shall then make a final decision in accordance with these regulations (§ 18.91).

§ 18.84 Rebuttal testimony and new issues of fact in prehearing order.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the prehearing order.

(b) If the prehearing order presents issues not included in the notice of the hearing published pursuant to § 18.74:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the prehearing order. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 18.75; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the prehearing order. Such direct testimony will comply with the requirements of § 18.77.

§ 18.85 Waiver of right to participate.

Any person who fails to notify the Director of his intent to participate pursuant to § 18.75 or § 18.84 shall be deemed to have waived his right to participate as a party.

§ 18.86 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail. If the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record the notice of hearing as published in the FEDERAL REGISTER, all subsequent notices published in the FEDERAL REGISTER, the Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments, and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the prehearing order in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner

as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer if made prior to his certification of the transcript, or by the Director if made thereafter.

§ 18.87 Direct testimony.

(a) Only direct testimony submitted as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony, when written, shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof.

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross- and direct-examination. Cross-examination shall be by a party whose interests are adverse on the issue presented to the witness if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct-testimony if such party fails to present a witness to introduce the direct-testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States. Parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 18.88 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the examination; and

(2) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 18.89 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument by parties at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any party may file with the presiding officer proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 18.90 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that to the best of his knowledge and belief the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Upon receipt of the recommended decision, the Director shall send a copy thereof to each party by certified mail and shall publish in the FEDERAL REGISTER a notice of the receipt of the recommended decision by the Director. The notice shall include:

(1) A summary of the recommended decision;

(2) A statement that any interested person may file written comments on the recommended decision with the Director by a specified date;

(3) The time(s) and place(s) where the record of the hearing transmitted to the Director pursuant to paragraph (b) of this section may be inspected by interested persons; and

(4) The time(s) and place(s) where the recommended decision may be inspected and/or copied by interested persons.

(d) Within thirty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the thirty-day period to the Director at the above address.

§ 18.91 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the thirty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor;

(3) Rulings on issues of law; and

(4) Any other relevant information which the Director deems appropriate.

(c) The Director's decision shall be published in the FEDERAL REGISTER.

If the waiver is approved, the final adopted regulations shall be promulgated with the decision, or as soon thereafter as practicable.

[FR Doc.76-3692 Filed 2-5-76;8:45 am]

APPENDIX D

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MONDAY, APRIL 5, 1976

Fish and Wildlife Service

Subpart H - Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 18—MARINE MAMMALS

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

Section 101 of the Marine Mammal Protection Act of 1972 (16 USC 1371) establishes a moratorium on the taking and importing of marine mammals. Under certain conditions, which are set out in section 101(a)(3(A), the moratorium can be waived for any given species of marine mammal. The waiver is to be accompanied by regulations for the conservation of the species in question, issued pursuant to section 103 of the Act.

Section 109 of the Act preempts State laws and regulations relating to the taking of marine mammals within the State's jurisdiction. That section also provides for the reinstatement of State laws and regulations which provide for the conservation of marine mammals consistent with the Act and any applicable regulations.

On February 13, 1975, a document was published in the FEDERAL REGISTER (40 FR 6664) proposing to amend Part 18, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, by (1) the addition of a new subpart F to the table of sections, (2) the addition of a new § 18.32 entitled "Waiver of the Moratorium," (3) the addition of a new subpart F entitled "Waiver of the Moratorium; State Laws and Regulations," and (4) the amendment of § 18.23 entitled "Native exceptions."

The proposal contained a detailed description of the proposed amendments, gave notice of the availability of the State of Alaska's regulations concerning Pacific walrus and the statements required by section 103(d)(1)–(4) of the Act, set forth a concise summary of procedural regulations which would be applicable to a hearing concerning the proposal, and gave notice of the times and places where a prehearing conference and subsequent hearing would be held if requested, as well as the name and address of the Presiding Officer and the means by which participation in a hearing could be secured.

At the request of interested parties, a hearing was held in two stages. The first stage was held in Anchorage, Alaska, on March 18–22, 1975, at which the proponents presented their case in support of the proposed cooperative State/Federal conservation program. At the second stage held in Arlington, Virginia, on April 8 and 9, 1975, the opponents and the Marine Mammal Commission were afforded an opportunity to voice their objections and to make their suggestions for changes, additions, and modifications

to the proposal. Forty-five documentary exhibits and the testimony of fourteen witnesses were received in evidence; a total of 1,152 pages of transcript were amassed. Six parties proponent, three parties opponent supported by a number of affiliated groups, and one non-aligned party, the Marine Mammal Commission, actually participated in the proceeding.

Presiding Officer Joseph B. Kennedy, in a recommended decision issued on July 10, 1975, found that waiver of the moratorium on the taking of Pacific walrus was appropriate and that, subject to suggested changes in the proposed regulations and the State's management program, the cooperative State/Federal management program for Pacific walrus should be promulgated. [In Re: Waiver of the Moratorium on Walrus Under Regulations for a Cooperative State/Federal Conservation Program, Docket No. Wash. 75-1, July 10, 1975.] The recommended decision included the suggestion that the scope and nature of the waiver as it applies to walrus be more specifically delineated in a new subpart H.

On December 24, 1975, the Director of the U.S. Fish and Wildlife Service published a final decision in the proceeding concerning waiver of the moratorium on the taking of Pacific walrus (40 FR 59459). Simultaneously published were subpart F regulations as revised in accordance with the Director's decision and those portions of the Presiding Officer's recommendations accepted by the Director (40 FR 59442). As part of the Director's decision, a draft of subpart H was published for use by the Service as a guide in the development of regulations to implement the Presiding Officer's recommendation for a new subpart specifically limiting the taking and importation of Pacific walrus.

The Director's decision provided that final regulations for subpart H would be promulgated upon approval by the Director of the revised management program to be submitted by the State of Alaska. That program has been submitted and is hereby certified to be in compliance with the requirements of the Director's decision and those portions of the Presiding Officer's recommended decision adopted by the Director. Accordingly, Part 18 of Title 50, CFR, is amended as set forth below.

This rulemaking is limited to Pacific walrus. It is the intention of the Service to publish similar regulations in the near future applicable to other species of marine mammals for which the moratorium may be waived.

It is determined that immediate implementation of State regulations controlling the flow of raw ivory is essential to the proposed walrus management scheme. Consequently, for good cause found, it is determined that this amendment is to be effective April 5, 1976.

Dated: March 31, 1976.

GEORGE W. MILIAS,
Acting Director,
U.S. Fish and Wildlife Service.

In consideration of the foregoing, Part 18 of Subchapter B Chapter I of Title 50, Code of Federal Regulations, is amended as follows:

1. In the table of sections, a new subpart H is added reading:

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

Sec.
18.92 Purpose of regulations.
18.93 Scope of regulations.
18.94 Pacific walrus (Alaska).

2. A new subpart H is added, reading as follows:

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

§ 18.92 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of section 103 of the Act for regulations to govern the taking and importation of each species of marine mammal for which the moratorium imposed by section 101 has been waived.

§ 18.93 Scope of regulations.

(a) The provisions in this subpart apply only after (1) the Director has made a decision to waive a moratorium pursuant to section 101(a)(3)(A) of the Act, (2) the opportunity for a hearing required by section 103(d) of the Act has been provided, and (3) the Director has made a determination, in the case of State laws and regulations, to approve such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than takings for scientific research or public display, which are governed by section 18.31, of this part, or takings incidental to commercial fishing operations which are governed by § 18.24.

§ 18.94 Pacific walrus (Alaska).

(a) Pursuant to sections 101(a)(3)(A) 103, and 109 of the Marine Mammal Protection Act of 1972, the moratorium on the hunting and killing of Pacific walrus (*Odobenus rosmarus*) in waters or on lands subject to the jurisdiction of the State of Alaska, the United States, or on the high seas by any person, vessel, or conveyance subject to the jurisdiction of the State of Alaska or the United States, is waived, effective with publication of a notice of approval of the laws and regulations of the State of Alaska, subject to the following terms and conditions:

(1) The exemption for hunting and killing of Pacific walrus by Alaskan natives under section 101(b) of the Act is rescinded and superseded by the regulations relating to the hunting and killing of Pacific walrus as set forth in this section.

(2) Hunting and killing of Pacific walrus by Alaskan natives will be accomplished in the manner and in accordance with the limitations set forth in this section.

(3) Sport hunting of Pacific walrus by licensed sport hunters will be accomplished in the manner and in accordance with the limitations set forth in this section.

(4) Officers, employees or agents of the State of Alaska may take Pacific walrus in accordance with a State research or conservation program approved by the Director in connection with the approval of the State's laws and regulations pursuant to subpart F of these regulations.

(5) Importation of Pacific walrus taken on the high seas will be permitted only when imported into the State of Alaska, and when taken in accordance with the limitations of this section.

(6) No part or product of a Pacific walrus taken under the provisions of this section may be shipped on interstate or foreign commerce unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product until the final stages of processing.

(7) The taking or importation of Pacific walrus by all other persons, vessels, or other conveyances remains subject to the moratorium and the prohibitions set forth in the Marine Mammal Protection Act and subpart B of these regulations.

(8) Whenever retrieved takings exceed 3,000 walrus in any regulatory year, or the walrus herds diminish below the range of optimum sustainable population, the moratorium on the taking of walrus provided for in section 101(a) of the Marine Mammal Protection Act, 16 U.S.C. section 1371(a) will automatically be reimposed.

(b) All activities conducted pursuant to a waiver of the moratorium, including those carried out on the high seas adjacent to the coast of the State of Alaska must be in accordance with title 16 of the Alaska Statutes and the approved regulations promulgated thereunder.

(c) A violation of the provisions of the preceding subsection which occurs beyond the jurisdiction of the State of Alaska shall be punishable in accordance with section 105 of the Act.

3. Section 18.58 is revised to read as follows:

§ 18.58 List of waivers and States approved.

The following is a list of States whose laws and regulations have been approved by the Director pursuant to § 18.54 and the species of marine mammals for which the moratorium has been waived in each State:

State	Common name	Scientific name
Alaska	Pacific walrus	*Odobenus rosmarus.*

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APPENDIX E

federal register

FRIDAY, APRIL 9, 1976

PART II:

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

MARINE MAMMALS

Proposed Waiver of Moratorium

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 18]

MARINE MAMMALS

Proposed Waiver of Moratorium on the Polar Bear, Sea Otter, and Pacific Walrus

This proposal contains regulations to implement sections 101 and 103 of the Marine Mammal Protection Act of 1972 (hereinafter "the Act") by waiving the present moratorium on taking and importation of the polar bear (*Ursus maritimus*), sea otter (*Enhydra lutris*), and Pacific walrus (*Odobenus rosmarus*).

Section 101 of the Act establishes a moratorium on the taking and importing of marine mammals. Under certain conditions, which are set out in section 101 (a)(3)(A), the moratorium can be waived for any given species of marine mammal. The waiver is to be accompanied by regulations for the conservation of the species in question, issued pursuant to section 103 of the Act.

Section 109 of the Act preempts State laws and regulations relating to the taking of marine mammals within the State's jurisdiction. That section also provides for the reinstatement of State laws and regulations which provide for the conservation of marine mammals consistent with the Act and any applicable regulations.

Based on scientific and other evidence available to it, the United States Fish and Wildlife Service (FWS) has determined that certain marine mammals, specifically the species mentioned above, can and should be conserved on the basis of a management regime other than a strict moratorium on taking and importation. Based on a long standing request from the State of Alaska, and on communications with other States, FWS has also determined that in many instances, the States have the primary interest and expertise in conserving marine mammals consistent with the Act, and the capability of implementing such conservation programs.

The regulations in the proposal are written to provide for those situations where it is appropriate to waive the moratorium under section 101 and a State can provide a conservation program under section 109 to manage the populations in question consistent with the Act. These regulations do not apply where a waiver of the moratorium is appropriate but the Federal government alone would establish and implement a conservation regime. Separate regulations would be promulgated to deal with the latter situation.

Simultaneously with this proposal[1] the National Marine Fisheries Service is publishing a nearly identical proposal which will amend Part 216 of Title 50, CFR, and will apply to those species of marine mammals over which that Service was given jurisdiction by the Act. However, the action with respect to all species is a joint one, and the proposed regulations of both Services will be considered at a joint hearing.

[1] FR citation to National Marine Fisheries Service proposal.

DESCRIPTION OF THE PROPOSAL

I. REGULATIONS FOR A COOPERATIVE STATE FEDERAL CONSERVATION PROGRAM

The first item in the proposal would establish a new subpart F in Part 18 of Title 50, CFR, providing standards and procedures for the approval and monitoring of State laws and regulatory programs which implement a waiver of the moratorium. This new subpart is applicable to all States and is specifically designed for a cooperative State/Federal management system for marine mammal resources. These regulations will apply to all species of marine mammal for which the moratorium may be waived, including the Pacific walrus. The proposed regulations will thus replace the current subpart F, which applies only to Pacific walrus.

At the hearing which was held to consider the regulations now contained in subpart F, counsel for the Service stipulated that those regulations would be limited to Pacific walrus. This was done in order to provide an opportunity to be heard to those persons who did not appear at the hearing but who are concerned with waiver of the moratorium on the taking of other marine mammals. This proposal provides such an opportunity.

In §§ 18.51 through 18.53 the proposal requires two simultaneous events in order to trigger a waiver of the moratorium:

(1) A decision by the Director that a waiver of the moratorium is appropriate; and

(2) The submission of State laws and regulations constituting a proper management regime for the marine mammals in question.

When both of these conditions have been met, the approval of State laws and regulations pursuant to section 109 of the Act activates the waiver of the moratorium.

The Fish and Wildlife Service believes that this system provides the best combination of State and Federal capabilities, while meeting the objectives of the Act for conservation of marine mammals. It is consistent with the program for cooperative agreements with States under the Endangered Species Act of 1973 which likewise encourages State action under Federal guidelines. As stated above, this does not eliminate the possibility of a Federal management regime for certain marine mammal populations under appropriate circumstances. It simply provides for those occasions when a State desires to establish a marine

Section 18.54 describes the procedures for both the initial and the continuing approval of State laws and regulations. It provides for FEDERAL REGISTER notice to the public of the Director's approval of State laws and regulations, a description of the management regime established by the State, and the extent of the waiver of the moratorium.

Section 18.55 provides the criteria for the approval of State laws and regulations. These criteria have been designed to assure that all appropriate biological and ecological factors have been taken into account, consistent with the basic policies and goals of the Act.

Section 18.56 establishes machinery for an annual review of the State program (or more often if necessary). Working together, this section and the preceding sections provide for State management of certain marine mammals resources, under Federal guidelines and review. This system will have the following advantages:

(1) The States will actually manage the resource; generally, the States have the interest, expertise and capability to carry out proper conservation programs;

(2) The State conservation program must meet Federal standards;

(3) The State program will be under continual Federal review;

(4) Implementation of a State program will be preceded by a Federal waiver of the moratorium.

Section 18.57 establishes certain norms for enforcement, and certain Federal rules. These will assure the effectiveness of the particular approved conservation program.

For public convenience and clarity, § 18.58 will contain a list of all waivers of the moratorium, and of all States which have approved programs.

These regulations for subpart F will be promulgated pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. Thus, interested parties will have thirty (30) days in which to file written comments on these proposed regulations for subpart F. Written comments are to be submitted to the Director, United States Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, on or before May 10, 1976.

II. CONSEQUENTIAL CHANGES IN THE BASIC MARINE MAMMAL REGULATIONS

The second item in this proposal would make consequential changes in Part 18 of Title 50, CFR. Section 18.23 which relates to the taking of marine mammals by certain Indians, Aleuts and Eskimos, is the first section affected. If the State laws and regulations regarding marine mammals become effective, certain Federal restrictions on the transfer of parts or products of marine mammals will no longer be necessary. This is based on the State's ability to control any illicit trade in such items, thereby avoiding an incentive to take more marine mammals than appropriate.

Section 18.4 is also affected by this proposal. The text of that section would be deleted and the section reserved since it duplicates § 18.53 of the proposal.

The proposal would renumber § 18.58 as § 18.59.

The proposal would also amend § 18.11 to make it consistent with the proposal.

III. REGULATIONS TO IMPLEMENT THE WAIVER OF THE MORATORIUM

The third item in this proposal would establish a new subpart H in Part 18 of Title 50 CFR, providing regulations to ensure that the taking and importation

of each species or population stock of marine mammal for which the moratorium has been waived will not be to the disadvantage of that species or population stock.

The regulations in this subpart would provide for those situations where it is appropriate to waive the moratorium under section 101, and a State can provide a conservation program under section 109 to manage the populations in question consistent with the Act. These regulations do not cover the circumstance where a waiver of the moratorium is appropriate but the Federal Government alone would establish and implement the particular conservation regime. At this time these regulations will apply to the three species involved in this proposal including the Pacific walrus which is the only species covered by the current subpart H.

The proposed regulations for subpart H constitute regulations prescribed to carry out section 103 of the Act and must therefore be made "on the record after opportunity for an agency hearing." Those regulations will therefore be the subject of the hearing to be held concerning the Secretary's determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act. The State's laws and regulations, which constitute the essence of the regulatory scheme, will also be considered at the hearing.

NOTICE OF AVAILABILITY OF ALASKA'S REGULATIONS ON THE NINE SPECIES OF MARINE MAMMALS FOR WHICH WAIVER OF THE MORATORIUM IS SOUGHT AND SECTION 103(d) STATEMENT

The State of Alaska has proposed a conservation program for nine species of marine mammals. Three of the nine spices are under the Service's jurisdiction: the polar bear, sea otter, and Pacific walrus. The remaining six species are under the jurisdiction of the Department of Commerce and are the subject of a separate but identical proposal which is published simultaneously with this proposal by the National Marine Fisheries Service (NMFS).[2] The Directors of NMFS and FWS have individually determined that consideration of a waiver of the moratorium on the taking of those nine species is appropriate under section 101(a)(3)(A) of the Act.

The State of Alaska's laws and regulations are available for inspection at the Docket Section of the Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard Arlington, Virginia 22203. Copies of the State laws and regulations may be obtained by writing to the Director (MNB), U.S. Fish and Wildlife Service, Washington, D.C. 20240, for those species for which FWS has jurisdiction and to the Director (NMFS), Department of Commerce, Washington, D.C., for those species for which NMFS has jurisdiction.

The statements required by section 103(d)(1-4) of the Act are discussed in detail in an environmental impact statement (EIS) available for inspection and copying at the above location. Notice of availability of the EIS was published on March 5, 1976, (41 FR 9588). A summary of the four statements follows:

1. Statement of the estimated existing levels and populations stocks of the marine mammals concerned.

A. Polar Bear (*Ursus maritimus*). Centers for six geographically isolated polar bear populations which have been identified in the main polar basin are Wrangel Island—western Alaska, northern Alaska, northern Canada, Greenland, Spitsbergen-Franz Josef Land, and central Siberia. Separate populations also occur further south in Hudson Bay in Canada. Two of these populations stocks, Wrangel Island—western Alaska and northern Alaska, occur in waters off Alaska.

Based upon abundance and geographic distribution of bears off the Alaska coast and the magnitude of sustained long-term harvests, it is estimated that the population of the Wrangel Island—western Alaska stock numbers between 5,500 and 6,000 animals and the northern Alaska population stock numbers between 2,500 and 3,000.

Both of these population stocks are exhibiting biological characteristics which indicate that they are approaching the carrying capacity of their habitat.

B. Sea Otter (*Enhydra lutris*). Based upon aerial surveys in 1972 the sea otter population in waters off Alaska was estimated to be between 100,000 to 125,000 animals.

The entire sea otter population in waters off Alaska is considered to be of one genetic stock; however, for management purposes it can be divided geographically into eleven population stocks.

At the present time only those population stocks in the Rat Islands-Delarof Islands and in the Andreanof Islands are considered to be at the carrying capacity of their habitats.

The Rat Island-Delarof population stock is estimated to contain between 23,000 and 32,000 animals and the Andreanof Island population stock between 36,000 and 38,000 animals. Both are estimated to be at the upper range of their optimum sustainable populations.

C. Walrus. As established in the proceeding *In Re:* Waiver of Moratorium on Walrus, Docket No. Wash. 75-1, the population of walrus was found to be in the range of 170,000 to 200,000.

2. Statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stocks.

A. Polar Bear. The effect of the proposed regulations would be to allow up to 250 bears to be taken annually for sport and subsistence purposes.

No aircraft or large motorized vessels will be allowed to be used and the actual harvest probably will be significantly lower than the ceiling of 250 animals. Harvests greater than this were sustained for 13 years prior to the Act with no measurable effect upon population size. Harvests of this magnitude will not diminish the population stocks below their optimum sustainable levels.

B. Sea Otter. The effect of the proposed regulations would be to allow the harvesting of up to 3,000 sea otters from the Rat Island-Delarof Island and the Andreanof Island population stocks.

This would constitute 10.9 per cent of the Rat Island-Delarof Island population stock and 8.1 per cent of the Andreanof Island population stock. Harvests of this magnitude from either of these population stocks would not depress them below their optimum sustainable levels.

C. Walrus. The effect of the proposed regulations would be to allow the harvesting of up to 3,000 retrieved walruses annually for subsistence and sport purposes. As developed at the hearing in the proceeding *In Re:* Waiver of Moratorium on Walrus, Docket No. Wash. 75-1, such a harvest would not reduce the walrus population below its optimum sustainable population. No new evidence has been adduced since the close of the record in the walrus proceeding which would indicate that such a harvest would have any different results at present.

3. Evidence before the Secretary upon which he has based his regulations.

For all species, the Secretary's evidence for such regulations is that information summarized in 1 and 2 above, and a comprehensive management plan based upon sound principles of resource management which will again allow the utilization of these resources more fully for their aesthetic, recreational and economic benefits and for human welfare.

The evidence is discussed in detail in the Draft Environmental Impact Statement. The following listed literature contains information and evidence utilized in connection with the proposal:

Alaska Department of Economic Development, 1972. Alaska Statistical Review, 1972. Division of Economic Enterprise, Juneau. December.

Alaska Department of Fish and Game, 1973 (a). Alaska marine mammal regulations, status reports and management policies.

Alaska Department of Fish and Game, 1973 (b). Alaska's Wildlife and Habitat. State of Alaska. 144 p.

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Alaska Department of Labor, 1970. Alaska Native Population, 1970 census. Employment Security Division and Research and Analysis Division. Mimeo; August 1970.

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Allen, J. A. 1880. History of the North American pinnipeds, a monograph of the walruses, sea lions, sea bears, and seals of North America. U.S. Geological and Geographical Survey, Misc. Publ. No. 12, 785 p.

Alverson, D. L. A. T. Pruter, and L. L. Ronholt. 1964. H. R. Macmillan Lectures in Fisheries. A study of dermersal fishes and fisheries of the northeast Pacific Ocean. Vancouver, Univ. of British Columbia, 190 p.

Barbash-Nikiforov, I. I. 1943. Kalan, (The Sea Otter, pp. 1-174.) Soviet Ministrov RSFSR. Glavnoe upravlenie po zapovednikam. (In Russian.) (Translated from Russian by Dr. A. Birron and Z. S. Cole. Published for the National Science Foundation by the Israel Program for Scientific Translations, Jerusalem, 1962. 227 p., Illus.) (Cited in Schneider, 1975.)

Bartonek, J. C., R. Eisner, and F. H. Fay, 1974. Mammals and Birds. In: D. W. Hood, Convener, Probes: a Prospectus on Processes and Resources of the Bering Sea Shelf 1975-1985. National Science Foundation, Office of Polar Programs. March 1974.

Bertrand, Gerard A., 1975. Optimum Sustainable Populations and the Management of Marine Mammals. A report to the Marine Mammal Commission (contract N.MMSA-6010), March 10, 1975.

[2] FR citation to National Marine Fisheries Service proposal.

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Bishop, R. H., 1967. Reproduction, Age Determination, and Behavior of the Harbor Seal, *phoca vitulina*, in the Gulf of Alaska, MS Thesis University of Alaska, College, Alaska. 121 p.

Bigg, M. A. 1969. The harbor seal in British Columbia. Fish. Res. Bd. Can. Bull. 172.

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4. Studies or recommendations made for or by the Secretary or the Marine Mammal Commission on the establishment of these regulations.

The only known study made by or for the Secretaries or the Marine Mammal Commission specifically on these regulations is the preparation of a Draft Environmental Impact Statement on a Consideration on the Waiver of the Moratorium and Return of Management of Certain Marine Mammals to the State of Alaska.

PROCEDURES FOR THE WAIVER AND THIS PROPOSAL

Section 103(d) of the Act requires opportunity for a hearing on the Director's determination to waiver the moratorium, and on the regulations prescribed to implement such a waiver. As mentioned above, regulations governing such a hearing have been published at 41 FR 5396 (February 6, 1976). All persons wishing to participate in the hearing procedure should read those regulations carefully and follow the procedures set forth therein.

After the hearing and following review of the recommended decision, the Directors will, if appropriate, publish the regulations set forth as proposed subpart H as final rules, make a final determination to waive the moratorium, and approve Alaska's laws and regulations pursuant to section 109 of the Act and § 18.54 of the proposed subpart F. Subpart F will be published in final form as soon as practicable after the thirty (30) day comment period has expired.

NOTICE OF PROCEDURAL MATTERS

1. Notice is hereby given of intent to hold a hearing, if requested, regarding the proposed waiver and regulations. Such hearing is tentatively scheduled as follows: June 8, Anchorage, Alaska; June 15, Nome, Alaska; June 22, Anchorage, Alaska; July 20, Washington, D.C.; precise dates and times and places will be announced at the prehearing conference.

2. Notice is hereby given of a prehearing conference to be held on May 18, 1976 beginning at 1:30 p.m. at the following location: Hearing Room C, Twelfth Floor, 4015 Wilson Boulevard, Arlington, Virginia 22203. The prehearing conference will continue on May 19, if necessary.

3. The presiding officer is hereby designated to be Administrative Law Judge Malcom P. Littlefield, Office of Hearing and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 557-9200.

4. All communications and correspondence relating to this matter must be entitled as follows:

In the Matter of the Request of the State of Alaska To Waive the Moratorium on Nine Species of Marine Mammals and Allow the State To Resume Management [Docket No: Washington 76-1]

5. All persons interested in participating in this proceeding must notify the presiding officer by May 10, 1976, of their intention to participate, their request for hearing, and must submit what issues of fact and law they deem necessary to be determined. Such notification shall be by certified mail.

6. Dates for the submission of direct testimony will be announced in the prehearing order, prepared in accordance with 50 CFR 18.82.

7. The conduct of any hearing held in this matter will be governed by the procedural regulations published by the Service at 41 FR 5396 (February 6, 1976), 50 CFR 18.70–18.90

NOTICE OF ISSUES OF FACT WHICH MAY BE INVOLVED IN THE HEARING

The following list, required by 50 CFR 18.74(s) enumerates issues of fact which may be involved in the hearing:

1. The number of separate population stocks, if any, included in each species.

2. The estimated existing population levels of each species and population stock.

3. The optimum sustainable population of each such species and population stock.

4. The anticipated effect on the optimum sustainable population of each species and population stock, and on the health and stability of the ecosystem, of waiving the moratorium to the extent proposed.

5. The humaneness of the methods and means of taking permitted by the State's law and regulations.

6. The adequacy of the State's management program to insure that the extent of the waiver will not be exceeded, and that any takings will not otherwise be to the disadvantage of any species or population stock.

7. Whether the State provides a modern scientific management program in accordance with sound principles of resource protection and conservation as provided within the purposes and policies of the Act.

8. The adequacy of provisions for public participation within the State in the process of implementing the waiver.

9. The adequacy of provisions for monitoring and review of the State program.

Dated: April 5, 1976.

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend part 18, Subchapter B of Chapter I, title 50, CFR, as follows:

1. A new subpart F is added, reading as follows:

Subpart F—Approval of State Laws and Regulations

§ 18.51 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of sections 109 and 112 of the Act for procedures to permit adoption and enforcement by a State of its laws and regulations consistent with the Act which relate to the protection and taking of marine mammals.

§ 18.52 Scope.

(a) The provisions of § 18.53 of this subpart apply whenever a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's proposed or existing laws or regulations relating to the protection and taking of any marine mammal are consistent with the Act and regulations contained in this subchapter, whether or not the moratorium imposed by section 101 of the Act must be waived to allow such laws to take effect. The provisions set forth standards and criteria for such determination by the Director.

(b) The provisions of §§ 18.54 through 18.58 of this subpart apply only when the Director has waived or is considering waiving the moratorium, and when a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's laws and regulations relating to the protection and taking of any species or population stock of marine mammals, are consistent with the waiver of the moratorium, the Act, and the regulations in this subchapter which apply to such species or population stocks. The provisions set forth standards and criteria for such determination by the Director and for waiving the moratorium.

§ 18.53 Review of State Laws and Regulations—General.

(a) Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes

or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) Section 109 of the Act provides that on or after December 21, 1972, no State may adopt any law or regulation, or enforce any existing law or regulation, which relates to the taking of marine mammals or which in effect nullifies an exemption or exception created by the Act, unless such laws or regulations have been previously reviewed by the Director and determined by him to be consistent with the provisions of the Act and the regulations in this part. In no event, however, will the Director approve any State laws or regulations which:

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act, unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Director has waived the moratorium on such taking or importation under section 101(a)(3)(A) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or public display (except that a State may, under authority of a general scientific research permit granted by the Director to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit).

(c) Any State may obtain a review and determination of its proposed or existing laws and regulations from the Director by submitting a written request to that effect to the Director, U.S. Fish and Wildlife Service, accompanied by the following documents, unless otherwise specified by the Director:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization, staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description, where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Director may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Director shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Director will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Director. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (c) above, unless otherwise provided by the Director. All determinations by the Director (other than as a result of preliminary reviews of proposed laws and regulations) shall be final.

(f) The implementation and enforcement of all State laws and regulations previously approved by the Director pursuant to this section shall be subject to continuous monitoring and review by the Director pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Director before their adoption, except as provided in section 18.54(e).

(g) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 18.22 of the regulations in this part or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

§ 18.54 Review of State Laws and Regulations Implementing Waiver.

(a) Any State which requests a determination that its laws and regulations are consistent with the Act and applicable regulations in accordance with § 18.53(c) of this subpart may request a waiver of the moratorium imposed by section 101 of the Act to the extent necessary to allow such laws and regulations to take effect.

(b) The Director may approve such State laws and regulations which implement a waiver of the moratorium if he determines them to be consistent with the Act, with regulations promulgated under section 103 of the Act with respect to such marine mammals, with the criteria of § 18.55 of this part and with any other rule or regulation promulgated pursuant to the Act with respect to such marine mammals.

(c) Upon approval, the Director shall publish a notice in the FEDERAL REGISTER stating such approval, briefly summarizing the management program established by the State laws and regulations, stating the extent to which the moratorium is waived in order to allow such State laws and regulations to take effect, and the date of submission of the State's annual report.

(d) Until the Director has published the notice specified in paragraph (c) of this section, any waiver granted in response to a request by a State under this section shall not be effective.

(e) Any modifications, amendments, deletions or additions to laws or regulations previously approved, except emergency closing of seasons, shall require review and approval by the Director pursuant to paragraphs (c) through (f) of § 18.56 of these regulations before their adoption.

(f) All determinations by the Director shall be final.

(g) Upon a waiver of the moratorium and approval of State laws and regulations implementing the waiver under this subpart, subpart B of part 18 shall not apply to any activities subject to such laws and regulations.

§ 18.55 Approval of State Laws and Regulations—Criteria.

Any State which applies to the Director for approval of its laws and regulations pursuant to § 18.54 must demonstrate, to the Director's satisfaction, that such laws and regulations:

(a) Provide for a modern scientific resource management program, including but not limited to, research, census, law enforcement, habitat acquisition and improvement and, when and where appropriate, the periodic or total protection of the marine mammals in question;

(b) Establish a program which is based upon the best scientific evidence available on the relevant marine ecosystem and the role of the marine mammals in question in that ecosystem;

(c) Establish a program which is consistent with the primary goal of the Act, to maintain the health and stability of the marine ecosystem;

(d) Establish a program which insures that the species or population stock of marine mammals in question shall not diminish below the optimum sustainable population;

(e) Require the automatic cessation of all taking and/or importing of the marine mammals in question, whenever the number drops below the range of optimum sustain population;

(f) Provide appropriate maximum quotas and seasons, whenever a taking or importation is proposed, unless the State can show that it is more consistent

with these criteria to have no quota or season;

(g) Establish quotas, seasons, and other allowances and restrictions as necessary to be consistent with those criteria in accordance with the following factors:

(1) The seasonal distribution of populations;

(2) Segregation within populations by sex and age;

(3) Discreteness of populations;

(4) Population density;

(5) Critical periods in the species life cycle;

(6) Critical habitat areas;

(7) Productivity of the population;

(8) Species interactions;

(9) Percentage of retrieval by hunters;

(10) Maximization of the utilization of the species;

(11) Other uses of the species, such as recreational use or incidental catch; and

(12) Enforceability of the limitations.

(h) Contain suitable limitations on the means and methods of taking which assure that taking will be by humane means and will maximize the utilization of each animal taken.

(i) Contain provisions for significant public participation within the State in the process of implementing the waiver.

(j) Meet the criteria specified in section 18.53 of this part, to the extent such criteria may differ from those prescribed in this section.

§ 18.56 Review of approved State laws and regulations.

(a) All State law and regulations and the conservation programs established thereby which have been approved shall be reviewed annually, unless circumstances indicate that an earlier review is appropriate.

(b) In order to facilitate such a review, each State having approved laws and regulations must submit an annual report not later than 60 days after the close of such State's first full fiscal year following the effective date of the waiver of the moratorium and at the same time each following year. The report shall contain the following information current for each reporting period:

(1) Any changes in the State laws or regulations;

(2) Any new data on the marine mammal stocks or the marine ecosystems in question;

(3) All available harvest data;

(4) A summary of all research activity on the stocks or ecosystem in question;

(5) Any changes in the information provided with the original request for approval;

(6) A summary of all enforcement activity, including permits issued, skins sealed, reports under permits, investigation undertaken and their dispositions;

(7) Present budget and staffing level for the marine mammal activities; and

(8) Any other information which the Director may request, or which the State deems necessary or advisable.

(c) Each State having approved laws and regulations shall file a special report within 30 days, whenever any of the following occurs:

(1) A proposed change in a relevant State law or regulation (amendments, repealers, or new legislation or regulations), which, with the exception of emergency closing of seasons, shall not be effective until the Director makes a determination pursuant to paragraphs (d) through (f) of this section; or

(2) A significant natural or man-made occurrence affecting the marine ecosystem or the stock in question; or

(3) A significant violation of the State management program including any quotas established thereby.

(d) Upon receipt of any report described in §§ 18.57(b) or 18.57(c) the Director shall, in consultation with the Marine Mammal Commission, determine whether or not the State laws and regulations and any programs established thereby continue to comply with the requirements of the Act and this subpart.

(e) Whenever the Director preliminarily determines, in consultation with the Marine Mammal Commission, that any State laws and regulations or programs established thereby are not in compliance with the requirements of this subpart, he shall publish notice of such determination in the FEDERAL REGISTER, inviting submission from interested persons, within 30 days of the date of the notice, of written data, views or comments, and requests for hearing, with respect to such preliminary determination.

(f) As soon as practicable after the 30-day comment period described in § 18.56 (e), the Director, in consultation with the Marine Mammal Commission, shall determine whether or not to finally disapprove the State laws and regulations. The Director's determination shall be made within 90 days after publication of the notice described in § 18.56(e), unless a hearing is held, in which case the determination shall be made in accordance with the provisions of the Administrative Procedure Act and the procedural regulations of subpart G of this part.

(g) If the Director makes a final determination to disapprove proposed changes in State laws and regulations, the State shall, at the Director's discretion, have the option of retaining its initially approved laws and regulations, in which case the waiver shall remain in effect. All final determinations of disapproval shall be published in the FEDERAL REGISTER; upon such publication, unless a State elects within 30 days to retain its originally approved laws and regulations, any waiver conditioned upon approval of State laws and regulations as provided in this subpart shall terminate, and the moratorium of section 101 of the Act shall be reinstated and supersede such State laws and regulations.

§ 18.57 Notification.

The State shall immediately notify the Director when the number of known killings for each species or population stock of marine mammal reaches 90 percent of the numerical extent of the waiver prescribed by subpart F of this part for that species or population stock.

§ 18.58 Enforcement.

The appropriate official in each State shall utilize such methods as he deems appropriate to assure to the maximum extent practicable that the quotas, seasons, and other limitations in approved State laws and regulations are not exceeded. These methods may include, but are not limited to, patrols, surveillance, investigation, permit record-keeping and reporting requirements, and tagging and marking requirements.

2. The following changes are made in Part 18, of title 50, CFR:

§ 18.4 [Reserved]

(a) The text of § 18.4, Other laws and regulations, is deleted and the section is reserved.

3. Section 18.23(c) is amended to read as follows:

* * * * *

§ 18.23 [Amended]

(c) The restriction in subsection (b) shall not apply to parts on products of the pacific walrus (*Odobenus rosmarus*), sea otter (*Enhydra lutris*) or polar bear (*Ursus maritimus*) to the extent that the waiver of the moratorium and the appeared State/Federal regulations relating to the taking and importation of those species permit the delivery, sale, transportation or shipment of parts or products of those species in interstate or foreign commerce.

§ 18.58 [Redesignated]

Section 18.58 is renumbered 18.59.

Section 18.11 is amended to read as follows:

§ 18.11 Prohibited taking.

Except as otherwise provided in Subpart C, D, and H of this Part 18, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.

4. A new subpart H is added, reading as follows:

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

§ 18.92 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of section 103 of the Act for regulations to ensure that the taking and importation of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disadvantage of any species or population stock.

§ 18.93 Scope of regulations.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Director has made a decision to waive the moratorium on such species or population stock pursuant to section 101(a)(3)(A) of the Act; and (2) State laws and regulations relating to the protection and taking of such species provide a portion of the regulatory scheme, and the Director has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than the capture of live animals to be maintained in captivity for scientific research or public display, which takings and care and maintenance standards are governed by section 18.31 of this part.

§ 18.94 Definitions.

For purposes of this part, the term "waters off Alaska" means that area of the high seas beyond territorial waters west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 18.95 Taking of Polar bear, sea otter and Pacific walrus (Alaska).

(a) Pursuant to sections 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium on the taking of the following marine mammals within the territory of the State of Alaska and on the high seas in the waters off Alaska is waived to the extent provided, effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to section 18.54 (d) of this part:

Species:	*Numerical extent*
Pacific walrus	[1] 3,000
Sea otter	[1] 3,000
Polar bear	[1] 250

[1] Retrieved harvest.

(b) All takings of marine mammals and all activities relating thereto, including those conducted by Alaskan natives, shall be conducted in accordance with the applicable laws and regulations of the State of Alaska.

(c) Marine mammals may be taken pursuant to this section only by persons subject to the jurisdiction of the State of Alaska and duly licensed or otherwise authorized in writing by the State, or in accordance with a permit issued pursuant to subsection (h) of this section.

(d) No marine mammal or product thereof taken under the provisions of this section may be removed from the State of Alaska or from the waters off Alaska (except to the State) unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product until the final stages of processing.

(e) Whenever the known harvest of any species or population stock during any regulatory year is approaching the numerical extent of the waiver provided in subsection (a) of this section, all harvesting of such species or stock shall be terminated by notice in the FEDERAL REGISTER in time to ensure that the extent of the waiver will not be exceeded.

(f) When any species or population stock diminishes below its range of optimum sustainable population, the moratorium provided for in section 101(a) of the Act will be reimposed on the taking of such affected species of population stock by notice in the FEDERAL REGISTER.

(g) Any violation of the laws and regulations of the State of Alaska by those subject to the jurisdiction of the State shall be a violation of these regulations, and persons not subject to the jurisdiction of the State who take or import marine mammals in violation of these regulations may be punished in accordance with the procedures and penalties of section 105 of the Act and the regulations in this part.

(h) The Director, after consultation with the State of Alaska, may issue permits to nonresidents of the State of Alaska authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

(1) Name and address of applicant;
(2) Month and year of taking;
(3) Quantity to be taken;
(4) Proposed location of taking;
(5) Method of taking;
(6) Proposed disposition of parts and products and method of shipment;
(7) The following certification:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

and

(8) The signature of the applicant.

(i) Permits applied for under subsection (g) shall be issued, suspended, modified, or revoked, pursuant to § 18.33 except that the period during which the permit is valid may be modified or ended by reimposition of the moratorium or any closure of a season by the State of Alaska.

(j) Permits issued under subsection (h) shall contain such terms and conditions as the Director may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations and with the applicable provisions of Alaska's approved laws and regulations and shall include:

(1) The number of animals which are authorized to be taken;
(2) The location from which they may be taken;
(3) The method of taking;
(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;
(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;
(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and
(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of the Interior. In no event will the cost be less than the fee for the comparable nonresident license and/or permit issued by the State of Alaska.

(k) The hides of Polar bears taken pursuant to this section may be tanned only by a tannery registered with the Director as a tannery which may possess and process marine mammal products. Any tannery within the jurisdiction of the United States may apply to the Director for registration by submitting an application which contains the following information:

(1) The name and address of the applicant;
(2) A description of the applicant's procedures for receiving, storing, processing and shipping materials;
(3) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos, pursuant to this section.
(4) Such other information as the Director may request;
(5) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(6) The signature of the applicant.

The sufficiency of the application shall be determined by the Director, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to the conditions as the Director prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Director may charge a reasonable fee for such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of the Interior.

(l) The hides of polar bears taken pursuant to this section may not be sold or otherwise transferred in the pursuit of gain or profit.

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National Oceanic and Atmospheric Administration

[50 CFR Part 216]

MARINE MAMMAL PROTECTION

Proposed Waiver of Moratorium on Takings and Importations, Proposed Regulations To Govern Such Taking and Importation, and Notice of Hearing

Section 101 of the Marine Mammal Protection Act (the Act) (16 U.S.C. 1361 et seq.) established a moratorium on the taking and importing of marine mammals and marine mammal products. Under certain conditions, which are set out in section 101(a)(3)(A), the moratorium may be waived for any species or population stock of marine mammal. The waiver is to be implemented by regulations for the conservation of the species in question, issued pursuant to section 103 of the Act to ensure that any taking will not be to the disadvantage of such species or population stock.

The Act divided jurisdiction over species of marine mammals between the Secretary of Commerce for whales, porpoises, seals, and sea lions and the Secretary of the Interior for all others including polar bears, sea otters and walruses.

Section 109 of the Act preempts State laws and regulations relating to the taking of marine mammals within the State's jurisdiction. That section also provides for the reinstatement of State laws and regulations which provide for the conservation of marine mammals if the appropriate Secretary determines that they are consistent with the Act and any applicable regulations. The Secretary of Commerce has delegated his authority to waive the moratorium and approve State laws and regulations to the Administrator of the National Oceanic and Atmospheric Administration who has further delegated this authority to the Director of the National Marine Fisheries Service (NMFS).

On January 31, 1973, the State of Alaska (the State) requested the Secretary of Commerce, acting through the NMFS, to waive the moratorium with respect to Northern (Steller) sea lions, harbor seals (including spotted seals), ringed seals, ribbon seals, bearded seals and beluga whales and to approve the State's laws and regulations relating to the management of these species. The State submitted a similar request to the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service (FWS), with respect to polar bears, sea otters and walruses.

This proposal contains proposed regulations and procedural notices to consider and implement sections 101, 103, and 109 of the Act by waiving the moratorium on the taking and importation of Northern Sea Lions, *Eumetopias jubatus;* Harbor seals, Phoca vitulina *richardii;* Spotted (Largha) seals, *Phoca vitulina largha;* Ringed seals, *Pusa hispida;* Ribbon seals, *Histriophoca fasciata;* Pacific bearded seals, *Erignathus barbatus;* and Beluga whales, *Delphinapterus leucas;* and establishing a State management program.

Based on scientific and other evidence available to it, the NMFS is proposing that the moratorium established by the Act be waived with respect to the five species and 2 subspecies of one Species listed above each of which is under its jurisdiction, is also proposing that the State of Alaska has the primary interest and expertise in conserving marine mammals consistent with the Act, and the capability of implementing a conservation program consistent with the purposes and policies of the Act. Simultaneously with this proposal, the Fish and Wildlife Service is publishing a similar proposal regarding those species under its jurisdiction.[1]

Description of the Proposal

The Director proposes to waive the moratorium on the taking or importation of the following marine mammals located within waters under the jurisdiction of the State of Alaska and in waters off Alaska to the extent provided as follows:

a. Up to 500 Ribbon seals *Histriophoca fasciata)* may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver.

b. Up to 20,000 Ringed seals (*Pusa hispida)* may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver.

c. Up to 9,000 Pacific bearded seals (*Erignathus barbatus)* may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver.

d. Up to 20,000 Spotted (Largha) seals (*Phoca vitulina largha)* may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver.

e. Up to 6,500 Harbor seals (*Phoca vitulina richardii)* may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver. With respect to any population stock, not more than 10 percent of the total population of such stock may be taken annually.

f. Up to 15,000 Northern (Steller) sea lions (*Eumetopias jubatus)* may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver. With respect to any population stock, not more than 10 percent of the total population fo such stock may be taken annually.

g. Up to 315 Beluga whales (*Delphinapterus leucas)* inhabiting Bristol Bay and the Bering Sea and 45 Beluga whales inhabiting Cook Inlet may be taken annually commencing in 1977 provided that the Director upon annual review determines that conditions warrant continuation of the waiver.

The determination on the waiver and the extent of the waiver will depend in part on the acceptability of the management program of the State of Alaska, how the allowable take under that program relates to the optimum sustainable population of each species and what effect, if any, a waiver of the moratorium will have on the allowable take. Consequently, the extent of the waiver, i.e., the number of animals permitted to be taken, will be subject to revision on the basis of the evidence on the hearing record.

In connection with this approval, the Director NMFS is proposing two interrelated sets of regulations which are separate and distinct as set forth below.

Regulations for State Programs

The first set of regulations is applicable to all States and establishes a new subpart H in part 216, Title 50, Code of Federal Regulations, providing standards and procedures for approving and monitoring State laws and regulations implementing waivers of the moratorium. This new subpart is specifically designed for a cooperative State Federal management system for marine mammal resources. These regulations are proposed pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. Thus, interested parties will have until May 10, 1976 to file written comments on these proposed regulations for subpart H. Written comments are to be submitted to the Director, National Marine Fisheries Service, 3300 Whitehaven Street, Washington, D.C. 20235, on or before May 11, 1976.

In §§ 216.101 through 216.103 the proposal describes two events which must occur in order to trigger a waiver of the moratorium:

(1) A determination by the Director that a waiver of the moratorium is appropriate; and

(2) The submission of state laws and regulations constituting a proper management regime for the marine mammals in question.

When both of these events have occurred, the approval of State laws and regulations pursuant to section 109 of the Act activates the waiver of the moratorium.

The NMFS believes that this system provides the best combination of state and federal capabilities, while meeting the objectives of the Act for conservation of marine mammals however it does not eliminate the possibility of a federal management regime for certain marine mammal populations under appropriate circumstances and provides for those occasions when a state desires to establish a marine mammal conservation program.

Section 216.104 describes the procedures for both initial and continuing approval of State laws and regulations. It provides for Federal Register notice to the public of the Director's approval of State laws and regulations, a description of the management regime established

[1] See FR 76-10213.

by the State, and the extent of the waiver of the moratorium.

Section 216.105 provides the criteria for the approval of State laws and regulations. These criteria have been designed to assure that all appropriate biological and ecological factors have been taken into account, consistent with the basic policies and goals of the Act.

Section 216.106 establishes machinery for an annual review of the State program (or more often if necessary). Taken together, this section and the preceding sections provide for State management of certain marine mammal resources, under Federal guidelines and review. This system will have the following advantages:

(1) The States will actually manage the resource; generally, the States have the interest, expertise and capability to carry out proper conservation programs;

(2) The State conservation program must meet Federal standards;

(3) The State program will be under continual Federal review;

(4) Implementation of a State program will be preceded by a Federal waiver of the moratorium.

Section 216.107 establishes certain norms for enforcement, and certain Federal rules. These will assure the effectiveness of the particular approved conservation program.

For public convenience and clarity, § 216.109 will contain a list of all waivers of the moratorium, and of all States which have approved programs.

PROPOSED REGULATIONS TO IMPLEMENT A WAIVER OF THE MORATORIUM FOR CERTAIN SPECIES IN ALASKA

The second set of proposed regulations establishes a new subpart I in Part 216, Title 50 CFR to ensure that the taking and importation of each species or population stock of marine mammals for which the moratorium has been waived will not be to the disadvantage of that species or population stock.

The regulations in subpart I would provide for those situations where it is appropriate to waive the moratorium under section 101 of the Act and a State's program to manage the species subject to waiver is found to be consistent with the Act under section 109.

The proposed regulations for subpart I are intended to implement section 103 of the Act and must therefore be made "on the record after opportunity for an agency hearing" as required by section 103(d) of the Act. Those regulations will therefore be the subject of a hearing to be held on the proposal to waive the moratorium pursuant to section 101(a)(3)(A) of the Act.

Because the State's laws and regulations, if approved, will comprise the bulk of the regulatory scheme intended to ensure that the taking will not be to the disadvantage of any species or population stock, they will also be considered at the hearing along with the proposed Federal regulations. The relevant portions of the State's existing laws and regulations, together with certain proposed changes, are set out in the Draft Environmental Impact Statement and are available for review at the office of the National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C. It is not proposed to adopt these regulations as Federal regulations. All takings and activities related thereto, will be in accordance with applicable State laws and regulations whether in areas under State jurisdiction or in waters off Alaska.

CONSEQUENTIAL CHANGES IN NMFS REGULATIONS

Adoption of this proposal would make consequential changes in part 216 of 50 CFR. Section 216.23 relates to the taking of marine mammals by certain Indians, Aleuts and Eskimos. If the State laws and regulations regarding marine mammals become effective, certain Federal restrictions on the transfer of parts or products of marine mammals will no longer be necessary. This is based on the State's ability to control any illicit trade in such items thereby avoiding an incentive to take more marine mammals than appropriate.

Section 216.4 would be deleted and the section reserved since § 216.103 duplicates 216.4.

Section 216.11 would require amendment to include subpart I as an exception to prohibited takings.

NOTICE OF HEARING AND PROCEDURES, AND AVAILABILITY OF ALASKA REGULATIONS FOR WHICH A WAIVER OF THE MORATORIUM IS SOUGHT, AND 103(d) STATEMENTS

PROCEDURES FOR THE WAIVER AND THIS PROPOSAL

Section 103(d) of the Act requires opportunity for a hearing on the Director's proposal to waive the moratorium, and on the regulations prescribed to implement such a waiver. Regulations governing such a hearing have been published at 41 FR 5396 (February 6, 1976). A joint hearing regarding the NMFS and FWS proposals will be held in accordance with those regulations. All persons wishing to participate in the hearing procedure should read those regulations carefully and follow the procedures set forth therein.

After the hearing and following review of the recommended decision, the Director will, if appropriate, publish the regulations set forth as proposed subpart I as final rules, makes a final determination regarding a waiver of the moratorium, and approve Alaska's law and regulations pursuant to section 109 of the Act and § 216.104 of the proposed subpart H. Subpart H will be published in final form as soon as practicable after the thirty (30) day comment period has expired.

In connection with this proposal, 50 CFR 216.73, which implements in part section 103 of the Act, requires that the following information be provided:

A. *"The nature of the hearing."* A hearing on the record will be held, presided over by an Administrative Law Judge, to consider a waiver of the moratorium on the taking and importation of nine species of marine mammals located in Alaska and the waters off Alaska, and the regulations governing said taking and importation.

The presiding officer is hereby designated to be Administrative Law Judge Malcolm P. Littlefield, Office of Hearing and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 557-9200.

B. *"The place and date of the prehearing conference."* A prehearing conference will be held at the following location: Hearing Room C, Twelfth Floor, 4015 Wilson Boulevard, Arlington, Virginia 22203. The prehearing conference will begin at 1:30 pm, May 18, 1976, and continue on May 19, if necessary.

C. *"The docket number assigned to the case which shall be used in all subsequent proceedings."* The docket number assigned to this case is WASH. 76-1. This number will be used in all subsequent proceedings pertaining to this application. Communications should be entitled:

"In the matter of the request of the State of Alaska to waive the moratorium on nine species of marine mammals and allow the State to resume management."

D. *"The place and date of the hearing."* The date shall not be less than 60 days after publication of the Notice of the hearing.

Such hearing is tentatively scheduled as follows: June 8, Anchorage, Alaska; June 15, Nome, Alaska; June 22, Anchorage; July 20, Washington, D.C.; precise dates and times and places will be announced at the prehearing conference.

E. *"The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74."* Parties intending to participate in this proceeding must notify the presiding officer by certified mail, on or before May 10, 1976, of their intention to participate, and must submit what issues of fact and law they deem necessary to be determined.

F. *"The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required."* Dates for submittal of direct testimony will be announced in the prehearing order prepared in accordance with 50 CFR 18.82. The introduction of direct testimony as well as the procedural matters of the hearing will be governed by the regulations published on February 6, 1976, at 41 FR 5396-5399 (CFR 50 18.70 18.91) by the FWS.

G. *"The legal authority under which the hearing is to be held."* The Marine Mammal Protection Act of 1972, 16 U.S.C. 1061 et seq. and regulations promulgated thereunder, 41 FR 5396-5399 (February 6, 1976).

H. *"If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied."* A Draft Environmental Impact Statement (EIS), regarding the proposed action was issued on March 5, 1976. Copies are available from the Office of the Director, National Marine Fisheries Service, 3300 White-

haven Street, NW., Page Building 2, Washington, D.C. 20235.

I. *"Any written advice received from the Marine Mammal Commission."* The Draft EIS, and the proposed waiver and regulations are being submitted to the Marine Mammal Commission for review. Any comments received will be submitted for the record. The Commission's comments on obligate nursing were previously summarized at 40 FR 17845, April 23, 1975. That summary is incorporated by reference.

J. *"The place(s) where records and submitted direct testimony will be kept for public inspection."* A public record of the proposed action, records and testimony will be maintained in the Office of the Director, National Marine Fisheries Service, 330 Whitehaven Street, NW, Washington, D.C. 20235.

K. *"The proposed regulations and waiver where applicable and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d))*.

1. *"A statement of the existing levels of the species and stocks of the marine mammals concerned"* is:

Species:	*Estimated population level*
Northern sea lion, *Eumetopias jubata*	200,000
Harbor seal, *Phoca vitulina richardii*	270,000
Spotted seal, *Phoca vitulina largha*	(1)
Ringed seal, *Pusa hispida*	250,000
Ribbon seal, *Histriophoca fasciata*	100,000
Pacific bearded seal, *Erignathus barbatus*	300,000
Beluga whale, *Delphinapterus leucas*	10,000
Northern sea lion (*Eumetopias jubata*)	———

[1] 200,000 to 250,000.

Based upon aerial surveys, Kenyon and Rice (1961) estimated the world population of Northern sea lions to be 240–300 thousand in 1961. In Alaska itself there are 202 known rookeries and hauling grounds, and estimates of the numbers occupying these, obtained from aerial photographs, indicated a population size exceeding 200 thousand.

Harbor Seal (*Phoca vitulina richardii*).

Overall, the world population of harbor seals appears to be high and stable, except in coastal areas of dense human populations and development. About 525,000 are present in the North Pacific area and about 150,000 in the European North Atlantic region. There are two subspecies in waters off Alaska: the harbor seal (*Phoca vitulina richardii*) and the spotted (largha) seal (*P. v. largha*) The latter will be discussed later as if it were a separate species.

From analysis of past harvest records and surveys of selected areas, the population of harbor seals in waters off Alaska is estimated to be about 270,000. The entire population of the harbor seals in waters off Alaska probably has a single gene pool, however, for management purposes, five geographic population stocks have been identified.

In the area north of the Alaska peninsula and the Aleutian Islands, the stock is exhibiting biological characteristics which indicate that it is near or at the carrying capacity of the habitat and is therefore considered to be within the range of optimum sustainable population. The range of OSP cannot be determined for the other portion of the stock with information available.

Spotted Seal (*Phoca vitulina largha*).

Field observations and relative abundance in comparison to other species of ice seals indicates a minimum population of 200,000 to 250,000 spotted seals.

The population is at high and stable levels. Being at a high and stable level they are considered to be at or near the carrying capacity of their habitat and within the range of their optimum sustainable population.

Ringed Seal (*Pusa hispida*).

Based upon aerial surveys in areas of land-fast ice along the north coast of Alaska, indirect methods and relative indices of abundance the single population of ringed seals in waters off Alaska in the Bering-Chukchi and Beaufort Seas is estimated to number about 250,000 seals.

The population is considered to be high and stable at a level not much different from that in the 18th and 19th centuries. Being at a high and stable level, the population of these seals is considered to be at or near the carrying capacity of their habitat and within the range of their optimum sustainable population.

Ribbon Seal (*Histriophoca fasciata*).

The ribbon seal population was markedly reduced by Soviet hunting in the past. Since 1968 Soviet regulations have accorded increased protection for this seal, and today it is estimated to have reached its pre-exploitation size of 100,000 animals. It is therefore considered to be at or near the carrying capacity of its habitat and within its range of optimum sustainable population.

Pacific Bearded Seal (*Erignathus barbatus*).

The bearded seals occurring in waters off Alaska constitute one population. Indirect methods and relative indices of abundance of this widely distributed seal indicates a high and stable population of about 300,00 animals.

Being at a high and stable level, the population is considered to be at or near the carrying capacity of its habitat and within its range of optimum sustainable population.

Beluga Whale (*Delphinapterus leucus*).

Beluga whales in Alaska have never been subjected to heavy rates of exploitation. Traditionally they have been used as a source of meat, muktuk, and oil for both humans and sled dogs by residents of certain villages on the Bering Sea and Arctic Ocean coasts and along rivers that belugas periodically ascend. The demise of the sled dog as a result of the introduction of the snow machine the availability of alternate commercial food sources through the development of a cash economy, and welfare measures such as food stamps have greatly reduced the demand for beluga products. Fewer belugas are probably being taken today than for many years.

The beluga population in Alaska appears to be separated into two population stocks.

Based upon aerial surveys, the Cook Inlet population stock is estimated to be about 500 whales. There is no known harvest of this stock which is considered to be relatively stable at or near the carrying capacity of the habitat.

The Bristol Bay-Bering Sea population stock is estimated to number more than 9,500 animals. This stock is considered to be high and stable at or near the carrying capacity of the habitat.

Because they are at high and stable levels at or near the carrying capacity of their habitats, both population stocks are considered to be at or near the upper range of their optimum sustainable populations.

2. "A statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock" is: *Sea Lion*—The effect of the proposed regulations would be to allow up to 15,000 sea lions to be taken annually.

The harvest would be limited to not more than 10 percent of any one population stock. This rate of harvest would not depress the population stocks below the range of optimum sustainable levels.

Harbor Seal—The effect of the proposed regulations would be to allow up to 6,500 harbor seals to be taken annually in addition to the estimated 2,800 which might be taken incidental to domestic commercial fishing operations.

Commercial harvests would be restricted to areas north of the Aleutian Island chain. Not more than 10 percent of the harvest would be allowed to be taken in the areas from any one population stock and such taking would not depress the stocks below their range of optimum sustainable populations.

Spotted (Largha) Seal—The proposed regulations would allow up to 20,000 spotted seals to be taken. This harvest is expected to be almost wholly for subsistence purposes. It would constitute a take of 8–10 percent of the population and would not depress it below its range of optimum sustainable level.

Beluga Whale—It is proposed to allow up to 45 belugas to be taken from the Cook Inlet population stock, for public display and scientific research, and represents nine percent of the population stock.

Up to 315 belugas would be allowed to be taken from the Bristol Bay-Bering Sea population stock. These takings are expected to be almost wholly for subsistence purposes and would represent 3.3 percent of this population stock. Harvests of this magnitude would not depress the population stocks below the range of optimum sustainable levels.

Ringed Seal—About 10,000 ringed seals have been taken annually by subsistence hunters. The proposed regulations would allow up to 20,000 to be taken annually, nearly all of which are expected to be

taken for subsistence purposes. This would constitute eight percent of the population and would not depress it below the range of optimum sustainable level.

Ribbon Seal—The effect of these proposed regulations would be to allow up to 500 ribbon seals to be taken annually, nearly all of which are expected to be taken for subsistence purposes.

Bearded Seal—From 1964 to 1972 approximately 1,500 bearded seals were taken from Alaskan waters annually. This harvest was almost wholly for subsistence purposes and is not expected to increase substantially.

The proposed regulations would allow up to 9,000 to be taken annually. A harvest of this size would represent three percent of the population and would not depress the population below its range of optimum sustainable level.

3. "A statement describing the evidence before the Secretary upon which he proposes to base such regulations."

The available evidence is discussed in the Draft Environmental Impact Statement, and will be further discussed at the public hearing. The following listed literature contains information and evidence utilized in connection with the proposal:

Alaska Department of Economic Development, 1972. Alaska Statistical Review, 1972. Division of Economic Enterprise, Juneau. December.

Alaska Department of Fish and Game. 1973 (a). Alaska marine mammal regulations, status reports and management policies.

Alaska Department of Fish and Game. 1973 (b). Alaska's Wildlife and Habitat. State of Alaska. 144 p.

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Alaska Department of Labor, 1970. Alaska Native Population, 1970 census. Employment Security Division and Research and Analysis Division. Mimeo; August 1970.

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Allen, J. A. 1880. History of the North American pinnipeds, a monograph of the walruses, sea lions, sea bears, and seals of North America. U.S. Geological and Geographical Survey, Misc. Pub. No. 12, 785 p.

Alverson, D. L., A. T. Pruter, and L. L. Ronholt. 1964. H.R. Macmillan Lectures in Fisheries. A study of demersal fishes and fisheries of the northeast Pacific Ocean. Vancouver, Univ. of British Columbia, 190 p.

Barbash-Nikiforov, I. I. 1947. Kalan. (The Sea Otter, pp. 1–174.) Soviet Ministrov RSFSR. Glavnoe upravlenie po zapovednikam (In Russian.) (Translated from Russian by Dr. A. Birron and Z. S. Cole. Published for the National Science Foundation by the Israel Program for Scientific Translations, Jerusalem, 1962. 227 p., Illus.) (Cited in Schneider, 1975.)

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Bertrand, Gerard A., 1975. Optimum Sustainable Populations and the Management of Marine Mammals. A report to the Marine Mammal Commission (contract N. MMSA6010), March 10, 1975.

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4. "Any studies or recommendations made for or by the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations."

The only known study or recommendation made by or for the Secretaries or the Marine Mammal Commission specifically on these regulations is a Draft Environmental Impact Statement on a Consideration on the Waiver of the Moratorium and Return of Management of Certain Marine Mammals to the State of Alaska.

L. "Notice of Issues of Fact which may be involved in the hearing."

1. The number of separate population stocks, if any, included in each species.

2. The estimated existing population levels of each species and population stock.

3. The optimum sustainable population of each such species and population stock.

4. The anticipated effect on the optimum sustainable population of each species and population stock, and on the health and stability of the ecosystem, of waiving the moratorium to the extent proposed.

5. The humaneness of the methods and means of taking permitted by the State's laws and regulations.

6. The adequacy of the State's management program to ensure that the extent of the waiver will not be exceeded, and that any takings will not otherwise be to the disadvantage of any species or population stock.

7. Whether the State provides a modern scientific management program in accordance with sound principles of resource protection and conservation as provided within the purposes and policies of the Act.

8. The adequacy of provisions for public participation within the State in the process of implementing the waiver.

9. The adequacy of provisions for monitoring and review of the State program.

In conjunction with Notice of Proposed Waiver of Moratorium on Takings and Importations, Proposed Regulations to Govern Such Takings and Importation, and Notice of Hearing which appears in this issue, the Director, National Marine Fisheries Service proposes to amend Part 216, Title 50 CFR, Regulations Governing the Taking and Importing of Marine Mammals by adding a new Subpart H and I as follows:

Subpart H—Standards and Procedures for Approving and Monitoring State Laws and Regulations Implementing Waivers of the Moratorium

§ 216.101 Purpose of regulations.

The regulations contained in this subpart implement section 109 of the Marine Mammal Protection Act of 1972, (86 Stat. 1027, 16 U.S.C. 1361–1407, P.L. 92–522), (the "Act") by prescribing procedures to permit adoption and enforcement by a State of its laws and regulations consistent with the Act which relate to the protection and taking of marine mammals.

§ 216.102 Scope.

(a) The provisions of section 216.103 of this subpart apply whenever a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's proposed or existing laws or regulations relating to the protection and taking of any marine mammal are consistent with the Act and regulations contained in this subchapter, whether or not it is necessary to waive the moratorium imposed by Section 101 of the Act to allow such laws to take effect. Section 216.103 sets forth standards and criteria for such determination by the Director.

(b) The provisions of section 216.104 through 216.108 of this subpart apply only when the Director has waived or is considering waiving the moratorium, and when a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's laws and regulations relating to the protection and taking of any species or population stock of marine mammals, are

consistent with the waiver of the moratorium, the Act, and the regulations in this subchapter which apply to such species or population stocks. These sections set forth standards and criteria for such determination by the Director, and for waiving the moratorium.

§ 216.103 Review of State Laws and Regulations—General.

(a) Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by any statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) Section 109 of the Act provides that on or after December 21, 1972, no State may adopt any law or regulation, or enforce any existing law or regulation, which relates to the taking of marine mammals or which in effect nullifies an exemption or exception created by the Act, unless such laws or regulations have been previously reviewed by the Director and determined by him to be consistent with the provisions of the Act and the regulations in this part. In no event, however, will the Director approve any State laws or regulations which:

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act, unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Director has waived the moratorium on such taking or importation under section 101(a)(3)(A) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or public display (except that a State may, under authority of a general scientific research permit granted by the Director, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit).

(c) Any State may obtain a review and determination of its proposed or existing laws and regulations from the Director by submitting a written request to that effect to the Director, National Marine Fisheries Service (NMFS), accompanied by the following documents, unless otherwise specified by the Director:

(1) A complete set of the laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization, staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description, where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Director may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Director shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks of marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Director will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Director. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (c) above, unless otherwise provided by the Director. All determinations by the Director (other than as a result of preliminary reviews of proposed laws and regulations) shall be final.

(f) The implementation and enforcement of all State laws and regulations previously approved by the Director pursuant to this section shall be subject to continuous monitoring and review by the Director pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Director before their adoption, except as provided in section 216.104.

(g) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to section 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

§ 216.104 Review of State Laws and Regulations Implementing Waiver.

(a) Any State which requests a determination that its laws and regulations are consistent with the Act and applicable regulations in accordance with section 216.103(c) of this subpart, may also request a waiver of the moratorium imposed by section 101 of the Act to the extent necessary to allow such laws and regulations to take effect.

(b) The Director may approve such State laws and regulations which implement a waiver of the moratorium if he determines them to be consistent with the Act, with regulations promulgated under section 103 of the Act with respect to such marine mammals, with the criteria of section 216.105 of this part and with any other rule or regulation promulgated pursuant to the Act with respect to such marine mammals.

(c) Upon approval, the Director shall publish a notice in the FEDERAL REGISTER stating such approval, briefly summarizing the management program established by the State laws and regulations, stating the extent to which the moratorium is waived in order to allow such State laws and regulations to take effect, and the date the State's annual report is to be submitted.

(d) Until the Director has published the notice specified in paragraph (c) of this section, any waiver granted in response to a request by a State under this section shall not be effective.

(e) Any modifications, amendments, deletions or additions to laws or regulations previously approved, except emergency closing of seasons, shall require review and approval by the Director pursuant to paragraphs (c) through (f) of section 216.106 of these regulations before their adoption.

(f) All determinations by the Director shall be final.

(g) Upon a waiver of the moratorium and approval of State laws and regulations implementing the waiver under this subpart, subpart B of part 216 shall not apply to any activities subject to such laws and regulations.

§ 216.105 Approval of State Laws and Regulations—Criteria.

Any State which applies to the Director for approval of its laws and regulations pursuant to section 216.104 must demonstrate, to the Director's satisfaction, that such laws and regulations:

(a) Provide for a modern scientific resource management program, including, but not limited to, research, census, law enforcement, habitat acquisition and improvement and, when and where appropriate, the periodic or total protection of the marine mammals in question;

(b) Establish a program which is based upon the best scientific evidence available on the relevant marine ecosystem and the role of the marine mammals in question in that ecosystem;

(c) Establish a program which is consistent with the primary goal of the Act, to maintain the health and stability of the marine ecosystem;

(d) Establish a program which insures that the species or population stock of marine mammals in question shall not diminish below the optimum sustainable population;

(e) Provide for cessation of all taking and/or importing of the marine mammals in question, whenever the number drops below the range of optimum sustainable population;

(f) Provide appropriate maximum quotas and seasons, whenever a taking or importation is proposed, unless the State can show that it is more consistent with these criteria to have no quota or season;

(g) Establish quotas, seasons, and other allowances and restrictions as necessary to be consistent with those criteria in accordance with the following factors:

(1) The seasonal distribution of populations;

(2) Segregation within populations by sex and age;

(3) Discreteness of populations;

(4) Population density;

(5) Critical periods in the species life cycle;

(6) Critical habitat areas;

(7) Productivity of the population;

(8) Species interactions;

(9) Percentage of retrieval by hunters;

(10) Maximization of the utilization of the species;

(11) Other uses of the species, such as recreational use or incidental catch; and

(12) Enforceability of the limitations.

(h) Contain suitable limitations on the means and methods of taking which assure that taking will be by humane means and will maximize the utilization of each animal taken.

(i) Contain provisions for significant public participation within the State in the process of implementing the waiver.

(j) Meet the criteria specified in section 216.103 of this part, to the extent such criteria may differ from those prescribed in this section.

§ 216.106 Review of Approved State Laws and Regulations.

(a) All State laws and regulations and the conservation programs established thereby which have been approved shall be reviewed annually, unless circumstances indicate that an earlier review is appropriate.

(b) In order to facilitate such a review, each State having approved laws and regulations must submit an annual report not later than 60 days after the close of such State's first full fiscal year following the effective date of the waiver of the moratorium and at the same time each following year. The report shall contain the following information current for each reporting period:

(1) Any changes in the State laws or regulations;

(2) Any new data on the marine mammal stocks or the marine ecosystems in question;

(3) All available harvest data;

(4) A summary of all research activity on the stocks or ecosystem in question;

(5) Any changes in the information provided with the original request for approval;

(6) A summary of all enforcement activity, including permits issued, skins sealed, reports under permits, investigation undertaken and their dispositions;

(7) Present budget and staffing level for the marine mammal activities;

(8) Any other information which the Director may request, or which the State deems necessary or advisable.

(c) Each State having approved laws and regulations shall file a special report within 30 days, whenever any of the following occurs:

(1) A proposed change in a relevant State law or regulation (amendments, repealers, or new legislation or regulations), which, with the exception of emergency closing of seasons, shall not be effective until the Secretary makes a determination pursuant to paragraph (d) through (f) of this section; or

(2) A significant natural or man-made occurrence affecting the marine ecosystem or the stock in question; or

(3) A significant violation of the State management program including any quotas established thereby.

(d) Upon receipt of any report described in section 216.107(b) or 216.107 (c) the Director shall, in consultation with the Marine Mammal Commission, determine whether or not the State laws and regulations and any programs established thereby continue to comply with the requirements of the Act and this subpart.

(e) Whenever the Director preliminarily determines, in consultation with the Marine Mammal Commission, that any State laws and regulations or programs established thereby are not in compliance with the requirements of this subpart, he shall publish notice of such preliminary determination in the FEDERAL REGISTER, inviting submission from interested persons, within 30 days of the date of the notice, of written data, views or comments, and requests for hearing, with respect to such preliminary determination.

(f) As soon as practicable after the 30-day comment period described in section 216.106(e), the Director, in consultation with the Marine Mammal Commission, shall determine whether or not to finally disapprove the State laws and regulations. The Director's determination shall be made within 90 days after publication of the notice described in section 216.106(e), unless a hearing is held, in which case the determination shall be made in accordance with the provision of the Administrative Procedure Act and the procedural regulations of subpart G of this part.

(g) If the Director makes a final determination to disapprove proposed changes in State laws and regulations, the State shall, at the Director's discretion, have the option of retaining its initially approved laws and regulations in which case the waiver shall remain in effect. All final determinations of disapproval shall be published in the FEDERAL REGISTER; upon such publication, unless a State elects within 30 days to retain its originally approved laws and regulations, any waiver conditioned upon approval of State laws and regulations as provided in this subpart shall terminate, and the moratorium of section 101 of the Act shall be reinstated and supersede such State laws and regulations.

§ 216.107 Notification.

The State shall immediately notify the Director when the known harvest for any species or population stock of marine mammal reaches 90 percent of the numerical extent of the waiver prescribed by subpart I of this part for that species or population stock.

§ 216.108 Enforcement.

The appropriate official in each State shall utilize such methods as he deems appropriate to assure to the maximum extent practicable that the quotas, seasons, and other limitations in approved State laws and regulations are not exceeded. These methods may include, but are not limited to, patrols, surveillance, investigation, permit recordkeeping and reporting requirements, and tagging and marking requirements.

§ 216.109 Waivers of the Moratorium.

Subpart I—Taking and Importation of Marine Mammals for Which the Moratorium Has Been Waived

§ 216.110 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of section 103 of the Marine Mammal Protection Act of 1972 (the "Act"), for regulations to ensure that the taking and importation of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disadvantage of any species or population stock.

§ 216.111 Scope.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Director has made a decision to waive the moratorium on such species or population stock pursuant to section 101(a)(3)(A) of the Act; and, (2) State laws and regulations relating to the protection and taking of such species provided a portion of the regulatory scheme, and the Director has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart H of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than the capture of live animals to be maintained in captivity for scientific research or public display, which takings and care and maintenance standards are governed by section 216.31 of this part.

§ 216.112 Definitions.

For purposes of this part, the term "waters off Alaska" means waters outside State of Alaska jurisdiction and west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 216.113 Taking of Seals, Sea Lions, and Beluga Whales (Alaska).

(a) Pursuant to sections 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium on the taking of the following marine mammals within the territory of the State of Alaska and on the high seas in the waters off Alaska is waived to the extent provided, effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to section 216.104(d) of this part:

Species:	*extent Numerical*
Northern (Steller) Sea Lion (*Eumetopias jubatus*)	15,000
Harbor Seals (*Phoca vitulina richardii*)	6,500
Spotted (Largha) Seals (*Phoca vitulina largha*)	20,000
Ribbon Seals (*Histriophoca fasciata*)	500
Ringed Seals (*Pusa hispida*)	20,000
Pacific Bearded Seals (*Erignathus barbatus*)	9,000
Beluga Whale (*Delphinapterus leucas*)	360

(b) All takings of marine mammals and all activities relating thereto, including those conducted by Alaskan natives, shall be conducted in accordance with the applicable laws and regulations of the State of Alaska.

(c) Marine mammals may be taken pursuant to this section only by persons subject to the jurisdiction of the State of Alaska and duly licensed or otherwise authorized in writing by the State, or in accordance with a permit issued pursuant to subsection (h) of this section.

(d) No marine mammal or product thereof taken under the provisions of this section may be removed from the State of Alaska or from the waters off Alaska (except to the State) unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product until the final stages of processing.

(e) Whenever the known harvest of any species or population stock during any regulatory year reaches the numerical extent of the waiver provided in subsection (a) of this section, all harvests of such species or stock shall be terminated in order to ensure that the extent of the waiver will not be exceeded.

(f) When any species or population stock diminishes below its range of optimum sustainable population, the moratorium provided for in section 101(a) of the Act will be reimposed on the taking of such affected species of population stock by notice published in the FEDERAL REGISTER by the Director.

(g) Any violation of the laws and regulations of the State of Alaska by those subject to the jurisdiction of the State shall be a violation of these regulations and may be punished in accordance with the procedures and penalties of section 105 of the Act and the regulations in this part. Those persons not subject to the jurisdiction of the State, taking or importing in violation of these regulations, may be punished in accordance with the procedures and penalties of section 105 of the Act and the regulations in this part.

(h) The Director, after consultation with the State of Alaska, may issue permits to non-residents of the State of Alaska authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

(1) Name and address of applicant;

(2) Month and year of taking;

(3) Quantity to be taken;

(4) Proposed location of taking;

(5) Method of taking;

(6) Proposed disposition of parts and products and method of shipment; and

(7) The following certification:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972, and

(8) Signature of the applicant;

(i) Permits applied for under subsection (g) shall be issued, suspended, modified, or revoked, pursuant to § 216.33, except insofar as the period during which the permit is valid may be modified or ended by reimposition of the moratorium or any closure of a season by the State of Alaska.

(j) Permits issued under subsection (h) shall contain such terms and conditions as the Director may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations and with the applicable provisions of Alaska's approved laws and regulations and shall include:

(1) The number of animals which are authorized to be taken;

(2) The location from which they may be taken;

(3) The method of taking;

(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;

(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and

(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. In no event will the cost be less than the fee for the comparable nonresident license and/or permit issued by the State of Alaska.

(k) Hides from animals taken pursuant to this section may be tanned only by a tannery registered with the Director as a tannery which may possess and process marine mammal products. Any tannery within the jurisdiction of the United States may apply to the Director for registration by submitting an application which contains the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received pursuant to this section;

(iv) Such other information as the Director may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a benefit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Director, and in that connection, he may waive any requirement for information or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to the conditions as the Director prescribes, which may include, but are not limited to provisions regarding records, inventory segregation, reports and inspection. The Director may charge a reasonable fee for such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

JACK W. GEHRINGER,
National Marine Fisheries Service.

APRIL 6, 1976.

[FR Doc.76-10241 Filed 4-8-76;8:45 am]

APPENDIX F

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federal register

FRIDAY, MAY 28, 1976

U.S. Fish and Wildlife Service

[Docket No. WASH 76-1; Rulemaking Proceedings]

STATE OF ALASKA

Revised Notice of (I) Public Hearings and (II) Prehearing Order; Revised Notice of Public Hearings

In the Matter of the Request of the State of Alaska to Waive the Moratorium on Nine Species of Marine Mammals and Allow the State to Resume Management.

Notice is hereby given to amend the dates for public hearing previously pub-

lished in the FEDERAL REGISTER on April 9, 1976. The following hearing dates are hereby established and all previous dates are hereby canceled:

1. Anchorage—commencing 6/29, Alaska State Court Building, Alaska District Court, Courtroom C, 360 K Street, Anchorage, 10:00 a.m.
2. Nome—commencing 7/6, Federal Building, Courtroom, Front Street, Nome, 10:00 a.m.
3. Bethel—commencing 7/12, Kuskoquim Native Village Association Building, Bethel, 10:00 a.m.
4. Anchorage—Reconvening, if necessary, on *7/14*, Alaska State Court Building, Alaska District Court, Courtroom E, Anchorage, 10:00 a.m.
5. Washington, D.C.—commencing *9/21*, Department of the Interior Auditorium, 18th and C Streets, N.W., Washington, D.C., 10:00 a.m.

For information concerning the hearings, call: Ms. Charlene Rosen, Department of the Interior, Arlington, VA., 703-557-9200 or in Alaska call Mrs. Vicki Murphy, Alaska Native Claims Appeals Board, 907-265-5356.

PART II—PREHEARING ORDER

In accordance with § 18.82 of 41 FR 5395 and the determinations made after the prehearing conference held in Arlington, VA., on May 18, 1976, it is hereby ordered as follows:

1. That the following individuals and/or entities have indicated an interest in the proceeding:

A. PROPONENTS

1. Jeffrey Haynes, Esq., William Council, Esq., Office of the State of Alaska Attorney General, Pouch K, Juneau, Alaska.
2. Robert Rausche, Director, Division of Game, Department of Fish and Game, Subport Building, Juneau, Alaska 99801.
*3. David Fischer, Esq., U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of the Solicitor, 18th and C Streets, N.W., Washington, D.C. 20240.
*4. James S. W. Drewry, Esq., NOAA General Counsel's Office, Main Commerce Building, National Marine Fisheries Service, Room 5814, Washington, D.C. 20230.
*5. Robert Eisenbud, Esq., Marine Mammal Commission, 1625 Eye Street, N.W., Room 307, Washington, D.C.
6. Lynn McCastle, Chairman, Marine Mammal Committee, Alaska Professional Hunters Association, Inc., P.O. Box 4-1932, Anchorage, Alaska 99509.
7. John L. Gregg, Gregg's Artistic Homes, 216 East Glenoaks Boulevard, Glendale 7, California.
8. Bruce M. Swanson, Kodiak, Alaska.
*9. Gus Fritschie, Esq., Director of Government Relations, National Fisheries Institute, Inc., 1730 Pennsylvania Ave., N.W., Washington, D.C. 20006.
10. Eugene Klineburger, Klineburger Bros., Jonas Bros, of Seattle, Outdoor Clothing, Equipment, Gifts & Jewelry—Taxidermy & Tanning, Etc., 1527 12th Avenue, Seattle, Washington 98122.

B. OPPONENTS

*11. Bernard Fensterwald, Jr., Esq., Ms. Jowanda Shelton, Friends of Animals, Inc., Committee for Humane Legislation, Inc., 910 16th Street, N.W., Washington, D.C. 20006.
12. Jerome Trigg, President, Bering Straits Native Corporation, P.O. Box 1008, Nome, Alaska 99762.

C. PERSONS/ENTITIES UNALIGNED AT PRESENT TIME

13. Juanita Alvarez, Wildlife Coordinator, Sierra Club, 530 Bush Street, San Francisco, California 94108.
*14. William A. Butler, Esq., Environmental Defense Fund, 1525 18th Street, N.W., Washington, D.C. 20036.
*15. Ms. Jane Risk, Animal Protection Institute, 613 Pennsylvania Avenue, S.E., Washington, D.C. 20003.
*16. Jack Marker, Esq., Monitor, Inc., Col. Milton M. Kaufmann, President, Monitor, Inc., 1346 Connecticut Avenue, N.W., #931, Washington, D.C. 20036.
17. Ms. Jacqueline Muth, New York City, New York.
18. Irven Pinard, Chairman, Wildlife Committee, Sierra Club—Atlantic Chapter, 50 West 40th Street, New York, New York 10018.
19. Harold Sparck, Nunam Kitlutsisti, Protector of the Land, Box 267, Bethel, Alaska 99559.
20. Jake Lestenkoff, Executive Vice President, Land Claims, Alaska Federation of Natives, Bethel, Alaska.
21. Ms. Lillian Brannon, United New Conservationist, San Jose, California.

2. That the following witnesses have or will have submitted direct testimony by the appropriate date (see #3, *infra*) and may testify at the hearing:

A. U.S. FISH AND WILDLIFE SERVICE

1. Jack W. Lentfer—testimony re polar bear.
2. Ancel M. Johnson—testimony re sea otter.
3. Henry A. Hansen—testimony re general management scheme.
4. Carl Schneider—testimony re sea otter in behalf of the State of Alaska and the Fish and Wildlife Service.

B. STATE OF ALASKA

1. Robert Rausch, Director, Division of Game, Department of Fish and Game, Subport Building, Juneau, Alaska 99801.

C. NATIONAL MARINE FISHERIES SERVICE

1. Harry L. Reitze, Director, Alaska Region of National Marine Fishery Service—testimony re state management scheme.
2. George Y. Harry, Jr., Director, Marine Mammal Division, Northwest Fishery Center—testimony re all species under jurisdiction of Department of Commerce.
3. Carl B. Schneider, Scientist, Alaska Department of Fish and Game—testimony re sea lions.
4. Kenneth W. Pitcher—testimony re land-breeding harbor seals.
5. John J. Burns—testimony re Beluga whale, ice breeding harbor seal (Largha seal), ribbon, ringed, and Pacific bearded seals.

D. ADDITIONAL TESTIMONY

1. National Fisheries Institute, Inc., James Ferguson, President, Pelican Cold Storage Company, P.O. Box 5538, Seattle, Washington 98105 and Pelican, Alaska 99832.
2. Mr. Cartner, 4608 48th Street, N.W., Washington, D.C.

3. That 10 copies of all testimony be filed with the Presiding Officer on the dates as follows:

A. Additional direct testimony (including testimony from the State of Alaska and other witnesses testifying in Alaska)—*June 11, 1976*.

B. Direct testimony of Washington witnesses—*August 12, 1976*.

C. Rebuttal direct testimony—*September 2, 1976*.

4. That parties address themselves to the following issues in the order that is most logical to the presentation of the participant's case:

1. The number of separate population stocks, if any, included in each species.
2. The estimated existing population levels of each species and population stock.
3. What is the proper meaning for the term "optimum sustainable population" more specific than is defined in the Act and in accordance therewith what is the optimum sustainable population of each such species and population stock?
4. The anticipated effect on the optimum sustainable population of each species and population stock as well as on the health and stability of the ecosystem in waiving the moratorium to the extent proposed; also, including the meaning of the term "incidental take" and what effect, if any, does it have on the optimum sustainable population of each species and population stock?
5. What constitutes a state regulation for purposes of the instant proceeding and will Alaska's laws and regulations, if approved, be enforced as Federal regulations?
6. The humaneness of the methods and means of taking permitted by Alaska's laws and regulations.
7. What are the components of modern scientific resource management program for each of the nine species?
8. Who has the burden of proving that a given population stock or species has diminished below the optimum sustainable population and does Alaska's management program ensure that the extent of the waiver will not be exceeded?
9. Whether the State of Alaska's management program is in accordance with sound principles of resource protection and conservation as provided within the purposes and policies of the Act?
10. What criteria establishes that a population stock is disadvantaged under the Act, and in accordance therewith, does the State of Alaska's management program ensure that any takings will not be to the disadvantage of any species or population stock?
11. The adequacy of provisions for public participation within the State of Alaska in the process of implementing the Waiver.
12. The adequacy of Federal provisions for monitoring and review of the State of Alaska's program.
13. If the proposed waiver is granted and the delegation takes place, can the Federal Government enforce the provisions of these regulations pursuant to

* Entered appearance at Prehearing Conference.

section 105 of the Marine Mammal Protection Act and will the Federal Government as a private landowner be bound by the rules and regulations isued by the State of Alaska; also, will the State of Alaska have authority over non-Alaskan citizens on the high seas?

14. Is the definition of "waters of Alaska" as contained in § 18.94 and § 216.112 of the proposed regulations consistent with the applicable Federal Acts, treaties, and laws of the bordering state sovereigns, including but not limited to the 200-mile limit Act, as well as are there other treaties governing the subject matter of the instant case and how do they affect the proposed regulations?

15. Whether the proposed waiver, regulations, and delegation abrogates the rights of the Indian, Aleut, and Eskimo natives, and if so, is this abrogation permissible under existing law?

16. What are the other jurisdictions whose activities affect the same stocks or species as those at issue here, if any, and do sound principles of resource protection and conservation require that those effects be integrated into the state management program?

17. Should the proposed waiver of moratorium be granted?

MALCOLM P. LITTLFFIELD,
Administrative Law Judge.

MAY 25, 1976.

[FR Doc.76-15646 Filed 5-27-76;8:45 am]

GPO 911-345