



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE

Northwest Region  
7600 Sand Point Way, NE  
BIN C15700, Bldg. 1  
Seattle, Washington 98115

September 28, 1990

F/NWR

Mr. James P. Walsh  
Davis Wright Tremaine  
Suite 800  
1752 N Street, NW  
Washington, D.C. 20036

Dear Mr. Walsh:

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce has received four petitions to list the Snake River races of spring, summer, and fall chinook salmon (*Oncorhynchus tshawytscha*) and Lower Columbia River coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA) from Oregon Trout; Oregon Natural Resources Council; Northwest Environmental Defense Center; Idaho Chapter, American Fisheries Society (AFS); Oregon Chapter AFS; and American Rivers. We find that the petitions present substantial information indicating that listing may be warranted.

Section 4 of the ESA requires the Secretary of Commerce to make determinations pertaining to listing species after reviewing the status of the species using the best scientific and commercial data available, and after taking into account any efforts to protect such species.\*\* Therefore, we are currently accumulating all information needed to evaluate whether to list these fishes.

We have already identified several issues that we will consider in the course of our Status Review including: 1) defining distinct population segments that qualify as species under the ESA; 2) determining the thresholds for threatened and endangered status; 3) evaluating the role of artificial propagation; and 4) determining the causes of population declines.

If you have any comments or information pertaining to Status Review issues, please send copies to Merritt Tuttle, Division Chief, NMFS, Environmental and Technical Services Division, 911 N.E. 11th Avenue, Room 620, Portland, Oregon 97232 (phone 503-230-5401; FTS 429-5401) by November 13, 1990.

Sincerely,

Rolland A. Schmitt  
Regional Director

\*\* The Endangered Species Act defines species as including, "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. 1532 (1982).





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

April 9, 1990

**NOTICE TO ALL COMMERCIAL FISHERMAN**

**SEA LION ALERT**

New regulations now apply to all human activities, including commercial fishing, near Steller (northern) sea lions at-sea and near some of the islands where they breed.

- \*1 Shooting at or near any Steller sea lion for any reason is now prohibited in U.S. waters. Fishermen may still use other means which do not result in injury or death to the animal to deter sea lions from interfering with their gear.
- \*2 Subject to certain limited exceptions, operating vessels within 3 miles of any Steller sea lion rookery (locations where pups are born) west of 150° W longitude is now prohibited. A map and table describing these rookeries is included here. More detailed maps or additional clarification are available from the National Marine Fisheries Service in Juneau.
- \*3 The Secretary of Commerce is now empowered to place observers on any fishing vessel in order to monitor the accidental capture of sea lions in fishing gear. No more than 675 sea lions may be killed accidentally each year during fishing operations west of 141° W longitude.
- \*4 Violations of laws protecting Steller sea lions are subject to severe civil and criminal penalties including vessel forfeiture, fines of up to \$25,000, and imprisonment for up to one year for each violation.

These changes are due to the designation of the Steller sea lion as threatened throughout its range under the Endangered Species Act on April 5, 1990. This designation is based on declines of 63% since 1985 and 82% since 1960 in observed counts on certain Alaskan rookeries, which are in the primary range of the species.

The National Marine Fisheries Service is undertaking these and other measures in order to allow the sea lion population to recover. Consequently, your assistance in reducing all sources of unnatural disturbance and mortality is an important component of these efforts.

**FOR MORE INFORMATION CONTACT:**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

(907) 586-7233 or (907) 586-7510



TABLE OF PROTECTED STELLER SEA LION ROOKERIES

Island	From		To		Chart	Notes
	Lat.	Long.	Lat.	Long.		
1 Outer I.	59°20.5 N	150°23.0 W	51°21.0 N	150°24.5 W	16681	S quadrant
2 Sugarloaf I.	58°53.0 N	152°02.0 W			16580	whole island
3 Marmot I.	58°13.0 N	151°48.0 W	58°09.5 N	151°52.0 W	16580	SE quadrant
4 Chirikof I.	55°47.5 N	155°33.5 W	55°48.5 N	155°43.0 W	16580	S quadrant
5 Chowiet I.	56°02.0 N	156°41.0 W	56°01.5 N	156°44.0 W	16013	S quadrant
6 Atkins I.	55°03.5 N	159°19.0 W			16540	whole island
7 Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner
8 Pinnacle Rock	54°46.0 N	161°46.0 W			16540	whole island
9 Clubbing Rks(N)	54°43.0 N	162°27.5 W			16540	whole island
Clubbing Rks(S)	54°42.0 N	162°27.5 W			16540	whole island
10 Sea Lion Rks	55°28.0 N	163°12.5 W			16520	whole island
11 Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island
12 Akun I.	54°18.0 N	165°33.0 W	54°18.0 N	165°34.0 W	16520	Billings Head Bight
13 Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan
14 Bogoslof I.	53°56.0 N	168°02.0 W			16500	whole island
15 Ogchul I.	53°00.0 N	168°24.0 W			16500	whole island
16 Adugak I.	52°54.5 N	169°09.0 W			16500	whole island
17 Yunaska I.	52°41.0 N	170°34.5 W	52°42.0 N	170°38.5 W	16500	NE end
18 Seguam I.	52°21.5 N	172°33.5 W	52°21.5 N	172°35.0 W	16480	N coast, Saddleridge Pt.
19 Agligadak I.	52°06.25N	172°54.0 W			16480	whole island
20 Kasatochi I.	52°10.5 N	175°29.0 W	52°10.0 N	175°31.5 W	16480	N half of island
21 Adak I.	51°36.0 N	176°55.5 W	51°38.0 N	176°59.5 W	16460	SW point, Cape Yakak
22 Gramp rock	51°29.0 N	178°20.5 W			16460	whole island
23 Tag I.	51°33.5 N	178°34.5 W			16460	whole island
24 Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25 Semisopchnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopchnoi	52°01.5 N	179°39.0 E	52°01.5 N	179°37.5 E	16440	N quadrant, Petrel Pt.
26 Amchitka I.	51°23.5 N	179°26.0 E	51°22.0 N	179°23.0 E	16440	East Cape
27 Amchitka I.	51°32.5 N	178°50.0 E			16440	Column Rocks
28 Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat I.
29 Kiska I.	51°58.0 N	177°21.0 E	51°56.5 N	177°19.5 E	16440	W central, Lief Cove
30 Kiska I.	51°54.5 N	177°14.5 E	51°52.5 N	177°13.0 E	16440	Cape St. Stephen

MARINE MAMMAL COMMISSION  
1825 CONNECTICUT AVENUE, N.W. #512  
WASHINGTON, DC 20006

12 July 1990

The Honorable William W. Fox, Jr., Ph.D.  
Assistant Administrator for Fisheries  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
Department of Commerce  
Silver Spring, MD 20910

Dear Dr. Fox:

The 1988 amendments to the Marine Mammal Protection Act established, until 1 October 1993, an interim exemption allowing marine mammals, other than southern sea otters, to be taken incidental to commercial fisheries. The amendments require the Secretary of Commerce to recommend to Congress by 1 January 1992, a regime to govern the authorization of incidental takes upon expiration of the interim exemption.

As a first step in developing legislation to govern taking of marine mammals incidental to commercial fisheries after 1 October 1993, the Marine Mammal Commission was directed to develop and transmit to the Department of Commerce recommended guidelines. The guidelines are to provide a scientific rationale for determining the allowable level of take, are to be based on sound principles of wildlife management, and are to be consistent with the purposes and policies of the Marine Mammal Protection Act.

The Commission, in consultation with its Committee of Scientific Advisors, developed and, on 26 January 1990, circulated draft guidelines to interested parties, including fisheries groups and environmental organizations. The Commission also published a notice of availability in the Federal Register and invited public comment. At the request of several fisheries groups, the public comment period on the draft guidelines was extended until 30 March 1990.

Numerous comments on the draft guidelines were received. The Commission, in consultation with its Committee of Scientific Advisors, took those comments into consideration in preparing the Recommended Guidelines which are enclosed. The enclosed document summarizes the comments on the draft and indicates how they were addressed.

In the Recommended Guidelines, the Commission, in consultation with its Committee of Scientific Advisors, recommends, among other things, that the legislation to govern the incidental taking of marine mammals after 1 October 1993:

1. reaffirm the Marine Mammal Protection Act's goal to reduce the incidental kill and serious injury of marine mammals in commercial fisheries to insignificant levels approaching a zero mortality and serious injury rate;
2. reinstate the substantive, although not necessarily the procedural, requirements of the General Permit and small take provisions of the Act [sections 101(a)(2) and 101(a)(4)] for marine mammal populations known or reasonably believed to be within their optimum sustainable population levels;
3. allow the incidental take of marine mammals listed as endangered or threatened under the Endangered Species Act or designated as depleted under the Marine Mammal Protection Act if:  
(a) a recovery plan or conservation plan, including an implementation plan, has been developed, adopted, and put in place; (b) the authorized level of take, by itself and in combination with other sources of mortality, is not likely to cause or contribute to a further population decline or cause more than a ten percent increase in the best available estimate of the time it will take the affected species or population to recover to its maximum net productivity level; (c) ongoing and planned monitoring and enforcement programs are adequate to insure that the authorized level of take is not exceeded; and (d) there is good reason to believe that the incidental take has been or will be reduced to as near zero as practicable;
4. authorize, on an experimental basis, for periods of three to five years, the incidental take of marine mammals from populations whose status is uncertain if: (a) the authorized level of take clearly would have a negligible effect on population size and productivity; and (b) ongoing or planned assessment, monitoring, and enforcement programs are adequate to insure that the authorized levels of take will not be exceeded, that the status of the affected stock will be determined with reasonable certainty within three to five years, and that possible means for avoiding or reducing the level of incidental take will be identified and action taken thereon;
5. streamline and continue the vessel registration and reporting programs initiated under the 1988 Marine Mammal Protection Act amendments;

6. grant the Secretary of Commerce explicit authority to place observers aboard any U.S. commercial fishing vessel as well as any foreign commercial fishing vessel operating in U.S. waters; and

7. provide necessary funding or authorize the collection of user fees sufficient for observer and other marine mammal monitoring programs.

In addition, the Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, recommends that the act of fishing without the appropriate marine mammal incidental take authorization be made a violation of the Marine Mammal Protection Act. Such a prohibition was incorporated into the interim exemption for commercial fisheries and is much easier to enforce than the Act's taking prohibition, which requires observation of the illegal take. As noted in the Recommended Guidelines, the Secretaries of Commerce and the Interior should be granted discretion to waive the fishing prohibition for fisheries determined to have only a remote possibility of taking marine mammals.

Successful implementation of the recommended regime to govern the incidental take of marine mammals in commercial fisheries will depend, in large part, on the procedures by which the required determinations are made. Although not specifically directed to do so by the 1988 Marine Mammal Protection Act amendments, the Commission, in consultation with administrative law experts, is reviewing procedural aspects of the issue. The Commission's goal is to try to identify a streamlined alternative or alternatives to formal rulemaking. To be acceptable, any alternatives would have to provide for full scrutiny of the evidence before the agency, provide for independent review of the data, and require a complete explanation of the decisionmaker's rationale based on a fully developed record.

The legislative history of the 1988 amendments explains that the interim exemption was not intended to "supersede, or otherwise affect, any provisions of the Endangered Species Act...". Thus, the taking of endangered or threatened marine mammals, while not a violation of the Marine Mammal Protection Act, would remain unlawful under the Endangered Species Act. Unless a mechanism to authorize the incidental take of listed marine mammals under the Endangered Species Act is incorporated into the 1993 legislation, a court, following the decision in

Kokechik Fishermen's Association v. Secretary of Commerce, may rule that no incidental take of any marine mammals can be authorized for a fishery that has more than a remote possibility of also taking an endangered or threatened marine mammal. The Commission believes that the take of small numbers of listed marine mammals in certain instances, as recommended in the Guidelines, would not detrimentally affect the species or its recovery and provision should be made to authorize taking in those instances.

One assumption behind the 1988 amendments was that, at the end of the five-year, interim exemption, sufficient information would be available on the status of marine mammal stocks taken incidentally in commercial fisheries and the impact of fisheries on those marine mammal stocks to enable the Secretaries of Commerce and the Interior to authorize specific levels of take based on sound principles of wildlife management. In developing its Recommended Guidelines, the Marine Mammal Commission has accepted that assumption. Given the comments on the draft guidelines by the Service and others, however, it is likely that, unless substantial, additional population assessment efforts are undertaken immediately, the Service will not have the information needed to make status determinations for many, if not most, of the marine mammal stocks come 1993. There may even be some instances where it will not be possible to provide a reliable minimum population estimate for a stock subject to incidental taking or to determine whether the stock is increasing, stable, or decreasing. If this is the case, it is important that the Service so advise Congress. If a description of what can and should be done to fill the information gaps between now and October 1993 is provided to Congress, sufficient resources may be made available to allow the necessary studies to proceed on a priority basis.

Toward this end, the Commission recommends in the Guidelines that the National Marine Fisheries Service and the Fish and Wildlife Service, in consultation with the Marine Mammal Commission, hold a workshop or series of workshops, as soon as possible, but starting no later than in early 1991, to:

1. review available information concerning the species and numbers of marine mammals being taken incidental to various fisheries, the status of the affected marine mammal stocks, the effects of the incidental take, by itself and in

combination with other forms of take, on the stocks, and the nature and effectiveness of steps that have been taken to identify and implement changes in fishing gear and practices to avoid or reduce the incidental take;

2. determine factors, such as changes in habitat and lack of information on historic abundance, other sources of mortality, etc., that may make status of stock determinations difficult to make, and describe how problems caused by these factors might best be addressed;

3. identify additional information, if any, that will be needed to make required status of stock and other determinations; and

4. describe the research programs required to obtain and analyze needed data and the monitoring/management programs needed to ensure that authorized levels of take do not have unanticipated consequences and that levels of take are reduced to as near zero as practicable.

With respect to reducing levels of take incidental to fishing operations, the Commission notes that fisheries groups, during the 1988 reauthorization of the Marine Mammal Protection Act, agreed to undertake and fund a special research program on gear technology and fishing practices designed to minimize the take of marine mammals. The workshop(s) would provide an excellent opportunity to review the progress of this research program and to provide direction for additional studies.

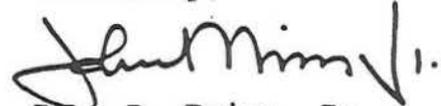
As noted in the Recommended Guidelines, marine mammals may be affected indirectly as well as directly by commercial fisheries. The Magnuson Fishery Conservation and Management Act, through its definition of "optimum yield," requires the Fishery Management Councils and the National Marine Fisheries Service to consider relevant ecological factors when setting harvest levels. To date, however, fishery management plans have not routinely considered or provided for maintaining the level of fish and shellfish resources necessary to support optimum sustainable marine mammal populations.

To ensure that both direct and indirect effects of commercial fisheries on marine mammal and other non-target species are considered and appropriately factored into fishery management plans, the Marine Mammal Commission recommends that the Service promulgate regulations requiring that the food requirements of such species, and any uncertainties related

thereto, be considered and appropriately factored into estimates of the optimum yield of fishery resources. In this regard, the Commission recommends that the National Marine Fisheries Service and the Fish and Wildlife Service, in consultation with the Commission, the various Fishery Management Councils, and other appropriate organizations and individuals, organize and hold a workshop or series of workshops in 1991 or 1992 to identify and evaluate possible procedures for assessing interactions between fisheries and marine mammals and ensuring that fisheries do not directly or indirectly disadvantage marine mammals. The Commission would be willing to assist the Services in developing the scope(s) of work for the workshop(s) and identifying possible participants.

We would be pleased to answer any questions you may have about the Commission's Recommended Guidelines.

Sincerely,



John R. Twiss, Jr.  
Executive Director

Enclosures: Recommended Guidelines  
Response to Comments

cc with enclosures: The Honorable Ernest F. Hollings  
The Honorable Gerry E. Studts  
The Honorable John F. Turner