

U.S. Fish and Wildlife Serv., Interior

§ 18.12

Native village or town means any community, association, tribe, band, clan, or group.

Pregnant means pregnant near term.

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

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal.

Threatened species means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

Wasteful manner means any taking or method of taking which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 7262, Feb. 25, 1974, as amended at 43 FR 13066, Mar. 29, 1978; 55 FR 14978, Apr. 20, 1990; 70 FR 48323, Aug. 17, 2005]

§ 18.4 Information collection requirements.

(a) The Office of Management and Budget under 44 U.S.C. 3501 *et seq.* has approved the information collection requirements contained in Subpart D and assigned clearance number 1018-0022. The Service is collecting this information to review and evaluate permit applications and make decisions accord-

ing to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The applicant must respond to obtain or retain a permit.

(b) The Service estimated the public reporting burden for this collection of information to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Office, Fish and Wildlife, Service Office of Management and Budget, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1018-0022), Washington, DC 20503.

[62 FR 7329, Feb. 18, 1997]

Subpart B—Prohibitions

§ 18.11 Prohibited taking.

Except as otherwise provided in subpart C, D, or H of this part 18, or part 403, 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.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

§ 18.12 Prohibited importation.

(a) Except as otherwise provided in subparts C and D of this part 18, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to subparts C and D of this part 18, it is unlawful for any person to import into the United States any:

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(1) Marine mammal: (i) Taken in violation of the Act, or

(ii) Taken in another country in violation of the laws of that country;

(2) Any marine mammal product if:

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin of the product is illegal.

(c) Except in accordance with an exception referred to in subpart C and §§ 18.31 and 18.32 of this part, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking;

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later;

(3) Specimen of an endangered or threatened species of marine mammals;

(4) Specimen taken from a depleted species or stock of marine mammals; or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 18.13 Prohibited uses, possession, transportation, and sales.

Except as otherwise provided in the Act or these regulations, it is unlawful for:

(a) Any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or any unlawful importation of any marine mammal or marine mammal products;

(b) Any person to possess any marine mammal, or product therefrom, taken in violation of the Act or these regulations;

(c) Any person to transport, purchase, sell, or offer to purchase or sell

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any marine mammal or marine mammal product; or

(d) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

§ 18.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides in effect that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date. Such status may be established by submitting to the Director prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of _____ under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 18 U.S.C. 1001.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to December 21, 1972. Such records or

other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) Service agents, or Customs officers, may refuse to clear marine mammals or marine mammal products for importation into the United States, pursuant to §14.53 of this subchapter, until the importer can demonstrate, by production of the affidavit referred in above or otherwise, that section 102(e) of the Act applies to all affected items.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §18.21, §18.31 or §18.32 of this part.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

Subpart C—General Exceptions

§ 18.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking or importation of marine mammals or marine mammal products, which was existent and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed in Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151-1187, as, in each case, from time to time amended.

§ 18.22 Taking by Federal, State or local government officials.

(a) A Federal, State or local government official or employee may take a marine mammal in the course of his duties as an official or employee and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or from the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking.

(b) Each taking permitted under this section should be included in a written report, to be submitted to the Director every six months, beginning December 31, 1973. Unless otherwise permitted by the Director, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Director may require.

The reports shall be mailed to the Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]