

Sea otter controversy embroils Marina Katelnikoff

by Jim Benedetto

Times Editor

A Kodiak Island Native woman has been cited by the U.S. Fish & Wildlife Service for alleged violations of the Marine Mammal Protection Act. Marina Katelnikoff had crafted several types of items from sea otter fur, including blankets, mittens, fur-flowers and teddy bears.

One week before Kodiak's annual Crab Festival celebration, which brings large numbers of tourists on-island (a boon to local craftsmen and merchants), agents of the U.S. Fish & Wildlife Service swept into Kodiak armed with warrants and confiscated all of Marina Katelnikoff's sea otter pieces from local gift shops, even the ones that would clearly seem to be within the guidelines of the regulations. Katelnikoff was "read her rights" by VSF&W agents, and told she was in violation of the Marine Mammal Protection Act.

Under the Marine Mammal Protection Act, Alaska Natives are allowed to harvest sea otter for the purpose of making traditional Native handicrafts.

U.S. Fish & Wildlife contends that Marina's items are not "traditional," and therein lies the conflict. The MMPA defines an "authentic Native handicraft" as "composed, wholly or in some significant respect of natural materials... fashioned in the exercise of traditional Native handicrafts... including... weaving, carving, stitching, sewing, lacing, beading, drawing and painting," as long as the fashioning of the item is not done in a wasteful manner. Codified regulations fashioned for enforcement of the Act add the stipulation that such items must have been commonly produced by Natives before 1972, the year the Act went into effect.

In November of 1984 Katelnikoff had gone to the National Marine Fisheries office on Kodiak, obtained a copy of the

Act, and asked about the Native exemption. She later asked for a list of what items she was permitted to make, and, according to Katelnikoff was told, "make something, and we'll let the lawyers decide."

"I'm perfectly within the bounds (of the Act)," said Katelnikoff. "I asked them for help. They've confiscated the stuff to determine whether it's traditional or not."

Katelnikoff says she was even told she couldn't make a blanket and sell it. "Do they think that Natives had electric blankets 100 years ago?" an exasperated Katelnikoff asked.

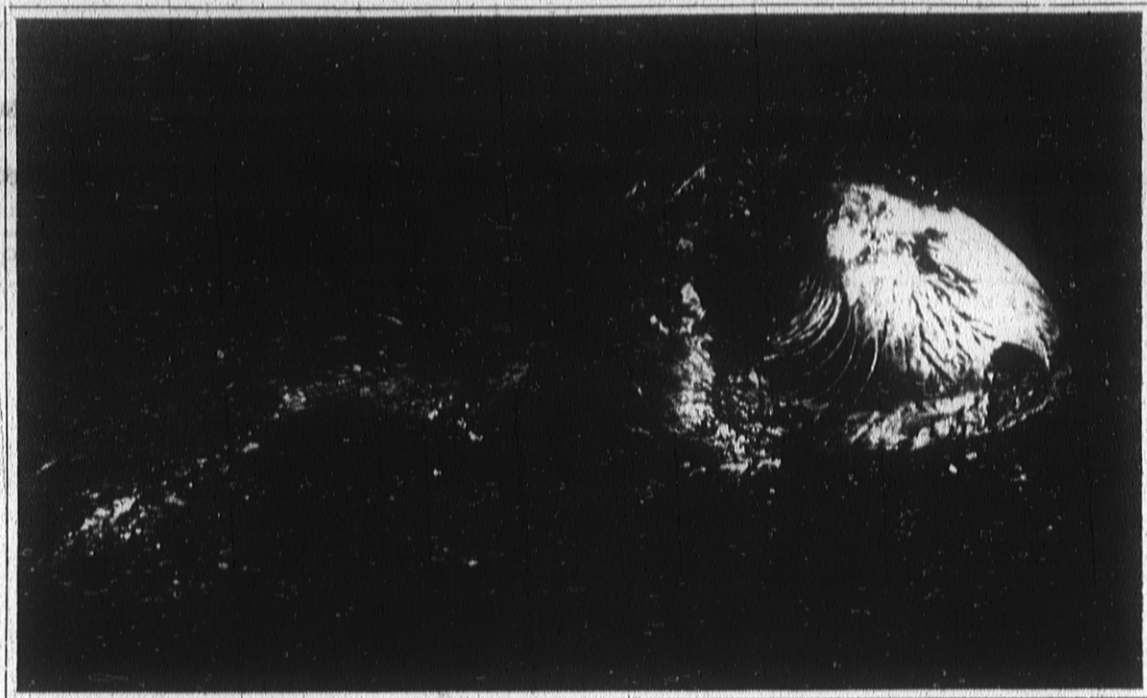
Marina has stopped selling her goods altogether now, "because I don't know what's going to happen."

"I'm convinced that all they're doing is harassing her," said Don Beck, Katelnikoff's fiancé. Beck is the captain of the Windy Sea; he accompanies Katelnikoff on her forays for Sea Otter.

"She's well within her rights as a Native," emphasized Beck, adding that, "all she's doing is doing what they said she can do."

According to Beck, he has several old books which mention dolls made of stuffed animal skins. Beck correctly points out that "even if you want to call them Teddy bears, Teddy Roosevelt was president for a long time before 1972. Do you mean to tell me that no Native ever made a Teddy Bear in all that time?"

Any penalty which may be



Sea Otters have been known to dive over 200 feet in search of crab. Photo courtesy of Alaska Fish and Game

assessed would "probably be civil, rather than criminal," said Bruce Schultheis of the Department of Interior's Regional Solicitor's office, "it could be anywhere from zero to \$10,000 though I doubt it would go that high." In addition, any article found not to be authentic would not be returned to Katelnikoff.

Jim Hogue of the U.S. Fish & Wildlife Service said that Marina's case "could end up being a test case," and that no one is really sure just what an authentic Native article is.

On that point, Katelnikoff's attorney Todd Littlefield of Alaska Legal Services in Kodiak agrees.

According to Littlefield, the regulations implemented to enforce the MMPA are "considerably looser than the Marine Mammal Protection Act itself," but Littlefield's reading of the law does not admit any question that Katelnikoff's work could possibly be in violation of the Act's intent.

"We are preparing a civil complaint against the Department of the Interior; we think the agents involved exceeded their statutory authority," said Littlefield.

Legislative intent is often of primary importance in determining how the law should be implemented, so it is fortunate for Katelnikoff that the author of the

Native exemption amendment to the MMPA is still around—Senator Ted Stevens.

Katelnikoff and Beck have been in contact with several of their legislators. On June 3, they received a letter from Senator Stevens' office promising her that the Senator would look into the matter personally.

Senator Stevens was able to issue this statement for the *Tundra Times*:

We are concerned about the action against Alaska Natives in Kodiak regarding use of sea otters for handicrafts. I have
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asked for an explanation from the Fish & Wildlife Service. In my judgement, Fish and Wildlife should explain what they are doing to inform the Native people of the limitations of the exception from the Marine Mammal Protection Act, so they may avoid violations of the law.

The sea otter is lately no stranger to controversy in the State of Alaska. Ever since 1972, when the Act was implemented, the state has been trying to have management of the sea otter restored to the state. The federal government, when it took control of marine mammal management, left provisions for the future return of management to the state as soon as "reasonable population levels" were established.

The state originally applied for return of all marine mammal management in 1972. In 1976, an administrative law judge ruled that the otter could be harvested if it were determined that reasonable population levels were reached.

In 1981 the state reapplied. When Governor Sheffield was elected, he asked for public hearings in the affected areas, mostly coastal communities, to determine whether residents wanted the state to pursue the goal of marine mammal management.

Beginning in the autumn of 1984, Alaska Fish & Game held more than 40 hearings from Barrow to Ketchikan. The intent of the hearings was to inform the public about sea otters and the issues involved with their management, so that the public could make an informed decision. A report summarizing the findings of those hearings is being completed in Juneau, and as expected, there is tremendous diversity within the public sector.

John Burns of Alaska Fish & Game told the *Tundra Times* that among communities which depended heavily on fishing, the consensus was pro state management. Otters in groups, called "pods," can move into a bay rich in shellfish and totally deplete it of clams, crabs and other shellfish in a relatively short period of time. Otters have been found in crab pots over 200 feet deep, and some biologists claim individual animals can dive up to 60 fathoms (360 ft). After the otters deplete the shellfish in an area, they move on.

Pods of sea otters have seriously damaged shellfish populations in areas of Prince William Sound, Afognak Straits (Blue Fox Bay), Raspberry Straits, Terror Bay, Uganik, and many other areas.

Generally, animal-protection groups are against the return of state management of the mammal.

But the inability of the State Senate to resolve the subsistence issue clouds the future of state management of marine mammals. Many insiders think it unlikely that Governor Sheffield will ask for its return.

Meanwhile, Marina Katelnikoff, a victim of federal management, waits for it all to work itself out.