

Chair Wood,

You asked on the record about whether Alaska Native hunters could combat seal predation for commercial fishers in the Inlet.

There is not a defensible way to read the Marine Mammal Protection Act's protections and limited exemption to allow for Alaska Native harvest of seals, a protected marine mammal, to negate predation and assist in commercial fishing efforts.

The exemption states: "Except as provided in [section 1379](#) of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking-- (1) is for subsistence purposes; or (2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing..." See 16 U.S.C. 1371.

Additionally relevant is the prohibition on intentional take of seals for commercial fishing purposes. The Act prohibits "the intentional lethal take of any marine mammal in the course of commercial fishing operations." 16 U.S.C. § 1387. Arguably, the scheme you asked about constitutes intentional lethal take in the course of commercial fishing operations. Granted, that argument takes a broad view of "course of commercial fishing" but I think that's a reasonable interpretation in this context.

As Member Carlson-Van Dort stated, there is also a definitional restriction on who qualifies as Indian, Aleut, or Eskimo which I am happy to further analyze if that would be helpful. That would be relevant as to who can participate in harvest under the limited exemption. A person who is "one-quarter Alaska Native by blood [requires] no authorization from the Federal Government is needed to harvest most marine mammals for subsistence." See <https://www.fisheries.noaa.gov/alaska/outreach-and-education/marine-mammal-parts-and-products-alaska>.

Thanks,

Noah I. Star

Assistant Attorney General
Natural Resources Section
Alaska Department of Law
907-269-5237