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MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 2004

APRIL 20, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources, submitted the following

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 2693]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2693) to reauthorize the Marine Mammal Protection Act of 1972, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Protection Act Amendments of 2004".

SEC. 2. AMENDMENT REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to such section or other provision of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 3. TECHNICAL CORRECTIONS.

(a) COMMITTEE REFERENCES.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by striking "Committee on Merchant Marine and Fisheries" each place it appears and inserting "Committee on Resources".

(b) OBSOLETE REFERENCE TO SECTION.—Section 118(c)(3)(A)(i) (16 U.S.C. 1387(c)(3)(A)(i)) is amended by striking ", except that" and all that follows through "is valid".

SEC. 4. LIMITED AUTHORITY TO EXPORT MARINE MAMMAL PRODUCTS.

(a) IN GENERAL.—Section 101(a)(6) (16 U.S.C. 1371(a)(6)) is amended by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following:

"(B) A marine mammal product may be exported from the United States if the product—

"(i) is legally possessed, and exported by, a citizen of the United States for noncommercial purposes in conjunction with travel outside the United States and the product is imported into the United States by the same person upon the termination of travel;

"(ii) is legally possessed and exported as part of a cultural exchange, by an Indian, Aleut, or Eskimo residing in Alaska; or

"(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is exported for noncommercial purposes—

"(I) in conjunction with, and upon the completion of, travel within the United States; or

"(II) as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.".

(b) CONFORMING AMENDMENT.—Section 101(a)(6)(A)(i) (16 U.S.C. 1371(a)(6)(A)(i)) is amended by inserting "for noncommercial purposes" after "United States" the first place it appears.

SEC. 5. MISCELLANEOUS AUTHORIZATIONS OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.—Section 116(a) (16 U.S.C. 1384(a)) is amended to read as follows:

"(a) DEPARTMENT OF COMMERCE.—(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV—

"(A) $23,728,000 for 2004;
"(B) $24,378,000 for 2005;
"(C) $25,028,000 for 2006;
"(D) $25,678,000 for 2007; and
"(E) $26,328,000 for 2008.

"(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, $20,000,000 for each of the fiscal years 2004 through 2008.".

(b) DEPARTMENT OF THE INTERIOR.—Section 116(b) (16 U.S.C. 1384(b)) is amended to read as follows:

"(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title—

"(1) $11,800,000 for 2004;
"(2) $12,300,000 for 2005;
"(3) $12,800,000 for 2006;
"(4) $13,300,000 for 2007; and
"(5) $13,800,000 for 2008.".

(c) COOPERATIVE AGREEMENTS IN ALASKA.—Section 119(d) (16 U.S.C. 1388(d)) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) $2,000,000 to the Secretary of Commerce for each of fiscal years 2004 through 2008; and

"(2) $1,500,000 to the Secretary of the Interior for each of fiscal years 2004 through 2008.".

SEC. 6. TAKE REDUCTION PLANS.

(a) IN GENERAL.—Section 118 (16 U.S.C. 1387) is amended as follows:

(1) In subsection (a) by striking "commercial" each place it appears in paragraphs (1) and (5).

(2) In subsection (c)(1) by striking so much as precedes subparagraph (B) and inserting the following:

"(c) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of the Marine Mammal Protection Act Amendments of 2004—

"(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of fisheries published under section 114(b)(1) in the Federal Register on August 24, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to—

"(i) commercial and recreational fisheries that have frequent incidental mortality and serious injury of marine mammals;

"(ii) commercial and recreational fisheries that have occasional incidental mortality and serious injury of marine mammals; or

"(iii) commercial fisheries that have a remote likelihood of or no known incidental mortality or serious injury of marine mammals;".

(3) In subsection (c)(1) in subparagraphs (B) and (C) by striking "commercial".

(4) In subsection (c)(2)(A) by striking "commercial".

(5) In subsection (c)(3)(A) in the matter preceding clause (i) by striking "a commercial fishery" and inserting "that fishery".

(6) In subsection (c)(3)(E) by inserting "commercial" after "any".

(7) In subsection (c)(5)(B) by striking "commercial".

(8) In subsection (d)(1) in the matter preceding subparagraph (A) by striking "commercial fishing operations" and inserting "fishing operations in a fishery listed under subsection (c)(1)(A)(i) or (ii)".

(9) In subsection (d)(3) in the matter preceding subparagraph (A) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(10) In subsection (d)(4) as follows:

(A) In the matter preceding subparagraph (A) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(B) In subparagraph (A) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(C) In subparagraph (B) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(D) In subparagraph (C) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(11) In subsection (d)(5) by striking "commercial fishing operations" and inserting "fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(12) In subsection (e) in the matter preceding paragraph (1)—

(A) by striking "commercial" each place it appears; and

(B) by striking "this Act" and inserting "this section".

(13) In subsection (f) by striking so much as precedes paragraph (2) and inserting the following:

"(f) TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), unless the Secretary determines, after notice and opportunity for public comment, that the level of fishery related mortality and serious injury is having a negligible impact on that stock. The Secretary may develop and implement a take reduction plan for any other marine mammal stocks which interact with a fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.".

(14) In subsection (f)(2)—

(A) by striking "6 months" and inserting "9 months"; and

(B) by striking "commercial fishing operations" each place it appears and inserting "fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(15) In subsection (f)(3) by striking "commercial".

(16) In subsection (f)(4)(B) by striking "commercial fishing operations" and inserting "fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(17) In subsection (f)(5)—

(A) in subparagraph (A) by striking "6 months" and inserting "9 months"; and

(B) in subparagraphs (A) and (B) by striking "commercial" each place it appears.

(18) In subsection (f)(6)(A)—

(A) by striking "(not later than 30 days)"; and

(B) in clause (ii) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(19) In subsection (f)(6)(C) in the second sentence, by inserting before the period the following: ", a representative of the office of General Counsel of the National Oceanic and Atmospheric Administration, a representative of the National Marine Fisheries Service having responsibilities related to fisheries science, a representative of the National Marine Fisheries Service having responsibilities related to law enforcement, and a representative of the appropriate National Marine Fisheries Service Regional Administrator".

(20) In subsection (f)(7)—

(A) in subparagraph (A)(i) by striking "6 months" and inserting "9 months";

(B) in subparagraph (B)(i)—

(i) by striking "not later than 60 days" and inserting "not later than 120 days"; and

(ii) by adding at the end the following: "Before publishing any plan that is different than the draft plan proposed by a take reduction team, the Secretary shall reconvene the team and explain to the team the differences between the published plan and the draft plan proposed by the team."; and

(C) in subparagraph (B)(ii)—

(i) by striking "6 months" and inserting "9 months"; and

(ii) by striking "not later than 8 months" and inserting "not later than 11 months".

(21) In subsection (f)(7)(C) by striking "Not later than 60 days" and inserting "Not later than 90 days".

(22) In subsection (f)(7)(D) by striking "commercial".

(23) In subsection (f)(8)—

(A) in subparagraph (C) by striking "Not later than 60 days" and inserting "Not later than 180 days"; and

(B) by striking "commercial" each place it appears.

(24) In subsection (f)(9) as follows:

(A) In subparagraph (A) by striking "commercial fisheries or restrict commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii) or restrict such fisheries".

(B) In subparagraphs (B) and (C) by striking "commercial" each place it appears.

(C) In subparagraph (D) by striking "commercial fishing operations" and inserting "participation in a fishery listed under subsection (c)(1)(A)(i) or (ii)".

(25) In subsection (g)(1) by striking "commercial fisheries" and inserting "fisheries listed under subsection (c)(1)(A)(i) or (ii)".

(26) In subsection (g)(3)(B) by striking "commercial".

(27) In subsection (g)(4) by striking "commercial fishery" and inserting "fishery listed under subsection (c)(1)(A)(i) or (ii)".

(28) In subsection (j) by inserting "including observer, research, and education and outreach programs," after "For purposes of carrying out this section,".

(29) By amending subsection (d)(1)(C) to read as follows:

"(C) identify current fishery regulations and changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.".

(30) In subsection (f)(2) in the last sentence by inserting "conservation benefits of" before "State or regional fishery management plans.".

(31) By amending subsection (f)(4)(A) to read as follows:

"(A) a review of the information in the final stock assessment published under section 117(b), any substantial new information, a review of the conservation benefits from current State and regional fishery management regulations;".

(b) STOCK ASSESSMENTS.—Section 117(a)(4) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by inserting "and" at the end of subparagraph (D); and

(3) by adding at the end the following:

"(E) potential conservation benefits provided by State and regional fishery management regulations;".

(c) CONFORMING AMENDMENT.—Section 101(a)(5)(E) (16 U.S.C. 1371(a)(5)(E)) is amended by inserting "or recreational" after "commercial" each place it appears.

SEC. 7. PINNIPED RESEARCH.

Section 120 (16 U.S.C. 1389) is amended by adding at the end the following:

"(k) RESEARCH ON NONLETHAL REMOVAL AND CONTROL.—(1) The Secretary shall conduct research on the nonlethal removal and control of nuisance pinnipeds. The research shall include a review of measures that have been taken to effect such removal and control, the effectiveness of these measures, and the development of new technologies to deter nuisance pinnipeds.

"(2) The Secretary shall include, among the individuals that develop the research program under this subsection, representatives of the commercial and recreational fishing industries.

"(3) The Secretary is encouraged, where appropriate, to use independent marine mammal research institutions in developing and in conducting the research program.

"(4) The Secretary shall, by December 31 of each year, submit an annual report on the results of research under this subsection to the Committee on Resources of

the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.".

SEC. 8. MARINE MAMMAL COMMISSION.

(a) NUMBER OF EMPLOYEES.—Section 206(5) (16 U.S.C. 1406(5)) is amended by striking "; except that no fewer than 11 employees must be employed under paragraph (1) at any time".

(b) ADMINISTRATION.—Section 206(4) (16 U.S.C. 1406(4)) is amended by striking "(but at rates for individuals not to exceed $100 per diem)".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 207 (16 U.S.C. 1407) is amended to read as follows:

"SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Marine Mammal Commission for purposes of carrying out this title—

"(1) $2,000,000 for fiscal year 2004;
"(2) $2,050,000 for fiscal year 2005;
"(3) $2,100,000 for fiscal year 2006;
"(4) $2,150,000 for fiscal year 2007; and
"(5) $2,200,000 for fiscal year 2008.".

SEC. 9. SCRIMSHAW EXEMPTION.

Any valid certificate of exemption referred to in section 18 of Public Law 103–238 (16 U.S.C. 1539 note) that was valid under that section on April 29, 1999, shall be valid during the 8-year period beginning October 31, 1999.

SEC. 10. POLAR BEAR PERMITS.

Section 104 (16 U.S.C. 1374) is amended—

(1) in subsection (c)(5)(D)—

(A) by striking "the date of enactment of the Marine Mammal Protection Act Amendments of 1994" and inserting "February 18, 1997"; and

(B) by striking ", expeditiously after the expiration of the applicable 30 day period under subsection (d)(2),";

(2) in subsection (d)(2) by inserting before the period at the end of the first sentence the following: ", except for an application for a permit to import polar bear parts under subsection (c)(5)";

(3) in subsection (d)(5) by inserting before the period at the end of the last sentence the following: "if a notice of application was required to be published pursuant to paragraph (2) with respect to the permit"; and

(4) in subsection (c)(5) by adding at the end the following:

"(E) The Secretary shall make available to the public on a semiannual basis information concerning the permits issued or denied under this paragraph.".

SEC. 11. CAPTIVE RELEASE PROHIBITION.

Section 102(a) (16 U.S.C. 1372(a)) is amended—

(1) in paragraph (4) by striking "subsection 104(c); and" and inserting "section 104(c);";

(2) in paragraph (5) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(6) for any person that is subject to the jurisdiction of the United States to release any captive marine mammal unless specifically authorized to do so under section 104(c)(3)(A), 104(c)(4)(A), or 109(h).".

SEC. 12. STRANDING AND ENTANGLEMENT RESPONSE.

(a) COLLECTION AND UPDATING OF INFORMATION.—Section 402(b)(1)(A) (16 U.S.C. 1421a(b)(1)(A)) is amended by inserting "or entangled" after "stranded".

(b) ENTANGLEMENT RESPONSE AGREEMENTS.—

(1) IN GENERAL.—Section 403 (16 U.S.C. 1421b) is amended—

(A) by amending the section heading to read as follows:

"SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE AGREEMENTS."

; and

(B) in subsection (a) by inserting "or entanglement" before the period.

(2) CLERICAL AMENDMENT.—The table of contents at the end of the first section is amended by striking the item relating to section 403 and inserting the following:

"Sec. 403. Stranding or entanglement response agreements.".

(c) LIABILITY.—Section 406(a) (16 U.S.C. 1421e(a)) is amended by inserting "or entanglement" after "stranding".

(d) ENTANGLEMENT DEFINED.—

(1) IN GENERAL.—Section 410 (16 U.S.C. 1421h) is amended—

(A) by redesignating paragraphs (1) through (6) in order as paragraphs (2) through (7); and

(B) by inserting before paragraph (2) (as so redesignated) the following:

"(1) The term 'entanglement' means an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and is—

"(A) on a beach or shore of the United States; or

"(B) in waters under the jurisdiction of the United States.".

(2) CONFORMING AMENDMENT.—Section 408(a)(2)(B)(i) (16 U.S.C. 1421f–1(a)(2)(B)(i)) is amended by striking "section 410(6)" and inserting "section 410(7)".

(e) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) GRANT PROGRAM.—Section 408(h) (16 U.S.C. 1421f–1(h)) is amended by striking "fiscal years 2001 through 2003" and inserting "fiscal years 2004 through 2008".

(2) FUND.—Section 409(3) (16 U.S.C. 1421g(3)) is amended by striking "$500,000 for fiscal year 1993" and inserting "$125,000 for each of fiscal years 2004 through 2008".

(f) Section 408 (16 U.S.C. 1421f–1), is amended—

(1) by adding at the end of subsection (a)(1) the following: "All funds available to implement this section shall be distributed to eligible stranding network participants for the three purposes set forth in this paragraph, except as provided in subsection (f)."; and

(2) by amending subsection (f) to read as follows:

"(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of the amounts available each fiscal year to carry out this section, the Secretary shall not expend more than 6 percent or $80,000, whichever is greater, to pay the administrative costs and administrative expenses to implement the grant program provided for in subsection (a)(1). Any funds retained by the Secretary shall be used only for such administrative costs and expenses and any such funds that are not expended by the Secretary at the end of each fiscal year shall be expended as grants pursuant to the grant program established by subsection (a)(1).".

SEC. 13. DEFINITION OF HARASSMENT.

Section 3(18) is amended to read as follows:

"(18)(A) The term 'harassment' means any act that—

"(i) injures or has the potential to injure a marine mammal or marine mammal stock in the wild;

"(ii) disturbs or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of biologically significant behaviors, including, but not limited to, surfacing, migration, breeding, care of young, predator avoidance, defense, or feeding to a point where such behavioral patterns are significantly altered; or

"(iii) is directed toward a specific individual, group, or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, surfacing, migration, breeding, care of young, predator avoidance, defense, or feeding.

"(B) The term 'Level A harassment' means harassment described in subparagraph (A)(i).

"(C) The term 'Level B harassment' means harassment described in subparagraph (A) (ii) or (iii).".

SEC. 14. INCIDENTAL TAKINGS OF MARINE MAMMALS.

Section 101(a)(5) (16 U.S.C. 1371(a)(5)) is amended—

(1) in subparagraph (A) by striking "of small numbers";

(2) in subparagraph (D)(i) by striking "of small numbers"; and

SEC. 15. TUNA-DOLPHIN PROVISIONS.

Subsection (c) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385) is amended in paragraph (2) by striking "160 degrees west longitude" and inserting "150 degrees west longitude".

SEC. 16. PERMIT CLARIFICATIONS.

Section 104 (16 U.S.C. 1374) is amended as follows:

(1) Subsection (c)(7) is amended by inserting "notwithstanding any other provision of law" after "requesting the permit".

(2) Subsection (c)(9) is amended—

(A) by inserting "the Secretary of Agriculture determines, and then certifies to the Secretary, that" after "unless"; and

(B) by adding at the end the following: "The Secretary may not require or request, through comity or any other means, that any marine mammal remain subject to the jurisdiction of the United States when that marine mammal or its progeny is located in waters or on lands subject to the jurisdiction of another country.".

(3) Subsection (c)(10) is amended—

(A) in the first sentence by inserting "held within the lands and waters of the United States" after "marine mammals" each place it appears;

(B) in the second sentence by inserting ", which shall be updated on an annual basis," after "inventory"; and

(C) in subparagraph (D) by inserting "ownership, or other" after "date of".

SEC. 17. FISHERIES GEAR DEVELOPMENT.

Section 111 (16 U.S.C. 1381) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) RESEARCH AND DEVELOPMENT PROGRAM.—

"(1) IN GENERAL.—The Secretary of Commerce (in this section referred to as the 'Secretary') shall—

"(A) carry out a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with fishing operations; and

"(B) make every practicable effort to develop, evaluate, and make available to owners and operators of fishing vessels such gear and fishing method improvements as quickly as possible.

"(2) COORDINATION WITH OTHER COUNTRIES.—The Secretary may coordinate with other countries to foster gear technology transfer initiatives to reduce to the maximum extent practicable the incidental mortality and serious injury of marine mammals throughout the full extent of their range.".

(2) By adding at the end the following:

"(e) GEAR RESEARCH MINI-GRANT PROGRAM.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary may establish a grant program to provide financial assistance for developing, manufacturing, testing, or designing new types of fishing gear designed to reduce to the maximum extent practicable the incidental taking (including incidental mortality and serious injury) of marine mammals.

"(2) GRANT AMOUNT AND PURPOSES.—The amount of a grant under this subsection may not exceed $20,000.

"(3) GRANT APPLICATIONS.—To receive a grant under this section, an applicant must submit an application in such form and manner as the Secretary may prescribe.

"(4) CONSULTATION REGARDING CRITERIA.—The Secretary shall consult with the Secretary of the Interior and the Marine Mammal Commission regarding the development of criteria for the awarding of grants under this subsection.

"(5) ADMINISTRATIVE COSTS.—Of amounts available each fiscal year to carry out this subsection, the Secretary may expend not more than $40,000 to pay the administrative expenses necessary to carry out this subsection.

"(6) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.".

SEC. 18. MARINE MAMMAL RESEARCH GRANTS.

Section 110 (16 U.S.C. 1380) is amended—

(1) by amending subsection (a) to read as follows:

"(a) AUTHORIZATION OF ASSISTANCE; ANNUAL REPORT.—

"(1) AUTHORIZATION OF ASSISTANCE.—The Secretary may make grants, or provide financial assistance in such other form as the Secretary considers appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects that are relevant to the protection and conservation of marine mammals, and the ecosystems upon which they depend, including, but not limited to, the Bering/Chukchi Sea ecosystem and the California coastal marine ecosystem.

"(2) INCLUSION OF INFORMATION IN REPORTS.—The Secretary shall include a description of the annual results of research carried out with assistance under this section in the report required under section 103(f).

"(3) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests."; and

(2) by striking subsections (c) and (d).

SEC. 19. FINES AND PENALTIES.

(a) FINES AND PENALTIES, GENERALLY.—Section 105 (16 U.S.C. 1375) is amended—

(1) in subsection (a)(1) by striking "$10,000" and inserting "$20,000"; and

(2) in subsection (b) by striking "$20,000" and inserting "$30,000".

(b) VESSEL PENALTY.—Section 106(b) (16 U.S.C. 1376(b)) is amended by striking "$25,000" and inserting "$35,000".

PURPOSE OF THE BILL

The purpose of H.R. 2693 is to reauthorize the Marine Mammal Protection Act of 1972, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In general

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to ensure that marine mammals are maintained at, or in some cases restored to, healthy population levels. The original Act established a moratorium on the "taking" or importing of marine mammals and marine mammal products except for certain activities which are regulated and permitted. The MMPA defines "take" as "to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal."

Under the MMPA, jurisdiction over marine mammals in the wild is split between two agencies, the U.S. Fish and Wildlife Service (USFWS) (under the Department of the Interior) and the National Marine Fisheries Service (NMFS) (under the National Oceanic and Atmospheric Administration within the Department of Commerce). USFWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus, while NMFS has jurisdiction over all other marine mammals. The Animal and Plant Health Inspection Service (APHIS) (under the Department of Agriculture) has jurisdiction over the care and maintenance of captive animals under the Animal Welfare Act. The MMPA was substantially amended in 1994, and those amendments transferred authority for the care and management of captive marine mammals from NMFS and USFWS to APHIS.

The 1994 amendments also established a new incidental take regime for commercial fisheries and required NMFS to institute marine mammal stock assessments and abundance estimates to provide the necessary scientific basis for a new incidental take regime. A captive marine mammal inventory was also established and is maintained by NMFS. The permit process was eased for scientific research and for educational and commercial photography. The permit process was also eased for the public display community, allowing them to notify the agency 15 days prior to a transfer, export, or sale of a marine mammal instead of applying for additional permits. Furthermore, no additional permits were to be required for the progeny of captive marine mammals. Permits for the importation of legally harvested polar bear trophies from certain regions of Canada were also authorized. A process authorizing cooperative agreements between Alaska natives and the agency of jurisdiction for the management and conservation of marine mammals was also established. The Pinniped-Fishery Interaction Task Forces were authorized to review the interactions of marine mammals with fish populations on the west coast with regard to listed salmon stocks,

and for the Gulf of Maine with respect to aquaculture facilities. A prohibition on human activities within 100 yards of a humpback whale in waters surrounding Hawaii was included in the amendments. Finally, an authorization of appropriations was included for the Departments of Commerce and the Interior and the Marine Mammal Commission for fiscal years 1994–1999.

The definition of harassment under the MMPA

The 1994 amendments also included a definition of "harassment." The 1994 two-part definition of "harassment" is any act of pursuit, torment, or annoyance of marine mammals which: has the potential to injure a marine mammal or marine mammal stock in the wild (this is termed level A harassment); or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (this is termed Level B harassment).

This definition was included in the MMPA to clarify what activities constitute harassment and to assist the agencies in enforcing actions that may adversely affect marine mammals. However, the definition has not led to better enforcement of the Act. The Secretaries have been unable to prosecute non-permitted activities that have been directed at specific animals due to the two-tiered requirement of the definition. Under his approach, the Secretary concerned has been required to determine first if an action is an act of pursuit, torment, or annoyance. If so, then the relevant Secretary then makes a determination if the action was level A or level B harassment.

President Clinton and then later under President Bush proposed amending the definition of harassment, as proposed in the Administration's draft MMPA reauthorization bill. The Administration bill recommended removing the first tier of the definition—"pursuit, torment, or annoyance"—and modifying the definition to raise the threshold of what is considered harassment away from those activities that cause minor changes in behavior. In addition, a number of scientists recommended changes to the definition of "harassment."

The National Research Council (NRC) has issued three reports on the effects of sound as harassment of marine mammals: Low Frequency Sound and Marine Mammals: Current Knowledge and Research Needs, 1994; Marine Mammals and Low Frequency Sound: Progress Since 1994, 2000; and Ocean Noise and Marine Mammals, 2003. In its 2000 report, the NRC concluded that regulating activities that cause minor changes in behavior having no adverse impact did not make sense; instead, MMPA regulations must focus on significant disruption of behaviors critical to survival and reproduction. The 2000 report recommended amending level B harassment to reflect these conclusions. The 2003 NRC report expanded further on the changes to level B harassment and recommended that level B harassment should be modified to focus on biologically significant disruption of behaviors critical to survival and reproduction (i.e. adverse impacts), instead of any detectable change in behavior.

The 2000 report also recommended the removal of "small numbers" from the incidental take authorization in section 101 of the

MMPA. Under current law, section 101 requires the relevant Secretary to make three findings before issuing an authorization: whether the activity will harass a small number of marine mammals; the specified geographic area in which the activity will occur; and whether the activity will have a negligible impact on the species or stock. The panel stated "if such a change is not made, it is conceivable under the current MMPA language there would be two tests for determining takes by harassment, small numbers first, and if that test were met, negligible impact from that take of small numbers." The panel went on to state, "the removal of 'small numbers' would prevent the denial of research permits that might insignificantly harass large numbers of animals and would leave the 'negligible impact' test intact."

The "small numbers" finding was included in section 101(a)(5) of the MMPA when it was amended in 1981. The Committee report accompanying these changes to the MMPA stated the intent of this requirement was to minimize the impact an activity might have on marine mammals. The Committee recognized "the imprecision of the term 'small numbers,' but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits."

The imprecision of the term has led to problems with how the MMPA has been implemented and has resulted in lawsuits against NMFS which resulted in the courts interpreting the language. In *Natural Resources Defense Council, et al.* v. *Donald L. Evans, et al.*,[1] the court raised concerns with how the Secretary of Commerce defined "harassment" and "small numbers" in the final rule for the Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar permit and the MMPA implementing regulations, respectively. The court stated that the "plantiffs argue that NMFS has re-written the definition of 'harassment' from an activity that has the potential to disturb to an activity that actually causes such a disturbance." The court agreed that the agency used an erroneous definition of "harassment" in the final rule, but stated that "it does not appear that this erroneous definition caused any harm." The court further stated that NMFS' interpretation of the statutory language "disruption of behavior patterns" as "a significant behavioral change in a biologically important behavior or activity" was within the agency's discretion and granted the NMFS summary judgment on the issue of whether NMFS applied the wrong standard for level B harassment in preparing the regulatory definition.

Those regulations also defined "small numbers" as "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." The ruling in the *NRDC* v. *Evans* case concluded that NMFS improperly collapsed the two standards and eliminated the possibility that the two standards will serve as separate safeguards restricting the extent of the takes. The agency was directed to redefine "small numbers" as a separate standard.

MMPA section 101(a)(5) also requires the relevant Secretary to make a finding on the "specified geographic region" in which an ac-

[1] 279 F. Supp. 1129 (N.D. Cal. 2003). See also Natural Resources Defense Council In. v. Donald Evans (N.D. Cal. October 21, 2002) (No. C–02–3805) (order granting preliminary injunction).

tivity is to occur. This requirement was included in the 1981 amendments to the MMPA and also came under review in *NRDC* v. *Evans*. When Congress included the "specified geographical region" language in the MMPA in 1981, the Committee report addressed the issue in this manner: "the specified geographical region should not be larger than is necessary to accomplish the specified activity, and should be drawn in such a way that the effects on marine mammals in the region are substantially the same."

The judge in *NRDC* v. *Evans* ruled against the way NMFS applied the "specified geographic region" requirement in the permit for the Navy's SURTASS LFA sonar. In this permit, NMFS created 15 biomes, with 54 provinces within the biomes, using a schematic developed for plankton by Longhurst (1998). The term "biome" is used by scientists to describe areas on earth with similar climate, plants, and animals. The agency argued that the Longhurst data was the best scientific application available for designating these specified geographic regions. However, the plaintiffs in the case argued that the agency did not include all of the relevant Offshore Biologically Important Areas (OBIAs) within these biomes in the final rule. The public comments to the proposed rule raised the issue of the list of OBIAs being inadequate. The NMFS response to these comments was that "it is unnecessary to expand the list of OBIAs prior to making the required determinations under section 101(a)(5)(A)." In addition, NMFS stated "a delay in the rulemaking process to implement new OBIAs is unwarranted." However, NMFS would accept petitions for additional OBIAs. The permit at issue in the case required the Navy to inform NMFS as to which biomes would be in use in any one year. The permit also included mitigation measures that were a condition of receiving the permit. The court in *NRDC* v. *Evans* struck down this approach. The negotiated settlement of the case ultimately restricted the Navy to one large area of the Pacific ocean in which it could test its SURTASS LFA sonar.

The National Defense Authorization Act for Fiscal Year 2004 (NDAA) included language that created a new definition of harassment for military readiness activities and for research performed by a federal agency or by independent government researchers which benefits military operations. The NDAA struck the "specified geographical region" and "small number" requirements for military readiness activities in section 101(a)(5) of the MMPA. This action maintained the requirement that the relevant Secretary find that the action would have a "negligible impact" on any marine mammals that might be affected by the action. The NDAA also created a national defense exemption under which the Secretary of Defense may exempt certain activities from the MMPA, in consultation with the Secretaries of Commerce and the Interior, for national defense reasons for periods no longer than two years.

MMPA and fisheries interactions

The 1994 amendments also included a new fisheries regime in section 118 of the MMPA. While this new regime reiterated the Act's goal of reducing the incidental lethal take or serious injury of marine mammals, it also authorized interactions between commercial fisheries and marine mammals. The regime created three categories which list fisheries with frequent interactions (category

I), occasional interactions (category II), and remote interactions (category III) with marine mammals. It also required commercial fishermen to register and adhere to specific requirements prior to fishing, including: holding a valid permit and authorization; adhering to emergency regulations or take reduction plans; reporting requirements; and carrying observers if requested by the relevant Secretary. The new regime also authorized the creation of take reduction teams, which include representatives from commercial fishing, environmental groups, academics and agency officials, to develop measures to reduce the incidental take of marine mammals in those fisheries that interact with strategic or depleted stocks.

The 1994 amendments created new stock assessment requirements for NMFS to assist in the development of the new fishery regime. NMFS was required to develop stock assessments for each marine mammal in waters under the jurisdiction of the United States. This was recognized by Congress as a substantial task, which is why the Committee report directed the Secretary of Commerce to give a lower priority to those stocks taken only by harassment. The House Committee on Merchant Marine and Fisheries (the predecessor in jurisdiction to the Committee on Resources) understood that the stock assessments were the underpinnings of successful management.

However, due to an increase in litigation burdens, many legislative burdens, and other factors, the Secretary of Commerce has had a difficult time maintaining up-to-date stock assessments for stocks under his jurisdiction. The commercial fishing industry testified that the lack of accurate or up-to-date stock assessments presents potential litigation concerns since fishery restrictions are made based on the available stock assessment data.

When developing the stock assessment, NMFS determines the geographic range, a minimum population estimate, an estimate of the human-caused mortality and serious injury, and a description of the fisheries that interact with the stock. For strategic stocks, the information is supposed to be updated annually; other stocks are updated every three years. Regional scientific review groups were also created in 1994 to advise the Secretary on population estimates, research needs, and potential modifications to fishing gear and practices to reduce interactions.

One of the main goals of the MMPA is to maintain marine mammal populations at their optimum sustainable population (OSP). The potential biological removal level (PBR) for a stock, which is determined in the stock assessment process, meets this goal. PBR is defined in the MMPA as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population." PBR is calculated by taking a marine mammal population's minimum population count and multiplying it by 50 percent of the annual net reproduction rate. The resulting number is then reduced by multiplying it by a recovery factor of 0.1 for endangered species, 0.5 for threatened or status uncertain species, and 1.0 for others. This complicated calculation of PBR includes three levels of precaution, which many have argued is overly precautionary.

While PBR takes into account all human-caused mortalities, this mortality limit is used only to restrict commercial fisheries. No

matter how many marine mammals are taken from a population by other sources of mortality, the commercial fishing industry faces the restrictions to keep mortality at or below PBR.

In addition to adhering to PBR, the MMPA established a goal for commercial fisheries "to further reduce the incidental mortality and serious injury of marine mammals to an insignificant level approaching a zero mortality and serious injury rate" (ZMRG). During recent hearings on the reauthorization of the MMPA, the Committee heard testimony from the commercial fishing industry that achieving ZMRG is overly burdensome when fishing mortalities at or below PBR already meet the goal of maintaining marine mammal populations at OSP.

Congress enacted the MMPA in 1972, in part, to address the high mortality rate of marine mammals occurring in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean. In response to these high mortality levels, Congress created ZMRG for this fishery. At the time, Congress was very specific in how ZMRG should be applied to the fishery. The goal was not to shut down fisheries, but reduce the incidental mortality and serious injury rate of marine mammals. In this case, once the Secretary of Commerce was satisfied that the tuna fishermen were using the best available technology to assure minimal hazards to marine mammal populations, the goal of ZMRG was met. This standard also allowed the Secretary to take into account the economic and technological practicability of the best available technology.

In the 1980s, Congress reaffirmed the intent of ZMRG. Congress recognized the progress made by the purse seine fishery to reduce its mortality rates and maintained the technology standard for this fishery. The House of Representatives report accompanying the 1982 amendments to the MMPA stated ZMRG "is satisfied . . . by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable."

It was not until the 1990s that Congress applied dolphin mortality limits to the yellowfin tuna purse seine fishery. These limits were based on the International Dolphin Conservation Act of 1992 and the International Dolphin Conservation Program Act of 1997. It is important to note that the mortality limits established in the 1992 Act were based on reductions that could be achieved by the gear currently being used in the fishery.

For other fisheries, Congress maintained the zero mortality rate goal as a means to promote new technology to reduce the incidental taking of marine mammals. In the 1994 amendments to the MMPA, Congress created a new fishery regime which authorized limited incidental takes of marine mammals in commercial fisheries and retained the economic and technological practicability finding. In MMPA section 118(f)(2), which guides the take reduction plan process, it specifically states, "the long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology and existing State or regional fishery management plans."

To implement the 1994 amendments, NMFS published a proposed rule on June 16, 1995, to implement section 118 and included a definition of ZMRG. However, when the final rule was published in August 30, 1995, the provisions relating to the zero mortality rate goal were not included. The agency stated in the rule that it needed more time to determine the appropriate goal for zero mortality rate.

In 2002, NMFS was sued by a number of environmental groups for not complying with the requirements of section 118, and as part of the settlement NMFS was required to define the zero mortality rate goal. On July 9, 2003, NMFS published an advance notice of proposed rulemaking on this issue.

COMMITTEE ACTION

H.R. 2693 was introduced on July 10, 2003, by Congressman Wayne T. Gilchrest (R–MD). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On July 24, 2003, the Subcommittee held a hearing on the bill. On September 25, 2003, the Subcommittee met to mark up the bill. Mr. Gilchrest offered an amendment in the nature of a substitute which modified the definition of harassment, struck "small numbers" and "specified geographic region" from MMPA section 101(a)(5) and created a general authorization for activities that incidentally take marine mammals, clarified the take reduction plan process in MMPA section 118, clarified the export provisions in MMPA section 101, made technical changes to the polar bear trophy permit process in MMPA section 104, and added a new section which clarifies the tuna-dolphin provisions in the MMPA and the Dolphin Protection Consumer Information Act. Congressman Frank Pallone (D–NJ) offered and withdrew an amendment to the amendment in the nature of a substitute to change the definition of harassment. Mr. Pallone also offered an amendment to the amendment in the nature of a substitute to strike section 14 of the bill. This amendment was withdrawn. Congresswoman Madeleine Bordallo (D–GU) offered and withdrew an amendment to the amendment in the nature of a substitute to strike the time extensions made to the take reduction team process. Mr. Pallone offered and withdrew an amendment to the amendment in the nature of a substitute to increase the fines and penalties assessed in the MMPA. The amendment in the nature of a substitute was adopted by voice vote. The bill was then ordered favorably reported to the Full Committee by voice vote.

On November 5, 2003, the Full Resources Committee met to consider the bill. Mr. Gilchrest offered an amendment in the nature of a substitute which increased the authorized appropriations for the Department of Commerce to the Administration's request, reduced the take reduction team time-line extensions from 11 months to 6 months, barred the Secretary of Commerce from retaining funds beyond those necessary for administrating the Prescott Grant Program, amended MMPA section 104 to clarify certain public display permits, and added two new sections authorizing a research program to improve fishing gear and marine mammal research grants. Congressman Jay Inslee (D–WA) offered an amendment to the amendment in the nature of a substitute which would

have made research on sound the priority for marine mammal research grants. The amendment was withdrawn. Congressman Don Young (R–AK) offered and withdrew an amendment to allow the Secretaries and Native Alaskan Corporations to develop harvest management plans as part the their cooperative management agreements to conserve marine mammals and provide co-management of subsistence use by Alaska Natives. Mr. Young also offered an amendment to strike any reference to zero mortality rate goal in the MMPA, leaving potential biological removal as the mechanism to restore marine mammal stocks to their optimum sustainable population—the goal of the MMPA. Mr. Young withdrew the amendment. The amendment in the nature of a substitute was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the bill as the "Marine Mammal Protection Act Amendments of 2004."

Section 2. Amendment references

This section states that any amendment or repeal of a section shall be made to such section of the Marine Mammal Protection Act of 1972.

Section 3. Technical corrections

This section replaces "Committee on Merchant Marine and Fisheries" with "Committee on Resources" and deletes an obsolete reference in MMPA section 118.

Section 4. Limited authority to export marine mammal products

This section clarifies that any U.S. citizen who legally possesses a marine mammal product may export it in conjunction with travel outside the U.S. These exports shall be for non-commercial purposes and the product has to be imported back into the U.S. at the termination of travel. It also allows Native handicrafts to be exported for noncommercial purposes if owned by a Native of Canada, Greenland or Russia or if possessed by an Alaska Native and exported as a part of a cultural exchange. The import language in section 101(a)(6)(A)(i) of the MMPA is amended to state that imports shall be for non-commercial purposes. The intent of the Committee is to make it explicitly clear that Alaska Natives, Natives from Canada, Greenland and Russia, as well as U.S. citizens that legally possess a marine mammal product can import and export, for noncommercial purposes, legally possessed marine mammal products as part of cultural exchanges or in conjunction with travel outside the U.S.

Section 5. Miscellaneous authorizations of appropriations

This section authorizes appropriations for the Departments of Commerce and the Interior and for cooperative agreements in Alaska. The Department of Commerce authorization of appropriations are at levels recommended by the Administration. Appropriations for section 119 of the MMPA are also authorized.

Section 6. Take reduction plans

This section amends MMPA section 118 to include recreational fisheries in the list of fisheries that could have interactions with marine mammals that are frequent or occasional and result in the incidental mortality and serious injury of marine mammals. NMFS would be required to include both commercial and recreational fishermen's interactions with marine mammals in assessing whether a particular fishery should be placed in either category I (frequent incidental mortality or serious injury) or category II (occasional incidental mortality and serious injury). All recreational fishermen who participate in a category I or II fishery would be required to obtain the same annual authorizations and file the same reports regarding marine mammal interactions as are now required of commercial fishermen. In such cases, a recreational fishing representative will also be included in the take reduction plan process.

This section does not alter existing law for category III fisheries where there is only a remote likelihood of or no known incidental mortality or serious injury of marine mammals. By not expanding category III to include the millions of recreational fishermen who only fish with rods and reels, the regulatory burden on both the agency and the public is kept to a minimum. However, the Committee strongly supports the inclusion of those recreational fisheries using commercial-type fishing gear, if they are contributing to the mortality or serious injury to marine mammals in a category I or II fishery. These recreational fishermen should be subject to the same regulatory requirements as commercial fishermen when using the same gear and having the same affect on marine mammals.

The timelines in this section are modified to allow the relevant Secretary additional time to meet the requirements of this section. The Secretary will be given six extra months to complete the take reduction plans. The Committee was concerned with groups using missed timelines as the basis for litigation against the Secretary. The Committee believes the extension to the timelines in this section will not reduce protections for marine mammals, but will provide litigation relief for the Secretary allowing staff and funding to be used for conservation and management activities rather than preparing documents for litigation.

This section requires certain Administration personnel to be in attendance at take reduction team (TRT) meetings. They include representatives from the National Oceanic and Atmospheric Administration General Counsel office and the appropriate Regional Administrator's office, a NMFS fisheries scientist, and a NMFS law enforcement officer.

This section also requires the relevant Secretary to reconvene a take reduction team and explain any differences the Secretary makes between the draft plan, which was drafted by the TRT, and the published plan. It is not the intent of the Committee for a TRT to be reconvened for minor changes to a plan, which might include technical or unsubstantial changes like typographical errors. Instead, the Secretary is required to reconvene a TRT when changes are made to the reduction measures required in the plan which were recommended by the TRT. It is the understanding of the Committee that the involvement of additional agency personnel, as mentioned above, early in the process will help reduce the likeli-

hood that inappropriate measures are included in the TRT's recommendations. In addition, the Secretary could schedule the last TRT meeting during the drafting of regulations and the public comment process.

Language is added to this section to clarify that contributions from private sources can be used for observers, research, education and outreach programs.

This section gives the Secretary some flexibility whether to convene a TRT. After notice and public comment, the Secretary may decide not to convene TRTs for those fisheries that are having a negligible impact on the marine mammal stock and are not the major cause in the decline of a marine mammal population. It is the Committee's intent that this flexibility will allow the Secretary to focus staff time and resources on those fisheries that have high interactions with marine mammals.

This section also clarifies that MMPA section 118(c)(3)(E), which applies to category III fisheries, is a requirement for commercial vessels only. Owners of a vessel are not subject to penalties under the MMPA if they report any incidental mortality or injury of marine mammals in the course of the fishery.

A conforming amendment to MMPA section 101(a)(5)(E) has been included to clarify that both commercial and recreational fisheries can incidentally take endangered marine mammals, as long as the taking would have a negligible effect and is in accordance with a take reduction plan.

MMPA section 117(a)(4) is also amended to require that conservation benefits provided by State and regional fishery management regulations be included in the scientific review of marine mammal stocks. Similar changes are made in the take reduction plan process in MMPA section 118 to allow the take reduction teams to review the conservation benefits of State and regional fishery management regulations.

The Committee is concerned that benefits of State and regional management actions may have been overlooked by TRTs in the past and the measures and the benefits these regulations may have had on marine mammal populations have been ignored. The Committee intends that State and regional management measures should be factored into the TRT process. The Committee does not want this process to become burdensome on the TRT; however, every effort should be made to understand what actions have been taken and how commercial fisheries may have changed due to State or regional management measures and if those changes have had a benefit on marine mammal populations. The TRT should work to ensure that measures are developed to protect marine mammals, but it should include an analysis of restrictions already in place from State and regional management actions. In addition, if State and regional management actions have had an adverse impact on marine mammals, NMFS should work with the State or regional body to reduce the impacts on marine mammals of activities governed by those bodies.

The Committee is concerned that NMFS in many cases is using stock assessment data which is older than five years old. The Committee understands that the agency has internal guidance, based

on a 1996 GAMMS report,[2] which recommends using data which is no older than five years, and that anything beyond that time frame should be considered outdated and unreliable. The Committee encourages NMFS to use current data when convening a TRT, even if it means conducting a stock assessment in coordination with the development of a take reduction plan to ensure the take reduction plan is based on the most recent and accurate stock assessment data.

Section 7. Pinniped research

MMPA section 120 is amended to require the relevant Secretary to conduct research on the nonlethal removal and control of nuisance pinnipeds. The Secretary shall include representatives from commercial and recreational fishing industries and where appropriate use independent marine mammal research institutions. The Secretary shall report annually to the House Committee on Resources and the Senate Committee on Commerce, Science and Transportation.

Section 8. Marine Mammal Commission

This section authorizes appropriations for the Commission. It also deletes the $100 per diem rate cap and clarifies the staffing authorization for the Commission.

Section 9. Scrimshaw exemption

This section continues the permits for those individuals with pre-Endangered Species Act ivory to continue to possess, carve, and sell the ivory until October 31, 2007.

Section 10. Polar bear permits

This section changes the date for eligibility to receive a permit under MMPA section 104 from April 30, 1994, to February 18, 1997. This section also allows the Secretary of the Interior to publish on a semiannual basis information concerning permits authorizing the importation of a polar bear trophy or the denial of the permit.

Section 11. Captive release prohibition

This section amends section 102 of the MMPA to make it illegal to release a captive marine mammal without prior approval from the relevant Secretary. The intent of the Committee is to prohibit the release of captive marine mammals if the release has not been permitted by the Secretary. It is the understanding of the Committee that those activities that are permitted by the Secretary, such as military activities which conduct temporary releases, will still be authorized under the permits authorizing those activities under sections 104 and 109 of the MMPA.

Section 12. Stranding and entanglement response

This section amends Title IV of the MMPA to authorize the relevant Secretary to enter into response agreements for marine mammal entanglements in addition to strandings. The term entan-

[2] Guidelines for Assessing Marine Mammal Stocks: The GAMMS Workshop April 3–5, 1996, Seattle, Washington.

glement is also defined in this section. This section also authorizes appropriations for the grant program and the Unusual Mortality Rate Fund which is authorized in MMPA section 409. Language is added to prohibit the relevant Secretary from retaining funds under section 408, the Prescott Grant Program, except for administration costs. Any remaining funds are required to be issued in the form of grants to stranding facilities.

Section 13. Definition of harassment

This section amends the definition of harassment in the MMPA. These changes are based on recommendations by several reports issued by the National Research Council.

The Committee has removed the "pursuit, torment, or annoy" clause to clarify the definition to allow for better enforcement and implementation of those activities which may harass a marine mammal. The new definition modifies level A harassment to read: "injures or has the potential to injure a marine mammal or marine mammal stock in the wild." The definition of level B is modified to pertain to as any act that "disturbs or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of biologically significant behaviors including, but not limited to, surfacing, migration, breeding, care of young, predator avoidance, defense, or feeding to a point where such behavioral patterns are significantly altered."

The word "potential" has created ambiguities in the application of the "harassment" definition by the Secretaries. While the Committee maintained "potential," clarification of the term is warranted. All sea-faring activities have the "potential" to harass marine mammals. The question is whether the activity has caused a significant behavioral change or response in a biologically important behavior or activity. The Committee has modified the definition to allow the Secretaries to move away from managing for minor changes in marine mammal behavior to focus more on activities that cause a marine mammal to have a significant behavioral response in a biologically important activity. The Committee intends for the regulations to focus on significant disruptions of behavior critical to survival and reproduction. For instance, it would not be considered "harassment" if a boat passing by a buoy caused a sea lion to leave the buoy. However, it would be "harassment" if an activity caused a marine mammal to vacate its breeding area. This response would rise to the level of a significant alteration of a biologically important behavior. The Committee believes that the modified definition will allow the respective Secretaries to manage and permit activities that take or incidentally take or harass marine mammals to occur, while incorporating appropriate protections for marine mammals.

The definition of level B harassment also includes language regarding activities "directed toward a specific individual, group, or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, surfacing, migration, breeding, care of young, predator avoidance, defense or feeding." The Committee heard testimony from environmental groups and scientists raising concerns with the "directed toward" language—specifically that it may adversely impact scientific research activities. This lan-

guage was recommended by the Administration in their draft MMPA bill to improve the enforcement of the MMPA, specifically for those non-permitted activities that harass marine mammals. The Committee agreed with the merit of this language and intends for paragraph (iii) to be applied only to those non-permitted activities. Activities like marine mammal research, which receive permits under section 104, or activities that are eligible for incidental take and harassment authorizations under section 101(a)(5), should not be further restricted by this "directed toward" level B harassment language in paragraph (iii). It is the intent of the Committee that permitted activities, like those permitted under sections 101 or 104, fall under paragraph (ii) of the level B harassment definition.

Section 14. Incidental takings of marine mammals

This section amends MMPA section 101(a)(5) by deleting references to "small numbers." The Committee believes the removal of the "small numbers" finding is necessary to prevent the denial of research permits that might insignificantly take more than a small number of marine mammals, but would have no long term adverse impact to the population. The Committee intends the "negligible impact" finding to remain the guiding principle for the agencies when issuing permits for activities that incidentally, but not intentionally, take marine mammals. This change does not reduce the applicant's requirement to show that his activities will have a negligible impact on the marine mammal species and populations. Additionally, he will have to demonstrate that his activities will not have an unmitigable adverse impact on the availability of such species or stocks for subsistence uses pursuant to the MMPA. These analyses are the key elements to maintaining the health of marine mammal species and are the premise for take authorizations under the MMPA.

In addition, the Committee believes the change in law will require the Secretary of Commerce to amend the current regulatory definition of "specified activity," set forth in 50 Code of Federal Regulations 216.103, to ensure consistency with these amendments. "Specific activity" should be redefined to preclude mention of "small numbers."

H.R. 2693 does not remove the "specified geographic region" finding; however, the Committee believes clarification of this language is necessary to reduce litigation regarding this provision. The 1981 Committee report stated "the specified geographical region should not be larger than is necessary to accomplish the specified activity, and should be drawn in such a way that the effects on marine mammals in the region are substantially the same." The Resources Committee notes that the language does not state that the area has to be small, but should be as large as necessary to accomplish the activity. This Committee is not advocating world-wide permits for any one activity. However, there are certain activities, like sonar, which can traverse large expanses of the ocean and are not readily contained in a single "specified geographic region." The Committee understands the complications these types of activities present, but supports continued permitting of these activities in regions which are as large as necessary to accomplish the activity. In these instances, it is imperative that the permit include mitigation

measures to ensure protections for marine mammals throughout the area in which the activity occurs. The Committee supports the development of programmatic Environmental Impact Statements by NMFS to facilitate the permitting of activities authorized in MMPA section 101(a)(5)(A)&(D).

Section 15. Tuna-dolphin provisions

This section makes a technical and clarifying change to the Dolphin Protection Consumer Information Act. The reference to "160 degrees west longitude" is changed to "150 degrees west longitude". This change is necessary for the U.S. regulations to remain consistent with changes in the international agreement.

Section 16. Permit clarifications

This section amends MMPA section 104(c)(7) to make it clear that the relevant Secretary is required to issue a public display permit to a facility holding a stranded animal that has been determined under the guidelines developed under MMPA section 402(a) to not meet the standards for release. The Committee does not intend that permits be given to those marine mammals that can be legitimately rehabilitated for release in the wild; however, the Committee is very concerned that the Secretary has not been issuing public display permits to facilities caring for stranded animals that are not viable release candidates. The Committee's intent is that facilities shall receive public display permits for animals that do not meet the release requirements. The Committee does not intend for the issuance of these permits to diminish research activities involving these animals and encourages the facilities to continue to work with the Secretaries to allow important research activities to continue on these animals.

The Committee commends the public display community for its role in the conservation and management of marine mammals. Activities sponsored by public display facilities—research, educational programs and presentations, animal husbandry, breeding, and rescue and rehabilitation—are important aspects to the conservation of marine mammals. The rescue and rehabilitation programs run by these facilities are critical to the survival of stranded animals and for many years participating institutions ran these programs using their own funds. In addition, these facilities play an invaluable role for the general public. These public display facilities are the only place for many Americans to view marine mammals and learn about the conservation needs of these animals. The Committee believes the interactions provided at these facilities generate the general public's good will toward marine mammals and develops their support for conservation and management measures for these and many other ocean creatures.

This section amends the export provisions of MMPA section 104 to clarify that the Secretary of Agriculture is the appropriate entity for determining the adequacy of facilities holding captive marine mammals. When the Secretary of Agriculture determines the foreign facility meets the requirements of the Animal Welfare Act and the MMPA, a U.S.-based facility is authorized to export the animal. The Secretary of Agriculture may consult with the Secretaries of Commerce and the Interior when making the MMPA finding for a foreign facility. This section also clarifies that letters of comity are

not necessary and that once an animal is transferred to a foreign facility, the animal and its progeny are no longer under the jurisdiction of the United States.

The Committee does not agree with the Administration's interpretation that the MMPA requires comity letters from foreign governments or other foreign entities to NMFS or the FWS prior to marine mammals being exported to foreign facilities. The MMPA applies only in areas under the jurisdiction of the United States unless the Act specifically states otherwise. The Committee believes the Department of Agriculture's process is the only factor to determine whether or not a marine mammal can be exported to a foreign facility. If the facility meets the requirements of the Animal Welfare Act and the MMPA, the marine mammal should be exported.

The inventory provision in subsection (c)(10) is amended to clarify that the inventory is only for marine mammals in facilities under the jurisdiction of the United States. The MMPA still requires the documentation of the initial transfer of an animal to a foreign facility in the inventory. This information will remain in the inventory. However, the foreign facility that receives the marine mammal is not required to report to the U.S. on the location of the animal at its facility or if it transfers the marine mammal to another facility in that country or if the marine mammal is transferred to a facility in another country. The only time the animal will come back into the U.S. inventory is if the marine mammal is imported back into the U.S. In addition, the amendments clarify that the inventory should be updated annually. It is further amended to specify that facilities have ownership of the marine mammals in their care.

The Committee wants to clarify the intent of the 15-day notice reporting requirement established in the 1994 amendments for transfers between facilities. The MMPA currently authorizes the relevant Secretary to issue a permit to a person who meets the requirements of the MMPA for public display. The 15-day notice requirement applies to marine mammals transferred to another facility where care and ownership of the animal changes. The 15-day notice requirement does not apply if the care and ownership of the marine mammal does not change and the animal is moved between facilities owned by the permit holder.

Section 17. Fisheries gear development

This section amends section 111 of the MMPA to authorize the relevant Secretary to carry out a program of research and development for the purpose of devising improved fishing methods and gear to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with fishing operations. It authorizes a mini-grant program, subject to the availability of appropriations, and allows the Secretary to receive donations to carry out the grant program.

Section 18. Marine mammal research grants

MMPA section 110 is amended to delete expired provisions and authorize the relevant Secretary to make grants or other financial assistance to federal or State agencies, public or private institutions, or other persons to undertake research in subjects relevant

to the protection and conservation of marine mammals, and the ecosystem upon which they depend. The Secretary is authorized to receive gifts to carry out this section.

Section 19. Fines and penalties

This section increases the fines in MMPA section 105 from $10,000 to $20,000 for civil penalties and from $20,000 to $30,000 for criminal penalties. It also increases the penalty in MMPA section 106 from $25,000 to $35,000.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the advisory committee reauthorized in the bill are not currently being nor could they be performed by one or more agencies or by enlarging the mandate of a different, existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. H.R. 2693 would provide new authority to the Secretaries of Commerce and the Interior to collect and spend donations to support research programs on fishing methods and other activities related to the conservation of marine mammals. However, the Congressional Budget Office estimates that these donations and subsequent direct spending "would not exceed $500,000 in any year". In addition, revenues to the federal government could be increased by the larger civil and criminal penalties authorized in section 19 of the bill. Again, the Congressional Budget Office estimates that any additional revenues would total less than $500,000 annually and this increase in revenue would be fully offset by direct spending from the Crime Victims Fund (where criminal penalties are deposited) or the resource management ac-

count of the USFWS (where civil fines are deposited and used for rewards to informers and program costs).

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to reauthorize the Marine Mammal Protection Act of 1972.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 7, 2004.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2693, the Marine Mammal Protection Act Amendments of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2693—Marine Mammal Protection Act Amendments of 2003

Summary: H.R. 2693 would authorize the appropriation of $345 million over the 2004–2008 period for programs to protect and conserve marine mammals. Assuming appropriation of the specified amounts, CBO estimates that implementing this bill would cost $9 million in 2004 and $254 million over the next five years. The bill could increase direct spending and revenues, but we estimate that any such changes would be minimal and largely offsetting. H.R. 2693 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2693 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION					
Spending under current law for Marine Mammal Protection Act activities:					
Budget Authority [1]	5	0	0	0	0
Estimated outlays	5	2	0	0	0
Proposed changes:					
Authorization level	62	68	69	70	71
Estimated outlays	9	32	63	77	73
Spending under H.R. 3693 Marine Mammal Protection Act activities:					
Authorization level [1]	67	68	69	70	71

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Estimated outlays	14	34	63	77	73

[1] The 2004 level is the amount appropriated for that year to the Department of the Interior for activities under the Marine Mammal Protection Act.

Basis of estimate: Assuming appropriation of the necessary amounts, CBO estimates that H.R. 2693 would cost $9 million in 2004 and $254 million over the next five years. The bill also would increase direct spending and revenues, but we estimate that any such effects would be small and largely offsetting.

Spending subject to appropriations

H.R. 2693 would reauthorize programs administered by the Department of Commerce (DOC) and the Department of the Interior (DOI) under the Marine Mammals Protection Act. The bill would authorize the appropriation of $335 million over the 2004–2008 period for those agencies to support various activities, including the preparation and execution of plans to manage marine mammals, research and monitoring efforts, and grant programs to support the rescue of marine mammals from life-threatening situations. Based on historical spending patterns for these activities, CBO estimates that appropriation of the specified amounts would result in additional outlays of $7 million in 2004 and $244 million over the next five years. H.R. 2693 also would authorize the appropriation of $2 million a year over the 2004–2008 period for the Marine Mammal Commission, which performs research and advises DOC and DOI on efforts to conserve marine mammals. Assuming appropriation of the specified amounts, CBO estimates that funding that commission would cost $2 million a year for the next five years.

Direct spending and revenues

H.R. 2693 would provide new authority for the Secretaries of Commerce and the Interior to collect and spend donations (which are recorded in the budget as revenues) to support programs to research fishing methods and other activities related to the conservation of marine mammals. Based on information from DOC and DOI, CBO estimates that any such donations and any subsequent direct spending would not exceed $500,000 in any year.

By increasing the level of civil and criminal fines for violations of the Marine Mammals Protection Act, H.R. 2693 could increase revenues from such fines. Based on information from DOI about the relatively small number of cases likely to occur, however, CBO estimates that any such increase would total less than $500,000 annually. Moreover, such changes would be fully, offset by increases in direct spending from the Crime Victims Fund (where criminal fines are deposited) or the resource management account of the U.S. Fish and Wildlife Service (where civil fines are deposited and used for rewards to informers and other program costs.)

Intergovernmental and private-sector impact: H.R. 2693 contains no intergovernmental or private-sector mandates as defined in UMRA and would imposed no costs on state, local, or tribal government.

Estimate prepared by: Federal Costs: Megan Carroll. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Selena Caldera.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

AN ACT To protect marine mammals; to establish a Marine Mammal Commission; for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

TABLE OF CONTENTS

Sec. 2. Findings and declaration of policy.

* * * * * * *

TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

Sec. 401. Establishment of program.

* * * * * * *

[Sec. 403. Stranding response agreements.]
Sec. 403. Stranding or entanglement response agreements.

* * * * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) * * *

* * * * * * *

[(18)(A) The term "harassment" means any act of pursuit, torment, or annoyance which—

[(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

[(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

[(B) In the case of a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) or

a scientific research activity conducted by or on behalf of the Federal Government consistent with section 104(c)(3), the term "harassment" means—

[(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

[(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

[(C) The term "Level A harassment" means harassment described in subparagraph (A)(i) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(i).

[(D) The term "Level B harassment" means harassment described in subparagraph (A)(ii) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(ii).]

(18)(A) The term "harassment" means any act that—

(i) injures or has the potential to injure a marine mammal or marine mammal stock in the wild;

(ii) disturbs or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of biologically significant behaviors, including, but not limited to, surfacing, migration, breeding, care of young, predator avoidance, defense, or feeding to a point where such behavioral patterns are significantly altered; or

(iii) is directed toward a specific individual, group, or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, surfacing, migration, breeding, care of young, predator avoidance, defense, or feeding.

(B) The term "Level A harassment" means harassment described in subparagraph (A)(i).

(C) The term "Level B harassment" means harassment described in subparagraph (A) (ii) or (iii).

* * * * * * *

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) * * *

* * * * * * *

(5)(A)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region [of small numbers] of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I) * * *

* * * * * * *

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment [of small numbers] of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) * * *

* * * * * * *

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial *or recreational* fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial *or recreational* fisheries will have a negligible impact on such species or stock;

* * * * * * *

(iii) If, during the course of the commercial *or recreational* fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial *or recreational* fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and

may modify any permit granted under this paragraph as necessary.

* * * * * * *

(6)(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States *for noncommercial purposes* in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

* * * * * * *

(B) A marine mammal product may be exported from the United States if the product—

(i) is legally possessed, and exported by, a citizen of the United States for noncommercial purposes in conjunction with travel outside the United States and the product is imported into the United States by the same person upon the termination of travel;

(ii) is legally possessed and exported as part of a cultural exchange, by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is exported for noncommercial purposes—

(I) in conjunction with, and upon the completion of, travel within the United States; or

(II) as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

[(B)**]** *(C)* For the purposes of this paragraph, the term—

(i) * * *

* * * * * * *

PROHIBITIONS

SEC. 102. (a) Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV, it is unlawful—

(1) * * *

* * * * * * *

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

(A) that is taken in violation of this Act; or

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under **[**subsection 104(c); and**]** *section 104(c);*

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act**[**.**]***; and*

(6) for any person that is subject to the jurisdiction of the United States to release any captive marine mammal unless

specifically authorized to do so under section 104(c)(3)(A), 104(c)(4)(A), or 109(h).

* * * * * * *

PERMITS

SEC. 104. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(5)(A) * * *

* * * * * * *

(D) The Secretary of the Interior shall**[**, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2),**]** issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before **[**the date of enactment of the Marine Mammal Protection Act Amendments of 1994**]** *February 18, 1997*, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph.

(E) The Secretary shall make available to the public on a semi-annual basis information concerning the permits issued or denied under this paragraph.

* * * * * * *

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit *notwithstanding any other provision of law* if that person—

(A) * * *

* * * * * * *

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless *the Secretary of Agriculture determines, and then certifies to the Secretary, that* the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose. *The Secretary may not require or request, through comity or any other means, that any marine mammal remain subject to the jurisdiction of the United States when that marine mammal or its progeny is located in waters or on lands subject to the jurisdiction of another country.*

(10) The Secretary shall establish and maintain an inventory of all marine mammals *held within the lands and waters of the United States* possessed pursuant to permits issued under

paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals *held within the lands and waters of the United States*. The inventory*, which shall be updated on an annual basis,* shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) * * *

* * * * * * *

(D) The date of *ownership, or other* acquisition or disposition of the marine mammal by the permit holder.

* * * * * * *

(d)(1) * * *

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section*, except for an application for a permit to import polar bear parts under subsection (c)(5)*. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

* * * * * * *

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial *if a notice of application was required to be published pursuant to paragraph (2) with respect to the permit*.

* * * * * * *

PENALTIES

SEC. 105. (a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder, except as provided in section 118, may be assessed a civil penalty by the Secretary of not more than ⟦$10,000⟧ *$20,000* for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

* * * * * * *

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder (except as provided in section 118) shall, upon conviction, be fined not more than

[$20,000] *$30,000* for each such violation, or imprisoned for not more than one year, or both.

VESSEL FINE, CARGO FORFEITURE, AND REWARDS

SEC. 106. (a) * * *

(b) Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than [$25,000] *$35,000*. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

* * * * * * *

MARINE MAMMAL RESEARCH GRANTS

SEC. 110. [(a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).]

(a) AUTHORIZATION OF ASSISTANCE; ANNUAL REPORT.—

(1) AUTHORIZATION OF ASSISTANCE.—The Secretary may make grants, or provide financial assistance in such other form as the Secretary considers appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects that are relevant to the protection and conservation of marine mammals, and the ecosystems upon which they depend, including, but not limited to, the Bering/Chukchi Sea ecosystem and the California coastal marine ecosystem.

(2) INCLUSION OF INFORMATION IN REPORTS.—The Secretary shall include a description of the annual results of research carried out with assistance under this section in the report required under section 103(f).

(3) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

* * * * * * *

[(c)(1) No later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of Commerce shall convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health and

stability of that marine ecosystem, of which marine mammals are a part. The workshop shall be conducted in consultation with the Marine Mammal Commission, the adjacent coastal States, individuals with expertise in marine mammal biology and ecology, representatives from environmental organizations, the fishing industry, and other appropriate persons. The goal of the workshop shall be to identify such factors, and to recommend a program of research and management to restore or maintain that marine ecosystem and its key components that—

[(A) protects and encourages marine mammals to develop to the greatest extent feasible commensurate with sound policies of resource management;

[(B) has as the primary management objective the maintenance of the health and stability of the marine ecosystems;

[(C) ensures the fullest possible range of management options for future generations; and

[(D) permits nonwasteful, environmentally sound development of renewable and nonrenewable resources.

[(2) On or before December 31, 1995, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate a report containing the results of the workshop under this subsection, proposed regulatory or research actions, and recommended legislative action.

[(d)(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native organizations, shall, not later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

[(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary of Commerce shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

[(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 103(f) and 204 of this Act.]

COMMERCIAL FISHERIES GEAR DEVELOPMENT

SEC. 111. [(a) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection

with commercial fishing. At the end of the full twenty-four calendar month period following the date of the enactment of this Act, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of $1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.]

(a) RESEARCH AND DEVELOPMENT PROGRAM.—

(1) IN GENERAL.—The Secretary of Commerce (in this section referred to as the "Secretary") shall—

(A) carry out a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with fishing operations; and

(B) make every practicable effort to develop, evaluate, and make available to owners and operators of fishing vessels such gear and fishing method improvements as quickly as possible.

(2) COORDINATION WITH OTHER COUNTRIES.—The Secretary may coordinate with other countries to foster gear technology transfer initiatives to reduce to the maximum extent practicable the incidental mortality and serious injury of marine mammals throughout the full extent of their range.

* * * * * * *

(e) GEAR RESEARCH MINI-GRANT PROGRAM.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary may establish a grant program to provide financial assistance for developing, manufacturing, testing, or designing new types of fishing gear designed to reduce to the maximum extent practicable the incidental taking (including incidental mortality and serious injury) of marine mammals.

(2) GRANT AMOUNT AND PURPOSES.—The amount of a grant under this subsection may not exceed $20,000.

(3) GRANT APPLICATIONS.—To receive a grant under this section, an applicant must submit an application in such form and manner as the Secretary may prescribe.

(4) CONSULTATION REGARDING CRITERIA.—The Secretary shall consult with the Secretary of the Interior and the Marine Mammal Commission regarding the development of criteria for the awarding of grants under this subsection.

(5) ADMINISTRATIVE COSTS.—Of amounts available each fiscal year to carry out this subsection, the Secretary may expend not more than $40,000 to pay the administrative expenses necessary to carry out this subsection.

(6) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

* * * * * * *

APPLICATION TO OTHER TREATIES AND CONVENTIONS

SEC. 113. (a) * * *

* * * * * * *

(c) The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than April 1, 1995.

(d) Not later than 6 months after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, shall consult with the appropriate officials of the Russian Federation on the development and implementation of enhanced cooperative research and management programs for the conservation of polar bears in Alaska and Russia. The Secretary shall report the results of this consultation and provide periodic progress reports on the research and management programs to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate.

INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

SEC. 114. (a) * * *

* * * * * * *

(l)(1) * * *

* * * * * * *

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The recommendations shall include—

(A) * * *

* * * * * * *

SEC. 116. AUTHORIZATION OF APPROPRIATIONS.

[(a) DEPARTMENT OF COMMERCE.—(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV, $12,138,000 for fiscal year 1994, $12,623,000 for fiscal year 1995, $13,128,000 for fiscal year 1996, $13,653,000 for fiscal year 1997, $14,200,000 for fiscal year 1998, and $14,768,000 for fiscal year 1999.

[(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, $20,000,000 for each of the fiscal years 1994 through 1999.

[(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, $9,900,000 for fiscal year 1998, and $10,296,000 for fiscal year 1999.]

(a) DEPARTMENT OF COMMERCE.—(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV—

(A) $23,728,000 for 2004;

(B) $24,378,000 for 2005;

(C) $25,028,000 for 2006;

(D) $25,678,000 for 2007; and

(E) $26,328,000 for 2008.

(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, $20,000,000 for each of the fiscal years 2004 through 2008.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title—

(1) $11,800,000 for 2004;

(2) $12,300,000 for 2005;

(3) $12,800,000 for 2006;

(4) $13,300,000 for 2007; and

(5) $13,800,000 for 2008.

SEC. 117. STOCK ASSESSMENTS.

(a) IN GENERAL.—Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

(1) * * *

* * * * * * *

(4) describe commercial fisheries that interact with the stock, including—

(A) * * *

* * * * * * *

(C) seasonal or area differences in such incidental mortality or serious injury; [and]

(D) the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate; *and*

(E) potential conservation benefits provided by State and regional fishery management regulations;

* * * * * * *

SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

(a) IN GENERAL.—(1) Effective on the date of enactment of this section, and except as provided in section 114 and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of [commercial] fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of [commercial] fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section.

* * * * * * *

(5) Except as provided in section 101(c), the intentional lethal take of any marine mammal in the course of [commercial] fishing operations is prohibited.

* * * * * * *

(b) ZERO MORTALITY RATE GOAL.—(1) * * *

* * * * * * *

(3) Three years after such date of enactment, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

* * * * * * *

[(c) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of this section—

[(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 114(b)(1) and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to commercial fisheries that have—

[(i) frequent incidental mortality and serious injury of marine mammals;

[(ii) occasional incidental mortality and serious injury of marine mammals; or

[(iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;]

(c) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of the Marine Mammal Protection Act Amendments of 2004—

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of fisheries published under section 114(b)(1) in the Federal Register on August 24, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to—

(i) commercial and recreational fisheries that have frequent incidental mortality and serious injury of marine mammals;

(ii) commercial and recreational fisheries that have occasional incidental mortality and serious injury of marine mammals; or

(iii) commercial fisheries that have a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

(B) after the close of the period for such public comment, publish in the Federal Register a revised list of [commercial] fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this Act and other relevant sources and after notice and opportunity for public comment, the classification of [commercial] fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a [commercial] fishery listed under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

* * * * * * *

(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A) (i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in [a commercial fishery] *that fishery—*

(i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section[, except that owners of vessels holding valid certificates of exemption under section 114 are deemed to have registered for purposes of this subsection for the period during which such exemption is valid];

* * * * * * *

(E) Each owner of a vessel engaged in any *commercial* fishery not listed under paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e), instances of incidental mortality or injury of marine mammals in the course of that fishery.

* * * * * * *

(5)(A) * * *

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising [commercial] fishermen of the provisions of this section and the means by which they can comply with its requirements.

* * * * * * *

(d) MONITORING OF INCIDENTAL TAKES.—(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of [commercial fishing operations] *fishing operations in a fishery listed under subsection (c)(1)(A)(i) or (ii)*. The purposes of the monitoring program shall be to—

(A) * * *

* * * * * * *

[(C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.]

(C) identify current fishery regulations and changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

* * * * * * *

(3) In determining the distribution of observers among [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* and vessels within a fishery, the Secretary shall be guided by the following standards:

(A) * * *

* * * * * * *

(4) To the extent practicable, the Secretary shall allocate observers among [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* in accordance with the following priority:

(A) The highest priority for allocation shall be for [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threat-

ened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(B) The second highest priority for allocation shall be for [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that have incidental mortality and serious injury of marine mammals from strategic stocks.

(C) The third highest priority for allocation shall be for [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

(5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of [commercial fishing operations] *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)*. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

* * * * * * *

(e) REPORTING REQUIREMENT.—The owner or operator of a [commercial] fishing vessel subject to this [Act] *section* shall report all incidental mortality and injury of marine mammals in the course of [commercial] fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated sor computerized data processing system and shall require the vessel owner or operator to provide the following:

(1) * * *

* * * * * * *

[(f) TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A) (i) or (ii), and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.]

(f) TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), unless the Secretary determines, after notice and opportunity for public comment, that the level of fishery related mortality and serious injury is having a negligible impact on that stock. The Secretary may develop and implement a take reduction plan for any other marine mammal stocks which interact with a fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

(2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within [6] *9* months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of [commercial fishing operations] *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)* to levels less than the potential biological removal level established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of [commercial fishing operations] *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)* to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing *conservation benefits of* State or regional fishery management plans.

(3) If there is insufficient funding available to develop and implement a take reduction plan for all such stocks that interact with [commercial] fisheries listed under subsection (c)(1)(A) (i) or (ii), the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most rapidly.

(4) Each take reduction plan shall include—

[(A) a review of the information in the final stock assessment published under section 117(b) and any substantial new information;]

(A) a review of the information in the final stock assessment published under section 117(b), any substantial new information, a review of the conservation benefits from current State and regional fishery management regulations;

(B) an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of [commercial fishing operations] *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)*, by fishery;

* * * * * * *

(5)(A) For any stock in which incidental mortality and serious injury from [commercial] fisheries exceeds the potential biological removal level established under section 117, the plan shall include measures the Secretary expects will reduce, within [6] *9* months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.

(B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such [commercial] fisheries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.

(6)(A) At the earliest possible time [(not later than 30 days)] after the Secretary issues a final stock assessment under section 117(b) for a strategic stock, the Secretary shall, and for stocks that

interact with a fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

(i) * * *

(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that cause incidental mortality and serious injury of marine mammals from such stock.

* * * * * * *

(C) Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as the Secretary deems appropriate*, a representative of the office of General Counsel of the National Oceanic and Atmospheric Administration, a representative of the National Marine Fisheries Service having responsibilities related to fisheries science, a representative of the National Marine Fisheries Service having responsibilities related to law enforcement, and a representative of the appropriate National Marine Fisheries Service Regional Administrator*. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests.

* * * * * * *

(7) Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A) (i) or (ii), the following procedures shall apply in the development of the take reduction plan for the stock:

(A)(i) Not later than [6] *9* months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

* * * * * * *

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, [not later than 60 days] *not later than 120 days* after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days. *Before publishing any plan that is different than the draft plan proposed*

by a take reduction team, the Secretary shall reconvene the team and explain to the team the differences between the published plan and the draft plan proposed by the team.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within [6] *9* months, the Secretary shall, [not later than 8 months] *not later than 11 months* after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) [Not later than 60 days] *Not later than 90 days* after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising [commercial] fishermen of the requirements of the plan and how to comply with them.

* * * * * * *

(8) Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), or for any marine mammal stocks which interact with a [commercial] fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:

(A) * * *

* * * * * * *

(C) [Not later than 60 days] *Not later than 180 days* after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising [commercial] fishermen of the requirements of the plan and how to comply with them.

* * * * * * *

(9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—

(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in [commercial fisheries or restrict commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii) or restrict such fisheries* by time or area;

(B) require the use of alternative [commercial] fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

(C) educate [commercial] fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected [commercial] fisheries; and

(D) monitor, in accordance with subsection (d), the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of [commercial fishing operations] *participation in a fishery listed under subsection (c)(1)(A)(i) or (ii)*.

* * * * * * *

(g) EMERGENCY REGULATIONS.—(1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:

(A) * * *

* * * * * * *

(3) Emergency regulations prescribed under this subsection—

(A) * * *

(B) shall remain in effect for not more than 180 days or until the end of the applicable [commercial] fishing season, whichever is earlier; and

* * * * * * *

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a [commercial fishery] *fishery listed under subsection (c)(1)(A)(i) or (ii)* is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

* * * * * * *

(j) CONTRIBUTIONS.—For purposes of carrying out this section, *including observer, research, and education and outreach programs,* the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

* * * * * * *

SEC. 119. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

(a) * * *

* * * * * * *

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of carrying out this section—

[(1) $1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and

[(2) $1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.]

(1) $2,000,000 to the Secretary of Commerce for each of fiscal years 2004 through 2008; and

(2) $1,500,000 to the Secretary of the Interior for each of fiscal years 2004 through 2008.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 116.

SEC. 120. PACIFIC COAST TASK FORCE; GULF OF MAINE.

(a) * * *

* * * * * * *

(f) CALIFORNIA SEA LIONS AND PACIFIC HARBOR SEALS; INVESTIGATION AND REPORT.—

(1) * * *

(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

* * * * * * *

(g) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.—

(1) * * *

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives.

* * * * * * *

(h) GULF OF MAINE TASK FORCE.—The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from the date of enactment of this section, the Secretary shall after notice and opportunity for public comment submit to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.

* * * * * * *

(k) RESEARCH ON NONLETHAL REMOVAL AND CONTROL.—(1) The Secretary shall conduct research on the nonlethal removal and control of nuisance pinnipeds. The research shall include a review of measures that have been taken to effect such removal and control,

the effectiveness of these measures, and the development of new technologies to deter nuisance pinnipeds.

(2) The Secretary shall include, among the individuals that develop the research program under this subsection, representatives of the commercial and recreational fishing industries.

(3) The Secretary is encouraged, where appropriate, to use independent marine mammal research institutions in developing and in conducting the research program.

(4) The Secretary shall, by December 31 of each year, submit an annual report on the results of research under this subsection to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

TITLE II—MARINE MAMMAL COMMISSION

* * * * * * *

ADMINISTRATION OF COMMISSION

SEC. 206. The Commission, in carrying out its responsibilities under this title, may—

(1) * * *

* * * * * * *

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of Title 5, United States Code **[**(but at rates for individuals not to exceed $100 per diem)**]**; and

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this title**[**; except that no fewer than 11 employees must be employed under paragraph (1) at any time**]**. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

[SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this title, $1,500,000 for fiscal year 1994, $1,550,000 for fiscal year 1995, $1,600,000 for fiscal year 1996, $1,650,000 for fiscal year 1997, $1,700,000 for fiscal year 1998, and $1,750,000 for fiscal year 1999.**]**

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Marine Mammal Commission for purposes of carrying out this title—

(1) $2,000,000 for fiscal year 2004;
(2) $2,050,000 for fiscal year 2005;
(3) $2,100,000 for fiscal year 2006;
(4) $2,150,000 for fiscal year 2007; and
(5) $2,200,000 for fiscal year 2008.

* * * * * * *

TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

* * * * * * *

SEC. 402. DETERMINATION; DATA COLLECTION AND DISSEMINATION.

(a) * * *

(b) COLLECTION.—The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on—

(1) procedures and practices for—

(A) rescuing and rehabilitating stranded *or entangled* marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

* * * * * * *

[SEC. 403. STRANDING RESPONSE AGREEMENTS.]

SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a stranding *or entanglement*.

* * * * * * *

SEC. 406. LIABILITY.

(a) IN GENERAL.—A person who is authorized to respond to a stranding *or entanglement* pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

(1) * * *

* * * * * * *

SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT PROGRAM.

(a) IN GENERAL.—(1) Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue Assistance Grant Program, to provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes. *All funds available to implement this section shall be distributed to eligible stranding network participants for the three purposes set forth in this paragraph, except as provided in subsection (f).*

(2)(A) * * *

(B) In determining priorities among such regions, the Secretary may consider—

(i) any episodic stranding or any mortality event other than an event described in **[**section 410(6)**]** *section 410(7)*, that occurred in any region in the preceding year;

* * * * * * *

[(f) ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this section, the Secretary may expend not

more than 6 percent or $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this section.]

(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of the amounts available each fiscal year to carry out this section, the Secretary shall not expend more than 6 percent or $80,000, whichever is greater, to pay the administrative costs and administrative expenses to implement the grant program provided for in subsection (a)(1). Any funds retained by the Secretary shall be used only for such administrative costs and expenses and any such funds that are not expended by the Secretary at the end of each fiscal year shall be expended as grants pursuant to the grant program established by subsection (a)(1).

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(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years [2001 through 2003] *2004 through 2008*, to remain available until expended, of which—

(1) * * *

* * * * * * *

SEC. 409. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated—

(1) * * *

* * * * * * *

(3) to the Fund, [$500,000 for fiscal year 1993] *$125,000 for each of fiscal years 2004 through 2008*.

SEC. 410. DEFINITIONS.

In this title, the following definitions apply:

(1) The term "entanglement" means an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and is—

(A) on a beach or shore of the United States; or

(B) in waters under the jurisdiction of the United States.

[(1)] *(2)* The term "Fund" means the Marine Mammal Unusual Mortality Event Fund established by section 405(a).

[(2)] *(3)* The term "Office" means the Office of Protected Resources, in the National Marine Fisheries Service.

[(3)] *(4)* The term "stranding" means an event in the wild in which—

(A) * * *

* * * * * * *

[(4)] *(5)* The term "stranding network participant" means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

[(5)] *(6)* The term "Tissue Bank" means the National Marine Tissue Bank provided for under section 407(a).

[(6)] *(7)* The term "unusual mortality event" means a stranding that—

(A) * * *

* * * * * * *

DOLPHIN PROTECTION CONSUMER INFORMATION ACT

(Section 901 of Pub. L. 101–627)

DOLPHIN PROTECTION

SEC. 901. (a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

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(c) DEFINITIONS.—For purposes of this section—

(1) * * *

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, **[**160 degrees west longitude**]** *150 degrees west longitude*, and the western coastlines of North, Central, and South America;

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SUPPLEMENTAL VIEWS

While this legislation is the product of negotiation and compromise between the Chairman of the full committee and myself, as well as the chairman of the Subcommittee on Fisheries, Conservation, Wildlife and Oceans and that panel's ranking Democratic Member, and was reported in a bipartisan manner, certain provisions of the bill are described in the Committee Report in a way which in my view distorts their intent and purpose. For this reason, I am filing these Supplemental Views. Chiefly among these provisions are:

• *15 Day Advance Notice/Captive Marine Mammals:* The report states that the 15-day advance notice requirement for transfer of captive marine mammals should not apply to transport between facilities owned and operated by the same permit holder. This statement is without statutory basis and contrary to existing law and policy. Current law prohibits the sale, purchase, export or transport of marine mammals held for the purpose of public display unless the Secretary is notified of such action no later than 15 days before such action. This language clearly includes the transport of marine mammals between facilities, even where the owner of the facilities is the same, because of the explicit prohibition of both "sale" and "transport." Simply because a permit holder may own and operate multiple facilities is no assurance that all of these facilities meet all requirements for the care and maintenance of marine mammals. Furthermore, transfer and shipping of marine mammals is stressful to the animals and should be monitored to avoid abuse.

• *Zero Mortality Rate Goal:* The report's discussion concerning the Zero Mortality Rate Goal (ZMRG) reflects views which I do not share. In two instance, the report states that ZMRG is unnecessary once incidental mortality reaches the Potential Biological Removal (PBR) level. The basis for this assertion is that PBR alone is sufficient to attain the Act's goal of maintaining populations at optimal sustainable populations. However, I do not agree with the premise of equating ZMRG with PBR. Such an interpretation would be contrary to the long-term goal of the take reduction team process which is to reduce incidental mortality to levels below PBR. ZMRG therefore functions as a precautionary downward pressure to continue to reduce incidental mortality with consideration of economic and technological factors of the fishery.

• *Dolphin Safe:* The Majority's dicta equating ZMRG and PBR may have implications concerning ongoing litigation concerning dolphin bycatch in the yellowfin tuna fishery in the Eastern Tropical Pacific Ocean and the "Dolphin Safe" consumer label. When Congress amended the International Dolphin Conservation Act in 1997, it amended the yellowfin tuna provisions of the MMPA to provide an annual mortality cap of 5,000 dolphins and population-specific

dolphin mortality limits in the ETP purse seine fishery. However, Congress also renewed a commitment and objective to progressively reduce dolphin mortality to a level approaching zero. Language in the Majority's report should not be read to imply that the Congress considers the practice of setting on dolphins or encirclement by purse seine nets to satisfy a "best available technology" standard, particularly at a time when the matter is in litigation.

• *Small Numbers/Negligible Impact:* The report's rationale for striking references to "small numbers" as it applies to determinations of "no negligible impact" should be clarified. Fundamental to striking "small numbers" as a test for permit approval is the understanding that any determination of negligible impact must account for the population dynamics of the species. Accordingly, it is my view that it remains the Secretary's responsibility to consider the special circumstance of small sub-populations (i.e., Puget Sound orca or Cook Inlet beluga whale) or listed species (i.e., North Atlantic right whale).

• *Specific Geographic Region:* The committee report states that in regard to "specified geographic region" an area should be as large as necessary to accomplish the activity. I disagree. Since 1981, it is well established law that the specified geographical region MAY be smaller than the activity's range. The primary purpose of this provision of the Act is to protect marine mammals, not to design a permitting system catering to variously-sized areas of activities. The Majority's unilateral interpretation would be a significant change in current law which holds that regions should be narrowly identified so that anticipated effects will be substantially the same.

NICK RAHALL.

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