

Editorial Notes

REFERENCES IN TEXT

This section, referred to in subsecs. (d)(3)(A), (e), and (f), was in the original “this Act”, and was translated as referring to the Dolphin Protection Consumer Information Act, which is classified to this section, to reflect the probable intent of Congress.

CODIFICATION

Section was not enacted as part of the Marine Mammal Protection Act of 1972 which comprises this chapter.

AMENDMENTS

2015—Subsec. (e). Pub. L. 114-81 amended subsec. (e) generally. Prior to amendment, text read as follows: “Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed \$100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.”

1997—Subsec. (d). Pub. L. 105-42, §5(a), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

“(1) It is a violation of section 45 of title 15 for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term ‘Dolphin Safe’ or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

“(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

“(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

“(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

“(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

“(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

“(ii) the product is accompanied by a written statement executed by—

“(I) the Secretary or the Secretary’s designee, or

“(II) a representative of the Inter-American Tropical Tuna Commission, which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

“(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.”

Subsec. (f). Pub. L. 105-42, §5(b), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after November 28, 1990, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d) of this section.”

Subsec. (g). Pub. L. 105-42, §5(c), added subsec. (g) and struck out former subsec. (g), which had amended section 1371 of this title.

Subsecs. (h), (i). Pub. L. 105-42, §5(c), added subsec. (h) and struck out former subsecs. (h) and (i) which read as follows:

“(h) NEGOTIATIONS.—The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

“(i) EFFECTIVE DATE.—Subsections (d) and (e) of this section shall take effect 6 months after November 28, 1990.”

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

For effective date of amendment by Pub. L. 105-42, see section 8 of Pub. L. 105-42, set out as a note under section 1362 of this title.

§ 1386. 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) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;

(2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;

(3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;

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

(A) the approximate number of vessels actively participating in each such fishery;

(B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;

(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;

(5) categorize the status of the stock as one that either—

(A) has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or

(B) is a strategic stock, with a description of the reasons therefor; and

(6) estimate the potential biological removal level for the stock, describing the information used to calculate it, including the recovery factor.

(b) Public comment

(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to whom section 1371(b) of this title applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 1371(b) of this title.

(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d), and the comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

- (A) the close of the public comment period on a draft stock assessment or revision thereof; or
- (B) final action on an agency proceeding pursuant to paragraph (2).

(c) Review and revision

(1) The Secretary shall review stock assessments in accordance with this subsection—

- (A) at least annually for stocks which are specified as strategic stocks;
- (B) at least annually for stocks for which significant new information is available; and
- (C) at least once every 3 years for all other stocks.

(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b).

(d) Regional scientific review groups

(1) Not later than 60 days after April 30, 1994, the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups, establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico), consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 1371(b) of this title. The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced rep-

resentation of viewpoints among the individuals on each regional scientific review group. The regional scientific review groups shall advise the Secretary on—

(A) population estimates and the population status and trends of such stocks;

(B) uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

(C) uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

(D) research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;

(E) the actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

(F) any other issue which the Secretary or the groups consider appropriate.

(2) The scientific review groups established under this subsection shall not be subject to chapter 10 of title 5.

(3) Members of the scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their obligations.

(4) The Secretary may appoint or reappoint individuals to the regional scientific review groups under paragraph (1) as needed.

(e) Effect on section 1371(b) of this title

This section shall not affect or otherwise modify the provisions of section 1371(b) of this title.

(Pub. L. 92-522, title I, §117, as added Pub. L. 103-238, §10, Apr. 30, 1994, 108 Stat. 543; amended Pub. L. 117-286, §4(a)(108), Dec. 27, 2022, 136 Stat. 4317.)

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AMENDMENTS

2022—Subsec. (d)(2). Pub. L. 117-286 substituted “chapter 10 of title 5.” for “the Federal Advisory Committee Act (5 App. U.S.C.).”

§ 1387. Taking of marine mammals incidental to commercial fishing operations

(a) In general

(1) Effective on April 30, 1994, and except as provided in section 1383a of this title 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 1824(b) of this title. 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