

(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.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 1384 of this title.

(Pub. L. 92-522, title I, §119, as added Pub. L. 103-238, §19, Apr. 30, 1994, 108 Stat. 559.)

§ 1389. Pacific Coast Task Force; Gulf of Maine

(a) Pinniped removal authority

Notwithstanding any other provision of this subchapter, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) Application

(1) A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

(C) migrate through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) Actions in response to application

(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall—

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, in-

cluding along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

(d) Considerations

In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) Limitation

The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is—

(1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) depleted under this chapter; or

(3) a strategic stock.

(f) Temporary marine mammal removal authority on the waters of the Columbia River or its tributaries

(1) Removal authority

Notwithstanding any other provision of this chapter, the Secretary may issue a permit to an eligible entity to authorize the intentional lethal taking on the waters of the Columbia River and its tributaries of individually identifiable sea lions that are part of a population

or stock that is not categorized under this chapter as depleted or strategic for the purpose of protecting—

(A) species of salmon, steelhead, or eulachon that are listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(B) species of lamprey or sturgeon that are not so listed as endangered or threatened but are listed as a species of concern.

(2) Permit process

(A) In general

An eligible entity may apply to the Secretary for a permit under this subsection.

(B) Timelines and procedures of application

The timelines and procedures described in subsection (c) shall apply to applications for permits under this subsection in the same manner such timelines apply to applications under subsection (b).

(C) Coordination

The Secretary shall establish procedures to coordinate issuance of permits under this subsection, including application procedures and timelines, delegation and revocation of permits to and between eligible entities, monitoring, periodic review, and geographic, seasonal take, and species-specific considerations.

(D) Duration of permit

A permit under this subsection shall be effective for a period of not more than 5 years, and may be renewed by the Secretary.

(3) Limitations on annual takings

The Secretary shall apply the process for determining limitations on annual take of sea lions under subsection (c) to determinations on limitations under this subsection, and the cumulative number of sea lions authorized to be taken each year under all permits in effect under this subsection shall not exceed 10 percent of the annual potential biological removal level for sea lions.

(4) Qualified individuals

Intentional lethal takings under this subsection shall—

(A) be humane within the meaning of such term under section 1362(4) of this title;

(B) require that capture, husbandry, transportation, and euthanasia protocols are based on standards propagated by an Institutional Animal Care and Use Committee and that primary euthanasia be limited to humane chemical methods; and

(C) be implemented by agencies or qualified individuals described in subsection (c)(4), or by individuals employed by the eligible entities described in paragraph (6).

(5) Suspension of permitting authority

If, 5 years after December 18, 2018, the Secretary, after consulting with State and tribal fishery managers, determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from sea lion predation, the Secretary shall suspend the issuance of permits under this subsection.

(6) Eligible entity defined

(A) Definition

In this subsection, the term “eligible entity” means—

(i) with respect to removal in the mainstem of the Columbia River, from river mile 112 to the McNary Dam and its tributaries in the State of Washington, and its tributaries in the State of Oregon above Bonneville Dam, the State of Washington, the State of Oregon, and the State of Idaho;

(ii) with respect to removal in the mainstem Columbia River from river mile 112 to the McNary Dam and its tributaries within the State of Washington and in any of its tributaries above Bonneville Dam within the State of Oregon, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation; and

(iii) with respect to removal in the Willamette River and other tributaries of the Columbia River within the State of Oregon below Bonneville Dam, a committee recognized by the Secretary under subparagraph (D).

(B) Delegation authority

The Secretary may allow eligible entities described in clause (i) or (ii) of subparagraph (A) to delegate their authority under a permit under this subsection to the Columbia River Intertribal Fish Commission for removal in the mainstem of the Columbia River above river mile 112 and below McNary Dam, in the Columbia River tributaries in the State of Washington, or in tributaries within the State of Oregon above Bonneville Dam and below McNary Dam.

(C) Additional delegation authority

The Secretary may allow an eligible entity described in subparagraph (A)(i) to delegate its authority under a permit under this subsection to any entity described in subclause (i) or (ii) of subparagraph (A) with respect to removal in the mainstem of the Columbia River above river mile 112 and below McNary Dam, in the Columbia River tributaries in the State of Washington, or in tributaries in the State of Oregon above Bonneville Dam and below McNary Dam.

(D) Committee requirements

(i) In general

The Secretary shall recognize a committee established in accordance with this subparagraph as being eligible for a permit under this subsection, for purposes of subparagraph (A)(iii).

(ii) Membership

A committee established under this subparagraph shall consist of the State of Oregon and each of the following:

(I) The Confederated Tribes of Siletz Indians or the Confederated Tribes of the Grand Ronde Community, or both.

(II) The Confederated Tribes of the Warm Springs or the Confederated Tribes of the Umatilla Reservation, or both.

(iii) Majority agreement required

A committee established under this subparagraph may take action with respect to a permit application and removal under this subsection only with majority agreement by the committee members.

(iv) Nonapplicability of FACA

The Federal Advisory Committee Act (5 U.S.C. App.)¹ shall not apply to a committee established under this subparagraph.

(7) Individual exception

For purposes of this subsection, any sea lion located upstream of river mile 112 and downstream of McNary Dam, or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead is deemed to be individually identifiable.

(8) Significant negative impact exception

For purposes of this subsection, any sea lion located in the mainstem of the Columbia River upstream of river mile 112 and downstream of McNary Dam, or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead is deemed to be having a significant negative impact, within the meaning of subsection (b)(1).

(9) Definition

In this subsection, the term “Indian tribe” has the meaning given such term in section 5304 of title 25.

(g) Regionwide pinniped-fishery interaction study

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

(A) fish behavior in the presence of predators generally;

(B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;

(C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

(D) other issues the Secretary considers relevant.

(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 Sen-

ate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d).

(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 April 30, 1994, the Secretary shall after notice and opportunity for public comment 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 recommended available alternatives to mitigate such interactions.

(i) Requirements applicable to task forces

(1) Any task force established under this section—

(A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and

(B) shall not be subject to chapter 10 of title 5.

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) Gulf of Maine harbor porpoise

(1) Nothing in section 1386 of this title shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 1387 of this title for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 1387(f)(5)(A) of this title, but in no case may such modification extend the date of compliance beyond April 1, 1997.

(Pub. L. 92-522, title I, §120, as added Pub. L. 103-238, §23, Apr. 30, 1994, 108 Stat. 562; amended Pub. L. 115-329, §3, Dec. 18, 2018, 132 Stat. 4475; Pub. L. 117-286, §4(a)(110), Dec. 27, 2022, 136 Stat. 4317.)

Editorial Notes

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsecs. (b)(1)(A), (B), (e)(1), and (f)(1)(A), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(6)(D)(iv), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5,

¹ See References in Text note below.

Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§1001 et seq.) of Title 5 by Pub. L. 117-286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

AMENDMENTS

2022—Subsec. (i)(1)(B). Pub. L. 117-286 substituted “chapter 10 of title 5.” for “the Federal Advisory Committee Act (5 App. U.S.C.).”

2018—Subsec. (f). Pub. L. 115-329 amended subsec. (f) generally. Prior to amendment, subsec. (f) related to a scientific investigation and report on the impact of California sea lions and Pacific harbor seals.

Statutory Notes and Related Subsidiaries

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

TREATY RIGHTS OF FEDERALLY RECOGNIZED INDIAN TRIBES

Pub. L. 115-329, §4, Dec. 18, 2018, 132 Stat. 4478, provided that: “Nothing in this Act [see Short Title of 2018 Amendment note set out under section 1361 of this title] or the amendments made by this Act shall be construed to enlarge, confirm, adjudicate, affect, or modify any treaty or other right of an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).”

§ 1390. Assistance to ports to reduce impacts of vessel traffic and port operations on marine mammals

(a) In general

Not later than 180 days after December 23, 2022, the Under Secretary, in consultation with the Director of the United States Fish and Wildlife Service, the Secretary, the Secretary of Defense, and the Administrator of the Maritime Administration, shall establish a grant program to provide assistance to eligible entities to develop and implement mitigation measures that will lead to a quantifiable reduction in threats to marine mammals from vessel traffic, including shipping activities and port operations.

(b) Eligible uses

Assistance provided under subsection (a) may be used to develop, assess, and carry out activities that reduce threats to marine mammals by—

- (1) reducing underwater stressors related to marine traffic;
- (2) reducing mortality and serious injury from vessel strikes and other physical disturbances;

- (3) monitoring sound;
- (4) reducing vessel interactions with marine mammals;
- (5) conducting other types of monitoring that are consistent with reducing the threats to, and enhancing the habitats of, marine mammals; or
- (6) supporting State agencies and Tribal governments in developing the capacity to receive assistance under this section through education, training, information sharing, and collaboration to participate in the grant program under this section.

(c) Priority

The Under Secretary shall prioritize providing assistance under subsection (a) for projects that—

- (1) are based on the best available science with respect to methods to reduce threats to marine mammals;
- (2) collect data on the effects of such methods and the reduction of such threats;
- (3) assist ports that pose a higher relative threat to marine mammals listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (4) are in close proximity to areas in which threatened or endangered cetaceans are known to experience other stressors; or
- (5) allow eligible entities to conduct risk assessments and to track progress toward threat reduction.

(d) Outreach

The Under Secretary, in coordination with the Secretary, the Administrator of the Maritime Administration, and the Director of the United States Fish and Wildlife Service, as appropriate, shall conduct coordinated outreach to ports to provide information with respect to—

- (1) how to apply for assistance under subsection (a);
- (2) the benefits of such assistance; and
- (3) facilitation of best practices and lessons, including the best practices and lessons learned from activities carried out using such assistance.

(e) Report required

Not less frequently than annually, the Under Secretary shall make available to the public on a publicly accessible website of the National Oceanic and Atmospheric Administration a report that includes the following information:

- (1) The name and location of each entity to which assistance was awarded under subsection (a) during the year preceding submission of the report.
- (2) The amount of each such award.
- (3) A description of the activities carried out with each such award.
- (4) An estimate of the likely impact of such activities on the reduction of threats to marine mammals.

(f) Definition of eligible entity

In this section, the term “eligible entity” means—

- (1) a port authority for a port;
- (2) a State, regional, local, or Tribal government, or an Alaska Native or Native Hawaiian