

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1636**

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**AMENDMENT**  
**TO**  
**SENATE AMENDMENT**

***In the House of Representatives, U.S.,***

*April 26, 1994.*

*Resolved*, That the House agree to the amendment of the Senate to the amendment of the House to the bill (S. 1636) entitled “An Act to authorize appropriations for the Marine Mammal Protection Act of 1972 and to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes”, with the following

**AMENDMENT :**

In lieu of the matter proposed to be inserted by the Senate amendment, insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Marine Mammal Protec-*  
3 *tion Act Amendments of 1994”.*

4 ***SEC. 2. AMENDMENT OF MARINE MAMMAL PROTECTION***  
5 ***ACT OF 1972.***

6 *(a) REFERENCES.—Except as otherwise expressly pro-*  
7 *vided, whenever in this Act an amendment or repeal is ex-*  
8 *pressed in terms of an amendment to, or repeal of, a section*  
9 *or other provision, the reference shall be considered to be*  
10 *made to a section or other provision of the Marine Mammal*  
11 *Protection Act of 1972 (16 U.S.C. 1361 et seq.).*

1       (b) *RELATIONSHIP TO OTHER LAW.*—*Except as other-*  
2 *wise expressly provided, nothing in this Act is intended to*  
3 *amend, repeal, or otherwise affect any other provision of*  
4 *law.*

5 **SEC. 3. FINDINGS AND DECLARATION OF POLICY.**

6       Section 2 (16 U.S.C. 1361) is amended—

7           (1) in paragraph (2) by inserting “essential  
8       habitats, including” after “made to protect”; and

9           (2) in paragraph (5) in the matter following  
10       subparagraph (B) by inserting “and their habitats”  
11       before “is therefore necessary”.

12 **SEC. 4. MORATORIUM AND EXCEPTIONS.**

13       (a) *IN GENERAL.*—Section 101(a) (16 U.S.C. 1371(a))  
14 *is amended—*

15           (1) by amending paragraph (1) to read as fol-  
16       lows:

17           “(1) Consistent with the provisions of section  
18       104, permits may be issued by the Secretary for tak-  
19       ing, and importation for purposes of scientific re-  
20       search, public display, photography for educational or  
21       commercial purposes, or enhancing the survival or re-  
22       covery of a species or stock, or for importation of  
23       polar bear parts (other than internal organs) taken in  
24       sport hunts in Canada. Such permits, except permits  
25       issued under section 104(c)(5), may be issued if the

1        *taking or importation proposed to be made is first re-*  
2        *viewed by the Marine Mammal Commission and the*  
3        *Committee of Scientific Advisors on Marine Mammals*  
4        *established under title II. The Commission and Com-*  
5        *mittee shall recommend any proposed taking or im-*  
6        *portation, other than importation under section*  
7        *104(c)(5), which is consistent with the purposes and*  
8        *policies of section 2 of this Act. If the Secretary issues*  
9        *such a permit for importation, the Secretary shall*  
10       *issue to the importer concerned a certificate to that ef-*  
11       *fect in such form as the Secretary of the Treasury*  
12       *prescribes, and such importation may be made upon*  
13       *presentation of the certificate to the customs officer*  
14       *concerned.”;*

15            *(2) in paragraph (2) in the first sentence, by in-*  
16        *serting before the period at the end the following: “,*  
17        *or in lieu of such permits, authorizations may be*  
18        *granted therefor under section 118, subject to regula-*  
19        *tions prescribed under that section by the Secretary*  
20        *without regard to section 103”;*

21            *(3) in paragraph (3)(B)—*

22                    *(A) by inserting “, photography for edu-*  
23                    *cational or commercial purposes,” after “pur-*  
24                    *poses”;* and

1           (B) by inserting “or as provided for under  
2           paragraph (5) of this subsection,” after “sub-  
3           section,”;

4           (4) by amending paragraph (4) to read as fol-  
5           lows:

6           “(4)(A) Except as provided in subparagraphs  
7           (B) and (C), the provisions of this Act shall not apply  
8           to the use of measures—

9           “(i) by the owner of fishing gear or catch,  
10           or an employee or agent of such owner, to deter  
11           a marine mammal from damaging the gear or  
12           catch;

13           “(ii) by the owner of other private property,  
14           or an agent, bailee, or employee of such owner,  
15           to deter a marine mammal from damaging pri-  
16           vate property;

17           “(iii) by any person, to deter a marine  
18           mammal from endangering personal safety; or

19           “(iv) by a government employee, to deter a  
20           marine mammal from damaging public prop-  
21           erty,

22           so long as such measures do not result in the death  
23           or serious injury of a marine mammal.

24           “(B) The Secretary shall, through consultation  
25           with appropriate experts, and after notice and oppor-

1        *tunity for public comment, publish in the Federal*  
2        *Register a list of guidelines for use in safely deterring*  
3        *marine mammals. In the case of marine mammals*  
4        *listed as endangered species or threatened species*  
5        *under the Endangered Species Act of 1973, the Sec-*  
6        *retary shall recommend specific measures which may*  
7        *be used to nonlethally deter marine mammals. Ac-*  
8        *tions to deter marine mammals consistent with such*  
9        *guidelines or specific measures shall not be a viola-*  
10       *tion of this Act.*

11            *“(C) If the Secretary determines, using the best*  
12        *scientific information available, that certain forms of*  
13        *deterrence have a significant adverse effect on marine*  
14        *mammals, the Secretary may prohibit such deterrent*  
15        *methods, after notice and opportunity for public com-*  
16        *ment, through regulation under this Act.*

17            *“(D) The authority to deter marine mammals*  
18        *pursuant to subparagraph (A) applies to all marine*  
19        *mammals, including all stocks designated as depleted*  
20        *under this Act.”;*

21            *(5) in paragraph (5) by adding at the end the*  
22        *following new subparagraphs:*

23            *“(D)(i) Upon request therefor by citizens of the*  
24        *United States who engage in a specified activity*  
25        *(other than commercial fishing) within a specific geo-*

1 *graphic region, the Secretary shall authorize, for peri-*  
2 *ods of not more than 1 year, subject to such condi-*  
3 *tions as the Secretary may specify, the incidental, but*  
4 *not intentional, taking by harassment of small num-*  
5 *bers of marine mammals of a species or population*  
6 *stock by such citizens while engaging in that activity*  
7 *within that region if the Secretary finds that such*  
8 *harassment during each period concerned—*

9 *“(I) will have a negligible impact on such*  
10 *species or stock, and*

11 *“(II) will not have an unmitigable adverse*  
12 *impact on the availability of such species or*  
13 *stock for taking for subsistence uses pursuant to*  
14 *subsection (b), or section 109(f) or pursuant to*  
15 *a cooperative agreement under section 119.*

16 *“(ii) The authorization for such activity shall*  
17 *prescribe, where applicable—*

18 *“(I) permissible methods of taking by har-*  
19 *assment pursuant to such activity, and other*  
20 *means of effecting the least practicable impact on*  
21 *such species or stock and its habitat, paying par-*  
22 *ticular attention to rookeries, mating grounds,*  
23 *and areas of similar significance, and on the*  
24 *availability of such species or stock for taking for*  
25 *subsistence uses pursuant to subsection (b) or*

1            *section 109(f) or pursuant to a cooperative*  
2            *agreement under section 119,*

3            *“(II) the measures that the Secretary deter-*  
4            *mines are necessary to ensure no unmitigable*  
5            *adverse impact on the availability of the species*  
6            *or stock for taking for subsistence uses pursuant*  
7            *to subsection (b) or section 109(f) or pursuant to*  
8            *a cooperative agreement under section 119, and*

9            *“(III) requirements pertaining to the mon-*  
10           *itoring and reporting of such taking by harass-*  
11           *ment, including requirements for the independ-*  
12           *ent peer review of proposed monitoring plans or*  
13           *other research proposals where the proposed ac-*  
14           *tivity may affect the availability of a species or*  
15           *stock for taking for subsistence uses pursuant to*  
16           *subsection (b) or section 109(f) or pursuant to a*  
17           *cooperative agreement under section 119.*

18           *“(iii) The Secretary shall publish a proposed au-*  
19           *thorization not later than 45 days after receiving an*  
20           *application under this subparagraph and request*  
21           *public comment through notice in the Federal Reg-*  
22           *ister, newspapers of general circulation, and appro-*  
23           *priate electronic media and to all locally affected*  
24           *communities for a period of 30 days after publica-*  
25           *tion. Not later than 45 days after the close of the pub-*



1     *lic comment period, if the Secretary makes the find-*  
2     *ings set forth in clause (i), the Secretary shall issue*  
3     *an authorization with appropriate conditions to meet*  
4     *the requirements of clause (ii).*

5             *“(iv) The Secretary shall modify, suspend, or re-*  
6             *voke an authorization if the Secretary finds that the*  
7             *provisions of clauses (i) or (ii) are not being met.*

8             *“(v) A person conducting an activity for which*  
9             *an authorization has been granted under this sub-*  
10            *paragraph shall not be subject to the penalties of this*  
11            *Act for taking by harassment that occurs in compli-*  
12            *ance with such authorization.*

13            *“(E)(i) During any period of up to 3 consecutive*  
14            *years, the Secretary shall allow the incidental, but not*  
15            *the intentional, taking by persons using vessels of the*  
16            *United States or vessels which have valid fishing per-*  
17            *mits issued by the Secretary in accordance with sec-*  
18            *tion 204(b) of the Magnuson Fishery Conservation*  
19            *and Management Act (16 U.S.C. 1824(b)), while en-*  
20            *gaging in commercial fishing operations, of marine*  
21            *mammals from a species or stock designated as de-*  
22            *pleted because of its listing as an endangered species*  
23            *or threatened species under the Endangered Species*  
24            *Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary,*

1 *after notice and opportunity for public comment, de-*  
2 *termines that—*

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

6 *“(II) a recovery plan has been developed or*  
7 *is being developed for such species or stock pur-*  
8 *suant to the Endangered Species Act of 1973;*  
9 *and*

10 *“(III) where required under section 118, a*  
11 *monitoring program is established under sub-*  
12 *section (d) of such section, vessels engaged in*  
13 *such fisheries are registered in accordance with*  
14 *such section, and a take reduction plan has been*  
15 *developed or is being developed for such species*  
16 *or stock.*

17 *“(ii) Upon a determination by the Secretary*  
18 *that the requirements of clause (i) have been met, the*  
19 *Secretary shall publish in the Federal Register a list*  
20 *of those fisheries for which such determination was*  
21 *made, and, for vessels required to register under sec-*  
22 *tion 118, shall issue an appropriate permit for each*  
23 *authorization granted under such section to vessels to*  
24 *which this paragraph applies. Vessels engaged in a*  
25 *fishery included in the notice published by the Sec-*

1     *retary under this clause which are not required to*  
2     *register under section 118 shall not be subject to the*  
3     *penalties of this Act for the incidental taking of ma-*  
4     *rine mammals to which this paragraph applies, so*  
5     *long as the owner or master of such vessel reports any*  
6     *incidental mortality or injury of such marine mam-*  
7     *mals to the Secretary in accordance with section 118.*

8             *“(iii) If, during the course of the commercial*  
9     *fishing season, the Secretary determines that the level*  
10    *of incidental mortality or serious injury from com-*  
11    *mercial fisheries for which a determination was made*  
12    *under clause (i) has resulted or is likely to result in*  
13    *an impact that is more than negligible on the endan-*  
14    *gered or threatened species or stock, the Secretary*  
15    *shall use the emergency authority granted under sec-*  
16    *tion 118 to protect such species or stock, and may*  
17    *modify any permit granted under this paragraph as*  
18    *necessary.*

19            *“(iv) The Secretary may suspend for a time cer-*  
20    *tain or revoke a permit granted under this subpara-*  
21    *graph only if the Secretary determines that the condi-*  
22    *tions or limitations set forth in such permit are not*  
23    *being complied with. The Secretary may amend or*  
24    *modify, after notice and opportunity for public com-*  
25    *ment, the list of fisheries published under clause (ii)*

1 *whenever the Secretary determines there has been a*  
2 *significant change in the information or conditions*  
3 *used to determine such list.*

4 *“(v) Sections 103 and 104 shall not apply to the*  
5 *taking of marine mammals under the authority of*  
6 *this subparagraph.*

7 *“(vi) This subparagraph shall not govern the in-*  
8 *cidental taking of California sea otters and shall not*  
9 *be deemed to amend or repeal the Act of November 7,*  
10 *1986 (Public Law 99–625; 100 Stat. 3500).”;* and

11 *(6) by adding at the end the following new para-*  
12 *graph:*

13 *“(6)(A) A marine mammal product may be im-*  
14 *ported into the United States if the product—*

15 *“(i) was legally possessed and exported by*  
16 *any citizen of the United States in conjunction*  
17 *with travel outside the United States, provided*  
18 *that the product is imported into the United*  
19 *States by the same person upon the termination*  
20 *of travel;*

21 *“(ii) was acquired outside of the United*  
22 *States as part of a cultural exchange by an In-*  
23 *Indian, Aleut, or Eskimo residing in Alaska; or*

24 *“(iii) is owned by a Native inhabitant of*  
25 *Russia, Canada, or Greenland and is imported*

1           *for noncommercial purposes in conjunction with*  
2           *travel within the United States or as part of a*  
3           *cultural exchange with an Indian, Aleut, or Es-*  
4           *kimo residing in Alaska.*

5           “(B) *For the purposes of this paragraph, the*  
6           *term—*

7                   “(i) *‘Native inhabitant of Russia, Canada,*  
8                   *or Greenland’ means a person residing in Rus-*  
9                   *sia, Canada, or Greenland who is related by*  
10                   *blood, is a member of the same clan or ethno-*  
11                   *logical grouping, or shares a common heritage*  
12                   *with an Indian, Aleut, or Eskimo residing in*  
13                   *Alaska; and*

14                   “(ii) *‘cultural exchange’ means the sharing*  
15                   *or exchange of ideas, information, gifts, clothing,*  
16                   *or handicrafts between an Indian, Aleut, or Es-*  
17                   *kimo residing in Alaska and a Native inhabitant*  
18                   *of Russia, Canada, or Greenland, including ren-*  
19                   *dering of raw marine mammal parts as part of*  
20                   *such exchange into clothing or handicrafts*  
21                   *through carving, painting, sewing, or decorat-*  
22                   *ing.”.*

23           (b) *ACTIONS AFFECTING SECTION 101(b).—Section*  
24           *101(b) (16 U.S.C. 1371(b)) is amended by adding at the*  
25           *end the following new sentences: “In promulgating any reg-*

1 *ulation or making any assessment pursuant to a hearing*  
2 *or proceeding under this subsection or section 117(b)(2), or*  
3 *in making any determination of depletion under this sub-*  
4 *section or finding regarding unmitigable adverse impacts*  
5 *under subsection (a)(5) that affects stocks or persons to*  
6 *which this subsection applies, the Secretary shall be respon-*  
7 *sible for demonstrating that such regulation, assessment, de-*  
8 *termination, or finding is supported by substantial evidence*  
9 *on the basis of the record as a whole. The preceding sentence*  
10 *shall only be applicable in an action brought by one or more*  
11 *Alaska Native organizations representing persons to which*  
12 *this subsection applies.”.*

13 *(c) TAKING IN DEFENSE OF SELF OR OTHERS.—Sec-*  
14 *tion 101(c) (16 U.S.C. 1371(c)) is amended to read as fol-*  
15 *lows:*

16 *“(c) It shall not be a violation of this Act to take a*  
17 *marine mammal if such taking is imminently necessary in*  
18 *self-defense or to save the life of a person in immediate dan-*  
19 *ger, and such taking is reported to the Secretary within*  
20 *48 hours. The Secretary may seize and dispose of any car-*  
21 *cass.”.*

22 **SEC. 5. PERMITS.**

23 *(a) PROHIBITIONS.—Section 102(a) (16 U.S.C.*  
24 *1372(a)) is amended—*

1           (1) in paragraph (2)(B) by striking “for any  
2           purpose in any way connected with the taking or im-  
3           portation of” and inserting “to take or import”; and

4           (2) in paragraph (4) by—

5                 (A) striking “or offer to purchase or sell”  
6                 and inserting “export, or offer to purchase, sell,  
7                 or export”;

8                 (B) striking “product; and” and inserting  
9                 “product—”; and

10                (C) inserting after and below the text of the  
11                paragraph the following:

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

13                         or

14                         “(B) for any purpose other than public dis-  
15                         play, scientific research, or enhancing the sur-  
16                         vival of a species or stock as provided for under  
17                         subsection 104(c); and”.

18           (b) PERMITS.—Section 104 (16 U.S.C. 1374) is  
19 amended—

20                 (1) in subsection (a) by adding at the end the  
21                 following: “Permits for the incidental taking of ma-  
22                 rine mammals in the course of commercial fishing op-  
23                 erations may only be issued as specifically provided  
24                 for in sections 101(a)(5) or 306, or subsection (h) of  
25                 this section.”;

1           (2) in subsection (c)—

2                   (A) in paragraph (1) in the first sentence  
3           by striking “and after”;

4                   (B) by amending paragraph (2) to read as  
5           follows:

6                   “(2)(A) A permit may be issued to take or im-  
7           port a marine mammal for the purpose of public dis-  
8           play only to a person which the Secretary deter-  
9           mines—

10                   “(i) offers a program for education or con-  
11           servation purposes that is based on profes-  
12           sionally recognized standards of the public  
13           display community;

14                   “(ii) is registered or holds a license issued  
15           under 7 U.S.C. 2131 et seq.; and

16                   “(iii) maintains facilities for the public dis-  
17           play of marine mammals that are open to the  
18           public on a regularly scheduled basis and that  
19           access to such facilities is not limited or re-  
20           stricted other than by charging of an admission  
21           fee.

22                   “(B) A permit under this paragraph shall grant  
23           to the person to which it is issued the right, without  
24           obtaining any additional permit or authorization  
25           under this Act, to—



1           “(i) take, import, purchase, offer to pur-  
2 chase, possess, or transport the marine mammal  
3 that is the subject of the permit; and

4           “(ii) sell, export, or otherwise transfer pos-  
5 session of the marine mammal, or offer to sell,  
6 export, or otherwise transfer possession of the  
7 marine mammal—

8           “(I) for the purpose of public display,  
9 to a person that meets the requirements of  
10 clauses (i), (ii), and (iii) of subparagraph  
11 (A);

12           “(II) for the purpose of scientific re-  
13 search, to a person that meets the require-  
14 ments of paragraph (3); or

15           “(III) for the purpose of enhancing the  
16 survival or recovery of a species or stock, to  
17 a person that meets the requirements of  
18 paragraph (4).

19           “(C) A person to which a marine mammal is  
20 sold or exported or to which possession of a marine  
21 mammal is otherwise transferred under the authority  
22 of subparagraph (B) shall have the rights and respon-  
23 sibilities described in subparagraph (B) with respect  
24 to the marine mammal without obtaining any addi-

1        *tional permit or authorization under this Act. Such*  
2        *responsibilities shall be limited to—*

3                *“(i) for the purpose of public display, the*  
4                *responsibility to meet the requirements of clauses*  
5                *(i), (ii), and (iii) of subparagraph (A),*

6                *“(ii) for the purpose of scientific research,*  
7                *the responsibility to meet the requirements of*  
8                *paragraph (3), and*

9                *“(iii) for the purpose of enhancing the sur-*  
10               *vival or recovery of a species or stock, the respon-*  
11               *sibility to meet the requirements of paragraph*  
12               *(4).*

13               *“(D) If the Secretary—*

14               *“(i) finds in concurrence with the Secretary*  
15               *of Agriculture, that a person that holds a permit*  
16               *under this paragraph for a marine mammal, or*  
17               *a person exercising rights under subparagraph*  
18               *(C), no longer meets the requirements of subpara-*  
19               *graph (A)(ii) and is not reasonably likely to*  
20               *meet those requirements in the near future, or*

21               *“(ii) finds that a person that holds a permit*  
22               *under this paragraph for a marine mammal, or*  
23               *a person exercising rights under subparagraph*  
24               *(C), no longer meets the requirements of subpara-*

1           graph (A) (i) or (iii) and is not reasonably like-  
2           ly to meet those requirements in the near future,  
3           the Secretary may revoke the permit in accordance  
4           with section 104(e), seize the marine mammal, or co-  
5           operate with other persons authorized to hold marine  
6           mammals under this Act for disposition of the marine  
7           mammal. The Secretary may recover from the person  
8           expenses incurred by the Secretary for that seizure.

9           “(E) No marine mammal held pursuant to a  
10          permit issued under subparagraph (A), or by a per-  
11          son exercising rights under subparagraph (C), may be  
12          sold, purchased, exported, or transported unless the  
13          Secretary is notified of such action no later than 15  
14          days before such action, and such action is for pur-  
15          poses of public display, scientific research, or enhanc-  
16          ing the survival or recovery of a species or stock. The  
17          Secretary may only require the notification to include  
18          the information required for the inventory established  
19          under paragraph (10).”;

20                 (C) by amending paragraph (3) to read as  
21                 follows:

22                 “(3)(A) The Secretary may issue a permit under  
23                 this paragraph for scientific research purposes to an  
24                 applicant which submits with its permit application  
25                 information indicating that the taking is required to

1        *further a bona fide scientific purpose. The Secretary*  
2        *may issue a permit under this paragraph before the*  
3        *end of the public review and comment period required*  
4        *under subsection (d)(2) if delaying issuance of the*  
5        *permit could result in injury to a species, stock, or*  
6        *individual, or in loss of unique research opportuni-*  
7        *ties.*

8                *“(B) No permit issued for purposes of scientific*  
9        *research shall authorize the lethal taking of a marine*  
10        *mammal unless the applicant demonstrates that a*  
11        *nonlethal method of conducting the research is not*  
12        *feasible. The Secretary shall not issue a permit for re-*  
13        *search which involves the lethal taking of a marine*  
14        *mammal from a species or stock that is depleted, un-*  
15        *less the Secretary determines that the results of such*  
16        *research will directly benefit that species or stock, or*  
17        *that such research fulfills a critically important re-*  
18        *search need.*

19                *“(C) Not later than 120 days after the date of*  
20        *enactment of the Marine Mammal Protection Act*  
21        *Amendments of 1994, the Secretary shall issue a gen-*  
22        *eral authorization and implementing regulations al-*  
23        *lowing bona fide scientific research that may result*  
24        *only in taking by Level B harassment of a marine*  
25        *mammal. Such authorization shall apply to persons*

1       *which submit, by 60 days before commencement of*  
2       *such research, a letter of intent via certified mail to*  
3       *the Secretary containing the following:*

4               “(i) *The species or stocks of marine mam-*  
5               *mals which may be harassed.*

6               “(ii) *The geographic location of the re-*  
7               *search.*

8               “(iii) *The period of time over which the re-*  
9               *search will be conducted.*

10              “(iv) *The purpose of the research, including*  
11              *a description of how the definition of bona fide*  
12              *research as established under this Act would*  
13              *apply.*

14              “(v) *Methods to be used to conduct the re-*  
15              *search.*

16       *Not later than 30 days after receipt of a letter of in-*  
17       *tent to conduct scientific research under the general*  
18       *authorization, the Secretary shall issue a letter to the*  
19       *applicant confirming that the general authorization*  
20       *applies, or, if the proposed research is likely to result*  
21       *in the taking (including Level A harassment) of a*  
22       *marine mammal, shall notify the applicant that sub-*  
23       *paragraph (A) applies.”; and*

24              (D) *by adding at the end the following new*  
25              *paragraphs:*

1           “(5)(A) *The Secretary may issue a permit for*  
2 *the importation of polar bear parts (other than inter-*  
3 *nal organs) taken in sport hunts in Canada, includ-*  
4 *ing polar bears taken but not imported prior to the*  
5 *date of enactment of the Marine Mammal Protection*  
6 *Act Amendments of 1994, to an applicant which sub-*  
7 *mits with its permit application proof that the polar*  
8 *bear was legally harvested in Canada by the appli-*  
9 *cant. Such a permit shall be issued if the Secretary,*  
10 *in consultation with the Marine Mammal Commis-*  
11 *sion and after notice and opportunity for public com-*  
12 *ment, finds that—*

13                   “(i) *Canada has a monitored and enforced*  
14 *sport hunting program consistent with the pur-*  
15 *poses of the Agreement on the Conservation of*  
16 *Polar Bears;*

17                   “(ii) *Canada has a sport hunting program*  
18 *based on scientifically sound quotas ensuring the*  
19 *maintenance of the affected population stock at*  
20 *a sustainable level;*

21                   “(iii) *the export and subsequent import are*  
22 *consistent with the provisions of the Convention*  
23 *on International Trade in Endangered Species*  
24 *of Wild Fauna and Flora and other inter-*  
25 *national agreements and conventions; and*

1           “(iv) the export and subsequent import are  
2           not likely to contribute to illegal trade in bear  
3           parts.

4           “(B) The Secretary shall establish and charge a  
5           reasonable fee for permits issued under this para-  
6           graph. All fees collected under this paragraph shall be  
7           available to the Secretary for use in developing and  
8           implementing cooperative research and management  
9           programs for the conservation of polar bears in Alas-  
10          ka and Russia pursuant to section 113(d).

11          “(C)(i) The Secretary shall undertake a scientific  
12          review of the impact of permits issued under this  
13          paragraph on the polar bear population stocks in  
14          Canada within 2 years after the date of enactment of  
15          this paragraph. The Secretary shall provide an op-  
16          portunity for public comment during the course of  
17          such review, and shall include a response to such pub-  
18          lic comment in the final report on such review.

19          “(ii) The Secretary shall not issue permits under  
20          this paragraph after September 30, 1996, if the Sec-  
21          retary determines, based on the scientific review, that  
22          the issuance of permits under this paragraph is hav-  
23          ing a significant adverse impact on the polar bear  
24          population stocks in Canada. The Secretary may re-  
25          view such determination annually thereafter, in light

1       *of the best scientific information available, and shall*  
2       *complete the review not later than January 31 in any*  
3       *year a review is undertaken. The Secretary may issue*  
4       *permits under this paragraph whenever the Secretary*  
5       *determines, on the basis of such annual review, that*  
6       *the issuance of permits under this paragraph is not*  
7       *having a significant adverse impact on the polar bear*  
8       *population stocks in Canada.*

9               *“(6) A permit may be issued for photography for*  
10       *educational or commercial purposes involving marine*  
11       *mammals in the wild only to an applicant which*  
12       *submits with its permit application information indi-*  
13       *cating that the taking will be limited to Level B har-*  
14       *assment, and the manner in which the products of*  
15       *such activities will be made available to the public.*

16               *“(7) Upon request by a person for a permit*  
17       *under paragraph (2), (3), or (4) for a marine mam-*  
18       *mal which is in the possession of any person author-*  
19       *ized to possess it under this Act and which is deter-*  
20       *mined under guidance under section 402(a) not to be*  
21       *releasable to the wild, the Secretary shall issue the*  
22       *permit to the person requesting the permit if that per-*  
23       *son—*



1           “(A) meets the requirements of clauses (i),  
2           (ii), and (iii) of paragraph (2)(A), in the case  
3           of a request for a permit under paragraph (2);

4           “(B) meets the requirements of paragraph  
5           (3), in the case of a request for a permit under  
6           that paragraph; or

7           “(C) meets the requirements of paragraph  
8           (4), in the case of a request for a permit under  
9           that paragraph.

10          “(8)(A) No additional permit or authorization  
11          shall be required to possess, sell, purchase, transport,  
12          export, or offer to sell or purchase the progeny of ma-  
13          rine mammals taken or imported under this sub-  
14          section, if such possession, sale, purchase, transport,  
15          export, or offer to sell or purchase is—

16                 “(i) for the purpose of public display, and  
17                 by or to, respectively, a person which meets the  
18                 requirements of clauses (i), (ii), and (iii) of  
19                 paragraph (2)(A);

20                 “(ii) for the purpose of scientific research,  
21                 and by or to, respectively, a person which meets  
22                 the requirements of paragraph (3); or

23                 “(iii) for the purpose of enhancing the sur-  
24                 vival or recovery of a species or stock, and by or

1           to, respectively, a person which meets the re-  
2           quirements of paragraph (4).

3           “(B)(i) A person which has a permit under  
4           paragraph (2), or a person exercising rights under  
5           paragraph (2)(C), which has possession of a marine  
6           mammal that gives birth to progeny shall—

7                   “(I) notify the Secretary of the birth of such  
8                   progeny within 30 days after the date of birth;  
9                   and

10                   “(II) notify the Secretary of the sale, pur-  
11                   chase, or transport of such progeny no later than  
12                   15 days before such action.

13           “(ii) The Secretary may only require notifica-  
14           tion under clause (i) to include the information re-  
15           quired for the inventory established under paragraph  
16           (10).

17           “(C) Any progeny of a marine mammal born in  
18           captivity before the date of the enactment of the Ma-  
19           rine Mammal Protection Act Amendments of 1994  
20           and held in captivity for the purpose of public dis-  
21           play shall be treated as though born after that date  
22           of enactment.

23           “(9) No marine mammal may be exported for  
24           the purpose of public display, scientific research, or  
25           enhancing the survival or recovery of a species or

1     *stock unless the receiving facility meets standards that*  
2     *are comparable to the requirements that a person*  
3     *must meet to receive a permit under this subsection*  
4     *for that purpose.*

5             *“(10) The Secretary shall establish and maintain*  
6     *an inventory of all marine mammals possessed pursu-*  
7     *ant to permits issued under paragraph (2)(A), by*  
8     *persons exercising rights under paragraph (2)(C), and*  
9     *all progeny of such marine mammals. The inventory*  
10    *shall contain, for each marine mammal, only the fol-*  
11    *lowing information which shall be provided by a per-*  
12    *son holding a marine mammal under this Act:*

13             *“(A) The name of the marine mammal or*  
14     *other identification.*

15             *“(B) The sex of the marine mammal.*

16             *“(C) The estimated or actual birth date of*  
17     *the marine mammal.*

18             *“(D) The date of acquisition or disposition*  
19     *of the marine mammal by the permit holder.*

20             *“(E) The source from whom the marine*  
21     *mammal was acquired including the location of*  
22     *the take from the wild, if applicable.*

23             *“(F) If the marine mammal is transferred,*  
24     *the name of the recipient.*

1           “(G) A notation if the animal was acquired  
2 as the result of a stranding.

3           “(H) The date of death of the marine mam-  
4 mal and the cause of death when determined.”;  
5 and

6           (3) in subsection (e)(1) by—

7           (A) striking “or” at the end of subpara-  
8 graph (A);

9           (B) striking the period at the end of sub-  
10 paragraph (B) and inserting “, or”; and

11           (C) adding at the end the following new  
12 subparagraph:

13           “(C) if, in the case of a permit under subsection  
14 (c)(5) authorizing importation of polar bear parts,  
15 the Secretary, in consultation with the appropriate  
16 authority in Canada, determines that the sustain-  
17 ability of Canada’s polar bear population stocks are  
18 being adversely affected or that sport hunting may be  
19 having a detrimental effect on maintaining polar  
20 bear population stocks throughout their range.”.

21           (c) *EXISTING PERMITS.*—Any permit issued under sec-  
22 tion 104(c)(2) of the Marine Mammal Protection Act of  
23 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment  
24 of this Act is hereby modified to be consistent with that  
25 section as amended by this Act.

1 **SEC. 6. PURPOSE AND USE OF THE FUND.**

2 *Section 405 (16 U.S.C. 1421d), as so redesignated by*  
3 *this Act, is amended—*

4 *(1) in subsection (b)(1)(A)—*

5 *(A) by striking “and” at the end of clause*  
6 *(i); and*

7 *(B) by inserting at the end the following*  
8 *new clause:*

9 *“(iii) for care and maintenance of marine mam-*  
10 *mal seized under section 104(c)(2)(D); and”; and*

11 *(2) in subsection (d) by inserting after “For pur-*  
12 *poses of carrying out this title” the following: “and*  
13 *section 104(c)(2)(D)”.*

14 **SEC. 7. REGULATIONS AND ADMINISTRATION; APPLICA-**  
15 **TION TO OTHER TREATIES AND CONVEN-**  
16 **TIONS.**

17 *(a) MEASURES FOR IMPACTS ON STRATEGIC*  
18 *STOCKS.—Section 112 (16 U.S.C. 1382) is amended by*  
19 *adding at the end the following new subsection:*

20 *“(e) If the Secretary determines, based on a stock as-*  
21 *essment under section 117 or other significant new infor-*  
22 *mation obtained under this Act, that impacts on rookeries,*  
23 *mating grounds, or other areas of similar ecological signifi-*  
24 *cance to marine mammals may be causing the decline or*  
25 *impeding the recovery of a strategic stock, the Secretary*  
26 *may develop and implement conservation or management*

1 *measures to alleviate those impacts. Such measures shall be*  
2 *developed and implemented after consultation with the Ma-*  
3 *rine Mammal Commission and the appropriate Federal*  
4 *agencies and after notice and opportunity for public com-*  
5 *ment.”.*

6 (b) *INTERNATIONAL POLAR BEAR CONSERVATION.—*  
7 *Section 113 (16 U.S.C. 1383) is amended by—*

8 (1) *designating the existing paragraph as sub-*  
9 *section (a); and*

10 (2) *adding at the end the following new sub-*  
11 *sections:*

12 “(b) *Not later than 1 year after the date of enactment*  
13 *of the Marine Mammal Protection Act Amendments of*  
14 *1994, the Secretary of the Interior shall, in consultation*  
15 *with the contracting parties, initiate a review of the effec-*  
16 *tiveness of the Agreement on the Conservation of Polar*  
17 *Bears, as provided for in Article IX of the Agreement, and*  
18 *establish a process by which future reviews shall be con-*  
19 *ducted.*

20 “(c) *The Secretary of the Interior, in consultation with*  
21 *the Secretary of State and the Marine Mammal Commis-*  
22 *sion, shall review the effectiveness of United States imple-*  
23 *mentation of the Agreement on the Conservation of Polar*  
24 *Bears, particularly with respect to the habitat protection*  
25 *mandates contained in Article II. The Secretary shall re-*

1 *port the results of this review to the Committee on Merchant*  
2 *Marine and Fisheries of the House of Representatives and*  
3 *the Committee on Commerce, Science, and Transportation*  
4 *of the Senate not later than April 1, 1995.*

5       “(d) Not later than 6 months after the date of enact-  
6 *ment of the Marine Mammal Protection Act Amendments*  
7 *of 1994, the Secretary of the Interior, acting through the*  
8 *Secretary of State and in consultation with the Marine*  
9 *Mammal Commission and the State of Alaska, shall consult*  
10 *with the appropriate officials of the Russian Federation on*  
11 *the development and implementation of enhanced coopera-*  
12 *tive research and management programs for the conserva-*  
13 *tion of polar bears in Alaska and Russia. The Secretary*  
14 *shall report the results of this consultation and provide*  
15 *periodic progress reports on the research and management*  
16 *programs to the Committee on Merchant Marine and Fish-*  
17 *eries of the House of Representatives and the Committee on*  
18 *Commerce, Science and Transportation of the Senate.”.*

19 **SEC. 8. CONSERVATION PLANS.**

20       *Section 115(b) (16 U.S.C. 1383b(b)) is amended by*  
21 *adding at the end the following new paragraph:*

22       “(4) *If the Secretary determines that a take reduction*  
23 *plan is necessary to reduce the incidental taking of marine*  
24 *mammals in the course of commercial fishing operations*  
25 *from a strategic stock, or for species or stocks which interact*

1 *with a commercial fishery for which the Secretary has made*  
 2 *a determination under section 118(f)(1), any conservation*  
 3 *plan prepared under this subsection for such species or stock*  
 4 *shall incorporate the take reduction plan required under*  
 5 *section 118 for such species or stock.”.*

6 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) DEPARTMENTS OF COMMERCE AND THE INTE-  
 8 RIOR.—Section 116 is amended to read as follows:

9 **“SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

10 “(a) DEPARTMENT OF COMMERCE.—(1) There are au-  
 11 thorized to be appropriated to the Department of Commerce,  
 12 for purposes of carrying out its functions and responsibil-  
 13 ities under this title (other than sections 117 and 118) and  
 14 title IV, \$12,138,000 for fiscal year 1994, \$12,623,000 for  
 15 fiscal year 1995, \$13,128,000 for fiscal year 1996,  
 16 \$13,653,000 for fiscal year 1997, \$14,200,000 for fiscal year  
 17 1998, and \$14,768,000 for fiscal year 1999.

18 “(2) There are authorized to be appropriated to the  
 19 Department of Commerce, for purposes of carrying out sec-  
 20 tions 117 and 118, \$20,000,000 for each of the fiscal years  
 21 1994 through 1999.

22 “(b) DEPARTMENT OF THE INTERIOR.—There are au-  
 23 thorized to be appropriated to the Department of the Inte-  
 24 rior, for purposes of carrying out its functions and respon-  
 25 sibilities under this title, \$8,000,000 for fiscal year 1994,



1 \$8,600,000 for fiscal year 1995, \$9,000,000 for fiscal year  
2 1996, \$9,400,000 for fiscal year 1997, \$9,900,000 for fiscal  
3 year 1998, and \$10,296,000 for fiscal year 1999.”.

4 (b) *MARINE MAMMAL COMMISSION*.—Section 207 is  
5 amended to read as follows:

6 **“SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

7 “There are authorized to be appropriated to the Ma-  
8 rine Mammal Commission, for purposes of carrying out  
9 this title, \$1,500,000 for fiscal year 1994, \$1,550,000 for  
10 fiscal year 1995, \$1,600,000 for fiscal year 1996, \$1,650,000  
11 for fiscal year 1997, \$1,700,000 for fiscal year 1998, and  
12 \$1,750,000 for fiscal year 1999.”.

13 (c) *REPEAL*.—Section 7 of the Act entitled “An Act  
14 to improve the operation of the Marine Mammal Protection  
15 Act of 1972, and for other purposes”, approved October 9,  
16 1981 (16 U.S.C. 1384 and 1407), is repealed.

17 **SEC. 10. STOCK ASSESSMENTS.**

18 Title I (16 U.S.C. 1371 et seq.) is amended by adding  
19 at the end the following new section:

20 **“SEC. 117. STOCK ASSESSMENTS.**

21 “(a) *IN GENERAL*.—Not later than August 1, 1994, the  
22 Secretary shall, in consultation with the appropriate re-  
23 gional scientific review group established under subsection  
24 (d), prepare a draft stock assessment for each marine mam-  
25 mal stock which occurs in waters under the jurisdiction of

1 *the United States. Each draft stock assessment, based on*  
2 *the best scientific information available, shall—*

3           “(1) *describe the geographic range of the affected*  
4 *stock, including any seasonal or temporal variation*  
5 *in such range;*

6           “(2) *provide for such stock the minimum popu-*  
7 *lation estimate, current and maximum net productiv-*  
8 *ity rates, and current population trend, including a*  
9 *description of the information upon which these are*  
10 *based;*

11           “(3) *estimate the annual human-caused mortal-*  
12 *ity and serious injury of the stock by source and, for*  
13 *a strategic stock, other factors that may be causing a*  
14 *decline or impeding recovery of the stock, including*  
15 *effects on marine mammal habitat and prey;*

16           “(4) *describe commercial fisheries that interact*  
17 *with the stock, including—*

18                   “(A) *the approximate number of vessels ac-*  
19 *tively participating in each such fishery;*

20                   “(B) *the estimated level of incidental mor-*  
21 *tality and serious injury of the stock by each*  
22 *such fishery on an annual basis;*

23                   “(C) *seasonal or area differences in such in-*  
24 *cidental mortality or serious injury; and*

1           “(D) the rate, based on the appropriate  
2           standard unit of fishing effort, of such incidental  
3           mortality and serious injury, and an analysis  
4           stating whether such level is insignificant and is  
5           approaching a zero mortality and serious injury  
6           rate;

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

9           “(A) has a level of human-caused mortality  
10           and serious injury that is not likely to cause the  
11           stock to be reduced below its optimum sustain-  
12           able population; or

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

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

18           “(b) PUBLIC COMMENT.—(1) The Secretary shall pub-  
19           lish in the Federal Register a notice of the availability of  
20           a draft stock assessment or any revision thereof and provide  
21           an opportunity for public review and comment during a  
22           period of 90 days. Such notice shall include a summary  
23           of the assessment and a list of the sources of information  
24           or published reports upon which the assessment is based.

1       “(2) Subsequent to the notice of availability required  
2 under paragraph (1), if requested by a person to which sec-  
3 tion 101(b) applies, the Secretary shall conduct a proceed-  
4 ing on the record prior to publishing a final stock assess-  
5 ment or any revision thereof for any stock subject to taking  
6 under section 101(b).

7       “(3) After consideration of the best scientific informa-  
8 tion available, the advice of the appropriate regional sci-  
9 entific review group established under subsection (d), and  
10 the comments of the general public, the Secretary shall pub-  
11 lish in the Federal Register a notice of availability and a  
12 summary of the final stock assessment or any revision there-  
13 of, not later than 90 days after—

14               “(A) the close of the public comment period on  
15 a draft stock assessment or revision thereof; or

16               “(B) final action on an agency proceeding pur-  
17 suant to paragraph (2).

18       “(c) REVIEW AND REVISION.—(1) The Secretary shall  
19 review stock assessments in accordance with this sub-  
20 section—

21               “(A) at least annually for stocks which are speci-  
22 fied as strategic stocks;

23               “(B) at least annually for stocks for which sig-  
24 nificant new information is available; and

1           “(C) at least once every 3 years for all other  
2       stocks.

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

7           “(d) REGIONAL SCIENTIFIC REVIEW GROUPS.—(1)  
8       Not later than 60 days after the date of enactment of this  
9       section, the Secretary of Commerce shall, in consultation  
10      with the Secretary of the Interior (with respect to marine  
11      mammals under that Secretary’s jurisdiction), the Marine  
12      Mammal Commission, the Governors of affected adjacent  
13      coastal States, regional fishery and wildlife management  
14      authorities, Alaska Native organizations and Indian tribes,  
15      and environmental and fishery groups, establish three inde-  
16      pendent regional scientific review groups representing Alas-  
17      ka, the Pacific Coast (including Hawaii), and the Atlantic  
18      Coast (including the Gulf of Mexico), consisting of individ-  
19      uals with expertise in marine mammal biology and ecology,  
20      population dynamics and modeling, commercial fishing  
21      technology and practices, and stocks taken under section  
22      101(b). The Secretary of Commerce shall, to the maximum  
23      extent practicable, attempt to achieve a balanced represen-  
24      tation of viewpoints among the individuals on each regional

1 *scientific review group. The regional scientific review*  
2 *groups shall advise the Secretary on—*

3           “(A) *population estimates and the population*  
4 *status and trends of such stocks;*

5           “(B) *uncertainties and research needed regard-*  
6 *ing stock separation, abundance, or trends, and fac-*  
7 *tors affecting the distribution, size, or productivity of*  
8 *the stock;*

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

12           “(D) *research needed to identify modifications in*  
13 *fishing gear and practices likely to reduce the inci-*  
14 *dental mortality and serious injury of marine mam-*  
15 *mals in commercial fishing operations;*

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

22           “(F) *any other issue which the Secretary or the*  
23 *groups consider appropriate.*

1       “(2) The scientific review groups established under this  
2 subsection shall not be subject to the Federal Advisory Com-  
3 mittee Act (5 App. U.S.C.).

4       “(3) Members of the scientific review groups shall serve  
5 without compensation, but may be reimbursed by the Sec-  
6 retary, upon request, for reasonable travel costs and ex-  
7 penses incurred in performing their obligations.

8       “(4) The Secretary may appoint or reappoint individ-  
9 uals to the regional scientific review groups under para-  
10 graph (1) as needed.

11       “(e) *EFFECT ON SECTION 101(b).*—This section shall  
12 not affect or otherwise modify the provisions of section  
13 101(b).”.

14       **SEC. 11. TAKING OF MARINE MAMMALS INCIDENTAL TO**  
15   **COMMERCIAL FISHING OPERATIONS.**

16       Title I (16 U.S.C. 1371 et seq.), as amended by this  
17 Act, is further amended by adding at the end the following  
18 new section:

19       **“SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO**  
20   **COMMERCIAL FISHING OPERATIONS.**

21       “(a) *IN GENERAL.*—(1) Effective on the date of enact-  
22 ment of this section, and except as provided in section 114  
23 and in paragraphs (2), (3), and (4) of this subsection, the  
24 provisions of this section shall govern the incidental taking  
25 of marine mammals in the course of commercial fishing op-

1 *erations by persons using vessels of the United States or*  
2 *vessels which have valid fishing permits issued by the Sec-*  
3 *retary in accordance with section 204(b) of the Magnuson*  
4 *Fishery Conservation and Management Act (16 U.S.C.*  
5 *1824(b)). In any event it shall be the immediate goal that*  
6 *the incidental mortality or serious injury of marine mam-*  
7 *mals occurring in the course of commercial fishing oper-*  
8 *ations be reduced to insignificant levels approaching a zero*  
9 *mortality and serious injury rate within 7 years after the*  
10 *date of enactment of this section.*

11       “(2) *In the case of the incidental taking of marine*  
12 *mammals from species or stocks designated under this Act*  
13 *as depleted on the basis of their listing as threatened species*  
14 *or endangered species under the Endangered Species Act of*  
15 *1973 (16 U.S.C. 1531 et seq.), both this section and section*  
16 *101(a)(5)(E) of this Act shall apply.*

17       “(3) *Section 104(h) and title III, and not this section,*  
18 *shall govern the taking of marine mammals in the course*  
19 *of commercial purse seine fishing for yellowfin tuna in the*  
20 *eastern tropical Pacific Ocean.*

21       “(4) *This section shall not govern the incidental taking*  
22 *of California sea otters and shall not be deemed to amend*  
23 *or repeal the Act of November 7, 1986 (Public Law 99-*  
24 *625; 100 Stat. 3500).*



1       “(5) Except as provided in section 101(c), the inten-  
2 tional lethal take of any marine mammal in the course of  
3 commercial fishing operations is prohibited.

4       “(6) Sections 103 and 104 shall not apply to the inci-  
5 dental taking of marine mammals under the authority of  
6 this section.

7       “(b) ZERO MORTALITY RATE GOAL.—(1) Commercial  
8 fisheries shall reduce incidental mortality and serious in-  
9 jury of marine mammals to insignificant levels approach-  
10 ing a zero mortality and serious injury rate within 7 years  
11 after the date of enactment of this section.

12       “(2) Fisheries which maintain insignificant serious  
13 injury and mortality levels approaching a zero rate shall  
14 not be required to further reduce their mortality and serious  
15 injury rates.

16       “(3) Three years after such date of enactment, the Sec-  
17 retary shall review the progress of all commercial fisheries,  
18 by fishery, toward reducing incidental mortality and seri-  
19 ous injury to insignificant levels approaching a zero rate.  
20 The Secretary shall submit to the Committee on Commerce,  
21 Science, and Transportation of the Senate and the Commit-  
22 tee on Merchant Marine and Fisheries of the House of Rep-  
23 resentatives a report setting forth the results of such review  
24 within 1 year after commencement of the review. The Sec-  
25 retary shall note any commercial fishery for which addi-

1 *tional information is required to accurately assess the level*  
2 *of incidental mortality and serious injury of marine mam-*  
3 *mals in the fishery.*

4       “(4) *If the Secretary determines after review under*  
5 *paragraph (3) that the rate of incidental mortality and se-*  
6 *rious injury of marine mammals in a commercial fishery*  
7 *is not consistent with paragraph (1), then the Secretary*  
8 *shall take appropriate action under subsection (f).*

9       “(c) *REGISTRATION AND AUTHORIZATION.—(1) The*  
10 *Secretary shall, within 90 days after the date of enactment*  
11 *of this section—*

12               “(A) *publish in the Federal Register for public*  
13 *comment, for a period of not less than 90 days, any*  
14 *necessary changes to the Secretary’s list of commercial*  
15 *fisheries published under section 114(b)(1) and which*  
16 *is in existence on March 31, 1994 (along with an ex-*  
17 *planation of such changes and a statement describing*  
18 *the marine mammal stocks interacting with, and the*  
19 *approximate number of vessels or persons actively in-*  
20 *volved in, each such fishery), with respect to commer-*  
21 *cial fisheries that have—*

22                       “(i) *frequent incidental mortality and seri-*  
23 *ous injury of marine mammals;*

24                       “(ii) *occasional incidental mortality and se-*  
25 *rious injury of marine mammals; or*

1           “(iii) a remote likelihood of or no known  
2           incidental mortality or serious injury of marine  
3           mammals;

4           “(B) after the close of the period for such public  
5           comment, publish in the Federal Register a revised  
6           list of commercial fisheries and an update of informa-  
7           tion required by subparagraph (A), together with a  
8           summary of the provisions of this section and infor-  
9           mation sufficient to advise vessel owners on how to  
10          obtain an authorization and otherwise comply with  
11          the requirements of this section; and

12          “(C) at least once each year thereafter, and at  
13          such other times as the Secretary considers appro-  
14          priate, reexamine, based on information gathered  
15          under this Act and other relevant sources and after  
16          notice and opportunity for public comment, the clas-  
17          sification of commercial fisheries and other deter-  
18          minations required under subparagraph (A) and pub-  
19          lish in the Federal Register any necessary changes.

20          “(2)(A) An authorization shall be granted by the Sec-  
21          retary in accordance with this section for a vessel engaged  
22          in a commercial fishery listed under paragraph (1)(A) (i)  
23          or (ii), upon receipt by the Secretary of a completed reg-  
24          istration form providing the name of the vessel owner and  
25          operator, the name and description of the vessel, the fish-

1 eries in which it will be engaged, the approximate time,  
2 duration, and location of such fishery operations, and the  
3 general type and nature of use of the fishing gear and tech-  
4 niques used. Such information shall be in a readily usable  
5 format that can be efficiently entered into and utilized by  
6 an automated or computerized data processing system. A  
7 decal or other physical evidence that the authorization is  
8 current and valid shall be issued by the Secretary at the  
9 time an authorization is granted, and so long as the author-  
10 ization remains current and valid, shall be reissued annu-  
11 ally thereafter.

12       “(B) No authorization may be granted under this sec-  
13 tion to the owner of a vessel unless such vessel—

14               “(i) is a vessel of the United States; or

15               “(ii) has a valid fishing permit issued by the  
16 Secretary in accordance with section 204(b) of the  
17 Magnuson Fishery Conservation and Management Act  
18 (16 U.S.C. 1824(b)).

19       “(C) Except as provided in subsection (a), an author-  
20 ization granted under this section shall allow the incidental  
21 taking of all species and stocks of marine mammals to  
22 which this Act applies.

23       “(3)(A) An owner of a vessel engaged in any fishery  
24 listed under paragraph (1)(A) (i) or (ii) shall, in order to

1 *engage in the lawful incidental taking of marine mammals*  
2 *in a commercial fishery—*

3           “(i) *have registered as required under paragraph*  
4           (2) *with the Secretary in order to obtain for each*  
5           *such vessel owned and used in the fishery an author-*  
6           *ization for the purpose of incidentally taking marine*  
7           *mammals in accordance with this section, except that*  
8           *owners of vessels holding valid certificates of exemp-*  
9           *tion under section 114 are deemed to have registered*  
10           *for purposes of this subsection for the period during*  
11           *which such exemption is valid;*

12           “(ii) *ensure that a decal or such other physical*  
13           *evidence of a current and valid authorization as the*  
14           *Secretary may require is displayed on or is in the*  
15           *possession of the master of each such vessel;*

16           “(iii) *report as required by subsection (e); and*

17           “(iv) *comply with any applicable take reduction*  
18           *plan and emergency regulations issued under this sec-*  
19           *tion.*

20           “(B) *Any owner of a vessel receiving an authorization*  
21           *under this section for any fishery listed under paragraph*  
22           (1)(A) (i) *or (ii) shall, as a condition of that authorization,*  
23           *take on board an observer if requested to do so by the Sec-*  
24           *retary.*

1       “(C) An owner of a vessel engaged in a fishery listed  
2 under paragraph (1)(A) (i) or (ii) who—

3               “(i) fails to obtain from the Secretary an author-  
4 ization for such vessel under this section;

5               “(ii) fails to maintain a current and valid au-  
6 thorization for such vessel; or

7               “(iii) fails to ensure that a decal or other phys-  
8 ical evidence of such authorization issued by the Sec-  
9 retary is displayed on or is in possession of the mas-  
10 ter of the vessel,

11 and the master of any such vessel engaged in such fishery,  
12 shall be deemed to have violated this title, and for violations  
13 of clauses (i) and (ii) shall be subject to the penalties of  
14 this title, and for violations of clause (iii) shall be subject  
15 to a fine of not more than \$100 for each offense.

16       “(D) If the owner of a vessel has obtained and main-  
17 tains a current and valid authorization from the Secretary  
18 under this section and meets the requirements set forth in  
19 this section, including compliance with any regulations to  
20 implement a take reduction plan under this section, the  
21 owner of such vessel, and the master and crew members of  
22 the vessel, shall not be subject to the penalties set forth in  
23 this title for the incidental taking of marine mammals  
24 while such vessel is engaged in a fishery to which the au-  
25 thorization applies.

1       “(E) Each owner of a vessel engaged in any fishery  
2 not listed under paragraph (1)(A) (i) or (ii), and the mas-  
3 ter and crew members of such a vessel, shall not be subject  
4 to the penalties set forth in this title for the incidental tak-  
5 ing of marine mammals if such owner reports to the Sec-  
6 retary, in the form and manner required under subsection  
7 (e), instances of incidental mortality or injury of marine  
8 mammals in the course of that fishery.

9       “(4)(A) The Secretary shall suspend or revoke an au-  
10 thorization granted under this section and shall not issue  
11 a decal or other physical evidence of the authorization for  
12 any vessel until the owner of such vessel complies with the  
13 reporting requirements under subsection (e) and such re-  
14 quirements to take on board an observer under paragraph  
15 (3)(B) as are applicable to such vessel. Previous failure to  
16 comply with the requirements of section 114 shall not bar  
17 authorization under this section for an owner who complies  
18 with the requirements of this section.

19       “(B) The Secretary may suspend or revoke an author-  
20 ization granted under this subsection, and may not issue  
21 a decal or other physical evidence of the authorization for  
22 any vessel which fails to comply with a take reduction plan  
23 or emergency regulations issued under this section.

24       “(C) The owner and master of a vessel which fails to  
25 comply with a take reduction plan shall be subject to the

1 *penalties of sections 105 and 107, and may be subject to*  
2 *section 106.*

3       “(5)(A) *The Secretary shall develop, in consultation*  
4 *with the appropriate States, affected Regional Fishery*  
5 *Management Councils, and other interested persons, the*  
6 *means by which the granting and administration of author-*  
7 *izations under this section shall be integrated and coordi-*  
8 *nated, to the maximum extent practicable, with existing*  
9 *fishery licenses, registrations, and related programs.*

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

15       “(C) *The Secretary is authorized to charge a fee for*  
16 *the granting of an authorization under this section. The*  
17 *level of fees charged under this subparagraph shall not ex-*  
18 *ceed the administrative costs incurred in granting an au-*  
19 *thorization. Fees collected under this subparagraph shall be*  
20 *available to the Under Secretary of Commerce for Oceans*  
21 *and Atmosphere for expenses incurred in the granting and*  
22 *administration of authorizations under this section.*

23       “(d) *MONITORING OF INCIDENTAL TAKES.—(1) The*  
24 *Secretary shall establish a program to monitor incidental*  
25 *mortality and serious injury of marine mammals during*



1 *the course of commercial fishing operations. The purposes*  
2 *of the monitoring program shall be to—*

3           “(A) *obtain statistically reliable estimates of inci-*  
4 *cidental mortality and serious injury;*

5           “(B) *determine the reliability of reports of inci-*  
6 *dental mortality and serious injury under subsection*  
7 *(e); and*

8           “(C) *identify changes in fishing methods or tech-*  
9 *nology that may increase or decrease incidental mor-*  
10 *tality and serious injury.*

11       “(2) *Pursuant to paragraph (1), the Secretary may*  
12 *place observers on board vessels as necessary, subject to the*  
13 *provisions of this section. Observers may, among other*  
14 *tasks—*

15           “(A) *record incidental mortality and injury, or*  
16 *by catch of other nontarget species;*

17           “(B) *record numbers of marine mammals sight-*  
18 *ed; and*

19           “(C) *perform other scientific investigations.*

20       “(3) *In determining the distribution of observers*  
21 *among commercial fisheries and vessels within a fishery,*  
22 *the Secretary shall be guided by the following standards:*

23           “(A) *The requirement to obtain statistically reli-*  
24 *able information.*

1           “(B) The requirement that assignment of observ-  
2           ers is fair and equitable among fisheries and among  
3           vessels in a fishery.

4           “(C) The requirement that no individual person  
5           or vessel, or group of persons or vessels, be subject to  
6           excessive or overly burdensome observer coverage.

7           “(D) To the extent practicable, the need to mini-  
8           mize costs and avoid duplication.

9           “(4) To the extent practicable, the Secretary shall allo-  
10          cate observers among commercial fisheries in accordance  
11          with the following priority:

12           “(A) The highest priority for allocation shall be  
13           for commercial fisheries that have incidental mortal-  
14           ity or serious injury of marine mammals from stocks  
15           listed as endangered species or threatened species  
16           under the Endangered Species Act of 1973 (16 U.S.C.  
17           1531 et seq.).

18           “(B) The second highest priority for allocation  
19           shall be for commercial fisheries that have incidental  
20           mortality and serious injury of marine mammals  
21           from strategic stocks.

22           “(C) The third highest priority for allocation  
23           shall be for commercial fisheries that have incidental  
24           mortality or serious injury of marine mammals from

1        *stocks for which the level of incidental mortality and*  
2        *serious injury is uncertain.*

3        *“(5) The Secretary may establish an alternative ob-*  
4        *server program to provide statistically reliable information*  
5        *on the species and number of marine mammals incidentally*  
6        *taken in the course of commercial fishing operations. The*  
7        *alternative observer program may include direct observa-*  
8        *tion of fishing activities from vessels, airplanes, or points*  
9        *on shore.*

10       *“(6) The Secretary is not required to place an observer*  
11       *on a vessel in a fishery if the Secretary finds that—*

12                *“(A) in a situation in which harvesting vessels*  
13                *are delivering fish to a processing vessel and the catch*  
14                *is not taken on board the harvesting vessel, statis-*  
15                *tically reliable information can be obtained from an*  
16                *observer on board the processing vessel to which the*  
17                *fish are delivered;*

18                *“(B) the facilities on a vessel for quartering of*  
19                *an observer, or for carrying out observer functions,*  
20                *are so inadequate or unsafe that the health or safety*  
21                *of the observer or the safe operation of the vessel*  
22                *would be jeopardized; or*

23                *“(C) for reasons beyond the control of the Sec-*  
24                *retary, an observer is not available.*

1       “(7) *The Secretary may, with the consent of the vessel*  
2 *owner, station an observer on board a vessel engaged in a*  
3 *fishery not listed under subsection (c)(1)(A) (i) or (ii).*

4       “(8) *Any proprietary information collected under this*  
5 *subsection shall be confidential and shall not be disclosed*  
6 *except—*

7             “(A) *to Federal employees whose duties require*  
8 *access to such information;*

9             “(B) *to State or tribal employees pursuant to an*  
10 *agreement with the Secretary that prevents public*  
11 *disclosure of the identity or business of any person;*

12            “(C) *when required by court order; or*

13            “(D) *in the case of scientific information involv-*  
14 *ing fisheries, to employees of Regional Fishery Man-*  
15 *agement Councils who are responsible for fishery*  
16 *management plan development and monitoring.*

17       “(9) *The Secretary shall prescribe such procedures as*  
18 *may be necessary to preserve such confidentiality, except*  
19 *that the Secretary shall release or make public upon request*  
20 *any such information in aggregate, summary, or other form*  
21 *which does not directly or indirectly disclose the identity*  
22 *or business of any person.*

23       “(e) *REPORTING REQUIREMENT.—The owner or opera-*  
24 *tor of a commercial fishing vessel subject to this Act shall*  
25 *report all incidental mortality and injury of marine mam-*

1 *mals in the course of commercial fishing operations to the*  
2 *Secretary by mail or other means acceptable to the Sec-*  
3 *retary within 48 hours after the end of each fishing trip*  
4 *on a standard postage-paid form to be developed by the Sec-*  
5 *retary under this section. Such form shall be capable of*  
6 *being readily entered into and usable by an automated or*  
7 *computerized data processing system and shall require the*  
8 *vessel owner or operator to provide the following:*

9           “(1) *The vessel name, and Federal, State, or*  
10           *tribal registration numbers of the registered vessel.*

11           “(2) *The name and address of the vessel owner*  
12           *or operator.*

13           “(3) *The name and description of the fishery.*

14           “(4) *The species of each marine mammal inci-*  
15           *dentally killed or injured, and the date, time, and ap-*  
16           *proximate geographic location of such occurrence.*

17           “(f) *TAKE REDUCTION PLANS.—(1) The Secretary*  
18 *shall develop and implement a take reduction plan designed*  
19 *to assist in the recovery or prevent the depletion of each*  
20 *strategic stock which interacts with a commercial fishery*  
21 *listed under subsection (c)(1)(A) (i) or (ii), and may de-*  
22 *velop and implement such a plan for any other marine*  
23 *mammal stocks which interact with a commercial fishery*  
24 *listed under subsection (c)(1)(A)(i) which the Secretary de-*  
25 *termines, after notice and opportunity for public comment,*

1 *has a high level of mortality and serious injury across a*  
2 *number of such marine mammal stocks.*

3       “(2) *The immediate goal of a take reduction plan for*  
4 *a strategic stock shall be to reduce, within 6 months of its*  
5 *implementation, the incidental mortality or serious injury*  
6 *of marine mammals incidentally taken in the course of*  
7 *commercial fishing operations to levels less than the poten-*  
8 *tial biological removal level established for that stock under*  
9 *section 117. The long-term goal of the plan shall be to re-*  
10 *duce, within 5 years of its implementation, the incidental*  
11 *mortality or serious injury of marine mammals inciden-*  
12 *tally taken in the course of commercial fishing operations*  
13 *to insignificant levels approaching a zero mortality and se-*  
14 *rious injury rate, taking into account the economics of the*  
15 *fishery, the availability of existing technology, and existing*  
16 *State or regional fishery management plans.*

17       “(3) *If there is insufficient funding available to de-*  
18 *velop and implement a take reduction plan for all such*  
19 *stocks that interact with commercial fisheries listed under*  
20 *subsection (c)(1)(A) (i) or (ii), the Secretary shall give high-*  
21 *est priority to the development and implementation of take*  
22 *reduction plans for species or stocks whose level of inciden-*  
23 *tal mortality and serious injury exceeds the potential bio-*  
24 *logical removal level, those that have a small population*  
25 *size, and those which are declining most rapidly.*

1       “(4) Each take reduction plan shall include—

2               “(A) a review of the information in the final  
3 stock assessment published under section 117(b) and  
4 any substantial new information;

5               “(B) an estimate of the total number and, if pos-  
6 sible, age and gender, of animals from the stock that  
7 are being incidentally lethally taken or seriously in-  
8 jured each year during the course of commercial fish-  
9 ing operations, by fishery;

10              “(C) recommended regulatory or voluntary meas-  
11 ures for the reduction of incidental mortality and se-  
12 rious injury;

13              “(D) recommended dates for achieving the spe-  
14 cific objectives of the plan.

15       “(5)(A) For any stock in which incidental mortality  
16 and serious injury from commercial fisheries exceeds the po-  
17 tential biological removal level established under section  
18 117, the plan shall include measures the Secretary expects  
19 will reduce, within 6 months of the plan’s implementation,  
20 such mortality and serious injury to a level below the poten-  
21 tial biological removal level.

22              “(B) For any stock in which human-caused mortality  
23 and serious injury exceeds the potential biological removal  
24 level, other than a stock to which subparagraph (A) applies,  
25 the plan shall include measures the Secretary expects will

1 *reduce, to the maximum extent practicable within 6 months*  
2 *of the plan's implementation, the incidental mortality and*  
3 *serious injury by such commercial fisheries from that stock.*  
4 *For purposes of this subparagraph, the term 'maximum ex-*  
5 *tent practicable' means to the lowest level that is feasible*  
6 *for such fisheries within the 6-month period.*

7       “(6)(A) *At the earliest possible time (not later than*  
8 *30 days) after the Secretary issues a final stock assessment*  
9 *under section 117(b) for a strategic stock, the Secretary*  
10 *shall, and for stocks that interact with a fishery listed under*  
11 *subsection (c)(1)(A)(i) for which the Secretary has made a*  
12 *determination under paragraph (1), the Secretary may—*

13               “(i) *establish a take reduction team for such*  
14 *stock and appoint the members of such team in ac-*  
15 *cordance with subparagraph (C); and*

16               “(ii) *publish in the Federal Register a notice of*  
17 *the team's establishment, the names of the team's ap-*  
18 *pointed members, the full geographic range of such*  
19 *stock, and a list of all commercial fisheries that cause*  
20 *incidental mortality and serious injury of marine*  
21 *mammals from such stock.*

22       “(B) *The Secretary may request a take reduction team*  
23 *to address a stock that extends over one or more regions*  
24 *or fisheries, or multiple stocks within a region or fishery,*  
25 *if the Secretary determines that doing so would facilitate*



1 *the development and implementation of plans required*  
2 *under this subsection.*

3       “(C) *Members of take reduction teams shall have exper-*  
4 *tise regarding the conservation or biology of the marine*  
5 *mammal species which the take reduction plan will address,*  
6 *or the fishing practices which result in the incidental mor-*  
7 *tality and serious injury of such species. Members shall in-*  
8 *clude representatives of Federal agencies, each coastal State*  
9 *which has fisheries which interact with the species or stock,*  
10 *appropriate Regional Fishery Management Councils, inter-*  
11 *state fisheries commissions, academic and scientific organi-*  
12 *zations, environmental groups, all commercial and rec-*  
13 *reational fisheries groups and gear types which incidentally*  
14 *take the species or stock, Alaska Native organizations or In-*  
15 *dian tribal organizations, and others as the Secretary*  
16 *deems appropriate. Take reduction teams shall, to the maxi-*  
17 *imum extent practicable, consist of an equitable balance*  
18 *among representatives of resource user interests and*  
19 *nonuser interests.*

20       “(D) *Take reduction teams shall not be subject to the*  
21 *Federal Advisory Committee Act (5 App. U.S.C.). Meetings*  
22 *of take reduction teams shall be open to the public, and*  
23 *prior notice of meetings shall be made public in a timely*  
24 *fashion.*

1       “(E) Members of take reduction teams shall serve with-  
2 out compensation, but may be reimbursed by the Secretary,  
3 upon request, for reasonable travel costs and expenses in-  
4 curred in performing their duties as members of the team.

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

12           “(A)(i) Not later than 6 months after the date of  
13 establishment of a take reduction team for the stock,  
14 the team shall submit a draft take reduction plan for  
15 such stock to the Secretary, consistent with the other  
16 provisions of this section.

17           “(ii) Such draft take reduction plan shall be de-  
18 veloped by consensus. In the event consensus cannot  
19 be reached, the team shall advise the Secretary in  
20 writing on the range of possibilities considered by the  
21 team, and the views of both the majority and minor-  
22 ity.

23           “(B)(i) The Secretary shall take the draft take  
24 reduction plan into consideration and, not later than  
25 60 days after the submission of the draft plan by the

1        *team, the Secretary shall publish in the Federal Reg-*  
2        *ister the plan proposed by the team, any changes pro-*  
3        *posed by the Secretary with an explanation of the*  
4        *reasons therefor, and proposed regulations to imple-*  
5        *ment such plan, for public review and comment dur-*  
6        *ing a period of not to exceed 90 days.*

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

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

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

1           “(E) The Secretary and the take reduction team  
2 shall meet every 6 months, or at such other intervals  
3 as the Secretary determines are necessary, to monitor  
4 the implementation of the final take reduction plan  
5 until such time that the Secretary determines that the  
6 objectives of such plan have been met.

7           “(F) The Secretary shall amend the take reduc-  
8 tion plan and implementing regulations as necessary  
9 to meet the requirements of this section, in accordance  
10 with the procedures in this section for the issuance of  
11 such plans and regulations.

12          “(8) Where the human-caused mortality and serious  
13 injury from a strategic stock is estimated to be less than  
14 the potential biological removal level established under sec-  
15 tion 117 for such stock and such stock interacts with a fish-  
16 ery listed under subsection (c)(1)(A) (i) or (ii), or for any  
17 marine mammal stocks which interact with a commercial  
18 fishery listed under subsection (c)(1)(A)(i) for which the  
19 Secretary has made a determination under paragraph (1),  
20 the following procedures shall apply in the development of  
21 the take reduction plan for such stock:

22           “(A)(i) Not later than 11 months after the date  
23 of establishment of a take reduction team for the  
24 stock, the team shall submit a draft take reduction

1     *plan for the stock to the Secretary, consistent with the*  
2     *other provisions of this section.*

3             “(ii) *Such draft take reduction plan shall be de-*  
4     *veloped by consensus. In the event consensus cannot*  
5     *be reached, the team shall advise the Secretary in*  
6     *writing on the range of possibilities considered by the*  
7     *team, and the views of both the majority and minor-*  
8     *ity.*

9             “(B)(i) *The Secretary shall take the draft take*  
10    *reduction plan into consideration and, not later than*  
11    *60 days after the submission of the draft plan by the*  
12    *team, the Secretary shall publish in the Federal Reg-*  
13    *ister the plan proposed by the team, any changes pro-*  
14    *posed by the Secretary with an explanation of the*  
15    *reasons therefor, and proposed regulations to imple-*  
16    *ment such plan, for public review and comment dur-*  
17    *ing a period of not to exceed 90 days.*

18            “(ii) *In the event that the take reduction team*  
19    *does not submit a draft plan to the Secretary within*  
20    *11 months, the Secretary shall, not later than 13*  
21    *months after the establishment of the team, publish in*  
22    *the Federal Register a proposed take reduction plan*  
23    *and implementing regulations, for public review and*  
24    *comment during a period of not to exceed 90 days.*

1           “(C) Not later than 60 days after the close of the  
2           comment period required under subparagraph (B),  
3           the Secretary shall issue a final take reduction plan  
4           and implementing regulations, consistent with the  
5           other provisions of this section.

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

12          “(E) The Secretary and the take reduction team  
13          shall meet on an annual basis, or at such other inter-  
14          vals as the Secretary determines are necessary, to  
15          monitor the implementation of the final take reduc-  
16          tion plan until such time that the Secretary deter-  
17          mines that the objectives of such plan have been met.

18          “(F) The Secretary shall amend the take reduc-  
19          tion plan and implementing regulations as necessary  
20          to meet the requirements of this section, in accordance  
21          with the procedures in this section for the issuance of  
22          such plans and regulations.

23          “(9) In implementing a take reduction plan developed  
24          pursuant to this subsection, the Secretary may, where nec-  
25          essary to implement a take reduction plan to protect or re-

1 *store a marine mammal stock or species covered by such*  
2 *plan, promulgate regulations which include, but are not*  
3 *limited to, measures to—*

4           “(A) *establish fishery-specific limits on inciden-*  
5 *tal mortality and serious injury of marine mammals*  
6 *in commercial fisheries or restrict commercial fish-*  
7 *eries by time or area;*

8           “(B) *require the use of alternative commercial*  
9 *fishing gear or techniques and new technologies, en-*  
10 *courage the development of such gear or technology, or*  
11 *convene expert skippers’ panels;*

12           “(C) *educate commercial fishermen, through*  
13 *workshops and other means, on the importance of re-*  
14 *ducing the incidental mortality and serious injury of*  
15 *marine mammals in affected commercial fisheries;*  
16 *and*

17           “(D) *monitor, in accordance with subsection (d),*  
18 *the effectiveness of measures taken to reduce the level*  
19 *of incidental mortality and serious injury of marine*  
20 *mammals in the course of commercial fishing oper-*  
21 *ations.*

22           “(10)(A) *Notwithstanding paragraph (6), in the case*  
23 *of any stock to which paragraph (1) applies for which a*  
24 *final stock assessment has not been published under section*  
25 *117(b)(3) by April 1, 1995, due to a proceeding under sec-*

1 *tion 117(b)(2), or any Federal court review of such proceed-*  
2 *ing, the Secretary shall establish a take reduction team*  
3 *under paragraph (6) for such stock as if a final stock assess-*  
4 *ment had been published.*

5       “(B) *The draft stock assessment published for such*  
6 *stock under section 117(b)(1) shall be deemed the final stock*  
7 *assessment for purposes of preparing and implementing a*  
8 *take reduction plan for such stock under this section.*

9       “(C) *Upon publication of a final stock assessment for*  
10 *such stock under section 117(b)(3) the Secretary shall im-*  
11 *mediately reconvene the take reduction team for such stock*  
12 *for the purpose of amending the take reduction plan, and*  
13 *any regulations issued to implement such plan, if necessary,*  
14 *to reflect the final stock assessment or court action. Such*  
15 *amendments shall be made in accordance with paragraph*  
16 *(7)(F) or (8)(F), as appropriate.*

17       “(D) *A draft stock assessment may only be used as*  
18 *the basis for a take reduction plan under this paragraph*  
19 *for a period of not to exceed two years, or until a final*  
20 *stock assessment is published, whichever is earlier. If, at the*  
21 *end of the two-year period, a final stock assessment has not*  
22 *been published, the Secretary shall categorize such stock*  
23 *under section 117(a)(5)(A) and shall revoke any regulations*  
24 *to implement a take reduction plan for such stock.*



1       “(E) Subparagraph (D) shall not apply for any period  
2 beyond two years during which a final stock assessment for  
3 such stock has not been published due to review of a proceed-  
4 ing on such stock assessment by a Federal court. Imme-  
5 diately upon final action by such court, the Secretary shall  
6 proceed under subparagraph (C).

7       “(11) Take reduction plans developed under this sec-  
8 tion for a species or stock listed as a threatened species or  
9 endangered species under the Endangered Species Act of  
10 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any  
11 recovery plan developed for such species or stock under sec-  
12 tion 4 of such Act.

13       “(g) EMERGENCY REGULATIONS.—(1) If the Secretary  
14 finds that the incidental mortality and serious injury of  
15 marine mammals from commercial fisheries is having, or  
16 is likely to have, an immediate and significant adverse im-  
17 pact on a stock or species, the Secretary shall take actions  
18 as follows:

19               “(A) In the case of a stock or species for which  
20 a take reduction plan is in effect, the Secretary  
21 shall—

22                       “(i) prescribe emergency regulations that,  
23 consistent with such plan to the maximum extent  
24 practicable, reduce incidental mortality and seri-  
25 ous injury in that fishery; and

1           “(ii) approve and implement, on an expedited basis, any amendments to such plan that  
2           are recommended by the take reduction team to  
3           address such adverse impact.  
4

5           “(B) In the case of a stock or species for which  
6           a take reduction plan is being developed, the Secretary shall—  
7

8           “(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and  
9  
10

11           “(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.  
12  
13  
14

15           “(C) In the case of a stock or species for which  
16           a take reduction plan does not exist and is not being  
17           developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) which the Secretary  
18           believes may be contributing to such adverse impact,  
19           the Secretary shall—  
20

21           “(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to  
22           mitigate such adverse impact;  
23  
24

1           “(ii) immediately review the stock assess-  
2           ment for such stock or species and the classifica-  
3           tion of such commercial fishery under this sec-  
4           tion to determine if a take reduction team should  
5           be established; and

6           “(iii) may, where necessary to address such  
7           adverse impact on a species or stock listed as a  
8           threatened species or endangered species under  
9           the Endangered Species Act of 1973 (16 U.S.C.  
10          1531 et seq.), place observers on vessels in a com-  
11          mercial fishery listed under subsection  
12          (c)(1)(A)(iii), if the Secretary has reason to be-  
13          lieve such vessels may be causing the incidental  
14          mortality and serious injury to marine mam-  
15          mals from such stock.

16          “(2) Prior to taking action under paragraph (1) (A),  
17          (B), or (C), the Secretary shall consult with the Marine  
18          Mammal Commission, all appropriate Regional Fishery  
19          Management Councils, State fishery managers, and the ap-  
20          propriate take reduction team (if established).

21          “(3) Emergency regulations prescribed under this sub-  
22          section—

23                 “(A) shall be published in the Federal Register,  
24                 together with an explanation thereof;

1           “(B) shall remain in effect for not more than  
2           180 days or until the end of the applicable commer-  
3           cial fishing season, whichever is earlier; and

4           “(C) may be terminated by the Secretary at an  
5           earlier date by publication in the Federal Register of  
6           a notice of termination, if the Secretary determines  
7           that the reasons for emergency regulations no longer  
8           exist.

9           “(4) If the Secretary finds that incidental mortality  
10          and serious injury of marine mammals in a commercial  
11          fishery is continuing to have an immediate and significant  
12          adverse impact on a stock or species, the Secretary may  
13          extend the emergency regulations for an additional period  
14          of not more than 90 days or until reasons for the emergency  
15          no longer exist, whichever is earlier.

16          “(h) PENALTIES.—Except as provided in subsection  
17          (c), any person who violates this section shall be subject to  
18          the provisions of sections 105 and 107, and may be subject  
19          to section 106 as the Secretary shall establish by regula-  
20          tions.

21          “(i) ASSISTANCE.—The Secretary shall provide assist-  
22          ance to Regional Fishery Management Councils, States,  
23          interstate fishery commissions, and Indian tribal organiza-  
24          tions in meeting the goal of reducing incidental mortality

1 *and serious injury to insignificant levels approaching a*  
 2 *zero mortality and serious injury rate.*

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

6       “(k) *CONSULTATION WITH SECRETARY OF THE INTE-*  
 7 *RIOR.*—*The Secretary shall consult with the Secretary of*  
 8 *the Interior prior to taking actions or making determina-*  
 9 *tions under this section that affect or relate to species or*  
 10 *population stocks of marine mammals for which the Sec-*  
 11 *retary of the Interior is responsible under this title.*

12       “(l) *DEFINITIONS.*—*As used in this section and section*  
 13 *101(a)(5)(E), each of the terms ‘fishery’ and ‘vessel of the*  
 14 *United States’ has the same meaning it does in section 3*  
 15 *of the Magnuson Fishery Conservation and Management*  
 16 *Act (16 U.S.C. 1802).”*

17 **SEC. 12. DEFINITIONS.**

18       *Section 3 (16 U.S.C. 1362) is amended by adding at*  
 19 *the end the following:*

20               “(18)(A) *The term ‘harassment’ means any act*  
 21 *of pursuit, torment, or annoyance which—*

22                       “(i) *has the potential to injure a marine*  
 23 *mammal or marine mammal stock in the wild;*

24                       *or*

1           “(ii) has the potential to disturb a marine  
2 mammal or marine mammal stock in the wild  
3 by causing disruption of behavioral patterns, in-  
4 cluding, but not limited to, migration, breathing,  
5 nursing, breeding, feeding, or sheltering.

6           “(B) The term ‘Level A harassment’ means har-  
7 assment described in subparagraph (A)(i).

8           “(C) The term ‘Level B harassment’ means har-  
9 assment described in subparagraph (A)(ii).

10          “(19) The term ‘strategic stock’ means a marine  
11 mammal stock—

12           “(A) for which the level of direct human-  
13 caused mortality exceeds the potential biological  
14 removal level;

15           “(B) which, based on the best available sci-  
16 entific information, is declining and is likely to  
17 be listed as a threatened species under the En-  
18 dangered Species Act of 1973 within the foresee-  
19 able future; or

20           “(C) which is listed as a threatened species  
21 or endangered species under the Endangered  
22 Species Act of 1973 (16 U.S.C. 1531 et seq.), or  
23 is designated as depleted under this Act.

24          “(20) The term ‘potential biological removal  
25 level’ means the maximum number of animals, not

1     *including natural mortalities, that may be removed*  
2     *from a marine mammal stock while allowing that*  
3     *stock to reach or maintain its optimum sustainable*  
4     *population. The potential biological removal level is*  
5     *the product of the following factors:*

6             “(A) *The minimum population estimate of*  
7             *the stock.*

8             “(B) *One-half the maximum theoretical or*  
9             *estimated net productivity rate of the stock at a*  
10            *small population size.*

11            “(C) *A recovery factor of between 0.1 and*  
12            *1.0.*

13            “(21) *The term ‘Regional Fishery Management*  
14            *Council’ means a Regional Fishery Management*  
15            *Council established under section 302 of the Magnu-*  
16            *son Fishery Conservation and Management Act.*

17            “(22) *The term ‘bona fide research’ means sci-*  
18            *entific research on marine mammals, the results of*  
19            *which—*

20            “(A) *likely would be accepted for publica-*  
21            *tion in a referred scientific journal;*

22            “(B) *are likely to contribute to the basic*  
23            *knowledge of marine mammal biology or ecology;*  
24            *or*

1           “(C) are likely to identify, evaluate, or re-  
2           solve conservation problems.

3           “(23) The term ‘Alaska Native organization’  
4           means a group designated by law or formally char-  
5           tered which represents or consists of Indians, Aleuts,  
6           or Eskimos residing in Alaska.

7           “(24) The term ‘take reduction plan’ means a  
8           plan developed under section 118.

9           “(25) The term ‘take reduction team’ means a  
10          team established under section 118.

11          “(26) The term ‘net productivity rate’ means the  
12          annual per capita rate of increase in a stock resulting  
13          from additions due to reproduction, less losses due to  
14          mortality.

15          “(27) The term ‘minimum population estimate’  
16          means an estimate of the number of animals in a  
17          stock that—

18                 “(A) is based on the best available scientific  
19                 information on abundance, incorporating the  
20                 precision and variability associated with such  
21                 information; and

22                 “(B) provides reasonable assurance that the  
23                 stock size is equal to or greater than the esti-  
24                 mate.”.



1 **SEC. 13. PENALTIES; PROHIBITIONS.**

2 (a) *CIVIL PENALTIES.*—Section 105(a)(1) (16 U.S.C.  
3 1375(a)(1)) is amended by inserting “, except as provided  
4 in section 118,” after “thereunder”.

5 (b) *CRIMINAL PENALTIES.*—Section 105(b) (16 U.S.C.  
6 1375(b)) is amended by inserting “(except as provided in  
7 section 118)” after “thereunder”.

8 (c) *PROHIBITIONS.*—Section 102(a) (16 U.S.C.  
9 1372(a)) is amended by striking “and 114 of this title or  
10 title III” and inserting “114, and 118 of this title and title  
11 IV”.

12 **SEC. 14. INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSIST-**  
13 **ENCE.**

14 *Nothing in this Act, including any amendments to the*  
15 *Marine Mammal Protection Act of 1972 made by this Act—*

16 (1) *alters or is intended to alter any treaty be-*  
17 *tween the United States and one or more Indian*  
18 *tribes; or*

19 (2) *affects or otherwise modifies the provisions of*  
20 *section 101(b) of the Marine Mammal Protection Act*  
21 *of 1972 (16 U.S.C. 1371(b)), except as specifically*  
22 *provided in the amendment made by section 4(b) of*  
23 *this Act.*

24 **SEC. 15. TRANSITION RULE; IMPLEMENTING REGULATIONS.**

25 (a) *TRANSITION RULE.*—Section 114(a)(1) (16 U.S.C.  
26 1383a(a)(1)) is amended by striking “ending April 1,

1 1994,” and inserting in lieu thereof “until superseded by  
2 regulations prescribed under section 118, or until Septem-  
3 ber 1, 1995, whichever is earlier,”.

4 (b) *IMPLEMENTING REGULATIONS.*—Except as pro-  
5 vided otherwise in this Act, or the amendments to the Ma-  
6 rine Mammal Protection Act of 1972 (16 U.S.C. 1361 et  
7 seq.) made by this Act, the Secretary of Commerce or the  
8 Secretary of the Interior, as appropriate, shall, after notice  
9 and opportunity for public comment, promulgate regula-  
10 tions to implement this Act and the amendments made by  
11 this Act by January 1, 1995.

12 **SEC. 16. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) *DEFINITIONS.*—Section 3 (16 U.S.C. 1362) is  
14 amended—

15 (1) by striking paragraph (17); and

16 (2) by redesignating the second paragraph (15)  
17 and paragraph (16) as paragraphs (16) and (17), re-  
18 spectively.

19 (b) *UNUSUAL MORTALITY EVENT FUND.*—Section  
20 405(a) (16 U.S.C. 1421d(a)), as so redesignated by this Act,  
21 is amended by striking “a fund” and inserting in lieu  
22 thereof “an interest bearing fund”.

1 **SEC. 17. HUMAN ACTIVITIES WITHIN PROXIMITY OF**  
2 **WHALES.**

3 (a) *LAWFUL APPROACHES.*—*In waters of the United*  
4 *States surrounding the State of Hawaii, it is lawful for*  
5 *a person subject to the jurisdiction of the United States to*  
6 *approach, by any means other than an aircraft, no closer*  
7 *than 100 yards to a humpback whale, regardless of whether*  
8 *the approach is made in waters designated under section*  
9 *222.31 of title 50, Code of Federal Regulations, as cow/calf*  
10 *waters.*

11 (b) *TERMINATION OF LEGAL EFFECT OF CERTAIN*  
12 *REGULATIONS.*—*Subsection (b) of section 222.31 of title 50,*  
13 *Code of Federal Regulations, shall cease to be in force and*  
14 *effect.*

15 **SEC. 18. SCRIMSHAW EXEMPTIONS.**

16 *Notwithstanding any other provision of law, any valid*  
17 *certificate of exemption renewed by the Secretary (or*  
18 *deemed to be renewed) under section 10(f)(8) of the Endan-*  
19 *gered Species Act of 1973 (16 U.S.C. 1539(f)(8)) for any*  
20 *person holding such a certificate with respect to the posses-*  
21 *sion of pre-Act finished scrimshaw products or raw mate-*  
22 *rial for such products shall remain valid for a period not*  
23 *to exceed 5 years beginning on the date of enactment of this*  
24 *Act.*

1 **SEC. 19. MARINE MAMMAL COOPERATIVE AGREEMENTS IN**  
2 **ALASKA.**

3 *Title I (16 U.S.C. 1371 et seq.), as amended by this*  
4 *Act, is further amended by adding at the end the following*  
5 *new section:*

6 **“SEC. 119. MARINE MAMMAL COOPERATIVE AGREEMENTS**  
7 **IN ALASKA.**

8 *“(a) IN GENERAL.—The Secretary may enter into co-*  
9 *operative agreements with Alaska Native organizations to*  
10 *conserve marine mammals and provide co-management of*  
11 *subsistence use by Alaska Natives.*

12 *“(b) GRANTS.—Agreements entered into under this sec-*  
13 *tion may include grants to Alaska Native organizations for,*  
14 *among other purposes—*

15 *“(1) collecting and analyzing data on marine*  
16 *mammal populations;*

17 *“(2) monitoring the harvest of marine mammals*  
18 *for subsistence use;*

19 *“(3) participating in marine mammal research*  
20 *conducted by the Federal Government, States, aca-*  
21 *demic institutions, and private organizations; and*

22 *“(4) developing marine mammal co-management*  
23 *structures with Federal and State agencies.*

24 *“(c) EFFECT OF JURISDICTION.—Nothing in this sec-*  
25 *tion is intended or shall be construed—*

1           “(1) as authorizing any expansion or change in  
2           the respective jurisdiction of Federal, State, or tribal  
3           governments over fish and wildlife resources; or

4           “(2) as altering in any respect the existing polit-  
5           ical or legal status of Alaska Natives, or the govern-  
6           mental or jurisdictional status of Alaska Native com-  
7           munities or Alaska Native entities.

8           “(d) *AUTHORIZATION OF APPROPRIATIONS.*—There  
9           are authorized to be appropriated for the purposes of carry-  
10          ing out this section—

11           “(1) \$1,500,000 to the Secretary of Commerce for  
12          each of the fiscal years 1994, 1995, 1996, 1997, 1998,  
13          and 1999; and

14           “(2) \$1,000,000 to the Secretary of the Interior  
15          for each of the fiscal years 1994, 1995, 1996, 1997,  
16          1998, and 1999.

17          The amounts authorized to be appropriated under this sub-  
18          section are in addition to the amounts authorized to be ap-  
19          propriated under section 116.”.

20          **SEC. 20. MARINE ECOSYSTEM PROTECTION.**

21          Section 110 (16 U.S.C. 1380) is amended by striking  
22          subsection (c) and inserting the following:

23           “(c)(1) No later than 1 year after the date of enactment  
24          of the Marine Mammal Protection Act Amendments of  
25          1994, the Secretary of Commerce shall convene a regional

1 workshop for the Gulf of Maine to assess human-caused fac-  
2 tors affecting the health and stability of that marine eco-  
3 system, of which marine mammals are a part. The work-  
4 shop shall be conducted in consultation with the Marine  
5 Mammal Commission, the adjacent coastal States, individ-  
6 uals with expertise in marine mammal biology and ecology,  
7 representatives from environmental organizations, the fish-  
8 ing industry, and other appropriate persons. The goal of  
9 the workshop shall be to identify such factors, and to rec-  
10 ommend a program of research and management to restore  
11 or maintain that marine ecosystem and its key components  
12 that—

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

16           “(B) has as the primary management objective  
17 the maintenance of the health and stability of the ma-  
18 rine ecosystems;

19           “(C) ensures the fullest possible range of manage-  
20 ment options for future generations; and

21           “(D) permits nonwasteful, environmentally  
22 sound development of renewable and nonrenewable re-  
23 sources.

24           “(2) On or before December 31, 1995, the Secretary  
25 of Commerce shall submit to the Committee on Merchant

1 *Marine and Fisheries of the House of Representatives and*  
2 *the Committee on Commerce, Science and Transportation*  
3 *of the Senate a report containing the results of the workshop*  
4 *under this subsection, proposed regulatory or research ac-*  
5 *tions, and recommended legislative action.*

6       “(d)(1) *The Secretary of Commerce, in consultation*  
7 *with the Secretary of the Interior, the Marine Mammal*  
8 *Commission, the State of Alaska, and Alaska Native organi-*  
9 *zations, shall, not later than 180 days after the date of en-*  
10 *actment of the Marine Mammal Protection Act Amend-*  
11 *ments of 1994, undertake a scientific research program to*  
12 *monitor the health and stability of the Bering Sea marine*  
13 *ecosystem and to resolve uncertainties concerning the causes*  
14 *of population declines of marine mammals, sea birds, and*  
15 *other living resources of that marine ecosystem. The pro-*  
16 *gram shall address the research recommendations developed*  
17 *by previous workshops on Bering Sea living marine re-*  
18 *sources, and shall include research on subsistence uses of*  
19 *such resources and ways to provide for the continued oppor-*  
20 *tunity for such uses.*

21       “(2) *To the maximum extent practicable, the research*  
22 *program undertaken pursuant to paragraph (1) shall be*  
23 *conducted in Alaska. The Secretary of Commerce shall uti-*  
24 *lize, where appropriate, traditional local knowledge and*

1 *may contract with a qualified Alaska Native organization*  
2 *to conduct such research.*

3 *“(3) The Secretary of Commerce, the Secretary of the*  
4 *Interior, and the Commission shall address the status and*  
5 *findings of the research program in their annual reports*  
6 *to Congress required by sections 103(f) and 204 of this*  
7 *Act.”.*

8 **SEC. 21. INTERJURISDICTIONAL FISHERIES ACT OF 1986.**

9 *Section 308(b) of the Interjurisdictional Fisheries Act*  
10 *of 1986 (16 U.S.C. 4107(b)) is amended by striking*  
11 *“\$2,500,000 for each of the fiscal years 1989, 1990, 1991,*  
12 *1992, 1993, 1994, and 1995” and inserting in lieu thereof*  
13 *“\$65,000,000 for each of the fiscal years 1994 and 1995”.*

14 **SEC. 22. COASTAL ECOSYSTEM HEALTH.**

15 *(a) REQUIREMENT TO CONVEY.—Not later than Sep-*  
16 *tember 30, 1994, the Secretary of the Navy shall convey,*  
17 *without payment or other consideration, to the Secretary*  
18 *of Commerce, all right, title, and interest to the property*  
19 *comprising that portion of the Naval Base, Charleston,*  
20 *South Carolina, bounded by Hobson Avenue, the Cooper*  
21 *River, the landward extension of the northwest side of Pier*  
22 *R, and the fenceline between the buildings known as 200*  
23 *and NS-16. Such property shall include Pier R, the build-*  
24 *ings known as RTC-1, RTC-4, 200, and 1874, all towers*



1 *and outbuildings on that property, and all walkways and*  
2 *parking areas associated with such buildings and Pier R.*

3       **(b) SURVEY; EFFECT ON LIABILITY OF SECRETARY OF**  
4 *THE NAVY.*—*The acreage and legal description of the prop-*  
5 *erty to be conveyed pursuant to this section shall be deter-*  
6 *mined by a survey approved by the Secretary of the Navy.*  
7 *Such conveyance shall not release the Secretary of the Navy*  
8 *from any liability arising prior to, during, or after such*  
9 *conveyance as a result of the ownership or occupation of*  
10 *the property by the United States Navy.*

11       **(c) USE BY NATIONAL OCEANIC AND ATMOSPHERIC**  
12 *ADMINISTRATION.*—*The property conveyed pursuant to this*  
13 *section shall be used by the Secretary of Commerce in sup-*  
14 *port of the operations of the National Oceanic and Atmos-*  
15 *pheric Administration.*

16       **(d) REVERSION RIGHTS.**—*Conveyance of the property*  
17 *pursuant to this section shall be subject to the condition*  
18 *that all right, title, and interest in and to the property so*  
19 *conveyed shall immediately be conveyed to the public entity*  
20 *vested with ownership of the remainder of the Charleston*  
21 *Naval Base, if and when—*

22               **(1)** *continued ownership and occupation of the*  
23 *property by the National Oceanic and Atmospheric*  
24 *Administration no longer is compatible with the com-*  
25 *prehensive plan for reuse of the Charleston Naval*

1       *Base developed by the community reuse committee*  
2       *and approved by the Secretary of the Navy; and*

3             (2) *such public entity provides for relocation of*  
4       *the programs and personnel of the National Oceanic*  
5       *and Atmospheric Administration occupying such*  
6       *property, at no further cost to the United States Gov-*  
7       *ernment, to a comparable facility, including adjacent*  
8       *waterfront and pier, within the Charleston area.*

9       **SEC. 23. PACIFIC COAST TASK FORCE; GULF OF MAINE.**

10       *Title I (16 U.S.C. 1371 et seq.), as amended by this*  
11       *Act, is further amended by adding at the end the following*  
12       *new section:*

13       **“SEC. 120. PACIFIC COAST TASK FORCE; GULF OF MAINE.**

14             “(a) *PINNIPED REMOVAL AUTHORITY.*—*Notwithstand-*  
15       *ing any other provision of this title, the Secretary may per-*  
16       *mit the intentional lethal taking of pinnipeds in accordance*  
17       *with this section.*

18             “(b) *APPLICATION.*—(1) *A State may apply to the Sec-*  
19       *retary to authorize the intentional lethal taking of individ-*  
20       *ually identifiable pinnipeds which are having a significant*  
21       *negative impact on the decline or recovery of salmonid fish-*  
22       *ery stocks which—*

23                     “(A) *have been listed as threatened species or en-*  
24       *dangered species under the Endangered Species Act of*  
25       *1973 (16 U.S.C. 1531 et seq.);*

1           “(B) the Secretary finds are approaching threat-  
2           ened species or endangered species status (as those  
3           terms are defined in that Act); or

4           “(C) migrate through the Ballard Locks at Se-  
5           attle, Washington.

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

10          “(c) ACTIONS IN RESPONSE TO APPLICATION.—(1)  
11          Within 15 days of receiving an application, the Secretary  
12          shall determine whether the application has produced suffi-  
13          cient evidence to warrant establishing a Pinniped-Fishery  
14          Interaction Task Force to address the situation described  
15          in the application. If the Secretary determines sufficient  
16          evidence has been provided, the Secretary shall establish a  
17          Pinniped-Fishery Interaction Task Force and publish a no-  
18          tice in the Federal Register requesting public comment on  
19          the application.

20          “(2) A Pinniped-Fishery Interaction Task Force estab-  
21          lished under paragraph (1) shall consist of designated em-  
22          ployees of the Department of Commerce, scientists who are  
23          knowledgeable about the pinniped interaction that the ap-  
24          plication addresses, representatives of affected conservation  
25          and fishing community organizations, Indian Treaty

1 *tribes, the States, and such other organizations as the Sec-*  
2 *retary deems appropriate.*

3       “(3) *Within 60 days after establishment, and after re-*  
4 *viewing public comments in response to the Federal Reg-*  
5 *ister notice under paragraph (1), the Pinniped-Fishery*  
6 *Interaction Task Force shall—*

7               “(A) *recommend to the Secretary whether to ap-*  
8 *prove or deny the proposed intentional lethal taking*  
9 *of the pinniped or pinnipeds, including along with*  
10 *the recommendation a description of the specific*  
11 *pinniped individual or individuals, the proposed lo-*  
12 *cation, time, and method of such taking, criteria for*  
13 *evaluating the success of the action, and the duration*  
14 *of the intentional lethal taking authority; and*

15               “(B) *suggest nonlethal alternatives, if available*  
16 *and practicable, including a recommended course of*  
17 *action.*

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

1       “(5) After implementation of an approved application,  
2 the Pinniped-Fishery Interaction Task Force shall evaluate  
3 the effectiveness of the permitted intentional lethal taking  
4 or alternative actions implemented. If implementation was  
5 ineffective in eliminating the problem interaction, the Task  
6 Force shall recommend additional actions. If the implemen-  
7 tation was effective, the Task Force shall so advise the Sec-  
8 retary, and the Secretary shall disband the Task Force.

9       “(d) CONSIDERATIONS.—In considering whether an  
10 application should be approved or denied, the Pinniped-  
11 Fishery Interaction Task Force and the Secretary shall con-  
12 sider—

13           “(1) population trends, feeding habits, the loca-  
14 tion of the pinniped interaction, how and when the  
15 interaction occurs, and how many individual  
16 pinnipeds are involved;

17           “(2) past efforts to nonlethally deter such  
18 pinnipeds, and whether the applicant has dem-  
19 onstrated that no feasible and prudent alternatives  
20 exist and that the applicant has taken all reasonable  
21 nonlethal steps without success;

22           “(3) the extent to which such pinnipeds are caus-  
23 ing undue injury or impact to, or imbalance with,  
24 other species in the ecosystem, including fish popu-  
25 lations; and

1           “(4) the extent to which such pinnipeds are ex-  
2           hibiting behavior that presents an ongoing threat to  
3           public safety.

4           “(e) LIMITATION.—The Secretary shall not approve the  
5           intentional lethal taking of any pinniped from a species  
6           or stock that is—

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

10          “(2) depleted under this Act; or

11          “(3) a strategic stock.

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

14          “(1) The Secretary shall engage in a scientific  
15          investigation to determine whether California sea  
16          lions and Pacific harbor seals—

17                 “(A) are having a significant negative im-  
18                 pact on the recovery of salmonid fishery stocks  
19                 which have been listed as endangered species or  
20                 threatened species under the Endangered Species  
21                 Act of 1973 (16 U.S.C. 1531 et seq.), or which  
22                 the Secretary finds are approaching such endan-  
23                 gered species or threatened species status; or

1           “(B) are having broader impacts on the  
2           coastal ecosystems of Washington, Oregon, and  
3           California.

4           *The Secretary shall conclude this investigation and*  
5           *prepare a report on its results no later than October*  
6           *1, 1995.*

7           “(2) Upon completion of the scientific investiga-  
8           tion required under paragraph (1), the Secretary  
9           shall enter into discussions with the Pacific States  
10          Marine Fisheries Commission, on behalf of the States  
11          of Washington, Oregon, and California, for the pur-  
12          pose of addressing any issues or problems identified  
13          as a result of the scientific investigation, and to de-  
14          velop recommendations to address such issues or prob-  
15          lems. Any recommendations resulting from such dis-  
16          cussions shall be submitted, along with the report, to  
17          the Committee on Merchant Marine and Fisheries of  
18          the House of Representatives and the Committee on  
19          Commerce, Science, and Transportation of the Senate.

20          “(3) The Secretary shall make the report and the  
21          recommendations submitted under paragraph (2)  
22          available to the public for review and comment for a  
23          period of 90 days.

1           “(4) There are authorized to be appropriated to  
2 the Secretary such sums as are necessary to carry out  
3 the provisions of this subsection.

4           “(5) The amounts appropriated under section  
5 308(c) of the Interjurisdictional Fisheries Act of 1986  
6 (16 U.S.C. 4107(c)) and allocated to the Pacific  
7 States Marine Fisheries Commission may be used by  
8 the Commission to participate in discussions with the  
9 Secretary under paragraph (2).

10          “(g) REGIONWIDE PINNIPED-FISHERY INTERACTION  
11 STUDY.—

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

20                   “(A) fish behavior in the presence of preda-  
21 tors generally;

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



1           “(C) whether additional facilities exist, or  
2           could be reasonably developed, that could im-  
3           prove escapement for anadromous fish; and

4           “(D) other issues the Secretary considers  
5           relevant.

6           “(2) Subject to the availability of appropri-  
7           ations, the Secretary may, not later than 18 months  
8           after the commencement of the study under this sub-  
9           section, transmit a report on the results of the study  
10          to the Committee on Commerce, Science, and Trans-  
11          portation of the Senate and the Committee on Mer-  
12          chant Marine and Fisheries of the House of Rep-  
13          resentatives.

14          “(3) The study conducted under this subsection  
15          may not be used by the Secretary as a reason for de-  
16          laying or deferring a determination or consideration  
17          under subsection (c) or (d).

18          “(h) GULF OF MAINE TASK FORCE.—The Secretary  
19          shall establish a Pinniped-Fishery Interaction Task Force  
20          to advise the Secretary on issues or problems regarding  
21          pinnipeds interacting in a dangerous or damaging manner  
22          with aquaculture resources in the Gulf of Maine. No later  
23          than 2 years from the date of enactment of this section, the  
24          Secretary shall after notice and opportunity for public com-  
25          ment submit to the Committee on Merchant Marine and

1 *Fisheries of the House of Representatives and the Committee*  
2 *on Commerce, Science, and Transportation of the Senate*  
3 *a report containing recommended available alternatives to*  
4 *mitigate such interactions.*

5 “(i) *REQUIREMENTS APPLICABLE TO TASK FORCES.*—

6 (1) *Any task force established under this section—*

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

10 “(B) *shall not be subject to the Federal Advisory*  
11 *Committee Act (5 App. U.S.C.).*

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

16 “(j) *GULF OF MAINE HARBOR PORPOISE.*—(1) *Noth-*  
17 *ing in section 117 shall prevent the Secretary from publish-*  
18 *ing a stock assessment for Gulf of Maine harbor porpoise*  
19 *in an expedited fashion.*

20 “(2) *In developing and implementing a take reduction*  
21 *plan under section 118 for Gulf of Maine harbor porpoise,*  
22 *the Secretary shall consider all actions already taken to re-*  
23 *duce incidental mortality and serious injury of such stock,*  
24 *and may, based on the recommendations of the take reduc-*  
25 *tion team for such stock, modify the time period required*

1 *for compliance with section 118(f)(5)(A), but in no case*  
2 *may such modification extend the date of compliance be-*  
3 *yond April 1, 1997.”.*

4 **SEC 24. FURTHER TECHNICAL AND CONFORMING AMEND-**  
5 **MENTS.**

6 (a) *AMENDMENTS RELATING TO DEFINITION OF SEC-*  
7 *RETARY.—*

8 (1) *EXECUTION OF PRIOR AMENDMENTS.—The*  
9 *amendments set forth in section 3004(b) of the Marine*  
10 *Mammal Health and Stranding Response Act (106*  
11 *Stat. 5067)—*

12 (A) *are deemed to have been made by that*  
13 *section to section 3(12) of the Marine Mammal*  
14 *Protection Act of 1972 (16 U.S.C. 1362(12));*  
15 *and*

16 (B) *shall not be considered to have been*  
17 *made by that section to section 3(11) of that Act*  
18 *(16 U.S.C. 1362(11)).*

19 (2) *FURTHER TECHNICAL AND CONFORMING*  
20 *AMENDMENTS.—Section 3(12)(B) of the Marine Mam-*  
21 *mal Protection Act of 1972, as deemed by paragraph*  
22 *(1)(A) of this subsection to have been amended by sec-*  
23 *tion 3004(b) of the Marine Mammal Health and*  
24 *Stranding Response Act (106 Stat. 5067), is further*

1        *amended in subparagraph (B) by striking “in title*  
2        *III” and inserting “in section 118 and title IV”.*

3        *(b) MARINE MAMMAL HEALTH AND STRANDING RE-*  
4        *SPONSE.—The Act (16 U.S.C. 1361 et seq.) is amended—*

5                *(1) by redesignating title III, as added by Public*  
6        *Law 102–587 (106 Stat. 5060), as title IV; and*

7                *(2) by redesignating the sections of that title (16*  
8        *U.S.C. 1421 through 1421h) as sections 401 through*  
9        *409, respectively.*

10        *(c) FURTHER AMENDMENTS TO TITLE IV.—The Act*  
11        *(16 U.S.C. 1361 et seq.) is amended—*

12                *(1) in section 401(b)(3) (as redesignated by this*  
13        *section) by striking “304” and inserting “404”;*

14                *(2) in section 405(b)(1)(A)(i) (as redesignated by*  
15        *this section) by striking “304(b)” and inserting*  
16        *“404(b)”;*

17                *(3) in section 406(a)(2)(A) (as redesignated by*  
18        *this section) by striking “304(b)” and inserting*  
19        *“404(b)”;*

20                *(4) in section 406(a)(2)(B) (as redesignated by*  
21        *this section) by striking “304(c)” and inserting*  
22        *“404(c)”;*

23                *(5) in section 408(1) (as redesignated by this sec-*  
24        *tion)—*

1 (A) by striking “305” and inserting “405”,

2 and

3 (B) by striking “307” and inserting “407”;

4 (6) in section 408(2) (as redesignated by this sec-  
5 tion) by striking “307” and inserting “407”;

6 (7) in section 409(1) (as redesignated by this sec-  
7 tion) by striking “305(a)” and inserting “405(a)”;

8 (8) in section 409(5) (as redesignated by this sec-  
9 tion) by striking “307(a)” and inserting “407(a)”;

10 (9) in section 102(a) (16 U.S.C. 1372(a)) by  
11 striking “title III” and inserting “title IV”;

12 (10) in section 109(h)(1) (16 U.S.C. 1379(h)(1))  
13 by striking “title III” and inserting “title IV”;

14 (11) in section 112(c) (16 U.S.C. 1382(c)) by  
15 striking “or title III” and inserting “or title IV”; and

16 (12) in the table of contents in the first section,  
17 by striking the items relating to the title that is reded-  
18 igned by subsection (b) of this section and the sec-  
19 tions that are redesignated by subsection (b) of this  
20 section and inserting the following:

“TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

“Sec. 401. Establishment of program.

“Sec. 402. Determination; data collection and dissemination.

“Sec. 403. Stranding response agreements.

“Sec. 404. Unusual mortality event response.

“Sec. 405. Unusual mortality event activity funding.

“Sec. 406. Liability.

“Sec. 407. National Marine Mammal Tissue Bank and tissue analysis.

“Sec. 408. Authorization of appropriations.

“Sec. 409. Definitions.”.

1           (d) *CLERICAL AMENDMENTS.*—*The portion of the table*  
 2 *of contents in the first section of the Act relating to title*  
 3 *I is amended by adding at the end the following new items:*

“*Sec. 117. Stock assessments.*”

“*Sec. 118. Taking of marine mammals incidental to commercial fishing operations.*”

“*Sec. 119. Marine mammal cooperative agreements in Alaska.*”

“*Sec. 120. Pacific Coast Task Force; Gulf of Maine.*”

4           (e) *EFFECTIVE DATE.*—*The amendments made by sub-*  
 5 *section (a) shall be effective as if enacted as part of section*  
 6 *3004 of the Marine Mammal Health and Stranding Re-*  
 7 *sponse Act (106 Stat. 5067).*

8    ***SEC. 25. TRANSFER.***

9           *Of amounts appropriated by Public Law 103–139 to*  
 10 *the Department of the Navy for Shipbuilding and Conver-*  
 11 *sion, Navy, the Secretary of the Navy shall transfer*  
 12 *\$8,000,000 not later than May 15, 1994, to the Adminis-*  
 13 *trator of the Maritime Administration for the conversion*  
 14 *of the USNS CHAUVENET to a training ship for the Texas*  
 15 *Maritime Academy’s Training Program.*

Attest:

*Clerk.*

S 1636 EAH—2

S 1636 EAH—3

S 1636 EAH—4

S 1636 EAH—5

S 1636 EAH—6

S 1636 EAH—7