

103D CONGRESS  
2D SESSION

**S. 1636**

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**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.

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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.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Marine Mammal Pro-  
5        tection Act Amendments of 1994”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are to—

3 (1) authorize appropriations to carry out the  
4 Marine Mammal Protection Act of 1972 for the fis-  
5 cal years 1994 through 1999;

6 (2) ensure that the incidental mortality and se-  
7 rious injury of marine mammals in commercial fish-  
8 eries does not cause any species or stock of marine  
9 mammals to be reduced to or maintained at, for sig-  
10 nificant periods of time, a level that is below the  
11 lower limit of its optimum sustainable population  
12 range;

13 (3) prohibit intentional killing of marine mam-  
14 mals during commercial fishing;

15 (4) improve efforts to identify and address the  
16 most significant problems involving incidental mor-  
17 tality and serious injury of marine mammals in com-  
18 mercial fishing operations, considering the popu-  
19 lation size and status of the affected marine mam-  
20 mal stocks and the numbers of marine mammals  
21 that are incidentally killed or injured in commercial  
22 fisheries;

23 (5) ensure that the procedure for authorizing  
24 the incidental taking of marine mammals in com-  
25 mercial fisheries is consistent with the long-term ob-  
26 jective of identifying and taking such steps as may

1 be practicable to reduce incidental mortality and se-  
2 rious injury from commercial fishing operations to  
3 insignificant rates approaching zero; and

4 (6) continue cost-effective programs for reliably  
5 monitoring (A) the levels of incidental mortality and  
6 serious injury of marine mammals in commercial  
7 fisheries and (B) the size and current population  
8 trends of the affected marine mammal stocks.

9 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) DEPARTMENT OF COMMERCE.—Section 7(a) of  
11 the Act entitled “An Act to improve the operation of the  
12 Marine Mammal Protection Act of 1972, and for other  
13 purposes”, approved October 9, 1981 (16 U.S.C.  
14 1384(a)), is amended to read as follows:

15 “(a) DEPARTMENT OF COMMERCE.—(1) There are  
16 authorized to be appropriated to the Department of Com-  
17 merce, for purposes of carrying out such functions and  
18 responsibilities as it may have been given under title I of  
19 the Marine Mammal Protection Act of 1972 (other than  
20 sections 117 and 118 of that Act), \$12,138,000 for fiscal  
21 year 1994, \$12,623,000 for fiscal year 1995, \$13,128,000  
22 for fiscal year 1996, \$13,653,000 for fiscal year 1997,  
23 \$14,200,000 for fiscal year 1998, and \$14,768,000 for fis-  
24 cal year 1999.

1       “(2) There are authorized to be appropriated to the  
2 Department of Commerce, for purposes of carrying out  
3 sections 117 and 118 of the Marine Mammal Protection  
4 Act of 1972, \$15,000,000 for each of the fiscal years 1994  
5 through 1999.”.

6       (b) DEPARTMENT OF THE INTERIOR.—Section 7(b)  
7 of the Act entitled “An Act to improve the operation of  
8 the Marine Mammal Protection Act of 1972, and for other  
9 purposes”, approved October 9, 1981 (16 U.S.C.  
10 1384(b)), is amended to read as follows:

11       “(b) DEPARTMENT OF THE INTERIOR.—There are  
12 authorized to be appropriated to the Department of the  
13 Interior, for purposes of carrying out such functions and  
14 responsibilities as it may have been given under title I of  
15 the Marine Mammal Protection Act of 1972, \$8,000,000  
16 for fiscal year 1994, \$8,600,000 for fiscal year 1995,  
17 \$9,000,000 for fiscal year 1996, \$9,400,000 for fiscal year  
18 1997, \$9,900,000 for fiscal year 1998, and \$10,296,000  
19 for fiscal year 1999.”.

20       (c) MARINE MAMMAL COMMISSION.—Section 7(c) of  
21 the Act entitled “An Act to improve the operation of the  
22 Marine Mammal Protection Act of 1972, and for other  
23 purposes”, approved October 9, 1981 (16 U.S.C. 1407),  
24 is amended to read as follows:

1       “(c) MARINE MAMMAL COMMISSION.—There are au-  
2 thorized to be appropriated to the Marine Mammal Com-  
3 mission, for purposes of carrying out such functions and  
4 responsibilities as it may have been given under title II  
5 of the Marine Mammal Protection Act of 1972,  
6 \$1,350,000 for fiscal year 1994, \$1,400,000 for fiscal year  
7 1995, \$1,450,000 for fiscal year 1996, \$1,500,000 for fis-  
8 cal year 1997, \$1,550,000 for fiscal year 1998, and  
9 \$1,600,000 for fiscal year 1999.”.

10 **SEC. 4. MORATORIUM AND EXCEPTIONS.**

11       (a) IN GENERAL.—In introductory matter of section  
12 101(a) of the Marine Mammal Protection Act of 1972 (16  
13 U.S.C. 1371(a)) is amended—

14             (1) by inserting “, harassment,” immediately  
15       before “and importation”; and

16             (2) by inserting “or harassment” immediately  
17       after “for the taking”.

18       (b) PERMITS FOR RESEARCH, DISPLAY, ENHANCING  
19 SURVIVAL OR RECOVERY.—Section 101(a)(1) of the Ma-  
20 rine Mammal Protection Act of 1972 (16 U.S.C.  
21 1371(a)(1)) is amended to read as follows:

22             “(1) Consistent with the provisions of section  
23       104, permits may be issued by the Secretary for the  
24       taking, harassment, and importation of marine  
25       mammals for purposes of scientific research, public

1 display, or enhancing the survival or recovery of a  
2 species or stock. Such permits may be issued if the  
3 taking, harassment, or importation proposed to be  
4 made is first reviewed by the Marine Mammal Com-  
5 mission and the Committee of Scientific Advisors on  
6 Marine Mammals established under title II. The  
7 Commission and the Committee shall recommend  
8 any proposed taking, harassment, or importation  
9 which is consistent with the purpose and policies of  
10 section 2. The Secretary shall, if the Secretary  
11 grants approval for importation, issue to the im-  
12 porter concerned a certificate to that effect which  
13 shall be in such form as the Secretary of Treasury  
14 prescribes and such importation may be made upon  
15 presentation of the certificate to the customs officer  
16 concerned.”.

17 (c) AUTHORIZATION FOR INCIDENTAL TAKING DUR-  
18 ING COMMERCIAL FISHERIES.—The first sentence of sec-  
19 tion 101(a)(2) of the Marine Mammal Protection Act of  
20 1972 (16 U.S.C. 1371(a)(2)) is amended by inserting  
21 immediately before the period at the end the following: “,  
22 or in lieu of such permits, authorizations may be granted  
23 therefor under section 118, subject to regulations pre-  
24 scribed under that section by the Secretary without regard  
25 to section 103.”.

1 (d) TAKING OR IMPORTATION FROM DEPLETED  
2 STOCKS.—(1) Section 101(a)(3)(A) of the Marine Mam-  
3 mal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(A)) is  
4 amended by inserting “, except as provided in paragraph  
5 (6),” after “that” in the second proviso.

6 (2) Section 101(a)(3)(B) of the Marine Mammal Pro-  
7 tection Act of 1972 (16 U.S.C. 1371(a)(3)(B)) is amended  
8 by inserting “, or as provided for under paragraph (5) of  
9 this subsection,” immediately after “subsection,”.

10 (e) AUTHORIZATION FOR HARASSMENT OF SMALL  
11 NUMBERS OF MARINE MAMMALS.—Section 101(a)(5) of  
12 the Marine Mammal Protection Act of 1972 (16 U.S.C.  
13 1371(a)(5)) is amended—

14 (1) in subparagraph (A), by inserting “or har-  
15 assment” immediately after “taking” each place it  
16 appears; and

17 (2) by adding at the end the following new sub-  
18 paragraph:

19 “(D)(i) Upon request therefor by citizens of the  
20 United States who engage in a specified activity  
21 (other than commercial fishing) within a specific ge-  
22 ographic region, the Secretary shall authorize, for  
23 periods of not more than one year, subject to such  
24 conditions as the Secretary may specify, the inciden-  
25 tal, but not intentional, harassment of small num-



1       bers of marine mammals of a species or population  
2       stock by such citizens while engaging in that activity  
3       within that region if the Secretary finds that such  
4       harassment during each period concerned—

5               “(I) will have a negligible impact on such  
6       species or stock; and

7               “(II) will not have an unmitigable adverse  
8       impact on the availability of such species or  
9       stock for taking for subsistence uses pursuant  
10       to subsection (b), or section 109(f), or pursuant  
11       to a cooperative agreement under section 120.

12       “(ii) The authorization for such activity shall  
13       prescribe, where applicable—

14               “(I) permissible methods of taking pursu-  
15       ant to such activity, and other means of  
16       effecting the least practicable impact on such  
17       species or stock and its habitat, paying particu-  
18       lar attention to rookeries, mating grounds, and  
19       areas of similar significance, and on the avail-  
20       ability of such species or stock for subsistence  
21       uses pursuant to subsection (b), or section  
22       109(f), or pursuant to a cooperative agreement  
23       under section 120;

24               “(II) the measures that the Secretary de-  
25       termines are necessary to ensure no unmitigable

1 adverse impact on the availability of the species  
2 or stock for subsistence uses pursuant to sub-  
3 section (b), or section 109(f), or pursuant to a  
4 cooperative agreement under section 120; and

5 “(III) requirements pertaining to the mon-  
6 itoring and reporting of such taking, including  
7 requirements for the independent peer review of  
8 proposed monitoring plans or other research  
9 proposals where the proposed activity may af-  
10 fect the availability of a species or stock for  
11 taking for subsistence uses pursuant to sub-  
12 section (b), or section 109(f), or pursuant to a  
13 cooperative agreement under section 120.

14 “(iii) The Secretary shall publish a proposed  
15 authorization not later than 45 days after receiving  
16 an application under this subparagraph and request  
17 public comment through notice in the Federal Reg-  
18 ister, newspapers of general circulation, and appro-  
19 priate electronic media and to all locally affected  
20 communities for a period of 30 days after publica-  
21 tion. Not later than 45 days after the close of the  
22 public comment period, if the Secretary makes the  
23 findings set forth in clause (i), the Secretary shall  
24 issue an authorization with appropriate conditions to  
25 meet the requirements of clause (ii).

1           “(iv) The Secretary shall modify, suspend, or  
2           revoke an authorization if the Secretary finds that  
3           the provisions of clauses (i) and (ii) are not being  
4           met.

5           “(v) A person conducting an activity for which  
6           an authorization has been granted under this sub-  
7           paragraph shall not be subject to the penalties of  
8           this Act for harassment that occurs in compliance  
9           with such authorization.”.

10          (f) PERMITS CONCERNING ENDANGERED OR  
11 THREATENED MARINE MAMMAL STOCKS.—Section  
12 101(a)(5) of the Marine Mammal Protection Act of 1972  
13 (16 U.S.C. 1371(a)(5)), as amended by this Act, is further  
14 amended by adding at the end the following new subpara-  
15 graph:

16           “(E)(i) During any period of three consecutive  
17           years, the Secretary shall allow the incidental, but  
18           not the intentional, taking or harassment by persons  
19           using vessels of the United States or vessels which  
20           have valid fishing permits issued by the Secretary in  
21           accordance with section 204(b) of the Magnuson  
22           Fishery Conservation and Management Act (16  
23           U.S.C. 1824(b)), while engaging in commercial fish-  
24           ing operations, of marine mammals from a species  
25           or stock designated as depleted because of its listing

1 as an endangered or threatened species under the  
2 Endangered Species Act of 1973 (16 U.S.C. 1531 et  
3 seq.) if the Secretary, after notice and opportunity  
4 for public comment, determines that—

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

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

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

19 “(ii) Upon a determination by the Secretary  
20 that the requirements of clause (i) have been met,  
21 the Secretary shall publish in the Federal Register  
22 a list of those fisheries for which such determination  
23 was made, and, for vessels required to register under  
24 section 118, shall issue an appropriate permit for  
25 each authorization granted under such section to

1 vessels to which this paragraph applies. Vessels en-  
2 gaged in a fishery included in the notice published  
3 by the Secretary under this clause which are not re-  
4 quired to register under section 118 shall not be  
5 subject to the penalties of this Act for the incidental  
6 taking of marine mammals to which this paragraph  
7 applies, so long as the owner or master of such ves-  
8 sel reports any incidental mortality or injury of such  
9 marine mammals to the Secretary in accordance  
10 with section 118.

11 “(iii) If, during the course of the commercial  
12 fishing season, the Secretary determines that the  
13 level of incidental mortality or serious injury from  
14 commercial fisheries for which a determination was  
15 made under clause (i) has resulted or is likely to re-  
16 sult in an impact that is more than negligible on the  
17 endangered or threatened species or stock, the Sec-  
18 retary shall use the emergency authority granted  
19 under section 118 to protect such species or stock,  
20 and may modify any permit granted under this para-  
21 graph as necessary.

22 “(iv) The Secretary may suspend for a time  
23 certain or revoke a permit granted under this sub-  
24 paragraph only if the Secretary determines that the  
25 conditions or limitations set forth in such permit are

1 not being substantially complied with. The Secretary  
2 may amend or modify, after notice and opportunity  
3 for public comment, the list of fisheries published  
4 under clause (ii) whenever the Secretary determines  
5 there has been a substantial change in the informa-  
6 tion or conditions used to determine such list.

7 “(v) Sections 103 and 104 shall not apply to  
8 the taking of marine mammals under the authority  
9 of this subparagraph.”.

10 (g) IMPORTATION OF CERTAIN PRODUCTS.—Section  
11 101(a) of the Marine Mammal Protection Act of 1972 (16  
12 U.S.C. 1371(a)) is amended by adding at the end the fol-  
13 lowing new paragraph:

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

16 “(i) was owned and exported by any person in  
17 conjunction with travel outside the United States;

18 “(ii) was acquired outside of the United States  
19 as part of a cultural exchange by an Indian, Aleut,  
20 or Eskimo residing in Alaska; or

21 “(iii) is owned by a Native inhabitant of Russia,  
22 Canada, or Greenland and is imported for non-  
23 commercial purposes in conjunction with travel with-  
24 in the United States or as part of a cultural ex-

1 change with an Indian, Aleut, or Eskimo residing in  
2 Alaska.

3 “(B) For the purposes of this paragraph, the term—

4 “(i) ‘Native inhabitant of Russia, Canada, or  
5 Greenland’ means a person residing in Russia, Can-  
6 ada, or Greenland who is related by blood, is a mem-  
7 ber of the same clan or ethnological grouping, or  
8 shares a common heritage with an Indian, Aleut, or  
9 Eskimo residing in Alaska; and

10 “(ii) ‘cultural exchange’ means the sharing or  
11 exchange of ideas, information, gifts, clothing, or  
12 handicrafts between an Indian, Aleut, or Eskimo re-  
13 siding in Alaska and a Native inhabitant of Russia,  
14 Canada, or Greenland, including rendering of raw  
15 marine mammal parts as part of such exchange into  
16 clothing or handicrafts through carving, painting,  
17 sewing, or decorating.”.

18 (h) ACTIONS AFFECTING SECTION 101(b).—Section  
19 101(b) of the Marine Mammal Protection Act of 1972 (16  
20 U.S.C. 1371(b)) is amended by adding at the end the fol-  
21 lowing new sentence: “In promulgating any regulation or  
22 making any assessment pursuant to a hearing or proceed-  
23 ing under this subsection or section 117(b)(2), or in mak-  
24 ing any determination or finding under this Act that af-  
25 fects stocks or persons to which this subsection applies,

1 the Secretary shall be responsible for demonstrating that  
2 such regulation, assessment, determination, or finding is  
3 supported by substantial evidence on the basis of the  
4 record as a whole. The preceding sentence shall only be  
5 applicable in an action brought by one or more Alaska Na-  
6 tive organizations representing persons to which this sub-  
7 section applies.”.

8 (i) TAKING IN DEFENSE OF SELF OR ANOTHER PER-  
9 SON.—Section 101(c) of the Marine Mammal Protection  
10 Act of 1972 (16 U.S.C. 1371(c)) is amended to read as  
11 follows:

12 “(c) It shall not be a violation of this Act to take  
13 a marine mammal if—

14 “(1) such taking is imminently necessary in  
15 self-defense or to save the life of a person in imme-  
16 diate danger; and

17 “(2) such taking is reported to the Secretary  
18 within 48 hours and, whenever feasible, any carcass  
19 is made available to the Secretary intact.”.

20 **SEC. 5. PERMITS.**

21 (a) PROHIBITIONS.—Section 102(a) of the Marine  
22 Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is  
23 amended—

24 (1) in paragraph (2)(B), by striking “for any  
25 purpose in any way connected with the taking or im-



1 portation of” and inserting in lieu thereof “to take  
2 or import”; and

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

5 “(4) for any person to transport, purchase, sell,  
6 export, or offer to purchase, sell, or export any ma-  
7 rine mammal or marine mammal product—

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

10 “(B) for any purpose other than public  
11 display, scientific research, or enhancing the  
12 survival of a species or stock as provided for  
13 under section 104(c); and”.

14 (b) PERMITS.—(1) Section 104(a) of the Marine  
15 Mammal Protection Act of 1972 (16 U.S.C. 1374(a)) is  
16 amended—

17 (A) by inserting “, harassment,” immediately  
18 after “taking”; and

19 (B) by inserting “except for the incidental tak-  
20 ing of marine mammals during the course of com-  
21 mercial fishing operations” immediately before the  
22 period at the end.

23 (2) Section 104(c)(1) of the Marine Mammal Protec-  
24 tion Act of 1972 (16 U.S.C. 1374(c)(1)) is amended by  
25 striking “and after” in the first sentence.

1       (3) Paragraph (2) of section 104(c) of the Marine  
2 Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is  
3 amended to read as follows:

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

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

12           “(ii) is registered or holds a license issued  
13 under the Animal Welfare Act (7 U.S.C. 2131  
14 et seq.); and

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

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

1           “(i) take, import, purchase, offer to pur-  
2 chase, possess, or transport the marine mam-  
3 mal 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  
16 the survival or recovery of a species or  
17 stock, to a person that meets the require-  
18 ments of 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 author-  
22 ity of subparagraph (B) shall have the rights and re-  
23 sponsibilities described in subparagraph (B) with re-  
24 spect to the marine mammal without obtaining any

1 additional permit or authorization under this Act.

2 Such responsibilities shall—

3 “(i) for the purpose of public display, be  
4 limited to the responsibility to meet the require-  
5 ments of clauses (i), (ii), and (iii) of subpara-  
6 graph (A);

7 “(ii) for the purpose of scientific research,  
8 be limited to the responsibility to meet the re-  
9 quirements of paragraph (3); and

10 “(iii) for the purpose of enhancing the sur-  
11 vival or recovery of a species or stock, be lim-  
12 ited to the responsibility to meet the require-  
13 ments of paragraph (4).

14 “(D) If the Secretary—

15 “(i) finds, in concurrence with the Sec-  
16 retary of Agriculture, that a person that holds  
17 a permit under this paragraph for a marine  
18 mammal, or a person exercising rights under  
19 subparagraph (C), no longer meets the require-  
20 ments of subparagraph (A)(ii) and is not rea-  
21 sonably likely to meet those requirements in the  
22 near future, or

23 “(ii) finds that a person that holds a per-  
24 mit under this paragraph for a marine mam-  
25 mal, or a person exercising rights under sub-

1 paragraph (C), no longer meets the require-  
2 ments of subparagraph (A) (i) or (iii) and is  
3 not reasonably likely to meet those require-  
4 ments in the near future,

5 the Secretary may revoke the permit in accordance  
6 with section 104(e), seize the marine mammal, or  
7 cooperate with other persons authorized to hold ma-  
8 rine mammals under this Act for disposition of the  
9 marine mammal. The Secretary may recover from  
10 the person expenses incurred by the Secretary for  
11 that seizure.

12 “(E) No marine mammal held pursuant to a  
13 permit issued under subparagraph (A) may be sold,  
14 purchased, exported, or transported unless the Sec-  
15 retary is notified of such action no later than 15  
16 days before such action, and such action is for pur-  
17 poses of public display, scientific research, or en-  
18 hancing the survival or recovery of a species or  
19 stock. The Secretary may only require the notifica-  
20 tion to include the information required for the in-  
21 ventory established under paragraph (10).”.

22 (4) Paragraph (3) of section 104(c) of the Marine  
23 Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is  
24 amended to read as follows:

1           “(3)(A) A permit may be issued, for scientific  
2           research purposes that are likely to result in the tak-  
3           ing or harassment of a marine mammal, to an appli-  
4           cant who submits information with the permit appli-  
5           cation indicating that the taking or harassment is  
6           required to further a bona fide scientific purpose.  
7           The Secretary is authorized to issue permits under  
8           this paragraph prior to the end of the mandatory  
9           public review and comment period if delaying the is-  
10          suaance of such permit could result in harm to a spe-  
11          cies, stock, or individual marine mammal, or result  
12          in loss of unique research opportunities.

13           “(B) No permit issued for purposes of scientific  
14          research under subparagraph (A) shall authorize the  
15          lethal taking of a marine mammal unless the appli-  
16          cant submits documentation to the Secretary that a  
17          nonlethal method of conducting the research is not  
18          feasible. The Secretary shall not issue a permit for  
19          research which involves the lethal taking of a marine  
20          mammal from a species or stock designated as de-  
21          pleted, unless the Secretary determines that the re-  
22          sults of such research will directly benefit that spe-  
23          cies or stock, or that such research fulfills a criti-  
24          cally important research need.

1           “(C) Not later than 60 days after the date of  
2           enactment of the Marine Mammal Protection Act  
3           Amendments of 1994, the Secretary shall grant a  
4           general authorization and shall issue implementing  
5           regulations allowing bona fide scientific research  
6           that is not likely to result in the taking or harass-  
7           ment of a marine mammal. Such authorization shall  
8           apply to persons who submit, at least 60 days prior  
9           to commencement of the research, a letter of intent  
10          to the Secretary specifying—

11                   “(i) the species or stock of marine mam-  
12                   mal on which the research will be conducted;

13                   “(ii) the geographic location of the re-  
14                   search;

15                   “(iii) the period of time over which the re-  
16                   search will be conducted;

17                   “(iv) the purpose of the research, including  
18                   a description of how the definition of bona fide  
19                   research as established by the Secretary under  
20                   this Act would apply; and

21                   “(v) the methods used to conduct the re-  
22                   search.

23          Not later than 30 days after receipt of a letter of  
24          intent to conduct scientific research under the gen-  
25          eral authorization, the Secretary may notify the ap-

1       plicant that the proposed research is likely to result  
2       in the taking or harassment of a marine mammal,  
3       and that the provisions of subparagraph (A) apply.  
4       If no such notification is received, the proposed re-  
5       search shall be covered under the general authoriza-  
6       tion.”.

7       (5) Section 104(c) of the Marine Mammal Protection  
8       Act of 1972 (16 U.S.C. 1374(c)) is amended by adding  
9       at the end the following new paragraphs:

10           “(7) Upon request by a person for a permit  
11           under paragraph (2), (3), or (4) for a marine mam-  
12           mal which is in the possession of any person author-  
13           ized to possess it under this Act and which is deter-  
14           mined under guidance under section 402(a) not to  
15           be releasable to the wild, the Secretary shall issue  
16           the permit to the person requesting the permit if  
17           that person—

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

21                   “(B) meets the requirements of paragraph  
22                   (3), in the case of a request for a permit under  
23                   that paragraph; or



1           “(C) meets the requirements of paragraph  
2           (4), in the case of a request for a permit under  
3           that paragraph.

4           “(8)(A) No additional permit or authorization  
5           shall be required to possess, sell, purchase, trans-  
6           port, export, or offer to sell or purchase the progeny  
7           of marine mammals taken or imported under this  
8           subsection, if such possession, sale, purchase, trans-  
9           port, export, or offer to sell or purchase is—

10           “(i) for the purpose of public display, and  
11           by or to, respectively, a person which meets the  
12           requirements of clauses (i), (ii), and (iii) of  
13           paragraph (2)(A);

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

17           “(iii) for the purpose of enhancing the sur-  
18           vival or recovery of a species or stock, and by  
19           or to, respectively, a person which meets the re-  
20           quirements of paragraph (4).

21           “(B)(i) A person which has possession of a ma-  
22           rine mammal pursuant to a permit under paragraph  
23           (2), or a person exercising rights under paragraph  
24           (2)(C), that gives birth to progeny shall—

1           “(I) notify the Secretary of the birth of  
2 such progeny within 30 days after the date of  
3 birth; and

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

7           “(ii) The Secretary may only require notifica-  
8 tion under clause (i) to include the information re-  
9 quired for the inventory established under paragraph  
10 (10).

11           “(C) Any progeny of a marine mammal born in  
12 captivity before the date of enactment of the Marine  
13 Mammal Protection Act Amendments of 1994 and  
14 held in captivity for the purpose of public display  
15 shall be treated as though born after that date of  
16 enactment.

17           “(9) No marine mammal may be exported for  
18 the purpose of public display, scientific research, or  
19 enhancing the survival or recovery of a species or  
20 stock unless the receiving facility meets standards  
21 that are comparable to the requirements that a per-  
22 son must meet to receive a permit under this sub-  
23 section for that purpose.

24           “(10) The Secretary shall establish and main-  
25 tain an inventory of all marine mammals possessed

1 pursuant to permits issued under paragraph (2) and  
2 all progeny of such marine mammals. The inventory  
3 shall contain, for each marine mammal, only the fol-  
4 lowing information, which shall be provided by a per-  
5 son holding a marine mammal under this Act:

6 “(A) The name of the marine mammal or  
7 other identification.

8 “(B) The sex of the marine mammal.

9 “(C) The estimated or actual birth date of  
10 the marine mammal.

11 “(D) The date of acquisition or disposition  
12 of the marine mammal by the permit holder.

13 “(E) The source from whom the marine  
14 mammal was acquired, including the location of  
15 the take from the wild, if applicable.

16 “(F) If the marine mammal is transferred,  
17 the name of the recipient.

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

20 “(H) The date of death of the marine  
21 mammal and the cause of death when deter-  
22 mined.”.

23 (c) EXISTING PERMITS.—Any permit issued under  
24 section 104(c)(2) of the Marine Mammal Protection Act  
25 of 1972 (16 U.S.C. 1374(c)(2)) before the date of the en-

1 actment of this Act is hereby modified to be consistent  
2 with that section, as amended by this Act.

3 **SEC. 6. CONSERVATION PLANS.**

4 Section 115(b) of the Marine Mammal Protection Act  
5 of 1972 (16 U.S.C. 1383b(b)) is amended by adding at  
6 the end the following new paragraph:

7 “(4) If the Secretary determines that an incidental  
8 take reduction plan is necessary to reduce the incidental  
9 taking of marine mammals in the course of commercial  
10 fishing operations from a stock specified under section  
11 117(a)(7), or for stocks which interact with a commercial  
12 fishery for which the Secretary has made a determination  
13 under section 118(b)(1), any conservation plan prepared  
14 under this subsection for such stock shall incorporate the  
15 incidental take reduction plan required under section 118  
16 for such stock.”.

17 **SEC. 7. STOCK ASSESSMENTS.**

18 (a) IN GENERAL.—Title I of the Marine Mammal  
19 Protection Act of 1972 (16 U.S.C. 1371 et seq.) is amend-  
20 ed by adding at the end the following new section:

21 **“SEC. 117. STOCK ASSESSMENTS.**

22 “(a) IN GENERAL.—Not later than August 1, 1994,  
23 the Secretary shall, after consultation with the appropriate  
24 regional scientific working group established under sub-  
25 section (d), prepare a draft stock assessment for each ma-

1 rine mammal stock which occurs in waters under the juris-  
2 diction of the United States. Each draft stock assessment,  
3 based on the best scientific information available, shall—

4           “(1) describe the geographic range of the af-  
5 fected stock, including any seasonal or temporal var-  
6 iation in such range;

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

12           “(3) estimate the annual anthropogenic mortal-  
13 ity and serious injury of the stock and, for a stock  
14 specified under paragraph (7), other factors that  
15 may be causing a decline or impeding recovery of the  
16 stock, including effects on marine mammal habitat  
17 and prey;

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

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

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

1           “(C) seasonal or area differences in such  
2 incidental mortality or serious injury; and

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

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

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

14           “(B)(i) meets the criteria described under  
15 paragraph (7);

16           “(ii) is listed as threatened or endangered  
17 under the Endangered Species Act of 1973 (16  
18 U.S.C. 1531 et seq.), or designated as depleted  
19 under this Act; or

20           “(iii) meets the criteria specified in both  
21 clauses (i) and (ii);

22           “(6) estimate the calculated removal level for  
23 the stock, describing the information used to cal-  
24 culate it, including the recovery factor; and

1           “(7) specify whether the Secretary has reason  
2           to believe that the level of anthropogenic mortality  
3           and serious injury for the stock is such that it may  
4           cause the stock to be reduced or maintained below  
5           its optimum sustainable population.

6           “(b) PUBLIC COMMENT.—(1) The Secretary shall  
7           publish in the Federal Register a notice of the availability  
8           of a draft stock assessment or any revision thereof and  
9           provide an opportunity for public review and comment  
10          during a period of 90 days. Such notice shall include a  
11          summary of the assessment and a list of the sources of  
12          information or published reports upon which the assess-  
13          ment is based.

14          “(2) Subsequent to the notice of availability required  
15          under paragraph (1), if requested by a person to which  
16          section 101(b) applies, the Secretary shall conduct a pro-  
17          ceeding on the record prior to publishing a final stock as-  
18          sessment or any revision thereof for any stock subject to  
19          taking under section 101(b).

20          “(3) After consideration of the best scientific infor-  
21          mation available, the advice of the appropriate regional  
22          scientific review group established under subsection (d),  
23          and the comments of the general public, the Secretary  
24          shall publish in the Federal Register a notice of availabil-

1 ity and a summary of the final stock assessment or any  
2 revision thereof, not later than 90 days after—

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

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

7 “(c) REVIEW AND REVISION.—(1) The Secretary, in  
8 consultation with the appropriate regional scientific review  
9 group established under subsection (d), shall review stock  
10 assessments under this section—

11 “(A) annually for stocks specified under sub-  
12 section (a)(7) or for which substantial new informa-  
13 tion is available; and

14 “(B) at least once every 3 years for all other  
15 marine mammal stocks.

16 “(2) If the review under paragraph (1) indicates that  
17 the status of the stock has changed or can be more accu-  
18 rately determined, the Secretary shall revise the stock as-  
19 sessment in accordance with subsection (b).

20 “(d) REGIONAL SCIENTIFIC REVIEW GROUPS.—(1)  
21 Not later than 60 days after the date of enactment of this  
22 section, the Secretary of Commerce shall, in consultation  
23 with the Secretary of the Interior (with respect to marine  
24 mammals under that Secretary’s jurisdiction), the Gov-  
25 ernors of affected adjacent coastal States, regional fishery



1 and wildlife management authorities, Alaska Native orga-  
2 nizations and Indian tribes, environmental and fishery  
3 groups, establish at least two independent regional sci-  
4 entific review groups consisting of individuals with exper-  
5 tise in marine mammal biology and ecology, population dy-  
6 namics and modeling, commercial fishing technology and  
7 practices, and stocks taken under section 101(b). The Sec-  
8 retary of Commerce shall, to the maximum extent prac-  
9 ticable, attempt to achieve a balanced representation of  
10 viewpoints among the individuals on each regional sci-  
11 entific working group. The regional scientific review  
12 groups shall advise the Secretary on all aspects of the  
13 stock assessments required under this section.

14       “(2) The regional scientific review groups established  
15 under this section shall not be subject to the Federal Advi-  
16 sory Committee Act (5 App. U.S.C.).

17       “(3) Members of the regional scientific review groups  
18 shall serve without compensation, but may be reimbursed  
19 by the Secretary, upon request, for reasonable travel costs  
20 and expenses incurred in performing their duties as mem-  
21 bers of such regional scientific review groups.

22       “(4) The Secretary may appoint or reappoint individ-  
23 uals to the regional scientific working groups under para-  
24 graph (1) as needed.

1       “(e) EFFECT ON SECTION 101(b).—This section  
2 shall not affect or otherwise modify the provisions of sec-  
3 tion 101(b).”.

4       **SEC. 8. TAKING OF MARINE MAMMALS INCIDENTAL TO**  
5                               **COMMERCIAL FISHING OPERATIONS.**

6       Title I of the Marine Mammal Protection Act of 1972  
7 (16 U.S.C. 1371 et seq.), as amended by this Act, is fur-  
8 ther amended by adding at the end the following new sec-  
9 tion:

10       **“SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO**  
11                               **COMMERCIAL FISHING OPERATIONS.**

12       “(a) IN GENERAL.—(1) Effective on the date of en-  
13 actment of this section, and except as provided in section  
14 114 and in paragraphs (2), (3), and (4) of this section,  
15 the provisions of this section shall govern the incidental  
16 taking of marine mammals in the course of commercial  
17 fishing operations by persons using vessels of the United  
18 States or vessels which have valid fishing permits issued  
19 by the Secretary in accordance with section 204(b) of the  
20 Magnuson Fishery Conservation and Management Act (16  
21 U.S.C. 1824(b)). In any event it shall be the immediate  
22 goal that the incidental mortality or serious injury of ma-  
23 rine mammals occurring in the course of commercial fish-  
24 ing operations be reduced to insignificant levels approach-  
25 ing a zero mortality and serious injury rate.

1       “(2) In the case of the incidental taking of marine  
2 mammals from species or stocks designated under this Act  
3 as depleted on the basis of their listing as threatened or  
4 endangered species under the Endangered Species Act of  
5 1973 (16 U.S.C. 1531 et seq.), both this section and sec-  
6 tion 101(a)(5)(E) of this Act shall apply.

7       “(3) Sections 104(h) and title III, and not this sec-  
8 tion, shall govern the taking of marine mammals in the  
9 course of commercial purse seine fishing for yellowfin tuna  
10 in the eastern tropical Pacific Ocean.

11       “(4) This section shall not govern the taking of ma-  
12 rine mammals from the California population of sea otters  
13 to which the Act of November 7, 1986 (Public Law 99-  
14 625; 100 Stat. 3500) applies.

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

18       “(6) Except as provided in section 101(c)(2), the in-  
19 tentional killing of any marine mammal in the course of  
20 commercial fishing operations is prohibited.

21       “(b) INCIDENTAL TAKE REDUCTION PLANS.—(1)  
22 The Secretary shall develop and implement an incidental  
23 take reduction plan designed to assist in the recovery of  
24 each marine mammal stock that is specified under section  
25 117(a)(7) which interacts with a commercial fishery listed

1 under subsection (f)(1)(A) (i) or (ii), and may develop and  
2 implement such a plan for any other marine mammal  
3 stocks which interact with a commercial fishery listed  
4 under subsection (f)(1)(A)(i) which the Secretary deter-  
5 mines, after notice and opportunity for public comment,  
6 has an excessive rate of mortality and serious injury  
7 across a number of such marine mammal stocks.

8       “(2) If there is insufficient funding available to de-  
9 velop and implement an incidental take reduction plan for  
10 all such stocks that interact with commercial fisheries list-  
11 ed under subsection (f)(1)(A) (i) or (ii), the Secretary  
12 shall give highest priority to the development and imple-  
13 mentation of incidental take reduction plans for species  
14 or stocks whose level of incidental mortality and serious  
15 injury exceeds the calculated removal level, those that have  
16 a small population size, and those which are declining  
17 most rapidly.

18       “(3) Each incidental take reduction plan developed  
19 under this subsection for a stock shall include the follow-  
20 ing:

21               “(A) A review and evaluation of the information  
22 contained in the stock assessment published under  
23 section 117 and any substantial new information  
24 that may be available.

1           “(B) An evaluation and estimate of the total  
2           number and percentage of animals from the stock  
3           that are being killed or seriously injured each year  
4           as a result of commercial fishing activities.

5           “(C) Proposed management measures and vol-  
6           untary actions for the reduction of incidental mortal-  
7           ity and serious injury of marine mammals in com-  
8           mercial fisheries which interact with such stock.

9           “(D) A long-term strategy to reduce, to insig-  
10          nificant levels approaching a zero rate within 10  
11          years, the incidental mortality and serious injury of  
12          marine mammals from the stock in the course of  
13          commercial fishing operations.

14          “(4)(A) Each incidental take reduction plan shall in-  
15          clude projected dates for achieving the objectives of the  
16          plan.

17          “(B) For any stock in which incidental mortality and  
18          serious injury from commercial fisheries exceeds the cal-  
19          culated removal level established under section 117, the  
20          plan shall include measures the Secretary expects will re-  
21          duce, within 6 months after commencement of operations  
22          by commercial fisheries that interact with that stock, such  
23          mortality and serious injury to a level below the calculated  
24          removal level.

1       “(C) For any stock in which anthropogenic mortality  
2 and serious injury exceeds the calculated removal level,  
3 other than a stock to which subparagraph (B) applies, the  
4 plan shall include measures the Secretary expects will re-  
5 duce, to the maximum extent practicable within 6 months  
6 after commencement of operations by commercial fisheries  
7 that interact with that stock, the incidental mortality and  
8 serious injury by such commercial fisheries from that  
9 stock. For purposes of this subparagraph, the term ‘maxi-  
10 mum extent practicable’ means to the lowest level that is  
11 feasible for such fisheries within the 6-month period.

12       “(5)(A) At the earliest possible time (not later than  
13 60 days) after the Secretary issues a final stock assess-  
14 ment for a stock specified under section 117(a)(7), the  
15 Secretary shall, and for stocks that interact with a fishery  
16 listed under subsection (f)(1)(A)(i) for which the Sec-  
17 retary has made a determination under paragraph (1), the  
18 Secretary may—

19               “(i) establish an incidental take reduction team  
20 for such stock and appoint the members of such  
21 team in accordance with subparagraph (C); and

22               “(ii) publish in the Federal Register a notice of  
23 the team’s establishment, the names of the team’s  
24 appointed members, the full geographic range of  
25 such stock, and a list of all commercial fisheries that

1        cause incidental mortality and serious injury of ma-  
2        rine mammals from such stock.

3        “(B) The Secretary may charge an incidental take  
4        reduction team to address a stock that extends over one  
5        or more regions or fisheries, or multiple stocks within a  
6        region or fishery, if the Secretary determines that doing  
7        so would facilitate the development and implementation of  
8        plans required under this subsection.

9        “(C) Members of incidental take reduction teams  
10       shall be individuals knowledgeable and experienced regard-  
11       ing measures to conserve such stocks and to reduce inci-  
12       dental mortality and serious injury to such stock from  
13       commercial fishing operations. Members may include rep-  
14       resentatives of Federal and State agencies, Councils,  
15       interstate fishery commissions, academic and scientific or-  
16       ganizations, environmental and fishery groups, Alaska Na-  
17       tive organizations and Indian tribes, and others as the  
18       Secretary considers appropriate. Incidental take reduction  
19       teams shall include a representative of each affected Coun-  
20       cil and State, and shall, to the maximum extent prac-  
21       ticable, include an equitable balance among representa-  
22       tives of government, resource user interests, and public in-  
23       terest groups. Incidental take reduction teams shall not  
24       be subject to the Federal Advisory Committee Act (5 App.

1 U.S.C.) but their meetings shall be open to the public,  
2 after timely notice of the time and place of such meetings.

3 “(D) Members of incidental take reduction teams  
4 shall serve without compensation, but may be reimbursed  
5 by the Secretary, upon request, for reasonable travel costs  
6 and expenses incurred in performing their duties as mem-  
7 bers of the team.

8 “(6) Where the anthropogenic mortality and serious  
9 injury from a stock specified under section 117(a)(7) is  
10 estimated to be equal to or greater than the calculated  
11 removal level established under section 117 for such stock  
12 and such stock interacts with a fishery listed under sub-  
13 section (f)(1)(A) (i) or (ii), the following procedures shall  
14 apply in the development of the incidental take reduction  
15 plan for the stock:

16 “(A)(i) Not later than 6 months after the date  
17 of establishment of an incidental take reduction  
18 team for the stock, the team shall submit a draft in-  
19 cidental take reduction plan for such stock to the  
20 Secretary, consistent with the other provisions of  
21 this section.

22 “(ii) Such draft incidental take reduction plan  
23 shall be developed by consensus. In the event con-  
24 sensus cannot be reached, the team shall advise the  
25 Secretary in writing on the range of possibilities con-



1       sidered by the team, and the views of both the ma-  
2       jority and minority.

3           “(B)(i) The Secretary shall take the draft inci-  
4       dental take reduction plan into consideration and,  
5       not later than 60 days after the submission of the  
6       draft plan by the team, the Secretary shall publish  
7       in the Federal Register the plan proposed by the  
8       team, any changes proposed by the Secretary with  
9       an explanation of the reasons therefor, and proposed  
10      regulations to implement such plan, for public review  
11      and comment during a period of not to exceed 90  
12      days.

13          “(ii) In the event that the incidental take re-  
14      duction team does not submit a draft plan to the  
15      Secretary within 6 months, the Secretary shall, not  
16      later than 8 months after the establishment of the  
17      team, publish in the Federal Register a proposed in-  
18      cidental take reduction plan and implementing regu-  
19      lations, for public review and comment during a pe-  
20      riod of not to exceed 90 days.

21          “(C) Not later than 90 days after the close of  
22      the comment period required under subparagraph  
23      (B), the Secretary shall issue a final incidental take  
24      reduction plan and implementing regulations, con-  
25      sistent with the other provisions of this section.

1           “(D) the Secretary and the incidental take re-  
2           duction team shall meet every 6 months, or at such  
3           other intervals as the Secretary determines are nec-  
4           essary, to monitor the implementation of the final  
5           incidental take reduction plan until such time that  
6           the Secretary determines that the objectives of such  
7           plan have been met.

8           “(E) the Secretary shall amend the incidental  
9           take reduction plan and implementing regulations as  
10          necessary to meet the requirements of this section,  
11          in accordance with the procedures in this section for  
12          the issuance of such plans and regulations.

13          “(7) Where the anthropogenic mortality and serious  
14          injury from a stock specified under section 117(a)(7) is  
15          estimated to be less than the calculated removal level es-  
16          tablished under section 117 for such stock and such stock  
17          interacts with a fishery listed under subsection (f)(1)(A)  
18          (i) or (ii), or for any marine mammal stocks which interact  
19          with a commercial fishery listed under subsection  
20          (f)(1)(A)(i) for which the Secretary has made a determina-  
21          tion under paragraph (1), the following procedures shall  
22          apply in the development of the incidental take reduction  
23          plan for such stock:

24                  “(A)(i) Not later than 11 months after the date  
25                  of establishment of an incidental take reduction

1 team for the stock, the team shall submit a draft in-  
2 cidental take reduction plan for the stock to the Sec-  
3 retary, consistent with the other provisions of this  
4 section.

5 “(ii) Such draft incidental take reduction plan  
6 shall be developed by consensus. In the event con-  
7 sensus cannot be reached, the team shall advise the  
8 Secretary in writing on the range of possibilities con-  
9 sidered by the team, and the views of both the ma-  
10 jority and minority.

11 “(B)(i) The Secretary shall take the draft inci-  
12 dental take reduction plan into consideration and,  
13 not later than 60 days after the submission of the  
14 draft plan by the team, the Secretary shall publish  
15 in the Federal Register the plan proposed by the  
16 team, any changes proposed by the Secretary with  
17 an explanation of the reasons therefor, and proposed  
18 regulations to implement such plan, for public review  
19 and comment during a period of not to exceed 90  
20 days.

21 “(ii) In the event that the incidental take re-  
22 duction team does not submit a draft plan to the  
23 Secretary within 11 months, the Secretary shall, not  
24 later than 13 months after the establishment of the  
25 team, publish in the Federal Register a proposed in-

1 incidental take reduction plan and implementing regu-  
2 lations, for public review and comment during a pe-  
3 riod of not to exceed 90 days.

4 “(C) Not later than 90 days after the close of  
5 the comment period required under subparagraph  
6 (B), the Secretary shall issue a final incidental take  
7 reduction plan and implementing regulations, con-  
8 sistent with the other provisions of this section.

9 “(D) The Secretary and the incidental take re-  
10 duction team shall meet on an annual basis, or at  
11 such other intervals as the Secretary determines are  
12 necessary, to monitor the implementation of the  
13 final incidental take reduction plan until such time  
14 that the Secretary determines that the objectives of  
15 such plan have been met.

16 “(E) The Secretary shall amend the incidental  
17 take reduction plan and implementing regulations as  
18 necessary to meet the requirements of this section,  
19 in accordance with the procedures in this section for  
20 the issuance of such plans and regulations.

21 “(8) In implementing an incidental take reduction  
22 plan developed pursuant to this subsection, the Secretary  
23 may, where necessary to implement an incidental take re-  
24 duction plan to protect or restore a marine mammal stock

1 or species covered by such plan, promulgate regulations  
2 which include, but are not limited to, measures to—

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

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

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

16 “(D) monitor the effectiveness of measures  
17 taken to reduce the level of incidental mortality and  
18 serious injury of marine mammals in the course of  
19 commercial fishing operations, as set forth in sub-  
20 section (d).

21 “(9)(A) Notwithstanding paragraph (5), in the case  
22 of any stock to which paragraph (5) applies for which a  
23 final stock assessment has not been published under sec-  
24 tion 117(b)(3) by April 1, 1995, due to a proceeding under  
25 section 117(b)(2), or any Federal court review of such pro-

1 ceeding, the Secretary shall establish an incidental take  
2 reduction team under paragraph (5) for such stock as if  
3 a final stock assessment had been published.

4 “(B) The draft stock assessment published for such  
5 stock under section 117(b)(1) shall be deemed the final  
6 stock assessment for purposes of preparing and imple-  
7 menting an incidental take reduction plan for such stock  
8 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 incidental take reduction team for  
12 such stock for the purpose of amending the incidental take  
13 reduction plan, and any regulations issued to implement  
14 such plan, if necessary, to reflect the final stock assess-  
15 ment or court action. Such amendments shall be made in  
16 accordance with paragraph (6)(E) or (7)(E), as appro-  
17 priate.

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

1 revoke any regulations to implement an incidental take re-  
2 duction plan for such stock.

3 “(E) Subparagraph (D) shall not apply for any pe-  
4 riod beyond two years during which a final stock assess-  
5 ment for such stock has not been published due to review  
6 of a proceeding on such stock assessment by a Federal  
7 court. Immediately upon final action by such court, the  
8 Secretary shall proceed under subparagraph (C).

9 “(10) Incidental take reduction plans developed  
10 under this section for a species or stock listed as a threat-  
11 ened or endangered species under the Endangered Species  
12 Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent  
13 with any recovery plan developed for such species or stock  
14 under section 4 of such Act.

15 “(c) EMERGENCY REGULATIONS.—(1) If the Sec-  
16 retary finds that incidental mortality and serious injury  
17 of marine mammals from commercial fisheries is having,  
18 or is likely to have, an immediate and significant adverse  
19 impact on a stock or species, the Secretary shall take ac-  
20 tion as follows:

21 “(A) In the case of a stock or species for which  
22 an approved incidental take reduction plan is in ef-  
23 fect, the Secretary shall—

24 “(i) prescribe emergency regulations that,  
25 consistent with such plan to the maximum ex-

1 tent practicable, reduce such incidental mortal-  
2 ity and serious injury in that fishery; and

3 “(ii) approve and implement, on an expe-  
4 dited basis, any amendments to such plan that  
5 are recommended by the incidental take reduc-  
6 tion team to address such adverse impact.

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

10 “(i) prescribe emergency regulations to re-  
11 duce such incidental mortality and serious in-  
12 jury in that fishery; and

13 “(ii) approve and implement, on an expe-  
14 dited basis, such plan, which shall provide  
15 methods to address such adverse impact if still  
16 necessary.

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

23 “(i) prescribe emergency regulations to re-  
24 duce such incidental mortality and serious in-



1 jury in that fishery, to the extent necessary to  
2 mitigate such adverse impact;

3 “(ii) immediately review the stock assess-  
4 ment for such stock or species under section  
5 117 and the classification of such commercial  
6 fishery under subsection (f)(1)(A) to determine  
7 if an incidental take reduction team should be  
8 established under this section; and

9 “(iii) may, where necessary to address  
10 such adverse impact, require the placement of  
11 observers pursuant to subsection (d) upon ves-  
12 sels in a commercial fishery listed under sub-  
13 section (f)(1)(A)(iii), if the Secretary has rea-  
14 son to believe that such vessels may be causing  
15 incidental mortality and serious injury to ma-  
16 rine mammals from such stock.

17 “(2) Prior to taking action under paragraph (1) (A),  
18 (B), or (C), the Secretary shall consult with the Marine  
19 Mammal Commission, all appropriate Councils, State fish-  
20 ery managers, and the appropriate incidental take reduc-  
21 tion team (if established).

22 “(3) Emergency regulations prescribed under this  
23 subsection—

24 “(A) shall be published in the Federal Register,  
25 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 the emergency regulations no  
8           longer 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 emer-  
15          gency no longer exist, whichever is earlier.

16          “(d) MONITORING OF INCIDENTAL TAKES.—(1) The  
17          Secretary shall establish a program to monitor incidental  
18          mortality and serious injury of marine mammals during  
19          the course of commercial fishing operations for commer-  
20          cial fisheries listed under subsection (f)(1)(A) (i) or (ii).  
21          The purposes of the monitoring program shall be to—

22                  “(A) obtain statistically reliable estimates of in-  
23          cidental mortality and serious injury;

1           “(B) determine the reliability of reports of inci-  
2           dental mortality and serious injury under subsection  
3           (g); and

4           “(C) report on the impacts of changes in com-  
5           mercial fishing methods or technology.

6           “(2) Pursuant to paragraph (1), the Secretary is au-  
7           thorized to place observers on board vessels as necessary,  
8           subject to the provisions of this section. Observers may  
9           perform other tasks including, but not limited to—

10           “(A) recording other sources of mortality;

11           “(B) recording the number of marine mammals  
12           sighted and the behavior of such mammals observed  
13           in the vicinity of commercial fishing gear;

14           “(C) other related scientific or fishery manage-  
15           ment observations; and

16           “(D) collection of marine mammals tissues,  
17           where such collection can be done safely and without  
18           interruption of commercial fishing operations.

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

22           “(A) the need to obtain the best scientific infor-  
23           mation available;

1           “(B) the requirement that assignment of ob-  
2           servers be fair and equitable among fisheries and  
3           among vessels in a fishery;

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

8           “(D) where practicable, the need to minimize  
9           costs and avoid duplication.

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

13                 “(A) The highest priority for allocation shall be  
14                 for commercial fisheries that have incidental mortal-  
15                 ity or serious injury of marine mammals from stocks  
16                 designated as depleted on the basis of their listing  
17                 as endangered or threatened species under the En-  
18                 dangered Species Act of 1973 (16 U.S.C. 1531 et  
19                 seq.).

20                 “(B) The second highest priority for allocation  
21                 shall be for commercial fisheries that have incidental  
22                 mortality and serious injury of marine mammals  
23                 from stocks specified under section 117(a)(7).

24                 “(C) The third highest priority for allocation  
25                 shall be for commercial fisheries that have incidental

1 mortality or serious injury of marine mammals from  
2 stocks for which the level of incidental mortality and  
3 serious injury is uncertain.

4 “(5) Notwithstanding paragraph (1), the Secretary  
5 may establish an alternative observer program to provide  
6 statistically reliable information on the species and num-  
7 ber of any marine mammals incidentally taken in the  
8 course of commercial fishing operations. The alternative  
9 program may include, but need not be limited to, direct  
10 observation of fishing activities from vessels, airplanes, or  
11 points on shore.

12 “(6) The Secretary may, with the consent of the ves-  
13 sel owner, station an observer on board a vessel engaged  
14 in a commercial fishery not listed under subsection  
15 (f)(1)(A) (i) or (ii).

16 “(7) The Secretary shall not be required to place an  
17 observer on a vessel in a commercial fishery if the Sec-  
18 retary finds that—

19 “(A) in a situation where harvesting vessels are  
20 delivering fish to a processing vessel and the catch  
21 is not taken on board the harvesting vessel, statis-  
22 tically reliable information can be obtained from an  
23 observer on board the processing vessel to which the  
24 fish are delivered;

1           “(B) the facilities of a vessel for quartering of  
2           an observer, or for carrying out observer functions,  
3           are so inadequate or unsafe that the health or safety  
4           of the observer or the safe operation of the vessel  
5           would be jeopardized; or

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

8           “(8) Any proprietary information collected under this  
9           subsection shall be confidential and shall not be disclosed  
10          except—

11           “(A) to Federal employees whose duties require  
12           access to such information;

13           “(B) to State or tribal employees pursuant to  
14           an agreement with the Secretary that prevents pub-  
15           lic disclosure of the identity or business of any per-  
16           son;

17           “(C) when required by court order; or

18           “(D) in the case of scientific information involv-  
19           ing fisheries, to employees of Councils who are re-  
20           sponsible for fishery management plan development  
21           and monitoring.

22           “(9) The Secretary shall prescribe such procedures  
23           as may be necessary to preserve the confidentiality of pro-  
24           prietary information collected under this subsection, ex-  
25           cept that the Secretary shall release or make public upon

1 request any such information in aggregate, summary, or  
2 other form which does not directly or indirectly disclose  
3 the identity or business of any person.

4 “(e) ZERO MORTALITY RATE GOAL.—(1) Commer-  
5 cial fisheries shall reduce incidental mortality and serious  
6 injury of marine mammals to insignificant levels ap-  
7 proaching a zero mortality and serious injury rate within  
8 10 years after the date of enactment of this section.

9 “(2) Fisheries which maintain insignificant serious  
10 injury and mortality levels approaching a zero rate shall  
11 not be required to further reduce their mortality rates.

12 “(3) Three years after such date of enactment, the  
13 Secretary shall review the progress of all commercial fish-  
14 eries, by fishery, toward reducing incidental mortality and  
15 serious injury to insignificant levels approaching a zero  
16 rate. The Secretary shall submit to the Committee on  
17 Commerce, Science, and Transportation of the Senate and  
18 the Committee on Merchant Marine and Fisheries of the  
19 House of Representatives a report setting forth the results  
20 of such review within 1 year after commencement of the  
21 review. The Secretary shall note any commercial fishery  
22 for which inadequate information exists on the level of in-  
23 cidental mortality and serious injury of marine mammals  
24 in the fishery.

1       “(4) If the Secretary determines after review under  
2 paragraph (3) that the rate of incidental mortality and  
3 serious injury of marine mammals in a commercial fishery  
4 is not consistent with paragraph (1), then the Secretary  
5 shall take appropriate action under subsection (b), and  
6 shall make recommendations to the Committee on Com-  
7 merce, Science, and Transportation of the Senate and the  
8 Committee on Merchant Marine and Fisheries of the  
9 House of Representatives on any legislative changes need-  
10 ed to achieve the goal specified in paragraph (1).

11       “(f) REGISTRATION AND AUTHORIZATION.—(1) The  
12 Secretary shall, within 90 days after the date of enactment  
13 of this section—

14           “(A) publish in the Federal Register for public  
15 comment, for a period of not less than 90 days, any  
16 necessary changes to the Secretary’s list of commer-  
17 cial fisheries published under section 114 (along  
18 with an explanation of such changes and a state-  
19 ment of the marine mammals and the approximate  
20 number of vessels or persons actively involved in  
21 each such fishery) 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 pub-  
5           lic comment, publish in the Federal Register a re-  
6           vised list of commercial fisheries and an update of  
7           information required by subparagraph (A), together  
8           with a summary of the provisions of this section and  
9           information sufficient to advise vessel owners on how  
10          to obtain an authorization and otherwise comply  
11          with 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  
19          publish in the Federal Register any necessary  
20          changes.

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

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

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

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

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

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

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

1 to engage in the lawful incidental taking of marine mam-  
2 mals in a commercial fishery—

3 “(i) have registered as required under para-  
4 graph (2) with the Secretary in order to obtain for  
5 each such vessel owned an authorization for the pur-  
6 pose of incidentally taking marine mammals in ac-  
7 cordance with this section, except that owners of  
8 vessels holding valid certificates of exemption under  
9 section 114 are deemed to have registered for pur-  
10 poses of this subsection for the period during which  
11 such registration 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; and

16 “(iii) report as required by subsection (g).

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

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

24 “(i) fails to obtain from the Secretary an au-  
25 thorization for such vessel under this section;

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

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

7           and the master of any such vessel engaged in such fishery,  
8           shall be deemed to have violated this title. Such owner and  
9           master shall be subject to penalty under sections 105 and  
10          107 for a violation of clause (i) or (ii), and shall be subject  
11          to a fine of not more than \$100 for each offense for a  
12          violation of clause (iii).

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

23          “(E) Each owner of a vessel engaged in any fishery  
24          not listed under paragraph (1)(A) (i) or (ii), and the mas-  
25          ter and crew members of such a vessel, shall not be subject

1 to the penalties set forth in this title for the incidental  
2 taking of marine mammals if such owner reports to the  
3 Secretary, in the form and manner required under sub-  
4 section (g), instances of incidental mortality or injury of  
5 marine mammals in the course of that fishery.

6       “(4) The Secretary shall suspend or revoke an au-  
7 thorization granted under this section and shall not issue  
8 a decal or other physical evidence of the authorization for  
9 any vessel until the owner of such vessel complies with  
10 the reporting requirements under subsection (g) and such  
11 requirements to take on board an observer under para-  
12 graph (3)(B) as are applicable to such vessel. Previous  
13 failure to comply with the requirements of section 114  
14 shall not bar the grant of an authorization under this sec-  
15 tion for an owner who complies with the requirements of  
16 this section. The Secretary may suspend or revoke an au-  
17 thorization granted under this subsection, and may not  
18 issue a decal or other physical evidence of the authoriza-  
19 tion for any vessel which fails to comply with regulations  
20 implementing an incidental take reduction plan or emer-  
21 gency regulations issued under this section.

22       “(5)(A) The Secretary shall develop, in consultation  
23 with the appropriate States, affected Councils, and other  
24 interested persons, the means by which the granting and  
25 administration of authorizations under this section shall

1 be integrated and coordinated, to the maximum extent  
2 practicable, with existing fishery licenses, registrations,  
3 and related programs.

4 “(B) The Secretary shall utilize newspapers of gen-  
5 eral circulation, fishery trade associations, electronic  
6 media, and other means of advising commercial fishermen  
7 of the provisions of this section and the means by which  
8 they can comply with its requirements.

9 “(C) The Secretary is authorized to charge a fee for  
10 the granting of an authorization under this section. The  
11 level of fees charged under this subparagraph shall not  
12 exceed the administrative costs incurred in granting an  
13 authorization. Fees collected under this subparagraph  
14 shall be available to the Under Secretary of Commerce for  
15 Oceans and Atmosphere for expenses incurred in the  
16 granting and administration of authorizations under this  
17 section.

18 “(g) REPORTING REQUIREMENT.—The owner or op-  
19 erator of a commercial fishing vessel subject to this Act  
20 shall report all incidental mortality and injury of marine  
21 mammals in the course of commercial fishing operations  
22 to the Secretary by mail or other means acceptable to the  
23 Secretary within 48 hours after the end of each fishing  
24 trip on a standard postage-paid form to be developed by  
25 the Secretary under this section. Such form shall be capa-

1 ble of being readily entered into and usable by an auto-  
2 mated or computerized data processing system and shall  
3 require the vessel owner or operator to provide the follow-  
4 ing:

5           “(1) The vessel name, and Federal, State, or  
6 tribal registration numbers of the registered vessel.

7           “(2) The name and address of the vessel owner  
8 or operator.

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

10           “(4) The species of each marine mammal inci-  
11 dentally killed or injured, and the date, time, and  
12 approximate geographic location of such occurrence.

13           “(h) PENALTIES.—Except as provided in subsection  
14 (f), any person who violates this section shall be subject  
15 to the provisions of section 105 and 107, and may be sub-  
16 ject to section 106 as the Secretary establishes by regula-  
17 tions.

18           “(i) VOLUNTARY MEASURES.—Nothing in this sec-  
19 tion shall be construed to limit the Secretary’s authority  
20 to permit voluntary measures to be utilized in reducing  
21 the incidental taking of marine mammals in commercial  
22 fisheries.

23           “(j) CONSULTATION WITH SECRETARY OF THE IN-  
24 TERIOR.—The Secretary shall consult with the Secretary  
25 of the Interior on measures promulgated under this sec-

1 tion which affect species or stocks under such Secretary's  
2 jurisdiction.”.

3 **SEC. 9. PENALTIES; PROHIBITIONS.**

4 (a) CIVIL PENALTIES.—Section 105(a)(1) of the Ma-  
5 rine Mammal Protection Act of 1972 (16 U.S.C.  
6 1375(a)(1)) is amended by inserting “, except as provided  
7 in section 118,” immediately after “thereunder” and by  
8 inserting “, harassment,” immediately after “taking”.

9 (b) CRIMINAL PENALTIES.—Section 105(b) of the  
10 Marine Mammal Protection Act of 1972 (16 U.S.C.  
11 1375(b)) is amended by inserting “(except as provided in  
12 section 118)” immediately after “thereunder”.

13 (c) PROHIBITIONS.—Section 102(a) of the Marine  
14 Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is  
15 amended by striking “and 114 of this title or title III”  
16 and inserting in lieu thereof “114, and 118 of this title  
17 and title IV”.

18 **SEC. 10. AUTHORIZATION TO DETER MARINE MAMMALS**

19 **NONLETHALLY.**

20 Section 101 of the Marine Mammal Protection Act  
21 of 1972 (16 U.S.C. 1371) is amended by adding at the  
22 end the following new subsection:

23 “(d)(1) Except as provided in paragraph (2), the pro-  
24 visions of this Act shall not apply to the use of measures—



1           “(A) by the owner of fishing gear or catch, or  
2           an employee or agent of such owner, to deter a ma-  
3           rine mammal from damaging the gear or catch;

4           “(B) by the owner of other private property, or  
5           an agent, bailee, or employee of such owner, to deter  
6           a marine mammal from damaging private property;

7           “(C) by any person, to deter a marine mammal  
8           from endangering personal safety; or

9           “(D) by a government employee, to deter a ma-  
10          rine mammal from damaging public property,

11       so long as such measures do not result in the death or  
12       serious injury of the marine mammal.

13       “(2) The Secretary shall, through consultation with  
14       appropriate experts, and after notice and opportunity for  
15       public comment, publish in the Federal Register a list of  
16       guidelines for use in safely deterring marine mammals. In  
17       the case of marine mammals designated as threatened or  
18       endangered under the Endangered Species Act of 1973  
19       (16 U.S.C. 1531 et seq.), the Secretary shall recommend  
20       specific measures which may be used to nonlethally deter  
21       such marine mammals. Actions to deter marine mammals  
22       consistent with such guidelines or specific measures shall  
23       not be a violation of this Act.

24       “(3) If the Secretary determines, using the best sci-  
25       entific information available, that certain forms of deter-

1 rence have a significant adverse effect on marine mam-  
2 mals, the Secretary may prohibit such deterrent methods,  
3 after notice and opportunity for public comment, through  
4 regulation under this Act.

5 “(4) The authority to deter marine mammals pursu-  
6 ant to paragraph (1) applies to all marine mammals, in-  
7 cluding all stocks designated as depleted under this Act.”.

8 **SEC. 11. INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSIST-**  
9 **ENCE.**

10 Nothing in this Act, including any amendments to the  
11 Marine Mammal Protection Act of 1972 made by this  
12 Act—

13 (1) alters or is intended to alter any treaty be-  
14 tween the United States and one or more Indian  
15 tribes; or

16 (2) affects or otherwise modifies the provisions  
17 of section 101(b) of the Marine Mammal Protection  
18 Act of 1972 (16 U.S.C. 1371(b)), except as specifi-  
19 cally provided in the amendment made by section  
20 4(h) of this Act.

21 **SEC. 12. TRANSITION RULE; IMPLEMENTING REGULA-**  
22 **TIONS.**

23 (a) TRANSITION RULE.—Section 114(a)(1) of the  
24 Marine Mammal Protection Act of 1972 (16 U.S.C.  
25 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 Decem-  
3 ber 31, 1996, 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  
11 by this Act within 270 days after the date of enactment  
12 of this Act.

13 **SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.**

14 (a) DEFINITIONS.—Section 3 of the Marine Mammal  
15 Protection Act of 1972 (16 U.S.C. 1362) is amended—

16 (1) by striking paragraph (17);

17 (2) by redesignating the second paragraph (15)  
18 and paragraph (16) as paragraphs (16) and (17),  
19 respectively; and

20 (3) in paragraph (12)(B), by striking “in title  
21 III” and inserting in lieu thereof “In section 118  
22 and in title IV”.

23 (b) MARINE MAMMAL HEALTH AND STRANDING RE-  
24 SPONSE.—The Marine Mammal Protection Act of 1972  
25 (16 U.S.C. 1361 et seq.) is amended—

1           (1) by redesignating title III, as added by Pub-  
2           lic Law 102–587 (106 Stat. 5060), as title IV; and

3           (2) by redesignating the sections of that title  
4           (16 U.S.C. 1421 through 1421h) as sections 401  
5           through 409, respectively.

6           (c) UNUSUAL MORTALITY EVENT FUND.—Section  
7           405(a) of the Marine Mammal Protection Act of 1972 (16  
8           U.S.C. 1421d(a)), as so redesignated by subsection (b)(2)  
9           of this section, is amended by striking “a fund” and in-  
10          serting in lieu thereof “an interest bearing fund”.

11       **SEC. 14. DEFINITIONS.**

12          Section 3 of the Marine Mammal Protection Act of  
13          1972 (16 U.S.C. 1362), as amended by this Act, is further  
14          amended—

15               (1) in paragraph (12), as redesignated by sec-  
16               tion 15 of this Act, by striking “harass,” each place  
17               it appears; and

18               (2) by adding at the end the following new  
19               paragraphs:

20                       “(18) The term ‘calculated removal level’ for a  
21                       marine mammal stock is the product of the following  
22                       factors:

23                               “(A) the minimum population estimate of  
24                               the stock;

1           “(B) one-half the maximum theoretical or  
2           estimated net productivity rate for the stock at  
3           a small population size; and

4           “(C) if the stock is specified under section  
5           117(a)(7), listed as endangered or threatened  
6           under the Endangered Species Act of 1973 (16  
7           U.S.C. 1531 et seq.), or designated as depleted  
8           under this Act, a recovery factor that is no  
9           greater than 1.0 to ensure that the stock will  
10          recover to its optimum sustainable population.

11          The recovery factor under subparagraph (C) shall  
12          not be less than 0.1 for an endangered stock, shall  
13          not be less than 0.3 for a threatened or depleted  
14          stock, and shall not be less than 0.5 for any other  
15          stock.

16          “(19) The term ‘Council’ means any Regional  
17          Fishery Management Council established under sec-  
18          tion 302 of the Magnuson Fishery Conservation and  
19          Management Act (16 U.S.C. 1852).

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

22                 “(A) has the potential to harm a marine  
23                 mammal in the wild; or

24                 “(B) has the potential to disturb a marine  
25                 mammal or marine mammal stock in the wild

1 by causing disruption of behavioral patterns, in-  
2 cluding but not limited to migration, respira-  
3 tion, nursing, breeding, feeding, and sheltering.

4 “(21) The term ‘incidental take reduction plan’  
5 means a plan developed under section 118.

6 “(22) The term ‘incidental take reduction team’  
7 means a team established under section 118.

8 “(23) The term ‘net productivity rate’ means  
9 the annual per capita rate of increase in a stock re-  
10 sulting from additions due to reproduction, less  
11 losses due to mortality.

12 “(24) The term ‘minimum population estimate’  
13 means an estimate of the number of animals in a  
14 stock that—

15 “(A) is based on the best available sci-  
16 entific information on abundance, incorporating  
17 the precision and variability associated with  
18 such information; and

19 “(B) provides reasonable assurance that  
20 the stock size is equal to or greater than the es-  
21 timate.”.

22 **SEC. 15. HUMAN ACTIVITIES WITHIN PROXIMITY OF**  
23 **WHALES.**

24 (a) **LAWFUL APPROACHES.**—In waters of the United  
25 States surrounding the State of Hawaii, it is lawful for

1 a person subject to the jurisdiction of the United States  
2 to approach, by any means other than an aircraft, no clos-  
3 er than 100 yards to a humpback whale or any other  
4 whale, regardless of whether the approach is made in wa-  
5 ters designated under section 222.31 of title 50, Code of  
6 Federal Regulations, as cow/calf waters.

7 (b) TERMINATION OF LEGAL EFFECT OF CERTAIN  
8 REGULATIONS.—Subsection (b) of section 222.31 of title  
9 50, Code of Federal Regulations, shall cease to be in force  
10 and effect.

11 **SEC. 16. PINNIPED-FISHERY INTERACTION TASK FORCE.**

12 Title I of the Marine Mammal Protection Act of 1972  
13 (16 U.S.C. 1371 et seq.), as amended by this Act, is fur-  
14 ther amended by adding at the end the following new sec-  
15 tion:

16 **“SEC. 119. PINNIPED-FISHERY INTERACTION TASK FORCE.**

17 “(a) PINNIPED REMOVAL AUTHORITY.—Notwith-  
18 standing any other provision of this title, the Secretary  
19 may permit the lethal removal of pinnipeds in accordance  
20 with this section.

21 “(b) APPLICATION.—Any person may apply to the  
22 Secretary to authorize the lethal removal of pinnipeds  
23 identified as habitually exhibiting dangerous or damaging  
24 behavior that cannot otherwise be deterred. Any such ap-  
25 plication shall include a means of identifying the individ-

1 ual pinniped or pinnipeds, and shall include a detailed de-  
2 scription of the problem interaction and expected benefits  
3 of the removal.

4 “(c) ACTIONS IN RESPONSE TO APPLICATION.—(1)  
5 Within 15 days of receiving an application, the Secretary  
6 shall determine whether the application has produced suf-  
7 ficient evidence to warrant establishing a Pinniped-Fish-  
8 ery Interaction Task Force to address the situation de-  
9 scribed in the application. If the Secretary determines that  
10 such sufficient evidence has been provided, the Secretary  
11 shall establish a Pinniped-Fishery Interaction Task Force  
12 and publish a notice in the Federal Register requesting  
13 public comment on the application.

14 “(2) A Pinniped-Fishery Interaction Task Force es-  
15 tablished under paragraph (1) shall consist of designated  
16 employees of the Department of Commerce, scientists who  
17 are knowledgeable about the pinniped interaction that the  
18 application addresses, representatives of affected con-  
19 servation and fishing community organizations, Indian  
20 treaty tribes, the States, and such other organizations as  
21 the Secretary deems appropriate.

22 “(3) Within 60 days after establishment, and after  
23 reviewing public comments in response to the Federal  
24 Register notice, the Pinniped-Fishery Interaction Task  
25 Force shall—



1           “(A) recommend to the Secretary whether to  
2           approve or deny the proposed lethal removal of the  
3           pinniped or pinnipeds, including along with the rec-  
4           ommendation a description of the specific pinniped  
5           individual or individuals, the proposed location, time,  
6           and method of removal, criteria for evaluating the  
7           success of the action, and the duration of the au-  
8           thority; and

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

12          “(4) Within 30 days after receipt of recommendations  
13          from the Pinniped-Fishery Interaction Task Force, the  
14          Secretary shall either approve or deny the application. If  
15          such application is approved, the Secretary shall imme-  
16          diately take steps to implement the lethal removal, which  
17          shall be performed by Federal or State agencies, or quali-  
18          fied individuals under contract to such agencies.

19          “(5) After implementation of an approved applica-  
20          tion, the Pinniped-Fishery Interaction Task Force shall  
21          evaluate the effectiveness of the permitted lethal removal  
22          or alternative actions implemented. If implementation was  
23          ineffective in eliminating the problem interaction, the  
24          Task Force shall recommend additional actions. If the im-  
25          plementation was effective, the Task Force shall so advise

1 the Secretary, and the Secretary shall disband the Task  
2 Force.

3 “(d) CONSIDERATIONS.—In considering whether an  
4 application should be approved or denied, the Task Force  
5 and the Secretary shall consider—

6 “(1) population trends, feeding habits, the loca-  
7 tion of the pinniped interaction, how and when the  
8 interaction occurs, and how many individual  
9 pinnipeds are involved;

10 “(2) past efforts to nonlethally deter such  
11 pinnipeds, and whether the applicant has dem-  
12 onstrated that no feasible and prudent alternatives  
13 exist and that the applicant has taken all reasonable  
14 nonlethal steps without success;

15 “(3) the extent to which such pinnipeds are  
16 causing undue harm, impact, or imbalance with  
17 other species in the ecosystem, including fish popu-  
18 lations; and

19 “(4) the extent to which such pinnipeds are ex-  
20 hibiting behavior that presents an ongoing threat to  
21 public safety.

22 “(e) LIMITATION.—The Secretary shall not approve  
23 lethal removal for any pinniped from a species or stock  
24 that is—

1           “(1) listed as threatened or endangered under  
2           the Endangered Species Act of 1973;

3           “(2) designated as depleted under this Act; or

4           “(3) specified under section 117(a)(7) of this  
5           Act.

6           “(f) REGIONWIDE PINNIPED-FISHERY INTERACTION  
7           STUDY.—(1)(A) The Secretary shall conduct a study, of  
8           not less than three high predation areas in anadromous  
9           fish migration corridors within the Northwest Region of  
10          the National Marine Fisheries Service, on the interaction  
11          between fish and pinnipeds. In carrying out the study, the  
12          Secretary shall consult with other State and Federal agen-  
13          cies with expertise in pinniped-fishery interaction. The  
14          study shall evaluate—

15                 “(i) fish behavior in the presence of predators  
16                 generally;

17                 “(ii) holding times and passage rates of anad-  
18                 romous fish stocks in areas where such anadromous  
19                 fish are vulnerable to predation;

20                 “(iii) whether additional facilities exist, or could  
21                 be reasonably developed, that could improve  
22                 escapement for anadromous fish; and

23                 “(iv) other issues the Secretary considers rel-  
24                 evant.

1       “(B) Subject to the availability of appropriations, the  
2 Secretary shall, not later than 18 months after the date  
3 of enactment of this section, transmit a report on the re-  
4 sults of the study required by this paragraph to the Com-  
5 mittee on Commerce, Science, and Transportation of the  
6 Senate and the Committee on Merchant Marine and Fish-  
7 eries of the House of Representatives.

8       “(C) There are authorized to be appropriated to the  
9 Secretary \$700,000 for the purpose of carrying out the  
10 study required by this paragraph.

11       “(2) The study conducted under this subsection shall  
12 not be considered relevant in any determination under  
13 subsection (c), nor reviewed by any task force in connec-  
14 tion with considerations under subsection (d), until such  
15 study is completed, and may not be used by the Secretary  
16 as a reason for delaying or deferring a determination  
17 under subsection (C).”.

18 **SEC. 17. MARINE MAMMAL COOPERATIVE AGREEMENTS IN**

19 **ALASKA.**

20       Title I of the Marine Mammal Protection Act of 1972  
21 (16 U.S.C. 1371 et seq.), as amended by this Act, is fur-  
22 ther amended by adding at the end the following new sec-  
23 tion:

1 **“SEC. 120. MARINE MAMMAL COOPERATIVE AGREEMENTS**  
2 **IN ALASKA.**

3 “(a) IN GENERAL.—The Secretary may enter into co-  
4 operative agreements with Alaska Native organizations to  
5 conserve marine mammals and provide co-management of  
6 subsistence use by Alaska Natives.

7 “(b) GRANTS.—Agreements entered into under this  
8 section may include grants to Alaska Native organizations  
9 for, among other purposes—

10 “(1) collecting and analyzing data on marine  
11 mammal populations;

12 “(2) monitoring the harvest of marine mam-  
13 mals for subsistence use;

14 “(3) participating in marine mammal research  
15 conducted by the Federal Government, States, aca-  
16 demic institutions, and private organizations; and

17 “(4) developing marine mammal co-manage-  
18 ment structures with Federal and State agencies.

19 “(c) EFFECT OF JURISDICTION.—Nothing in this  
20 section is intended or shall be construed—

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

24 “(2) as altering in any respect the existing po-  
25 litical or legal status or Alaska Natives, or the gov-

1       ernmental or jurisdictional status of Alaska Native  
2       communities or Alaska Native entities.

3       “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
4       are authorized to be appropriated for the purposes of car-  
5       rying out this section—

6               “(1) \$1,500,000 to the Secretary of Commerce  
7       for each of the fiscal years 1994, 1995, 1996, 1997,  
8       1998, and 1999; and

9               “(2) \$1,000,000 to the Secretary of the Interior  
10      for each of the fiscal years 1994, 1995, 1996, 1997,  
11      1998, and 1999.

12      The amounts authorized to be appropriated under this  
13      subsection are in addition to the amounts authorized to  
14      be appropriated under section 7 of the Act entitled ‘An  
15      Act to improve the operation of the Marine Mammal Pro-  
16      tection Act of 1972, and for other purposes’, approved Oc-  
17      tober 9, 1981 (16 U.S.C. 1384).”.

18      **SEC. 18. BERING SEA MARINE ECOSYSTEM PROTECTION.**

19      Section 110 of the Marine Mammal Protection Act  
20      of 1972 (16 U.S.C. 1380) is amended by striking sub-  
21      section (c) and inserting in lieu thereof the following:

22               “(c)(1) The Secretary of Commerce, in consultation  
23      with the Secretary of the Interior, the Marine Mammal  
24      Commission, the State of Alaska, Alaska Native organiza-  
25      tions, and fishery and environmental groups, shall, not

1 later than 180 days after the date of enactment of the  
2 Marine Mammal Protection Act Amendments of 1994, un-  
3 dertake a scientific research program to monitor the  
4 health and stability of the Bering Sea marine ecosystem  
5 and to resolve uncertainties concerning the causes of popu-  
6 lation declines of marine mammals, sea birds, and other  
7 living resources of that marine ecosystem. The program  
8 shall address the research recommendations developed by  
9 previous workshops on Bering Sea living marine resources,  
10 and shall include research on subsistence uses of such re-  
11 sources and ways to provide for the continued opportunity  
12 of such uses.

13       “(2) To the maximum extent practicable, the re-  
14 search program undertaken pursuant to paragraph (1)  
15 shall be conducted in Alaska. The Secretary shall utilize,  
16 where appropriate, traditional local knowledge and may  
17 contract with a qualified Alaska Native organization to  
18 conduct such research.

19       “(3) The Secretary of Commerce, the Secretary of the  
20 Interior, and the Commission shall address the status and  
21 findings of the research program in their annual reports  
22 to Congress required by sections 103(f) and 204.”.

23 **SEC. 19. INTERJURISDICTIONAL FISHERIES ACT OF 1986.**

24       Section 308(b) of the Interjurisdictional Fisheries  
25 Act of 1986 (16 U.S.C. 4107(b)) is amended by striking

1 “\$2,500,000 for each of the fiscal years 1989, 1990, 1991,  
2 1992, 1993, 1994, and 1995” and inserting in lieu thereof  
3 “\$65,000,000 for each of the fiscal years 1994 and 1995”.

4 **SEC. 20. COASTAL ECOSYSTEM HEALTH.**

5 (a) REQUIREMENT TO CONVEY.—Not later than Sep-  
6 tember 30, 1994, the Secretary of the Navy shall convey,  
7 without payment or other consideration, to the Secretary  
8 of Commerce, all right, title, and interest to the property  
9 comprising that portion of the Naval Base, Charleston,  
10 South Carolina, bounded by Hobson Avenue, the Cooper  
11 River, the landward extension of the northwest side of Pier  
12 R, and the fenceline between the buildings known as RTC-  
13 1 and 200. Such property shall include Pier R, the build-  
14 ings known as RTC-1 and RTC-4, and all walkways and  
15 parking areas associated with such buildings and Pier R.

16 (b) SURVEY; EFFECT ON LIABILITY OF SECRETARY  
17 OF THE NAVY.—The acreage and legal description of the  
18 property to be conveyed pursuant to this section shall be  
19 determined by a survey approved by the Secretary of the  
20 Navy. Such conveyance shall not release the Secretary of  
21 the Navy from any liability arising prior to, during, or  
22 after such conveyance as a result of the ownership or occu-  
23 pation of the property by the United States Navy.

24 (c) USE BY NATIONAL OCEANIC AND ATMOSPHERIC  
25 ADMINISTRATION.—The property conveyed pursuant to



1 this section shall be used by the Secretary of Commerce  
2 in support of the operations of the National Oceanic and  
3 Atmospheric Administration.

4 (d) REVERSION RIGHTS.—Conveyance of the prop-  
5 erty pursuant to this section shall be subject to the condi-  
6 tion that all right, title, and interest in and to the property  
7 so conveyed shall immediately be conveyed to the public  
8 entity vested with ownership of the remainder of the  
9 Charleston Naval Base, if and when—

10 (1) continued ownership and occupation of the  
11 property by the National Oceanic and Atmospheric  
12 Administration no longer is compatible with the  
13 comprehensive plan for reuse of the Charleston  
14 Naval Base developed by the community reuse com-  
15 mittee and approved by the Secretary of the Navy;  
16 and

17 (2) such public entity provides for relocation of  
18 the programs and personnel of the National Oceanic  
19 and Atmospheric Administration occupying such  
20 property, at no further cost to the United States

1 Government, to comparable facility, including adja-  
2 cent waterfront and pier, within the Charleston area.

Passed the Senate March 21 (legislative day, February 22), 1994.

Attest:

*Secretary.*

S 1636 ES—2

S 1636 ES—3

S 1636 ES—4

S 1636 ES—5

S 1636 ES—6

S 1636 ES—7

S 1636 ES—8

S 1636 ES—9

S 1636 ES—10