

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1636

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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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 8 (legislative day, NOVEMBER 2), 1993

Mr. KERRY (for himself, Mr. STEVENS, and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

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 1993”.

### 6   **SEC. 2. PURPOSES.**

7       The purposes of this Act are to—

1           (1) authorize appropriations to carry out the  
2       Marine Mammal Protection Act of 1972 for the fis-  
3       cal years 1994 through 1998;

4           (2) ensure that the incidental take of marine  
5       mammals in any fishery, by itself and in combina-  
6       tion with other human activities, does not cause any  
7       species or stock of marine mammals to be reduced  
8       to or maintained at, for significant periods of time,  
9       a level that is below the lower limit of its optimum  
10      sustainable population range;

11          (3) avoid restrictions on fishing operations  
12      when such restrictions are not necessary to meet the  
13      purpose described in paragraph (2);

14          (4) prohibit international lethal taking during  
15      commercial fishing, except as authorized through a  
16      waiver under section 101(a)(3) of the Marine Mam-  
17      mal Protection Act of 1972 (16 U.S.C. 1371(a)(3));

18          (5) focus efforts on identifying and addressing  
19      the most significant problems involving fishery-ma-  
20      rine mammal interactions, considering both the sta-  
21      tus of the affected marine mammal stocks and the  
22      numbers of marine mammals that are taken inciden-  
23      tally in each fishery;

24          (6) streamline the procedure for authorizing the  
25      incidental taking of marine mammals in commercial

1 fisheries, consistent with the long-term objective of  
2 identifying and taking such steps as may be prac-  
3 ticable to reduce mortality and serious injury inci-  
4 dental to commercial fishing operations to insignifi-  
5 cant levels approaching zero; and

6 (7) develop a cost-effective program for reliably  
7 monitoring (A) the levels of incidental take of ma-  
8 rine mammals in commercial fisheries and (B) the  
9 size and current population trends of the affected  
10 marine mammals stocks.

11 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

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

17 “(a) DEPARTMENT OF COMMERCE.—There are au-  
18 thorized to be appropriated to the Department of Com-  
19 merce, for purposes of carrying out such functions and  
20 responsibilities as it may have been given under title I of  
21 the Marine Mammal Protection Act of 1972, \$21,636,000  
22 for fiscal year 1994, \$22,502,000 for fiscal year 1995,  
23 \$23,402,000 for fiscal year 1996, \$24,338,000 for fiscal  
24 year 1997, and \$25,311,000 for fiscal year 1998.”.

1       (b) INTERIOR DEPARTMENT.—Section 7(b) of the  
2 Act entitled “An Act to improve the operation of the Ma-  
3 rine Mammal Protection Act of 1972, and for other pur-  
4 poses”, approved October 9, 1981 (16 U.S.C. 1384(b)),  
5 is amended to read as follows:

6       “(b) DEPARTMENT OF INTERIOR.—There are author-  
7 ized to be appropriated to the Department of Interior, for  
8 purposes of carrying out such functions and responsibil-  
9 ities as it may have been given under title I of the Marine  
10 Mammal Protection Act of 1972, \$8,000,000 for fiscal  
11 year 1994, \$8,600,000 for fiscal year 1995, \$9,000,000  
12 for fiscal year 1996, \$9,400,000 for fiscal year 1997, and  
13 \$9,900,000 for fiscal year 1998.”.

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

19       “(c) MARINE MAMMAL COMMISSION.—There are au-  
20 thorized to be appropriated to the Marine Mammal Com-  
21 mission, for purposes of carrying out such functions and  
22 responsibilities as it may have been given under title II  
23 of the Marine Mammal Protection Act of 1972,  
24 \$1,350,000 for fiscal year 1994, \$1,400,000 for fiscal year

1 1995, \$1,450,000 for fiscal year 1996, \$1,500,000 for fis-  
2 cal year 1997, and \$1,550,000 for fiscal year 1998.”.

3 **SEC. 4. INCIDENTAL TAKING OF ENDANGERED AND**  
4 **THREATENED SPECIES.**

5 (a) IN GENERAL.—Section 101(a)(4) of the Marine  
6 Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(4))  
7 is amended to read as follows:

8 “(4)(A) The Secretary may allow the incidental, but  
9 not the intentional, taking, by citizens of the United  
10 States while engaging in commercial fishing operations, of  
11 marine mammals from a species or stock designated under  
12 the Act as depleted because of its listing as an endangered  
13 or threatened species under the Endangered Species Act  
14 of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after  
15 notice and opportunity for public comment, determines  
16 that such taking is pursuant to a statement issued by the  
17 Secretary for such taking under section 7 of such Act (16  
18 U.S.C. 1536).

19 “(B) Sections 103 and 104 shall not apply to the tak-  
20 ing of marine mammals under the authority of this para-  
21 graph.”.

22 (b) CONFORMING AMENDMENT.—Section 7(b)(4)(C)  
23 of the Endangered Species Act of 1973 (16 U.S.C.  
24 1536(b)(4)(C)) is amended by inserting “101(a)(4) or”  
25 immediately before “101 (a)(5)” each place it appears.

1 **SEC. 5. CONSERVATION PLANS.**

2 Section 115(b) of the Marine Mammal Protection Act  
3 of 1972 (16 U.S.C. 13836(b)) is amended by adding at  
4 the end the following new paragraph:

5 “(4) If the Secretary determines that an incidental  
6 taking plan is necessary to reduce the incidental taking  
7 of marine mammals in the course of commercial fishing  
8 operations from a stock identified as a critical stock under  
9 section 118(c), any conservation plan required under this  
10 subsection for such stock shall only address non-incidental  
11 takings.”.

12 **SEC. 6. TAKING OF MARINE MAMMALS INCIDENTAL TO**  
13 **COMMERCIAL FISHING OPERATIONS.**

14 Title I of the Marine Mammal Protection Act of 1972  
15 (16 U.S.C. 1371 et seq.) is amended by adding at the end  
16 the following new section:

17 **“SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO**  
18 **COMMERCIAL FISHING OPERATIONS.**

19 “(a) IN GENERAL.—(1) Except as provided in section  
20 114 and in paragraphs (2), (3), and (4) of this section,  
21 and notwithstanding section 101, the provisions of this  
22 section shall govern the incidental taking of marine mam-  
23 mals in the course of commercial fishing operations by  
24 persons using vessels of the United States or vessels which  
25 have valid fishing permits issued by the Secretary in ac-  
26 cordance with section 204(b) of the Magnuson Fishery

1 Conservation and Management Act (16 U.S.C. 1824(b)).  
2 The Secretary shall develop and implement incidental tak-  
3 ing plans under this section to reduce the incidental lethal  
4 taking of marine mammals, from stocks listed as critical  
5 stocks under subsection (c), to a level below the calculated  
6 acceptable removal level.

7 “(2) Section 101(a)(4), and not this section, shall  
8 govern the incidental taking of marine mammals from spe-  
9 cies or stocks designated under this Act as depleted on  
10 the basis of their listing as threatened or endangered spe-  
11 cies under the Endangered Species Act of 1973.

12 “(3) Sections 104(h) and 306, and not this section,  
13 shall govern the taking of marine mammals in the course  
14 of commercial purse seine fishing for yellowfin tuna in the  
15 eastern tropical Pacific Ocean.

16 “(4) This section shall not govern the taking of ma-  
17 rine mammals from an experimental population of Califor-  
18 nia sea otters to which the Act of November 7, 1986 (Pub-  
19 lic Law 99–625; 100 Stat. 3500) applies.

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

23 “(b) SCIENTIFIC CONSULTATION.—In implementing  
24 the incidental taking program under this section, the Sec-  
25 retary shall seek the advice of individuals with expertise

1 in marine mammal biology and ecology, population dy-  
2 namics and modeling, and commercial fishing technology  
3 and practices. Such advice should be sought with respect  
4 to information available, and actions proposed, for such  
5 implementation, including—

6 “(1) information provided in connection with  
7 stock assessments under this section;

8 “(2) studies needed to resolve uncertainties re-  
9 garding stock separation, stock abundance, or trends  
10 and factors affecting distribution, size, or productiv-  
11 ity of stocks;

12 “(3) studies needed to resolve uncertainties in  
13 determining marine mammal species, numbers, ages,  
14 and gender, and the reproductive status of stocks;  
15 and

16 “(4) research to identify modifications in fish-  
17 ing gear and fishing practices likely to reduce the  
18 mortality and serious injury of marine mammals in-  
19 cidental to commercial fishing operations.

20 “(c) STOCK ASSESSMENTS.—(1) Using the best sci-  
21 entific information available and in accordance with this  
22 subsection, the Secretary shall prepare and issue, and  
23 thereafter (as appropriate) revise, a stock assessment for  
24 each marine mammal stock which occurs in waters under



1 the jurisdiction of the United States. The stock assess-  
2 ment shall include—

3 “(A) a definition of the stock by species of sub-  
4 species and its spatial and temporal distribution;

5 “(B) the best available estimates of the stock’s  
6 population abundance, realistic minimum population  
7 size, and current population trend;

8 “(C) estimates of the total lethal take from the  
9 stock by source and, for a stock designated under  
10 this subsection as a critical stock, other factors that  
11 may impede recovery of the stock, including impacts  
12 on marine mammal habitat and prey; and

13 “(D) a description of any commercial fishery  
14 that interacts with the stock, including—

15 “(i) the approximate number of vessels  
16 participating in the fishery;

17 “(ii) the approximate incidental lethal and  
18 serious injury take from the stock by such fish-  
19 ery;

20 “(iii) seasonal or area differences in levels  
21 of such incidental lethal or serious injury take;  
22 and

23 “(iv) the rate of incidental mortality in the  
24 stock caused by such fishing, based on a unit  
25 of fishing effort;

1           “(E) a determination as to the status of the  
2 stock, including whether the stock is determined to  
3 be within its optimum sustainable population range,  
4 is designated as depleted under this Act, is listed as  
5 threatened or endangered under the Endangered  
6 Species Act of 1973, or is proposed for listing as a  
7 critical stock under subparagraph (G);

8           “(F) a determination of the calculated accept-  
9 able removal level for the stock and the factors used  
10 to calculate it, including a recovery factor if the  
11 stock is below its optimum sustainable population;  
12 and

13           “(G) designation of the stock (based on a sci-  
14 entific analysis of the stock’s population trend and  
15 population size, the level of total lethal take from the  
16 stock from all sources, and the best available esti-  
17 mates of net productivity at the maximum net pro-  
18 ductivity level) for listing in one of the following cat-  
19 egories:

20           “(i) Class 1, consisting of stocks whose  
21 population size is declining, or whose population  
22 trend is unknown and whose realistic minimum  
23 population is less than 10,000, and from which  
24 the total annual lethal take exceeds the net pro-

ductivity of the population when it is at its maximum net productivity level.

“(ii) Class 2, consisting of stocks—

“(I) whose population size is declining, or whose population trend is unknown and whose realistic minimum population is less than 10,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock’s population when it is at its maximum net productivity level; or

“(II) whose population size is stable, or whose population trend is unknown and the realistic minimum population is greater than 10,000 but less than 100,000; and from which the total annual lethal take exceeds the net productivity of the stock’s population when it is at its maximum net productivity level.

“(iii) Class 3, consisting of stocks—

“(I) whose population size is declining, or whose population trend is unknown and whose realistic minimum population is less than 10,000; and from which the total annual lethal take is less than 20 percent

1 of the net productivity of the stock's popu-  
2 lation when it is at its maximum net pro-  
3 ductivity level;

4 “(II) whose population size is stable,  
5 or whose population trend is unknown and  
6 whose realistic minimum population is  
7 greater than 10,000 but less than 100,000;  
8 and from which the total annual lethal  
9 take is between 20 percent and 100 per-  
10 cent of the net productivity of the stock's  
11 population when it is at its maximum net  
12 productivity level; or

13 “(III) whose population size is in-  
14 creasing, or whose population trend is un-  
15 known and whose realistic minimum popu-  
16 lation is greater than 100,000; and from  
17 which the total annual lethal take exceeds  
18 the net productivity of the stock's popu-  
19 lation when it is at its maximum net pro-  
20 ductivity level.

21 “(iv) Class 4, consisting of stocks—

22 “(I) whose population size is stable, or  
23 whose population trend is unknown and  
24 the realistic minimum population is greater  
25 than 100,000; and from which the total

1 annual lethal take is between 20 percent  
2 and 100 percent of the net productivity of  
3 the stock's population when it is at its  
4 maximum net productivity level; or

5 “(II) whose population size is increas-  
6 ing, or whose population trend is unknown  
7 and whose realistic minimum population is  
8 greater than 100,000; and from which the  
9 total annual lethal take is between 20 per-  
10 cent and 100 percent of the net productiv-  
11 ity of the stock's population when it is at  
12 its maximum net productivity level.

13 “(v) Class 5, consisting of stocks whose  
14 population size is increasing, or whose popu-  
15 lation trend is unknown and the realistic mini-  
16 mum population is greater than 100,000; and  
17 from which the total annual lethal take is less  
18 than 20 percent of the net productivity of the  
19 stock's population when it is at its maximum  
20 net productivity level.

21 “(2) Not later than 240 days after the date of enact-  
22 ment of this section, the Secretary shall issue a draft of  
23 each stock assessment required by this subsection, after  
24 seeking advice from the experts described in subsection  
25 (b). The Secretary shall publish in the Federal Register

1 a notice of availability of the draft and provide an oppor-  
2 tunity for public review and comment during a period of  
3 not to exceed 60 days.

4 “(3) Not later than 90 days after the close of the  
5 public comment period on such preliminary stock assess-  
6 ment, the Secretary shall publish in the Federal Register  
7 a final stock assessment, after consideration of advice, rec-  
8 ommendations, and comments of experts and the general  
9 public and the best scientific information available.

10 “(4) The Secretary shall review stock assessments in  
11 accordance with this subsection, and obtain advice and  
12 recommendations from experts—

13 “(A) on an annual basis for stocks listed as  
14 critical stocks or for which new information is avail-  
15 able; and

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

18 The Secretary shall revise such assessments after notice  
19 and opportunity for public comment, if the review indi-  
20 cates revision is necessary.

21 “(d) INCIDENTAL TAKING PLAN.—(1) The Secretary  
22 shall develop and implement an incidental taking plan de-  
23 signed to assist in the recovery of each marine mammal  
24 stock that is listed as a critical stock and interacts with  
25 commercial fisheries. Such plan shall be developed in con-

1 sultation with the incidental take team established for the  
2 plan under this subsection. If there is insufficient funding  
3 available to develop and implement an incidental taking  
4 plan for all critical stocks that interact with commercial  
5 fisheries, the Secretary shall give highest priority to the  
6 development and implementation of Class 1 stocks. Within  
7 a particular class of critical stocks that interact with com-  
8 mercial fisheries, the Secretary shall give highest priority  
9 to the development and implementation of plans for stocks  
10 that the Secretary considers the most critical within the  
11 class.

12 “(2) Each incidental taking plan developed under this  
13 subsection for a critical stock shall include the following:

14 “(A) A review and evaluation of the information  
15 contained in the stock assessment published under  
16 subsection (c) and any new information that may be  
17 available.

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

22 “(C) Proposed management measures or vol-  
23 untary actions for the reduction of incidental taking  
24 by commercial fisheries. Such proposed measures  
25 and actions shall be developed in light of the plan’s

1 immediate objective of reducing incidental lethal and  
2 serious injury take by commercial fisheries by the  
3 same proportion as their proportion of the total le-  
4 thal and serious injury take from all sources.

5 “(D) A long-term strategy to reduce, to insig-  
6 nificant rates approaching zero within 10 years, the  
7 incidental mortality and serious injury within the  
8 stock that results from commercial fishing oper-  
9 ations.

10 “(3) Each incidental taking plan shall include pro-  
11 jected dates for achieving the objectives of the plan. If the  
12 total lethal take exceeds the calculated acceptable removal  
13 level, the plan shall include measures the Secretary ex-  
14 pects will reduce, within 6 months after commencement  
15 of fishing, the share of the lethal take that exceeds the  
16 calculated acceptable removal level and is attributable to  
17 commercial fisheries.

18 “(4)(A) At the earliest possible time (not later than  
19 120 days) after the Secretary issues a final stock assess-  
20 ment listing a stock as a critical stock, the Secretary  
21 shall—

22 “(i) establish an incidental take team for such  
23 critical stock and appoint the members of such team  
24 in accordance with subparagraph (C); and



1           “(ii) publish in the Federal Register a notice of  
2           the team’s establishment, the names of the team’s  
3           appointed members, the full geographic range of  
4           such critical stock, and all the commercial fisheries  
5           that have lethal incidental takings from such stock.

6           “(B) The Secretary may charge an incidental take  
7           team to deal with a stock that extends over one or more  
8           regions, or multiple stocks within a region, if the Secretary  
9           determines that doing so would facilitate the development  
10          and implementation of plans required under this sub-  
11          section.

12          “(C) Members of incidental take teams shall be indi-  
13          viduals knowledgeable and experienced regarding the  
14          measures to conserve such stocks and to reduce any  
15          takings from such stock incidental to commercial fishing  
16          operations. Members may include representatives of Fed-  
17          eral and State agencies, regional fishery management  
18          councils and commissions, academic and scientific organi-  
19          zations, environmental and fishery groups, and others as  
20          the Secretary considers appropriate. Incidental take teams  
21          shall, to the maximum extent practicable, consist of an  
22          equitable balance among representatives of government,  
23          resource user interests, and non-user interests. Incidental  
24          take teams shall not be subject to the Federal Advisory  
25          Committee Act (5 App. U.S.C.) but their meetings shall

1 be open to the public, after timely publicity on the time  
2 and place of such meetings.

3 “(D) Members of incidental take teams shall serve  
4 without compensation, but shall be reimbursed by the Sec-  
5 retary for reasonable travel costs and expenses incurred  
6 in performing their duties as members of the team.

7 “(E) Nothing in this section shall be construed to  
8 constrain the Secretary from establishing priority among  
9 classes of critical stocks covered by this subsection and  
10 exercising discretion (in consultation with scientific ex-  
11 perts) to address such stocks in any fiscal year according  
12 to that priority.

13 “(5) Where the total lethal take from such a critical  
14 stock is estimated to be greater than the calculated accept-  
15 able removal level established in the stock assessment, the  
16 following procedures shall apply in the development of the  
17 incidental taking plan for the stock:

18 “(A) Not later than 6 months after the date of  
19 establishment of an incidental take team for the  
20 stock, the team shall submit a draft incidental tak-  
21 ing plan for the critical stock to the Secretary, con-  
22 sistent with the other provisions of this section.

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

1 by the team, the Secretary shall publish in the Fed-  
2 eral Register a proposed incidental taking plan and  
3 proposed regulations to implement such plan, for  
4 public review and comment.

5 “(ii) In the event that the incidental take team  
6 does not submit a draft plan to the Secretary within  
7 6 months, the Secretary shall, not later than 8  
8 months after the establishment of the team, publish  
9 in the Federal Register a proposed incidental taking  
10 plan and implementing regulations, for public review  
11 and comment.

12 “(C) Not later than 60 days after the close of  
13 the comment period required under subparagraph  
14 (B), the Secretary shall issue a final incidental tak-  
15 ing plan and implementing regulations, consistent  
16 with the other provisions of this section.

17 “(D) The Secretary and the incidental take  
18 team shall meet every 6 months to monitor the im-  
19 plementation of the final incidental taking plan until  
20 such time that the Secretary determines that meet-  
21 ings are no longer necessary.

22 “(E) The Secretary may, in consultation with  
23 the incidental take team, amend the incidental tak-  
24 ing plan and implementing regulations as necessary,

1 consistent with the procedures in this section for the  
2 issuance of such plans and regulations.

3 “(6) Where the total lethal take from a critical stock  
4 to which this subsection applies is estimated to be less  
5 than the calculated acceptable removal level established in  
6 the stock assessment, the following procedures shall apply  
7 in the development of the incidental taking plan for the  
8 stock:

9 “(A) Not later than 11 months after the date  
10 of establishment of an incidental take team for the  
11 stock, the team shall submit a draft incidental tak-  
12 ing plan for the stock to the Secretary, consistent  
13 with the other provisions of this section.

14 “(B)(i) The Secretary shall take the draft inci-  
15 dental taking plan into consideration and, not later  
16 than 60 days following the submission of the draft  
17 plan by the team, the Secretary shall publish in the  
18 Federal Register a proposed incidental taking plan  
19 and implementing regulations, for public review and  
20 comment.

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

1 plan and implementing regulations, for public review  
2 and comment.

3 “(C) Not later than 60 days after the close of  
4 the comment period required under subparagraph  
5 (B), the Secretary shall issue a final incidental tak-  
6 ing plan and implementing regulations, consistent  
7 with the other provisions of this section.

8 “(D) The Secretary and the incidental take  
9 team shall meet on an annual basis to monitor the  
10 implementation of the final incidental taking plan  
11 until such time that the Secretary determines that  
12 formal meetings are no longer necessary.

13 “(E) The Secretary may, in consultation with  
14 the incidental take team, amend the incidental tak-  
15 ing plan and implementing regulations as necessary,  
16 consistent with the procedures in this section for the  
17 issuance of such plans and regulations.

18 “(7) If the Secretary finds, prior to the issuance of  
19 a final incidental taking plan, that the incidental taking  
20 of marine mammals in a commercial fishery is having an  
21 immediate and significant adverse impact on the stock to  
22 which the plan would apply, the Secretary may, after con-  
23 sultation with appropriate Regional Fishery Management  
24 Councils and State fishery managers, prescribe emergency  
25 regulations to reduce, to the maximum extent practicable,

1 such incidental taking. In prescribing such emergency reg-  
2 ulations, the Secretary shall take into account the econom-  
3 ics of the fishery concerned and the availability of existing  
4 technology to prevent or minimize incidental taking of ma-  
5 rine mammals, and shall conform such regulations, to the  
6 maximum extent practicable, with existing State or re-  
7 gional fishery management plans. Such regulations—

8 “(A) shall be published in the Federal Register  
9 together with the reasons therefor;

10 “(B) shall remain in effect for not more than  
11 180 days, until such time as a final incidental taking  
12 plan for the stock is issued, or until the end of the  
13 applicable fishing season, whichever is earlier; and

14 “(C) may be terminated by the Secretary at an  
15 earlier date by publication in the Federal Register of  
16 a notice of termination if the Secretary determines  
17 the reasons for the emergency regulations no longer  
18 exist.

19 “(e) REGULATORY MEASURES.—(1)(A) The Sec-  
20 retary shall, after notice and opportunity for public com-  
21 ment, promulgate regulations to implement an incidental  
22 taking plan necessary to accomplish the objectives set  
23 forth in subsection (i).

24 “(B) Nothing in this paragraph shall be construed  
25 to limit the authority of the Secretary to modify the inci-

1 dental taking plan at the request of the appropriate Re-  
2 gional Fishery Management Council or State or tribal  
3 management authority.

4 “(2) In implementing an incidental taking plan issued  
5 pursuant to this section, the Secretary may promulgate  
6 regulations which include, but are not limited to, measures  
7 to—

8 “(A) establish fishery-specific incidental lethal  
9 taking limits or restrict commercial fisheries by time  
10 or area;

11 “(B) register commercial fishing vessels as set  
12 forth in subsection (f);

13 “(C) require the use of alternative gear tech-  
14 niques and new technologies, encourage the develop-  
15 ment of such gear or technology, or convene expert  
16 skippers’ panels;

17 “(D) educate commercial fishermen and other  
18 individuals, through workshops and other means, on  
19 the importance of reducing the incidental lethal tak-  
20 ing of marine mammals from critical stocks; and

21 “(E) monitor the level of the incidental lethal  
22 taking of marine mammals in the course of commer-  
23 cial fishing operations, as set forth in subsection (h).

24 “(f) REGISTRATION OF VESSELS.—(1) Subject to the  
25 provisions of this subsection, the Secretary may develop

1 a system to register commercial fishing vessels and to as-  
2 sess fishery effort, where such system is necessary, to un-  
3 derstand the interaction between commercial fisheries and  
4 marine mammal stocks in a region.

5 “(2) In developing a registration system to under-  
6 stand such interactions, the Secretary shall rely upon ex-  
7 isting Federal, State, or tribal data bases which provide  
8 the following information about an affected commercial  
9 fishery:

10 “(A) The approximate number of vessels par-  
11 ticipating in the fishery.

12 “(B) The identity of specific vessels to be reg-  
13 istered.

14 “(C) The owner of operator, or both, of such  
15 vessels.

16 “(D) The time period in which the fishery oc-  
17 curs.

18 “(E) The approximate geographic location, or  
19 its official reporting area where the fishery occurs.

20 “(F) The description of fishing gear, including  
21 the appropriate unit of fishery effort.

22 “(3) The incidental take teams shall advise the Sec-  
23 retary as to whether existing Federal, State, or tribal data  
24 bases are capable of being utilized to understand the inter-  
25 action between commercial fisheries and critical stocks in



1 a region. If the Secretary determines, after consultation  
2 with such a team, that data bases for specific fisheries  
3 which provide the information required under paragraph  
4 (2) are not available to the Secretary or the team, the  
5 Secretary may require through regulation separate reg-  
6 istration to obtain the information set forth in paragraph  
7 (2).

8 “(4)(A) The Secretary may, as a condition of accept-  
9 ing a Federal, State, or tribal registration as adequate for  
10 the purposes of this section, require such registration to  
11 be supplemented by the requirement that the vessels so  
12 registered display a decal or other evidence, issued by the  
13 registering authority, that indicates the registration is cur-  
14 rent.

15 “(B) To the extent the Secretary determines that  
16 separate registration is required for a specific fishery pur-  
17 suant to paragraph (3), the Secretary is authorized to  
18 charge a fee for the issuance of a decal or other evidence  
19 indicating the registration is current. The fee charged  
20 under this subparagraph shall not exceed the administra-  
21 tive costs incurred in issuing the decal or other evidence.  
22 Fees collected under this subparagraph shall be available  
23 to the Under Secretary of Commerce for Oceans and At-  
24 mosphere for expenses incurred in the issuances of such  
25 decal or other evidence.

1       “(5) The costs of maintaining a separate registry sys-  
2 tem for a specific fishery pursuant to paragraph (3) shall  
3 be covered through Federal appropriations.

4       “(6) The Secretary may include within a registration  
5 system under this subsection only those vessels that fish  
6 in a fishery that has frequent or occasional incidental tak-  
7 ing of marine mammals.

8       “(g) REPORTING REQUIREMENT.—The owner or op-  
9 erator of a commercial fishing vessel subject to this Act  
10 shall report all incidental lethal and serious injury takings  
11 of marine mammals in the course of commercial fishing  
12 operations to the Secretary at the end of each fishing trip  
13 on a standard form to be developed by the Secretary under  
14 this section. Such form shall be readable by computer or  
15 other machine and shall require the vessel owner or opera-  
16 tor to provide the following:

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

19               “(2) The name and address of the vessel owner  
20 or operator.

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

22               “(4) The species of marine mammal incidentally  
23 killed or seriously injured, and the date and time of  
24 such incidental taking.

1           “(5) The time and period in which the fishery  
2       occurred.

3           “(6) The approximate geographic location of  
4       the incidental taking.

5       “(h) MONITORING.—(1) The Secretary may establish  
6       a vessel observer program to monitor incidental lethal and  
7       serious injury takings of marine mammals during the  
8       course of commercial fishing operations. The purpose of  
9       the monitoring program shall be to develop independent  
10      information on interactions between commercial fisheries  
11      and marine mammals and to verify reporting of incidental  
12      lethal and serious injury takings under subsection (g). Ob-  
13      servers may perform other tasks including, but not limited  
14      to—

15           “(A) recording other sources of mortality;

16           “(B) recording the number of marine mammals  
17      sighted during the observation period; and

18           “(C) other scientific investigations, including  
19      collection of marine mammal tissues.

20       “(2) Commercial fishing vessels shall carry observers  
21      on board, when requested by the Secretary, to the extent  
22      that the vessel can safely accommodate the observer. The  
23      owner or operator of a vessel who refuses to carry an ob-  
24      server shall be subject to a civil penalty, pursuant to sub-  
25      section (j).

1       “(3)(A) The Secretary may establish an incidental  
2 take monitoring program to achieve the objectives of this  
3 paragraph which may include, but not be limited to, direct  
4 observation of fishing activities from vessels, airplanes,  
5 video observation, or points on shore.

6       “(B) Individuals engaged in such monitoring pro-  
7 gram shall collect scientific information on fisheries con-  
8 sistent with the requirements of this paragraph.

9       “(4) The cost of the monitoring program shall be  
10 funded by Federal appropriations, and Secretary shall al-  
11 locate available observers among fisheries consistent with  
12 the following priority:

13           “(A) The highest priority shall be given to fish-  
14 eries that incidentally lethally take or seriously in-  
15 jure animals from (i) stocks designated as depleted  
16 on the basis of their listing as endangered or threat-  
17 ened species under the Endangered Species Act of  
18 1993, or (ii) critical stocks.

19           “(B) The second highest priority shall be given  
20 to fisheries other than those described in subpara-  
21 graph (A) in which the greatest incidental lethal  
22 take and serious injury of marine mammals occurs.  
23 When the Secretary determines the sufficient observation  
24 of a specific fishery has occurred, the Secretary may dis-  
25 continue such observation and direct available observer re-

1 sources to the next fishery in priority. Nothing in this sub-  
2 section precludes the Secretary from resuming observation  
3 of a fishery when necessary to achieve additional verifica-  
4 tion of the nature of interactions with marine mammal  
5 stocks.

6 “(5) Notwithstanding paragraph (4), the Secretary  
7 may initiate, where necessary, additional monitoring pro-  
8 grams to gather information on the interaction between  
9 commercial fisheries and marine mammal stocks not iden-  
10 tified as critical stocks. Such information may be used to  
11 verify—

12 “(A) the numbers of incidental lethal and seri-  
13 ous injury takings of marine mammals in a commer-  
14 cial fishery, and the rate of such takings;

15 “(B) impacts on marine mammals of changes in  
16 fishing patterns or technologies; and

17 “(C) the accuracy of reporting, by vessel owners  
18 and operators, of the lethal and serious injury  
19 takings of commercial fishing vessels.

20 “(i) ZERO MORTALITY RATE GOAL.—(1) Commercial  
21 fisheries shall reduce their rates of incidental lethal or se-  
22 rious injury taking, to insignificant rates approaching zero  
23 within 10 years after the date of enactment of this section.

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

4       “(3) Three years after such date of enactment, the  
5 Secretary shall review the progress, by fishery, toward re-  
6 ducing mortality and serious injury rates to insignificant  
7 rates approaching zero. The Secretary shall submit to the  
8 Committee on Commerce, Science, and Transportation of  
9 the Senate and the Committee on Merchant Marine and  
10 Fisheries of the House of Representatives a report setting  
11 forth the results of such review within 1 year after com-  
12 mencement of the review. The Secretary shall note any  
13 fishery for which no information exists on its incidental  
14 serious injury or mortality rate of marine mammals.

15       “(4) If the Secretary determines after review under  
16 paragraph (3) that the rate of incidental lethal and serious  
17 injury taking in a fishery is not consistent with paragraph  
18 (1), then the Secretary shall make recommendations to the  
19 Committee on Commerce, Science, and Transportation of  
20 the Senate and the Committee on Merchant Marine and  
21 Fisheries of the House of Representatives on further ac-  
22 tions to achieve the goal specified in paragraph (1).

23       “(j) PENALTIES.—(1) Except as provided in para-  
24 graph (2), a person who violates this section, or any regu-  
25 lations thereunder, may be assessed a civil penalty of not

1 more than \$5,000 for each violation, and shall not be sub-  
2 ject to penalty under any other provision of this Act. The  
3 penalty shall reflect the severity of the violation in relation  
4 to preventing the reduction of incidental lethal taking of  
5 marine mammals, or the accomplishment of other express  
6 objectives of this section.

7 “(2) Intentional killing of marine mammals, or fail-  
8 ure to report incidental lethal takings of marine mammals  
9 as required by this section, shall be subject to the penalties  
10 in section 105.

11 “(3) Each owner or operator of a vessel engaged in  
12 a fishery that has a remote likelihood of or no known inci-  
13 dental taking of marine mammals, and the master and  
14 crew members of such vessel, shall not be subject to pen-  
15 alties under this section or any other provision of this Act  
16 for the incidental taking of marine mammals if such owner  
17 or operator reports to the Secretary in accordance with  
18 subsection (f)(4).

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

24 “(l) DEFINITIONS.—For purposes of this section—

1           “(1) the term ‘calculated acceptable removal  
2           level’ means the realistic minimum population of a  
3           stock, multiplied by the net productivity rate of the  
4           stock, multiplied (if applicable) by a recovery factor;

5           “(2) the term ‘critical stock’ means a marine  
6           mammal stock that is listed as a Class 1 or 2 stock  
7           pursuant to subsection (c)(1)G);

8           “(3) the term ‘incidental take team’ means an  
9           incidental take team established under subsection  
10          (d)(4);

11          “(4) the term ‘incidental taking plan’ means an  
12          incidental taking plan developed under subsection  
13          (d);

14          “(5) the term ‘maximum net productivity level’  
15          means the population size of a stock which results  
16          in the greatest net productivity;

17          “(6) the term ‘net productivity’ means the esti-  
18          mated or theoretical annual increase in population  
19          numbers resulting from additions to the population  
20          due to reproduction, less the losses due to mortality;

21          “(7) the term ‘net productivity rate’ means the  
22          net annual per capita rate of increase of a stock at  
23          is maximum net productivity level;



1 “(8) the term ‘non-critical stock’ means a ma-  
 2 rine mammal stock that is listed as a Class 3, 4, or  
 3 5 stock pursuant to subsection (c)(1)(G);

4 “(9) the term ‘realistic minimum population’  
 5 means an estimate of the number of animals in a  
 6 stock that provides reasonable assurance that the  
 7 population size is equal to or greater than the esti-  
 8 mate; and

9 “(10) the term ‘recovery factor’ means the  
 10 number that is applied to the calculation of a cal-  
 11 culated acceptable removal level to provide reason-  
 12 able assurance that a stock will recover to its opti-  
 13 mum sustainable population.”.

14 **SEC. 7. PENALTIES; PROHIBITIONS.**

15 (a) CIVIL PENALTIES.—Section 105(a)(1) of the Ma-  
 16 rine Mammal Protection Act of 1972 (16 U.S.C.  
 17 1375(a)(1)) is amended by inserting “, except as provided  
 18 in section 118(j),” immediately after “thereunder”.

19 (b) CRIMINAL PENALTIES.—Section 105(b) of the  
 20 Marine Mammal Protection Act of 1972 (16 U.S.C.  
 21 1375(b)) is amended by inserting “(except as provided in  
 22 section 118(j))” immediately after “thereunder”.

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

1 amended by striking “and 114” and inserting in lieu  
2 thereof “114, and 118”.

3 **SEC. 8. ALASKA HARBOR SEALS AND GULF OF MARINE**  
4 **HARBOR PORPOISES.**

5 Notwithstanding any other provision of this Act, in-  
6 cluding section 118 of the Marine Mammal Protection Act  
7 of 1972 (as added by this Act), the Secretary of Commerce  
8 shall establish an incidental take team for the harbor seal  
9 stock in Alaska and for the harbor porpoise stock in the  
10 Gulf of Maine, within 60 days after the date of enactment  
11 of this Act. The incidental take teams shall begin work  
12 immediately on a draft incidental taking plan in accord-  
13 ance with such section 118, and shall use the best sci-  
14 entific information available. The draft incidental taking  
15 plan shall be reviewed by the Secretary, after consultation  
16 with scientific experts as described in subsection (b) of  
17 such section 118 and after notice and opportunity for pub-  
18 lic comment, and shall be approved and implemented as  
19 quickly as practicable.

20 **SEC. 9. AUTHORIZATION TO DETER MARINE MAMMALS.**

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

1       “(d)(1) Except as provided in paragraph (2), the pro-  
2 visions of this Act shall not apply to the use by any person  
3 of measures to deter marine mammals from—

4               “(A) damaging the gear or catch of commercial  
5 or recreational fishermen;

6               “(B) damaging private or public property; or

7               “(C) endangering personal safety,

8 so long as such measures do not result in marine mammal  
9 death or serious injury.

10       “(2) If the Secretary determines, using the best sci-  
11 entific information available, that certain forms of deter-  
12 rence have a significant adverse effect on marine mam-  
13 mals, the Secretary may prohibit such deterrent methods  
14 through regulation under this Act.

15       “(3) The authority to deter marine mammals pursu-  
16 ant to paragraph (1) applies to all marine mammals, in-  
17 cluding all stocks designated as depleted under this Act.”.

18 **SEC. 10. TREATY RIGHTS.**

19       Nothing in this Act, including any amendments made  
20 by this Act, is intended to abrogate or diminish existing  
21 Indian treaty fishing or hunting rights, and regulation of  
22 Native American fishing and hunting activities shall be  
23 limited to measures consistent with existing treaty rights.

1 **SEC. 11. TRANSITION RULE.**

2 Section 114(a)(1) of the Marine Mammal Protection  
3 Act of 1972 (16 U.S.C. 1383a(a)(1)) is amended by strik-  
4 ing “ending April 1, 1994,” and inserting in lieu thereof  
5 “until superseded by regulations prescribed under section  
6 118,”.

7 **SEC. 12. TECHNICAL AMENDMENTS.**

8 (a) DEFINITIONS.—Section 3 of the Marine Mammal  
9 Protection Act of 1972 (16 U.S.C. 1362) is amended by  
10 redesignating the last three paragraphs as paragraphs  
11 (16), (17), and (18), respectively.

12 (b) MARINE MAMMAL HEALTH AND STRANDING RE-  
13 SPONSE.—The Marine Mammal Protection Act of 1972  
14 (16 U.S.C. 1361 et seq.) is amended—

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

17 (2) by redesignating the sections of that title  
18 (16 U.S.C. 1421 through 1421h) as sections 401  
19 through 409, respectively.

○

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