

116TH CONGRESS
2D SESSION

H. R. 8795

To amend the Marine Mammal Protection Act of 1972 to direct the Secretary of Commerce to establish a climate impact management plan for the conservation of certain marine mammal species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 2020

Ms. BROWNLEY of California introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Marine Mammal Protection Act of 1972 to direct the Secretary of Commerce to establish a climate impact management plan for the conservation of certain marine mammal species, 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 Cli-
5 mate Change Protection Act”.

1 **SEC. 2. CONSERVATION OF MARINE MAMMALS ADVERSELY**
2 **AFFECTED BY CLIMATE CHANGE.**

3 (a) IN GENERAL.—The Marine Mammal Protection
4 Act of 1972 (16 U.S.C. 1361 et seq.) is amended by in-
5 serting after section 120 the following:

6 **“SEC. 121. CONSERVATION OF MARINE MAMMALS AD-**
7 **VERSELY AFFECTED BY CLIMATE CHANGE.**

8 “(a) CLIMATE IMPACT MANAGEMENT PLANS.—

9 “(1) Within 18 months after the date of enact-
10 ment of this section, the Secretary, in consultation
11 with the Marine Mammal Commission, shall publish
12 in the Federal Register, after notice and opportunity
13 for public comment, a list of those marine mammal
14 species and population stocks in waters under the
15 jurisdiction of the United States for which climate
16 change, alone or in combination or interaction with
17 other factors, has more than a remote possibility of
18 resulting in a decline in population abundance, of
19 impeding population recovery, or of reducing car-
20 rying capacity. The list shall identify—

21 “(A) any species or population stock for
22 which such impacts are likely to occur within
23 20 years;

24 “(B) any species or population stock listed
25 as a threatened species or endangered species
26 under the Endangered Species Act of 1973 (16

1 U.S.C. 1531 et seq.) for which such impacts
2 have more than a remote possibility of occur-
3 ring within 100 years; and

4 “(C) any other species or population stock
5 for which such impacts have more than a re-
6 mote possibility of occurring within 100 years.

7 “(2)(A) The Secretary, in consultation with the
8 Marine Mammal Commission, shall review the list
9 adopted pursuant to paragraph (1) at least once
10 every 5 years, or more frequently if significant new
11 information becomes available, and, after notice and
12 opportunity for public comment, shall publish a re-
13 vised list in the Federal Register.

14 “(B) Within 12 months after receiving the peti-
15 tion of an interested person under section 553(e) of
16 title 5, United States Code, to add a marine mam-
17 mal species or population stock to the list published
18 under paragraph (1), the Secretary, in consultation
19 with the Marine Mammal Commission and after no-
20 tice and opportunity for public comment, shall pub-
21 lish in the Federal Register its finding of whether
22 the petitioned action is warranted. If the petitioned
23 action is deemed warranted, the Secretary shall pub-
24 lish at the same time the revision adding such spe-
25 cies or population stock.

1 “(3) The list published under paragraph (1),
2 and any revisions made in accordance with para-
3 graph (2), shall include a determination of whether
4 a climate impact management plan will promote the
5 conservation of species or stocks listed pursuant to
6 paragraph (1)(C).

7 “(4)(A)(i) The Secretary shall publish in the
8 Federal Register a draft climate impact management
9 plan, and proposed regulations implementing the
10 plan, for each marine mammal species or population
11 stock—

12 “(I) listed under paragraph (1)(A), within
13 18 months after the listing;

14 “(II) listed under paragraph (1)(B), within
15 30 months after the listing; and

16 “(III) listed under paragraph (1)(C) of
17 this subsection, within 5 years after the listing
18 if the Secretary determines that such a plan
19 will promote the conservation of the species or
20 stock.

21 “(ii) Each draft climate impact management
22 plan shall be developed in consultation with the Ma-
23 rine Mammal Commission and, as appropriate, other
24 Federal agencies, and shall be made available for

1 public review and comment for a period not to ex-
2 ceed 90 days.

3 “(iii) No later than 120 days after the close of
4 the comment period required under clause (ii), the
5 Secretary shall issue a final climate impact manage-
6 ment plan and implementing regulations that are
7 consistent with the other provisions of this section
8 and, to the full extent available under the Sec-
9 retary’s authorities under this Act and other stat-
10 utes, implement the conservation and management
11 measures identified in the plan.

12 “(B) Each management plan under subpara-
13 graph (A) shall include a comprehensive strategy for
14 mitigating the direct and indirect effects of climate
15 change and increasing resiliency in the species or
16 population stock, and shall identify conservation and
17 management measures to—

18 “(i) mitigate to the extent possible the di-
19 rect adverse effects of climate change on such
20 species and population stocks and their prey;

21 “(ii) monitor, reduce, and prevent inter-
22 actions with fisheries and other human activi-
23 ties that may occur as a result of changes in
24 marine mammal distribution or other indirect
25 effects of climate change;

1 “(iii) increase resiliency by materially re-
2 ducing other human impacts on such species
3 and population stocks, including but not limited
4 to the reduction of incidental taking of marine
5 mammals and of the degradation of the habitat
6 of such species and population stocks, and by
7 managing prey species to improve the avail-
8 ability of prey to such species and population
9 stocks; and

10 “(iv) take any other action as may be nec-
11 essary to implement the strategy set forth in
12 the plan.

13 “(C) Each management plan under subpara-
14 graph (A) shall include objective, measurable criteria
15 for evaluating the effectiveness and sufficiency of
16 such measures to meet the purposes of this Act.

17 “(D) All other Federal agencies shall, in con-
18 sultation with and with the assistance of the Sec-
19 retary, utilize their authorities in furtherance of the
20 strategy and conservation and management meas-
21 ures set forth in climate impact management plans
22 developed under this subsection and ensure that
23 their actions do not conflict or interfere with the ob-
24 jectives of such management plans. The Secretary
25 shall consult with the Marine Mammal Commission

1 and, as may be warranted, other agencies in the im-
2 plementation of such plans.

3 “(E) When appropriate, the Secretary may, and
4 is encouraged to, integrate climate impact manage-
5 ment plans into conservation plans adopted under
6 section 115(b) or recovery plans adopted under sec-
7 tion 4(f) of the Endangered Species Act of 1973 (16
8 U.S.C. 1533(f)).

9 “(F) The Secretary shall review climate impact
10 management plans and implementing regulations at
11 least once every 5 years, and shall revise and amend
12 them as necessary to meet the goals and require-
13 ments of this section. Any changes shall be subject
14 to the procedures and requirements applicable to the
15 adoption of the initial plans and regulations.

16 “(5) The Secretary shall report to Congress 4
17 years after the date of enactment of this section,
18 and every 2 years thereafter, on—

19 “(A) actions taken to implement this sec-
20 tion;

21 “(B) any backlog in meeting the schedule
22 set forth in this subsection for adopting, review-
23 ing, and implementing climate impact manage-
24 ment plans, or additional resources necessary to
25 address any such backlog; and

1 “(C) the effectiveness of implementation
2 and sufficiency of the measures adopted in cli-
3 mate impact management plans, and any rec-
4 ommendations for improving the process or the
5 applicable legislation.

6 “(b) MONITORING OF CLIMATE IMPACTS.—The Sec-
7 retary shall establish a program to monitor the adverse
8 impacts of climate change on marine mammals. The pur-
9 poses of the monitoring program shall be to—

10 “(1) improve models of projected future
11 changes in marine mammal distribution and den-
12 sities resulting from climate change;

13 “(2) identify and monitor interactions with fish-
14 eries and other human activities that may occur as
15 a result of changes in marine mammal distribution
16 or other effects of climate change;

17 “(3) monitor the abundance of species and pop-
18 ulation stocks, to an extent sufficient to detect a 20
19 percent population decline over 20 years;

20 “(4) improve understanding of the impacts of
21 climate change on marine mammal species and pop-
22 ulation stocks; and

23 “(5) assess the direct and indirect contributions
24 of marine mammals to carbon reduction, including
25 through carbon sequestration and nutrient cycling.

1 “(c) PROMULGATION OF REGULATIONS FOR LISTING
2 MARINE MAMMALS ADVERSELY IMPACTED BY CLIMATE
3 CHANGE.—The Secretary shall, within 120 days after the
4 date of the enactment of this section—

5 “(1) publish in the Federal Register for public
6 comment, for a period of not less than 60 days, reg-
7 ulations for listing marine mammal species and pop-
8 ulation stocks adversely impacted by climate change,
9 alone or in combination or interaction with other
10 factors, as described in paragraphs (1) and (2) of
11 subsection (a), taking into account both quantitative
12 and qualitative indicators of adverse impacts of cli-
13 mate change and human activities on such species
14 and stocks, including—

15 “(A) direct and indirect mortality and seri-
16 ous injury;

17 “(B) loss or degradation of habitat;

18 “(C) changes in the distribution or avail-
19 ability of prey;

20 “(D) changes in the distribution of marine
21 mammal species and population stocks;

22 “(E) decreased genetic diversity or repro-
23 ductive success;

24 “(F) increased susceptibility to pathogens;

25 and

1 “(G) increased likelihood of interactions
2 with fisheries and other human activities; and

3 “(2) not later than 90 days after the close of
4 the period for such public comment, publish in the
5 Federal Register final regulations for listing marine
6 mammals as required by paragraph (a), to be re-
7 viewed at least once every three years.

8 “(d) LACK OF QUANTITATIVE INFORMATION.—The
9 lack of quantitative information shall not be a basis for
10 a determination under subsection (c) that a species or pop-
11 ulation stock is not adversely impacted by climate change,
12 alone or in combination or interaction with other factors,
13 as described in paragraphs (1) and (2) of subsection (a).

14 “(e) ESTIMATION OF POTENTIAL BIOLOGICAL RE-
15 MOVAL.—

16 “(1) The Secretary, in estimating the potential
17 biological removal level in stock assessments pre-
18 pared in accordance with section 117, shall take ac-
19 count of the adverse impacts of climate change in
20 determining the recovery factor applied to each
21 stock.

22 “(2) The Secretary, in preparing stock assess-
23 ments in accordance with section 117, shall reexam-
24 ine the stock definition and geographic range of ma-
25 rine mammal species and population stocks to iden-

1 tify climate-related changes in spatial distribution
2 and stock definition and to identify how such
3 changes may affect human impacts to the species.

4 “(f) AUTHORITY TO ENTER INTO AGREEMENTS.—
5 The Secretary shall—

6 “(1) periodically review the status of agree-
7 ments with foreign governments under section
8 108(a) concerning the management of transbound-
9 ary marine mammal species and population stocks,
10 and their prey species, that are or may be affected
11 by climate change; and

12 “(2) through the Secretary of State, initiate the
13 amendment of any such agreement, or negotiations
14 for the development of bilateral or multinational
15 agreements, consistent with the goals and policies of
16 this section.

17 “(g) CONSTRUCTION.—This section shall not be con-
18 strued to limit or restrict any other responsibility of the
19 Secretary or of any other person under this Act or any
20 other statute.”.

21 (b) CLERICAL AMENDMENT.—The table of contents
22 in the first section of such Act is amended by inserting
23 after the item relating to section 120 the following:

“Sec. 121. Conservation of marine mammals adversely affected by climate
change.”.

○