

P.L. 103-238, MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1994

MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1993

DATES OF CONSIDERATION AND PASSAGE

Senate: March 21, 24, April 26, 1994;59;59

House: March 21, 22, April 26, 1994;67;67

Cong. Record Vol. 140 (1994);73;73

Senate Report (Commerce, Science and Transportation Committee) No. 103-220,
Jan. 25, 1994 (;93;93To accompany S. 1636)

House Report (Merchant Marine and Fisheries Committee) No. 103-439,
Mar. 21, 1993 (To accompany H.R. 2760)

SENATE REPORT NO. 103-220

January 25, 1994;131;131

[To accompany S. 1636]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (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, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

S. 1636, the Marine Mammal Protection Act Amendments of 1993, as reported, would extend the authorization of appropriations through fiscal year (FY) 1998 for Federal marine mammal protection programs, and would establish a new regime governing the incidental taking of marine mammals in commercial fishing operations.

BACKGROUND AND NEEDS

The Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA);278;278 was enacted in response to increasing popular sentiment and growing concern regarding the welfare of marine mammals. The MMPA;298;298 recognizes that marine mammals have an important role in marine ecosystems and that they are significant recreational, aesthetic, and economic resources. The MMPA;322;322 also notes the adverse impact of human activities on some marine mammal populations, and the need to restore those populations that have been severely depleted. The MMPA;350;350 is unique in that it confers protected status upon a group of animals containing more than 100 species, based solely on their identification as marine mammals.

The Secretaries of Commerce and the Interior have primary responsibility for implementing the MMPA.;390;390 The Department of Commerce (DOC), through the National Oceanic and Atmospheric Administration (NOAA), has authority with respect to whales, porpoises, seals, and sea lions. The remaining marine mammal species (walrus, polar bears, sea otters, and manatees) are managed by the Department of the Interior (DOI) through the Fish and Wildlife Service (FWS). Both agencies are responsible for the promulgation of regulations, the issuance of permits, the conduct of scientific research, and enforcement.

In carrying out these responsibilities, both agencies are required to consult with the Marine Mammal Commission (Commission), an independent advisory agency created by the MMPA.;489;489 The purpose of the Commission is to review and develop recommendations concerning actions and policies which affect marine mammals. It is also required to conduct a

continuing review of all marine mammal stocks. The Commission consists of three part-time Commissioners who must be experts in marine ecology and is supported in its duties by a permanent staff of about 10 people and a statutorily created Committee of Scientific Advisors on Marine Mammals.

The MMPA;567;567 establishes a comprehensive Federal program to conserve marine mammals, preempting State management authority. The central feature of the Federal program is a moratorium on the taking of all marine mammals by persons subject to U.S. jurisdiction. This protection prohibits harassment of animals, as well as the hunting or capturing of them. In addition, imports of marine mammals or marine mammal products into the United States are banned.

While the MMPA;640;640 preempts State authority over marine mammals, it also establishes procedures through which States may regain that authority, together with Federal financial assistance for carrying out an approved State program. In addition, the moratorium on the taking or importation of marine mammals may be waived or does not apply under certain conditions. Waiver of the moratorium is most commonly achieved through issuance of a permit. The MMPA;709;709 provides for the following exceptions: (1) the taking or importation of marine mammals for public display and for scientific research; (2) the incidental taking of marine mammals in the course of commercial fishing operations; (3) the incidental taking of marine mammals during activities such as oil and gas exploration, if the taking is determined to have a negligible impact on the species; and (4) the MMPA;775;775 does not apply to takings by Alaskan Natives, provided that the species are taken for subsistence purposes.

In most instances, the MMPA;797;797 relies upon the condition of a marine mammal population to determine whether such exceptions should be made. A stated goal of the MMPA;821;821 is to maintain marine mammals at optimum sustainable population (OSP) levels. Although not clearly defined in the MMPA;840;840 a species or stock is usually considered to be at the OSP level if its numbers are at least 60 percent of historic or unexploited population levels. Species listed as endangered or threatened under the Endangered Species Act of 1973 (ESA) and species which are below OSP levels are designated as depleted under the MMPA;896;896 For the most part, exceptions to the moratorium have not been allowed for depleted species or populations.

Incidental Take of Marine Mammals by Commercial Fishermen

General permits for the incidental taking of marine mammals in the course of commercial fishing were issued to U.S. fishermen in 1983, for a period of 5 years. In July 1986, the Federation of Japan Salmon Fisheries Cooperative Association applied for a 5-year general permit to allow the incidental taking of Dall's porpoise, northern fur seals, and sea lions in the course of its Bering Sea salmon driftnet fishery. NOAA issued a permit allowing the take of Dall's porpoise, but denied one for northern fur seals and sea lions because insufficient information was available to assess the status of those populations.

After the issuance of this general permit, lawsuits to enjoin the permit were filed by the Kokechik Fishermen's Association and several environmental groups. On June 15, 1987, the U.S. District Court for the District of Columbia ruled that issuance of the permit violated the MMPA;1073;1073 The Court's decision (*Kokechik Fishermen's Association v. Secretary of Commerce*) held that NOAA could not issue the permit to take Dall's porpoise if it were likely that northern fur seals also would be taken because the MMPA;1111;1111 prohibits the issuance of a permit and any taking for a population that is below its OSP level. The decision affected NOAA's discretion to issue or renew general permits to U.S. fishermen for the incidental taking of small numbers of marine mammals from depleted populations or from those populations for which the status was uncertain.

The MMPA;1169;1169 Amendments of 1988 (Public Law 100-711) addressed the Kokechik decision by adding section 114 to the MMPA;1187;1187 which provided for the issuance of a

new 5-year Interim Exemption for Commercial Fisheries. Section 114 implemented a negotiated agreement between commercial fishing organizations and environmental groups, and created a 5-year period during which the nonintentional killing of marine mammals during most commercial fishing operations was permitted in exchange for an agreement by fishermen to carry observers and report all interactions with marine mammals during most commercial fishing operations. This statutory exemption would have expired on October 1, 1993. However, Congress recently passed legislation (P.L. 103-86) extending the exemption for an additional 6 months, until April 1, 1994.;1291;1291

Public Display and Scientific Research

With respect to public display and scientific research, NOAA issues permits under the MMPA;1311;1311 for taking or importing marine mammals for public display, scientific research, or enhancement of the survival or recovery of a species or stock. NOAA reviews applications and decides whether to issue the requested permits, monitoring the animals as long as they are maintained under the authority of a permit. Currently, the agency is monitoring about 400 permits for scientific research and public display.

Dolphins, sea lions, and other marine mammals are popular displays at public zoos and aquariums across the United States. The MMPA;1398;1398 recognizes that this display provides an important educational opportunity to inform the public about the esthetic, recreational, and economic significance of marine mammals and their role in the ocean ecosystem. From 1973 through 1989, about 145 U.S. facilities obtained marine mammals under NOAA permits for public display. By 1989, zoos and aquariums were holding about 1300 marine mammals representing 27 species.

There is considerable variation in the type of facility receiving a permit for public display. Among the factors which vary are the number and species of marine mammals displayed, training and handling of animals in public, the size of the audience, the level of interaction with the public, scheduling of programs, and educational content. The largest facilities in the United States may hold 50-70 marine mammals, on display year-round and seen by millions of visitors annually. The smallest facilities may hold two or three animals, that often are rehabilitated beached and stranded California sea lions. In addition to zoos and aquariums, NOAA has issued public display permits to theme and amusement parks, travelling exhibits, and resorts.

With respect to scientific research, from 1973 through 1989, NOAA received 409 permit applications for scientific research that requested takings of almost 1 million animals. Takings under a scientific research permit vary with the nature of the research. About 78 percent of the animals taken under a scientific research permit are captured and released, and another 18 percent of the animals are simply harassed (subject to direct interaction). Less than 3 percent of the animals taken are killed or maintained in captivity.

In the years since the MMPA;1674;1674 was enacted, the permit program has become increasingly complex and controversial. Amendments to the MMPA;1690;1690 strengthened permit requirements, but program regulations, policies, and administrative procedures have not kept pace with these changes. As a result, in 1988, NOAA initiated the first comprehensive examination of the permit program since regulations were issued in 1974. The objective of this permit program review were to (1) streamline and speed up the permit process; (2) ensure consistency in permit procedures; (3) develop a policy framework for permit decisions; and (4) ensure compliance with all applicable Federal statutes. As part of the review, the agency has held several workshops and published a discussion paper in the Federal Register. Proposed regulations to revise the permit process have been drafted and were recently published in the Federal Register for public comment.

Finally, in recent years, natural observation programs such as whale-watching have developed which do not meet the MMPA;1832;1832 permit criteria for either public display or scientific research. Whale-watching is a thriving industry that reflects growing public interest in observing

marine mammals in the wild. For example, in 1990, an estimated 1,500,000 whale-watchers in Massachusetts, New Hampshire, and Maine generated \$22.5 million in direct revenues and \$78.75 million in total revenues for that region. Prime whale-watching locations are scattered around the U.S. coastline and include Massachusetts, Hawaii, California, Alaska, Oregon, and Washington.

Whale-watching operations have not been required to apply for permits because they traditionally have had little interaction with the marine mammals under observation. Whale-watching boats have relied on guidelines for maneuvering around these large cetaceans, based on local operating conditions and regional differences in the behavioral patterns of the whales under observation. In August 1992, NOAA issued proposed rules for approaching whales in an attempt to provide greater protection from harassment. However, the rules which NOAA proposed to adopt uniformly were guidelines that had been used for specific calving grounds in Hawaii and would have required vessels to stay more than 300 yards away from any whale. The proposed rules provided no flexibility for regional geographic differences, and eventually were withdrawn. Although there presently are no pending proposals for restricting natural observation programs, the issue remains as to how such programs fit within the existing regulatory framework.

LEGISLATIVE HISTORY

On July 14 and July 28, 1993, the Committee held hearings on legislation to reauthorize the MMPA.;2087;2087 The first hearing addressed the need to establish a new regime to govern the incidental taking of marine mammals in commercial fishing operations after expiration of the current interim exemption. The second hearing focused on concerns regarding the permitting process for public display and scientific research. S. 1636 was introduced on November 8, 1993, by Senator Kerry and is cosponsored by Senators Stevens and Packwood. The House of Representatives introduced legislation, H.R. 2760, to reauthorize the MMPA;2168;2168 on July 27, 1993.

At its November 9, 1993 executive session, the Committee considered S. 1636 in open session, and two amendments were offered. The first, offered by Senator Inouye, would allow vessels off the coast of Hawaii to approach lawfully a humpback or other whale as close as 100 yards. The second amendment, offered by Senator Gorton, would authorize the Secretary of Commerce (Secretary) to remove lethally a nuisance pinniped if the animal was identified as habitually exhibiting dangerous or damaging behavior that could not be deterred by other means. The second amendment also would provide for establishment of a task force to consult with the Secretary in any decision regarding such a nuisance pinniped. The amendment was developed in response to predation by nuisance pinnipeds of fish runs at the Ballard Locks and Columbia River in Washington State. It is claimed that the predation by the nuisance pinnipeds has contributed to a decline in the number of fish returning to spawn. The two amendments were adopted by the Committee without objection. Without objection, the Committee ordered S. 1636 to be reported as amended.

S. 1636, as reported, does not address issues related to public display or scientific research. During Committee discussion of S. 1636 at the markup, concerns were raised regarding those provisions of the MMPA,;2394;2394 some of which may be resolved by NOAA's proposed revision of permit regulations. Because the recent publication of the NOAA proposal provided little time for review, Committee members agreed to address any remaining concerns through an amendment to S. 1636 when it is considered by the full Senate.

SUMMARY OF MAJOR PROVISIONS

The primary purpose of the legislation is to establish criteria for identifying and prioritizing marine mammal stocks most affected by interactions with commercial fishing operations. Emphasis is placed on the need for immediate action to protect those stocks that interact with commercial fisheries and are in decline or at low population levels. In addition, the intentional

killing of marine mammals by commercial fishermen is prohibited. Major provisions of S. 1636, as reported, include:

1. Authorization of appropriations.-The authorization of appropriations would be extended through FY 1998 for DOC, DOI and the Commission. DOC would be authorized to receive \$21,636,000 for FY 1994;;2556;2556 DOI would be authorized to receive \$8,000,000 for FY 1994;;2566;2566 and the Marine Mammal Commission would be authorized to receive \$1,350,000 for FY 1994.;2580;2580 Funding authorization levels would be adjusted for inflation in the out-years.

2. Regulatory regime.-A new section 117 is added to the MMPA;2606;2606 to govern the interactions between commercial fisheries and marine mammals.

3. Stock assessment.-The Secretary would be required to prepare and issue a stock assessment for each marine mammal stock. Stocks would be designated into one of five classes ranked in priority based on population trend, size, and level of total lethal take. All stock assessments would be issued within 240 days after the date of enactment of the legislation, with final stock assessments published 90 days after the end of the public comment period. Those stocks placed in the first two classes would be classified as "critical stocks."

4. Transitional period.-The current interim exemption for commercial fisheries would remain in place until the regulations prescribed under S. 1636 as reported take effect.

5. Incidental take teams and incidental taking plans.-For critical marine mammal stocks that interact with commercial fisheries, the Secretary would be required to establish incidental take teams of experts to develop incidental taking plans recommending measures for assisting stock recovery. If an incidental take team cannot reach agreement and submit a draft plan within 6 months, the Secretary would be required to publish a proposed plan and implementing regulations for public review within 2 additional months. Emergency regulations could be prescribed prior to final publication of a plan if the Secretary finds that incidental taking is having an immediate and significant adverse impact on a critical stock. The incidental taking plan for a critical stock would include a review and evaluation of the information gathered in the stock assessment, and proposed management measures to reduce takings by commercial fisheries based proportionately on their contribution to the problem.

6. Vessel registration.-If no other Federal, State, or tribal registration system exists, the Secretary would be authorized to develop a vessel registration system to assess fishery efforts and their impact on marine mammals. Fees charged for a registration decal would be limited to the administrative costs incurred in issuing the decal. Appropriated funds would be used to cover any costs of maintaining a separate registration system. Only those vessels that fish in a fishery with frequent or occasional incidental takes of marine mammals could be included within a registration system established by the Secretary.

7. Reporting of takes.-All incidental lethal and serious injury takes would be reported at the end of each fishing trip on a standard form, and failure to report would subject a commercial fishing vessel owner or operator to civil penalties.

8. Monitoring.-The Secretary would be authorized to implement vessel observer programs, and require vessels to carry observers to the extent that they can be accommodated safely. The highest priority in assigning observers would be given to those fisheries that take stocks designated as depleted or critical. The cost of monitoring would be covered by appropriations.

9. Alaska harbor seals and Gulf of Marine harbor porpoises.-Establishment of an incidental take team would be mandated within 60 days of the date of enactment of the legislation to begin work immediately on a draft incidental taking plan to assist these two critical stocks toward recovery.

10. Whale approach standards in Hawaii.-Requirements for approaching whales in Hawaii would be streamlined to allow vessels to come as close as 100 yards from any whale.

11. Establishment of a Pinniped-Fishery Interaction Task Force.-The Secretary would be authorized to allow the lethal removal of a nuisance pinniped if it is identified as habitually exhibiting dangerous or damaging behavior that cannot be deterred by other means. A task force would be convened when an application is received requesting a permit for the lethal removal. The task force would evaluate the situation and make recommendations as to whether lethal removal would be acceptable or whether a nonlethal alternative is available and practicable. The lethal removal, if approved, would be performed by Federal or State agencies or qualified individuals under contract to those agencies. The Secretary could not approve the lethal removal of a pinniped from a stock listed as threatened or endangered under the ESA or listed as depleted or critical under the MMPA.;3308;3308

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, December 9, 1993.
Hon. Ernest F. Hollings, Chairman,
Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1636, the Marine Mammal Protection Act Amendments of 1993.

Enactment of S. 1636 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,
Robert D. Reischauer, Director.

CONGRESSIONAL BUDGET OFFICE-COST ESTIMATE

1. Bill number: S. 1636.
2. Bill title: Marine Mammal Protection Act Amendments of 1993.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 9, 1993.
4. Bill purpose: S. 1636 would authorize appropriations of an additional \$147 million over the fiscal years 1994;3511;3511-1998 to implement provisions regarding the incidental taking of endangered and threatened species of marine mammals. These appropriations would be for the activities of the Department of Commerce, the Department of the Interior (DOI), and the Marine Mammal Commission.

In addition, S. 1636 would establish rules governing the incidental taking of marine mammals and would require the Secretary of Commerce to develop a plan to reduce the incidental take from stocks listed as "critical". In order to accomplish this, the Secretary would be required to

prepare and issue an assessment for each marine mammal that lives in waters in the jurisdiction of the United States. The assessment would be the basis for developing a priority list of species that require the most immediate attention. The Secretary also would be required to develop and implement an incidental take plan to assist in the recovery of each marine mammal stock listed as critical. The bill would establish timetables for developing the plan and promulgating regulations to implement the plan. S. 1636 would provide authority to the Secretary to establish a monitoring program and enforcement procedures. Finally, the bill would establish penalties for the incidental taking of endangered or threatened species.

5. Estimated cost to the Federal Government:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The costs of this bill within budget function 300.

Basis of estimate: CBO estimates that the bill would be enacted early in fiscal year 1994;3775;3775 and that all amounts authorized would be appropriated. CBO has based its estimate of outlays on historical spending rates for similar activities of the National Oceanic and Atmospheric Administration (NOAA), DOI, and the Marine Mammal Commission. Since about \$22 million has already been appropriated for these activities for 1994,;3826;3826 CBO's estimate reflects the increase over actual appropriations that the bill would authorize.

S. 1636 would allow the Secretary to charge a fee to cover the administrative costs associated with issuing tags for vessel registration. The fees would be available for use by NOAA without further appropriation. CBO expects that the resulting change in outlays would be less than \$500,000 a year.

The bill would authorize NOAA to level civil penalties against anyone found in violation of the provisions of the bill. Based on information from NOAA, CBO expects penalty collections to be less than \$500,000 annually.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Any fees collected for vessel registration as a result of S. 1636 would affect direct spending and any penalties collected would affect receipts. Therefore, pay-as-you-go procedures would apply to the bill. CBO does not expect either of these amounts to be greater than \$500,000 in any one year over the 1994;4019;4019-1998 period.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Patricia A. Conroy and Melissa Sampson.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER AND TYPE OF PERSONS REGULATED

Most of the regulatory requirements of S. 1636 as reported would apply to owners, operators, and crew members of U.S. fishing vessels or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act. However, the vessel registration process established under section 6 would

apply only to the owners or operators of vessels that fish in a fishery that has frequent or occasional incidental taking of marine mammals. In addition, section 13 would clarify regulations applying to any vessel, including passenger vessels and other non-fishery vessels, that approach whales off the coast of Hawaii. Finally, regulations to implement section 14, allowing removal of nuisance pinnipeds, would apply to any person who makes a request to the Secretary for such a removal.

ECONOMIC IMPACT

DOC, DOI, and the Commission will incur some costs in fulfilling Federal responsibilities under the legislation, including stock assessments, program administration, and implementation of vessel registration and observer programs. A portion of the costs may be recovered from the fishing industry for the administrative costs incurred in issuing a decal indicating that vessel registration is current. However, such fees cannot exceed the actual administrative costs. Fishermen who frequently take marine mammals also may face additional costs in implementing incidental taking plans to reduce interactions and allow marine mammal stock recovery. At the same time, industry participation in the development of the plans should ensure that such economic costs are minimized.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Some additional paperwork would be required from commercial fishermen in order to comply with the registration and reporting provisions of the legislation. With regard to registration, the reported bill would require the Secretary to rely on existing Federal, State, or tribal data bases to provide the necessary information in order to minimize duplication. In the event that those data bases do not exist, the Secretary could establish a separate registration system. With regard to reporting, the Secretary would provide a standard form which can be read by a computerized data entry system for the owner or operator of a commercial fishing vessel to submit at the end of any fishing operation involving the incidental lethal and serious injury taking of a marine mammal. This approach is considered more efficient by the fishing industry than the logbooks required under the MMPA;4526;4526 at present. Therefore, any resulting increase in paperwork should be minimal.

SECTION-BY-SECTION ANALYSIS

SECTION 1.-SHORT TITLE

This section cites the short title of the reported bill as the Marine Mammal Protection Act Amendments of 1993.

SECTION 2.-PURPOSES

This section sets forth seven purposes for the reauthorization of the MMPA;4583;4583 (1) authorizing of appropriations; (2) ensuring that the incidental take of marine mammals by commercial fishing vessels does not reduce marine mammal populations below sustainable levels; (3) minimizing commercial fishing restrictions; (4) prohibiting most intentional killing of marine mammals; (5) focusing efforts on identifying and addressing the most significant problems involving commercial fishery-marine mammal interactions; (6) streamlining procedures and achieving in commercial fisheries a zero mortality rate goal; and (7) developing a cost-effective program for reliably monitoring the levels of incidental take in commercial fishing operations and the population trends of affected marine mammal stocks.

SECTION 3.-AUTHORIZATION OF APPROPRIATIONS

This section would extend the authorization of appropriations through FY 1988 for DOC, DOI, and

the Commission to carry out their responsibilities under the MMPA.;4711;4711 DOC activities authorized under this section would include funding to provide observer coverage on commercial fishing vessels, an activity that was previously authorized under section 114(e) of the MMPA.;4742;4742

SECTION 4.-INCIDENTAL TAKING OF ENDANGERED AND THREATENED SPECIES

This section addresses the incidental taking the marine mammals from a species or stock which is designated as depleted under the MMPA;4774;4774 because of its listing as endangered or threatened under the ESA. Subsection (a) would amend section 101(a)(4) of the MMPA.;4797;4797 authorizing the Secretary to allow the incidental taking of marine mammals from such a stock or species if the Secretary determines that the taking is pursuant to a statement issued by the Secretary under section 7 of the ESA. Subsection (b) of this section would amend section 7(b)(4)(C) of the ESA to make the necessary cross-reference to section 101(a)(4) of the MMPA;4866;4866 in order to ensure that the Secretary is not prevented from issuing the ESA statement. The effect of the amendments made by this section is to require that the incidental taking of endangered and threatened marine mammals is handled in the same manner as the taking of other endangered and threatened animals.

SECTION 5.-CONSERVATION PLANS

This section would amend section 115 of the MMPA;4933;4933 to clarify that, if the Secretary determines the need for an incidental taking plan to reduce the taking of marine mammals in the course of commercial fishing operations, any conservation plan required by section 115 of the MMPA;4971;4971 would address only nonincidental takings. New section 117(d) of the MMPA;4984;4984 would address plans to reduce incidental takings in the course of commercial fishing operations.

SECTION 6.-TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

This section would establish a new section 117 of the MMPA;5021;5021 to govern the incidental taking of marine mammals in the course of commercial fishing operations. New section 117 would apply to U.S. fishing vessels and foreign vessels with valid fishing permits issued under section 204(b) of the Magnuson Fishery Conservation and Management Act. Subsection (a) of new section 117 specifies that this section, and not sections 103 and 104, would govern the incidental taking of marine mammals in the course of commercial fishing operations, and would require the Secretary to develop and implement plans for reducing the incidental lethal taking of marine mammals in commercial fishing operations. New section 117 would not apply to: (1) the incidental taking of marine mammals during commercial fishing operations from species or stocks designated as depleted on the basis of their listing as threatened or endangered under the ESA; (2) the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean; or (3) the taking of marine mammals during commercial fishing operations from an experimental population of California sea otters governed by Public Law 99-625.

Subsection (b) of new section 117 would require the Secretary to consult with and consider the advice of scientific and commercial fishing industry experts in implementing the new incidental taking program. The Secretary would be expected to seek advice with respect to both available information and proposed actions for implementation. In addition, advice would be sought in connection with specific matters such as: stock assessments; studies to improve understanding of marine mammal population dynamics; research to resolve uncertainties in determining marine mammal life history parameters; and conservation engineering and research on commercial fishing practices that would reduce marine mammal deaths and serious injuries. The Committee expects the Secretary to consult with and consider the advice not only of individuals within NOAA, but also of individuals who are involved in academia, in the conservation of marine mammals, and in commercial fishing operations.

Subsection (c) of new section 117 would require the Secretary to prepare and revise a stock assessment for each marine mammal stock using the best scientific information available. The stock assessment would include: a definition of the stock by species or subspecies and its spatial and temporal distribution; the best available estimates of the stock's population abundance, realistic minimum population size, and current population trend; an estimate of total lethal take from the stock by source; for critical stocks, other factors that may impede recovery of the stock, including habitat and prey; and a description of any commercial fishery that interacts with the stock. The description of the interacting commercial fishery would specify the number of vessels participating in the fishery, the approximate incidental lethal and serious injury take from the stock by such fishery, seasonal or areal variations in take levels, and the rate of incidental marine mammal mortality. The stock assessment also would include a determination of the status of the stock (whether the stock is within OSP range, is designated as depleted, is listed as threatened or endangered under ESA, or is proposed for listing as critical under this section), and a determination of the calculated acceptable removal level for the stock and an explanation of how it was calculated. Finally, the stock assessment would classify the stock into one of five categories based on population size, population trend, and total lethal take. Stocks which fall into class 1 or class 2 would be classified as critical.

The Secretary would be required to issue a draft of each stock assessment within 240 days after the date of enactment of this legislation. The Committee expects the Secretary to issue each stock assessment as quickly as possible and to publish all stock assessments within 240 days of the date of enactment of the legislation. In addition, the Secretary should seek the advice of the experts described in subsection (b) of new section 117 in formulating draft stock assessments. The Secretary would publish a notice of issuance in the Federal Register and provide a 60-day opportunity for public review and comment. Ninety days after close of the public comment period on each preliminary stock assessment, the Secretary would publish in the Federal Register a final stock assessment, taking into consideration the advice, comments, and recommendations of the experts and the general public. The Secretary would review the stock assessments, with advice and recommendations from experts, on an annual basis for stocks listed as critical or for which new information is available, and at least once every 3 years for all other marine mammal stocks.

Subsection (d) of new section 117 would require the Secretary to develop and implement an incidental taking plan for the purpose of assisting the recovery of each marine mammal stock listed as critical and which interacts with commercial fisheries. The plan would be developed in consultation with an incidental take team. If funds are insufficient to implement plans for all critical stocks, the Secretary is to give the highest priority to the most critical stocks that interact with commercial fisheries.

Subsection (d) would establish criteria for the contents and development of an incidental taking plan. Each plan would be required to contain the following: (1) a review of the stock assessment, including any new information; (2) an evaluation and estimate of the total number and percentage of animals from the stock that are being killed or seriously injured each year in commercial fisheries; (3) proposed measures for minimizing incidental takings during commercial fishing operations; and (4) a long-term strategy for reducing the rate of marine mammal mortalities and serious injuries from commercial fishing within 10 years to a level approaching zero. In addition, each incidental taking plan would include a timetable for achieving its objectives, and provide for measures to reduce lethal marine mammal takes attributable to commercial fishing within 6 months if the total of such takes exceeds the calculated acceptable removal level.

Subsection (d) of new section 117 also would provide the Secretary with the authority to establish incidental take teams. An incidental take team would be established at the earliest possible date after the final stock assessment is issued and not later than 120 days after issuance of the final stock assessment. An incidental take team could be requested to address a single stock that extends over one or more regions, or multiple stocks within a single region,

based upon the Secretary's determination that the approach selected would facilitate the development of a recovery plan. Team members would be required to have expertise with respect to marine mammal and fishery interactions and could be Federal and State fishery managers or representatives of academic, scientific, environmental or fishery groups. The Committee anticipates that, to the maximum extent practicable, each team would provide for an equitable balance among interested parties and develop recommendations through consensus. Teams would not be subject to the Federal Advisory Committee Act, but would be required to hold public meetings and provide adequate public notice of their time and location. Members would serve without compensation, but would be reimbursed for reasonable travel costs and expenses incurred while performing related duties.

Subsection (d) of new section 117 would establish two timetables for developing incidental taking plans for critical stocks which interact with commercial fisheries. A shorter timetable would apply in cases where the total lethal take of a marine mammal stock is estimated to be greater than the calculated acceptable removal level, requiring a draft plan to be submitted within 6 months after establishment of the incidental take team. However, if the total lethal take is estimated to be less than the calculated acceptable removal level, the team would have 11 months to develop a draft plan.

Subsequent procedures for incidental taking plans would be the same for both types of plans. Sixty days after submission, the Secretary would publish the proposed incidental taking plan and regulations for public review and comment. If an incidental take team fails to submit a draft plan within the allotted time, the Secretary would be required to publish a proposed plan and implementing regulations for public review and comment within 2 additional months. Sixty days after close of the public comment period, a final incidental taking plan and implementing regulations would be published. The Secretary and the incidental take team would meet at prescribed intervals for as long as is determined to be necessary to monitor the implementation of the plan. The plan and implementing regulations could be amended in consultation with the incidental take team.

Finally, subsection (d) of new section 117 would allow the Secretary to prescribe emergency regulations prior to issuance of a final incidental taking plan upon a finding by the Secretary that incidental takings in a commercial fishery are having an immediate and significant adverse impact on a stock. Emergency regulations would: (1) be prescribed after consultation with the appropriate regional fishery management council (Council) and State fishery managers; (2) take into account the economics of the affected fishery and the availability of existing technology to minimize takings; (3) conform with existing State or regional fishery management plans to the maximum extent practical; (4) be published in the Federal Register with an explanation; (5) remain in effect for not more than 180 days, until a final plan for the stock is issued, or until the end of the applicable fishing season, whichever is earliest; and (6) be terminated at an earlier date if the Secretary determines that the emergency no longer exists.

Subsection (e) of new section 117 would require the Secretary to promulgate regulations for implementing an incidental taking plan after notice and opportunity for public comment. The Secretary's authority to modify the plan at the request of an appropriate Council or State or tribal management authority would not be limited by this subsection. Among the measures which could be required by the Secretary in such regulations are: fishery-specific incidental lethal taking limits; time or area restrictions on commercial fishing; registration of commercial fishing vessels; mandated use of alternative gear techniques and new technologies; and vessel observer programs.

Subsection (f) of new section 117 would authorize the Secretary to develop a system for registering commercial fishing vessels, where such system is necessary to address interactions between fisheries and marine mammals. The Secretary would be required to use existing Federal, State, or tribal data bases that provide information about the approximate number of vessels in the fishery, vessel identities, owners or operators of such vessels, the time period and

location of the fishery, and the type of fishing gear used. The Secretary would consult with the incidental take team in determining whether such data bases exist. If, after consultation, the Secretary determined that no data base is available, a separate registration system could be established through regulation to obtain the specified information.

The Secretary would be authorized to require a decal or other evidence that a vessel was maintaining an acceptable Federal, State, or tribal registration, and to charge a fee for the issuance of a Federal registration decal if a separate system was required for a specific fishery. Fees collected could not exceed the administrative costs incurred in issuing the decals, and would be available to the NOAA Administrator as a cost reimbursement. The expense of maintaining a Federal system would be provided through appropriations. Finally, only those vessels operating in a commercial fishery that had frequent or occasional takes of marine mammals would be authorized for inclusion in such a system. The Committee intends that fisheries such as the Gulf of Mexico and South Atlantic shrimp fisheries, which have minimal contact with marine mammals, would be precluded from having to register under this subsection.

Subsection (g) of new section 117 would require the owner or operator of a commercial fishing vessel to report all incidental lethal and serious injury takes at the end of each fishing trip on a standard form developed by the Secretary. The form should be machine-readable for use in a computerized data system. The form would require the following information: (1) vessel name and Federal, State, or tribal registration numbers; (2) name and address of the vessel owner or operator; (3) name and description of the fishery; (4) species of marine mammal incidentally killed or injured and the date and time of the taking; (5) time and period in which the fishery occurred; and (6) approximate geographic location of the incidental taking. Failure to report incidental lethal takings of marine mammals would subject the vessel owner or operator to penalties under section 105 of the MMPA.;7157;7157

Subsection (h) of new section 117 would authorize the Secretary to establish a vessel observer program to monitor interactions between commercial fisheries and marine mammals and to verify industry reports of takings. In addition, observers would be authorized to collect information on other sources of mortality, marine mammal sightings during the observation period, and other matters of scientific interest. Commercial fishing vessels would be required to carry observers if they could be accommodated safely, and refusal to carry an observer would be subject to a civil penalty. This subsection also would allow the Secretary to establish other programs, such as direct observations from vessels, airplanes, video, or points on shore, for monitoring incidental marine mammal takes during commercial fishing operations. Individuals engaged in an alternative monitoring program would collect scientific information on commercial fisheries consistent with the information collected under the observer coverage.

The cost of monitoring programs would be covered by Federal appropriations, and top funding priority would be given to the placement of observers in commercial fisheries taking stocks that are endangered or threatened under the ESA, or designated as critical stocks under new section 117. Other commercial fisheries with the greatest incidental lethal take and injury would be given second highest priority. Available observer resources could be shifted when the Secretary determined that sufficient information had been collected about one specific fishery and that attention should be directed to the next priority fishery. Monitoring programs also could be initiated to gather information on the interaction between noncritical stocks and commercial fisheries, in particular to verify the numbers and rate of incidental lethal and serious injury takes, fishery impacts, changes in fishing patterns or technologies, and the accuracy of reporting by commercial fishing vessels.

Subsection (i) of new section 117 would establish a 10-year goal for commercial fishermen of reducing their lethal takes and injuries of marine mammals to insignificant rates approaching zero. In addition, this subsection would clarify that commercial fisheries which maintain serious injury and mortality rate levels approaching zero would not be required to reduce further their mortality rates. Within 3 years to the date of enactment of the legislation, the Secretary would

be required to initiate a review of each fishery's progress toward the zero-mortality rate goal and submit a report to the appropriate congressional committees. The report would note any commercial fishery for which there is no information on marine mammal interactions and provide recommendations on those commercial fisheries for which further actions are needed to achieve the goal within the 10-year timeframe established by subsection (i).

Subsection (j) of new section 117 would allow civil penalties of not more than \$5,000 to be assessed for violations of the new section, other than the intentional killing of a marine mammal or failure to report an incidental lethal taking. The latter violations would be subject to penalties under section 105 of the MMPA.;7650;7650 The owner or operator of a vessel engaged in a commercial fishery with a remote likelihood of taking marine mammals or no known incidental taking of marine mammals would not be subject to penalties under the MMPA;7688;7688 if the owner or operator reports to the Secretary in accordance with new section 117(g)(4). Although the likelihood of interaction with a marine mammal in some fisheries such as the Southeastern shrimp fisheries is remote, the Committee recognizes the importance of collecting adequate information. This provision would protect such fisheries from the requirements governing fisheries with frequent interactions, while ensuring accurate data by mandating a report on any occasional interaction.

Subsection (k) of new section 117 would ensure that the Secretary's authority to allow voluntary measures to reduce the incidental take of marine mammals in commercial fisheries would not be limited.

Finally, subsection (l) defines several terms for the purposes of implementing the new section 117, including "calculated acceptable removal level," "critical stock," "noncritical stock," "incidental take team," "maximum net productivity level," and "recovery factor."

SECTION 7.-PENALTIES; PROHIBITIONS

This section would amend section 105(a)(1) of the MMPA;7843;7843 to differentiate the penalties in the new section 117(j) from those of section 105(a)(1). This section also would amend section 105(b) of the MMPA;7872;7872 to conform with the penalty provisions of new section 117(j).

SECTION 8.-ALASKA HARBOR SEALS AND GULF OF MAINE HARBOR PORPOISES

Recognizing the critical status of the Alaska harbor seals and the Gulf of Main harbor porpoises, this section would authorize the Secretary to establish incidental take teams for these two stocks within 60 days after the date of enactment of this legislation. The incidental take teams would begin work immediately on a draft incidental taking plan in accordance with new section 117 of the MMPA;;7961;7961 using the best scientific information available in plan development. The draft plan would be reviewed by the Secretary and, after consultation with scientific experts and notice and opportunity for public comment, approved and implemented as quickly as practical.

SECTION 9.-AUTHORIZATION TO DETER MARINE MAMMALS

This section would allow for the nonlethal deterrence of marine mammals that damage the gear or catch of commercial or recreational fishermen, damage private or public property, or endanger personal safety. The measures used could not result in the death of or serious injury to a marine mammal. The Secretary could prohibit any methods of deterrence through regulation if the Secretary determines, based on the best scientific information available, that the method of deterrence would have a significant adverse effect on marine mammals.

SECTION 10.-TREATY RIGHTS

This section would reaffirm that the MMPA;8105;8105 does not in any way diminish or abrogate existing protected Indian treaty fishing or hunting rights.

SECTION 11.-TRANSITION RULE

This section would clarify that the elements of section 114 of the MMPA;8139;8139 are to be kept in place until the regulations prescribed under section 117 come into force. At that time, the regulations under section 114 would be superseded by the regulations implementing section 117.

SECTION 12.-TECHNICAL AMENDMENTS

This section makes technical corrections to the MMPA.;8186;8186 The numbering of definitions in section 3 would be corrected, and the title added to the MMPA;8204;8204 by the Marine Mammal Health and Stranding Response Act (enacted in 1992 as title III of the Oceans Act of 1992, (P.L. 102-587) would be redesignated as title IV since there is an existing title III.

SECTION 13.-HUMAN ACTIVITIES WITHIN PROXIMITY OF WHALES

This section would allow individuals to approach lawfully a humpback whale or any other whale by any means other than aircraft at a distance no closer than 100 yards. The approach standard would apply only to the waters off the coast of Hawaii, and would include areas designated in regulation as cow/calf waters.

SECTION 14.-PINNIPED-FISHERY INTERACTION TASK FORCE

This section would establish a new section 118 of the MMPA;8324;8324 to govern the lethal and humane removal of identifiable nuisance pinnipeds that habitually exhibit dangerous or damaging behavior that cannot be deterred by any other means.

Section 118(b) would allow any person to apply to the Secretary to authorize the lethal removal of the identified pinniped. The application would include a means of identifying the individual pinniped or pinnipeds as well as a detailed description of the problem interaction and the expected benefits of the removal.

The Secretary would have 15 days after receipt of the application to review it. Upon a determination that the application contains sufficient evidence, the Secretary is required to establish a Pinniped-Fishery Interaction Task Force (Task Force), and to publish a notice in the Federal Register requesting public comment on the application.

The Task Force would consist of: designated DOC employees; scientists knowledgeable about the pinniped interaction described in the application; and representatives of interested conservation and fishing groups, Indian treaty tribes, State wildlife officials, and any other organization deemed appropriate by the Secretary. Within 60 days of its establishment and after review of the public comments received, the Task Force would make a recommendation to the Secretary either approving or disapproving the application for pinniped removal. The recommendation would include: a description of the specific pinniped or pinnipeds; the proposed location, time, and method of removal; criteria for evaluating the success of the action; and the duration of the authority for removal. The Task Force also would suggest practical and available nonlethal alternatives and a recommended course of action.

The Secretary would have 30 days after receipt of the recommendations from the Task Force either to approve or to deny the application. Upon approval, the Secretary would begin immediately to implement the lethal removal. Such a removal must be performed by a Federal or State agency, or a qualified individual under contract to a Federal or State agency. The Task Force would evaluate the effectiveness of the course of action taken, whether it was a lethal removal or an alternative, and would recommend additional actions if the problem interaction

failed to be eliminated. If implementation was effective, however, the Task Force would so advise the Secretary, and the Secretary then would disband the Task Force.

In determining whether an application should be approved or denied, the Task Force would consider criteria such as: population trends; feeding habits; location of the interaction; time of occurrence of the interaction; the number of pinnipeds involved; past efforts to deter nonlethally the pinniped or pinnipeds; a demonstration that all reasonable nonlethal steps have been taken with no success; the extent of harm, impact, or imbalance with other species in the ecosystem; and the extent of behavior that presents an ongoing threat to public safety. No species that is listed as threatened or endangered under the ESA or as critical under new section 117 of the MMPA;8814;8814 would be approved for lethal removal.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed *italic*, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

Section 3 of That Act

DEFINITIONS

Sec. 3. For the purposes of this Act-

(1) through (14) ***

(15) The term "waters under the jurisdiction of the United States" means-

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary in a line drawn in such a manner that each point on it is 20 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

[(15)] (16) The term "fishery" means-

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

[(16)] (17) The term "competent regional organization"-

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

*20 (B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

[(17)] (18) The term "intermediary nation" means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B). If such nation certifies and provides reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States pursuant to this

section, the Secretary shall, as soon as practicable after receiving complete information regarding certification and proof, make an affirmative finding that such nation does not constitute an intermediary nation for purposes of this section.

Section 101 of That Act

MORATORIUM AND EXCEPTIONS

Sec. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammals products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) through (3) ***

[(4)(A) During any period of five consecutive years, the Secretary shall allow the incidental, but not the intentional, taking, by citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice and opportunity for public comment-

[(i) finds that the total of such taking during such five-year period will have a negligible impact on such species or stock; and

[(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

[(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment, that-

[(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

[(ii) the policies, purposes and goals of this Act would be better served through the application of this title without regard to this subsection.

Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.]

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

(B) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(5) ***

(b) through (c) ***

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

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

(B) damaging private or public property; or

(C) endangering personal safety, so long as such measures do not result in marine mammal death or serious injury.

(2) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods through regulation under this Act.

(3) The authority to deter marine mammals pursuant to paragraph (1) applies to all marine mammals, including all stocks designated as depleted under this Act.

Section 102 of That Act

PROHIBITIONS

Sec. 102. (a) Except as provided in sections 101, 103, 104, 109, 111, 113, [and 114 of this title

or title III] 114, and 117 of this title and title IV, it is
(1) through (5) ***
(b) through (f) ***

Section 105 of That Act

PENALTIES

Sec. 105. (a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder (except as provided in section 117(j)) may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(2) ***

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder (except as provided in section 117(j)) shall, upon conviction, be fined not more than \$20,000 for each such violation, or imprisoned for not more than one year, or both.

Section 114 of That Act

INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

Sec. 114. (a)(1) During the period beginning on the date of enactment of this section and [ending April 1, 1994,];10161;10161 until superseded by regulations prescribed under section 117, except as provided in paragraph (2), the provisions of this section, rather than sections 101, 103, and 104, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

(2) ***

(b) through (o) ***

Section 115 of That Act

STATUS REVIEW; CONSERVATION PLANS

Sec. 115. (a) ***

(b)(1) The Secretary shall prepare conservation plans-

(A) by December 31, 1989, for North Pacific fur seals;

(B) by December 31, 1990, for Steller sea lions; and

(C) as soon as possible, for any species or stock designated as depleted under this title, except that a conservation plan need not be prepared if the Secretary determines that it will not promote the conservation of the species or stock.

(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary shall model such plans on recovery plans required under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)).

(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 103(f) of this title what measures have been taken to prepare and implement such plans.

(4) If the Secretary determines that an incidental taking plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a stock identified as a critical stock under section 117(c), any conservation plan required *23 under this subsection for such stock shall only address nonincidental takings.

Section 116 of That Act

AUTHORIZATION OF APPROPRIATIONS

Sec. 116. ***

* * * * *

SEC. 117. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

(a) In General.-Except as provided in section 114 and in paragraphs, (2), (3), and (4) of this section, and notwithstanding section 101, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). The Secretary shall develop and implement incidental taking plans under this section to reduce the incidental lethal taking of marine mammals, from stocks listed as critical stocks under subsection (c), to a level below the calculated acceptable removal level.

(2) Section 101(a)(4), and not this section, shall govern the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened or endangered species under the Endangered Species Act of 1973.

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

(4) This section shall not govern the taking of marine mammals from an experimental population of California sea otters to which the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500) applies.

(5) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

(b) Scientific Consultation.-In implementing the incidental taking program under this section, the Secretary shall seek the advice of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, and commercial fishing technology and practices. Such advice should be sought with respect to information available, and actions proposed, for such implementation, including-

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

(2) studies needed to resolve uncertainties regarding stock separation, stock abundance, or trends and factors affecting distribution, size, or productivity of stocks;

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

(4) research to identify modifications in fishing gear and fishing practices likely to reduce the mortality and serious injury of marine mammals incidental to commercial fishing operations.

(c) Stock Assessments.- (1) Using the best scientific information available and in accordance with this subsection, the Secretary shall prepare and issue, and thereafter (as appropriate) revise, a stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. The stock assessment shall include-

(A) a definition of the stock by species or subspecies and its spatial and temporal distribution;

(B) the best available estimates of the stock's population abundance, realistic minimum population size, and current population trend;

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

- (D) a description of any commercial fishery that interacts with the stock, including-
- (i) the approximate number of vessels participating in the fishery;
 - (ii) the approximate incidental lethal and serious injury take from the stock by such fishery;
 - (iii) seasonal or area differences in levels of such incidental lethal or serious injury take; and
 - (iv) the rate of incidental mortality in the stock caused by such fishing, based on a unit of fishing effort;
- (E) a determination as to the status of the stock, including whether the stock is determined to be within its optimum sustainable population range, is designated as depleted under this Act, is listed as threatened or endangered under the Endangered Species Act of 1973, or is proposed for listing as a critical stock under subparagraph (G);
- (F) a determination of the calculated acceptable removal level for the stock and the factors used to calculate it, including a recovery factor if the stock is below its optimum sustainable population; and
- (G) designation of the stock (based on a scientific analysis of the stock's population trend and population size, the level of total lethal take from the stock from all sources, and the best available estimates of net productivity at the maximum net productivity level) for listing in one of the following categories:
- (i) Class 1, consisting of stocks 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 exceeds the net productivity 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 whose 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 of the net productivity of the stock's population when it is at its maximum net productivity level;
 - (II) whose population size is stable, or whose population trend is unknown and whose realistic minimum population is greater than 10,000 but less than 100,000; 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
 - (III) whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater 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.
 - (iv) Class 4, consisting of stocks-
 - (I) whose population size is stable, or whose population trend is unknown and whose realistic minimum population is greater than 10,000 but less than 100,000; and from which the total annual lethal take is less than 20 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 increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; 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.
 - (v) Class 5, consisting of stocks whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take is less than 20 percent of the net productivity of the stock's population when it is at its maximum net productivity level.

(2) Not later than 240 days after the date of enactment of this section, the Secretary shall issue a draft of each stock assessment required by this subsection, after seeking advice from the experts described in subsection (b). The Secretary shall publish in the Federal Register a notice of availability of the draft and provide an opportunity for public review and comment during a period of not to exceed 60 days.

(3) Not later than 90 days after the close of the public comment period on such preliminary stock assessment, the Secretary shall publish in the Federal Register a final stock assessment, after consideration of advice, recommendations, and comments of experts and the general public and the best scientific information available.

(4) The Secretary shall review stock assessments in accordance with this subsection, and obtain advice and recommendations from experts-

(A) on an annual basis for stocks listed as critical stocks or for which new information is available; and

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

The Secretary shall revise such assessments after notice and opportunity for public comment, if the review indicates revision is necessary.

(d) Incidental Taking Plan.-(1) The Secretary shall develop and implement an incidental taking plan designated to assist in the recovery of each marine mammal stock that is listed as a critical stock and interacts with commercial fisheries. Such plan shall be developed in consultation with the incidental take team established for the plan under this subsection. If there is insufficient funding available to develop and implement an incidental taking plan for all critical stocks that interact with commercial fisheries, the Secretary shall give highest priority to the development and implementation of incidental taking plans for Class 1 stocks. Within a particular class of critical stocks that interact with commercial fisheries, the Secretary shall give highest priority to the development and implementation of plans for stocks that the Secretary considers the most critical within the class.

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

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

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

(C) Proposed management measures or voluntary actions for the reduction of incidental taking by commercial fisheries. Such proposed measures and actions shall be developed in light of the plan's immediate objective of reducing incidental lethal and serious injury take by commercial fisheries by the same proportion as their proportion of the total lethal and serious injury take from all sources.

(D) A long-term strategy to reduce, to insignificant rates approaching zero within 10 years, the incidental mortality and serious injury within the stock that results from commercial fishing operations.

(3) Each incidental taking plan shall include projected dates for achieving the objectives of the plan. If the total lethal take exceeds the calculated acceptable removal level, the plan shall include measures the Secretary expects will reduce, within 6 months after commencement of fishing, the share of the lethal take that exceeds the calculated acceptable removal level and is attributable to commercial fisheries.

(4)(A) At the earliest possible time (not later than 120 days) after the Secretary issues a final stock assessment listing a stock as a critical stock, the Secretary shall-

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

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

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

(C) Members of incidental take teams shall be individuals knowledgeable and experienced

regarding the measures to conserve such stocks and to reduce any takings from such stock incidental to commercial fishing operations. Members may include representatives of Federal and State agencies, regional fishery management councils and commissions, academic and scientific organizations, environmental and fishery groups, and others as the Secretary considers appropriate. Incidental take teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of government, resource user interests, and non-user interests. Incidental take teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.) but their meetings shall be open to the public, after timely publicity on the time and place of such meetings.

(D) Members of incidental take teams shall serve without compensation, but shall be reimbursed by the Secretary for reasonable travel costs and expenses incurred in performing their duties as members of the team.

(E) Nothing in this section shall be construed to constrain the Secretary from establishing priority among classes of critical stocks covered by this subsection and exercising discretion (in consultation with scientific experts) to address such stocks in any fiscal year according to that priority.

(5) Where the total lethal take from such a critical stock is estimated to be greater than the calculated acceptable removal level established in the stock assessment, the following procedures shall apply in the development of the incidental taking plan for the stock:

(A) Not later than 6 months after the date of establishment of an incidental take team for the stock, the team shall submit a draft incidental taking plan for the critical stock to the Secretary, consistent with the other provisions of this section.

(B)(i) The Secretary shall take the draft incidental taking plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and proposed regulations to implement such plan, for public review and comment.

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

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental taking plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary and the incidental take team shall meet every 6 months to monitor the implementation of the final incidental taking plan until such time that the Secretary determines that meetings are no longer necessary.

(E) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations as necessary, consistent with the procedures in this section for the issuance of such plans and regulations.

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

(A) Not later than 11 months after the date of establishment of an incidental take team for the stock, the team shall submit a draft incidental taking plan for the stock to the Secretary, consistent with the other provisions of this section.

(B)(i) The Secretary shall take the draft incidental taking plan into consideration and, not later than 60 days following the submission of the draft plan by the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and implementing regulations, for public review and comment.

(ii) In the event that the incidental take team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed incidental taking plan and implementing regulations, for public review and comment.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental taking plan and implementing regulations, consistent with the other provisions of this section.

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

(E) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations as necessary, consistent with the procedures in this section for the issuance of such plans and regulations.

(7) If the Secretary finds, prior to the issuance of a final incidental taking plan, that the incidental taking of marine mammals in a commercial fishery is having an immediate and significant adverse impact on the stock to which the plan would apply, the Secretary may, after consultation with appropriate Regional Fishery Management Councils and State fishery managers, prescribe emergency regulations to reduce, to the maximum extent practicable, such incidental taking. In prescribing such emergency regulations, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals, and shall conform such regulations, to the maximum extent practicable, with existing State or regional fishery management plans. Such regulations-

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

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

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

(e) Regulatory Measures.-(1)(A) The Secretary shall, after notice and opportunity for public comment, promulgate regulations to implement an incidental taking plan necessary to accomplish the objectives set forth in subsections (d) and (i).

(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary to modify the incidental taking plan at the request of the appropriate Regional Fishery Management Council or State or tribal management authority.

(2) In implementing an incidental taking plan issued pursuant to this section, the Secretary may promulgate regulations which include, but are not limited to, measures to-

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

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

(C) require the use of alternative gear techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

(D) educate commercial fishermen and other individuals, through workshops and other means, on the importance of reducing the incidental lethal taking of marine mammals from critical stocks; and

(E) monitor the level of the incidental lethal taking of marine mammals in the course of commercial fishing operations, as set forth in subsection (h).

(f) Registration of Vessels.-(1) Subject to the provisions of this subsection, the Secretary may develop a system to register commercial fishing vessels and to assess fishery effort, where such system is necessary, to understand the interaction between commercial fisheries and marine mammal stocks in a region.

(2) In developing a registration system to understand such interactions, the Secretary shall rely upon existing Federal, State, or tribal data bases which provide the following information about an affected commercial fishery:

(A) The approximate number of vessels participating in the fishery.

(B) The identity of specific vessels to be registered.

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

(D) The time period in which the fishery occurs.

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

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

(3) The incidental take teams shall advise the Secretary as to whether existing Federal, State, or

tribal data bases are capable of being utilized to understand the interaction between commercial fisheries and critical stocks in a region. If the Secretary determines, after consultation with such a team, that data bases for specific fisheries which provide the information required under paragraph (2) are not available to the Secretary or the team, the Secretary may require through regulation separate registration to obtain the information set forth in paragraph (2).

(4)(A) The Secretary may, as a condition of accepting a Federal, State, or tribal registration as adequate for the purposes of this section, require such registration to be supplemented by the requirement that the vessels so registered display a decal or other evidence, issued by the registering authority, that indicates the registration is current.

(B) To the extent the Secretary determines that separate registration is required for a specific fishery pursuant to paragraph (3), the Secretary is authorized to charge a fee for the issuance of a decal or other evidence indicating the registration is current. The fee charged under this subparagraph shall not exceed the administrative costs incurred in issuing the decal or other evidence. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the issuance of such decal or other evidence.

(5) The costs of maintaining a separate registry system for a specific fishery pursuant to paragraph (3) shall be covered through Federal appropriations.

(6) The Secretary may include within a registration system under this subsection only those vessels that fish in a fishery that has frequent or occasional incidental taking of marine mammals.

(g) Reporting Requirement.-The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental lethal and serious injury takings of marine mammals in the course of commercial fishing operations to the Secretary at the end of each fishing trip on a standard form to be developed by the Secretary under this section. Such form shall be readable by computer or other machine and shall require the vessel owner or operator to provide the following:

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

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

(3) The name and description of the fishery.

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

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

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

(h) Monitoring.-⁽¹⁾ The Secretary may establish a vessel observer program to monitor incidental lethal and serious injury takings of marine mammals during the course of commercial fishing operations. The purpose of the monitoring program shall be to develop independent information on interactions between commercial fisheries and marine mammals and to verify reporting of incidental lethal and serious injury takings under subsection (g). Observers may perform other tasks including, but not limited to-

(A) recording other sources of mortality;

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

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

⁽²⁾ Commercial fishing vessels shall carry observers on board, when requested by the Secretary, to the extent that the vessel can safely accommodate the observer. The owner or operator of a vessel who refuses to carry an observer shall be subject to a civil penalty, pursuant to subsection (j).

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

(B) Individuals engaged in such monitoring program shall collect scientific information on marine mammal interactions, consistent with the requirements of this subsection.

(4) The cost of the monitoring program shall be funded by Federal appropriations, and the Secretary shall allocate available observers among fisheries consistent with the following priority:

(A) The highest priority shall be given to fisheries that incidentally lethally take or seriously injure animals from (i) stocks designated as depleted on the basis of their listing as endangered or

threatened species under the Endangered Species Act of 1973, or (ii) critical stocks.

(B) The second highest priority shall be given to fisheries other than those described in subparagraph (A) in which the greatest incidental lethal take and serious injury of marine mammals occurs.

When the Secretary determines that sufficient observation of a specific fishery has occurred, the Secretary may discontinue such observation and direct available observer resources to the next fishery in priority. Nothing in this subsection precludes the Secretary from resuming observation of a fishery when necessary to achieve additional verification of the nature of interactions with marine mammal stocks.

(5) Notwithstanding paragraph (4), the Secretary may initiate, where necessary, additional monitoring programs to gather information on the interaction between commercial fisheries and marine mammal stocks not identified as critical stocks. Such information may be used to verify-

(A) the numbers of incidental lethal and serious injury takings of marine mammals in a commercial fishery, and the rate of such takings;

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

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

(i) Zero Mortality Rate Goal.-(1) Commercial fisheries shall reduce their rates of incidental lethal or serious injury taking, to insignificant rates approaching zero within 10 years after the date of enactment of this section.

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

(3) Three years after such date of enactment, the Secretary shall review the progress of commercial fisheries, by fishery, toward reducing mortality and serious injury rates to insignificant rates approaching zero. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which no information exists on its incidental serious injury or mortality rate of marine mammals.

(4) If the Secretary determines after review under paragraph (3) that the rate of incidental lethal and serious injury taking in a commercial fishery is not consistent with paragraph (1), then the Secretary shall make recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on further actions to achieve the goal specified in paragraph (1).

(j) Penalties.-(1) Except as provided in paragraph (2), a person who violates this section, or any regulations thereunder, may be assessed a civil penalty of not more than \$5,000 for each violation, and shall not be subject to penalty under any other provision of this Act. The penalty shall reflect the severity of the violation in relation to preventing the reduction of incidental lethal taking of marine mammals, or the accomplishment of other express objectives of this section.

(2) Intentional killing of marine mammals, or failure to report incidental lethal takings of marine mammals as required by this section, shall be subject to the penalties in section 105.

(3) Each owner or operator of a vessel engaged in a fishery that has a remote likelihood of or no known incidental taking of marine mammals, and the master and crew members of such vessel, shall not be subject to penalties under this section or any other provision of this Act for the incidental taking of marine mammals if such owner or operator reports to the Secretary in accordance with subsection (g)(4).

(k) Voluntary Measures.-Nothing in this section shall be construed to limit the Secretary's authority to permit voluntary measures to be utilized in reducing the incidental taking of marine mammals in commercial fisheries.

(1) Definitions.-For purposes of this section-

(1) The term "calculated acceptable removal level" means the realistic minimum population of a stock, multiplied by the net productivity rate of the stock, multiplied (if applicable) by a recovery factor.

(2) The term "critical stock" means a marine mammal stock that is listed as a Class 1 or 2 stock pursuant to subsection (c)(1)(G).

(3) The term "incidental take team" means an incidental take team established under subsection

(d)(4).

(4) The term "incidental taking plan" means an incidental taking plan developed under subsection (d).

(5) The term "maximum net productivity level" means the population size of a stock which results in the greatest net productivity.

(6) The term "net productivity" means the estimated or theoretical annual increase in population numbers resulting from additions to the population due to reproduction, less the losses due to mortality.

(7) The term "net productivity rate" means the net annual per capita rate of increase of a stock at its maximum net productivity level.

(8) The term "non-critical stock" means a marine mammal stock that is listed as a Class 3, 4, or 5 stock pursuant to subsection (c)(1)(G).

(9) The term "realistic minimum population" means an estimate of the number of animals in a stock that provides reasonable assurance that the population size is equal to or greater than the estimate.

(10) The term "recovery factor" means the number that is applied to the calculation of a calculated acceptable removal level to provide reasonable assurance that a stock will recover to its optimum sustainable population.

SEC. 118. PINNIPED-FISHERY INTERACTION TASK FORCE.

(a) Pinned Removal Authority.-Notwithstanding any other provision of this title, the Secretary may permit the lethal removal of pinnipeds in accordance with this section.

(b) Application.-Any person may apply to the Secretary to authorize the lethal removal of pinnipeds identified as habitually exhibiting dangerous or damaging behavior that cannot otherwise be deterred. Any such application shall include means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the removal.

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

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

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

(A) recommend to the Secretary whether to approve or deny the proposed lethal removal of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of removal, criteria for evaluating the success of the action, and the duration of the authority; and

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

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

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

(d) Considerations.-In considering whether an application should be approved or denied, the Task Force and the Secretary shall consider-

- (1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individuals pinnipeds are improved;
- (2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;
- (3) the extent to which such pinnipeds are causing undue harm, impact, or imbalance with other species in the ecosystem, including fish populations; and
- (4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) Limitation.-The Secretary shall not approve lethal removal for any pinniped from a species or stock that is listed as threatened or endangered under the Endangered Species Act of 1973, designated as depleted under this Act, or identified by the Secretary as a critical stock under section 117 of this Act.

Title III of that Act (as added by Public Law 102-587)

TITLE [III] IV-MARINE MAMMAL HEALTH AND STRANDING RESPONSE

SEC. [301] 401. ESTABLISHMENT OF PROGRAM.

(a) through (b) ***

SEC. [302] 402. DETERMINATION; DATA COLLECTION AND DISSEMINATION.

(a) through (c) ***

SEC. [303] 403. STRANDING RESPONSE AGREEMENTS.

(a) through (c) ***

SEC. [304] 404. UNUSUAL MORTALITY EVENT RESPONSE.

(a) through (c) ***

SEC. [305] 405. UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

(a) through (d) ***

SEC. [306] 406. LIABILITY.

(a) through (b) ***

SEC. [307] 407. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

(a) through (d) ***

SEC. [308] 408. AUTHORIZATION OF APPROPRIATIONS.

* * * * *

SEC. [309] 409. DEFINITIONS.

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ENDANGERED SPECIES ACT OF 1973

Section 7 of That Act

INTERAGENCY COOPERATION

Sec. 7. (a) ***

(b) Opinion of Secretary.-(1) ***

(2) through (3) ***

(4) If after consultation under subsection (a)(2), the Secretary concludes that-

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 101(a)(4) or 101(a)(5) of the Marine Mammal Protection Act of 1972; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that-

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(4) or 101(a)(5) of the Marine Mammal Protection Act of 1972 with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) through (p) ***

Act of October 9, 1981

Section 7 of That Act

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

[(a) Department of Commerce.-There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I (other than section 104(h)(3)) of the Marine Mammal Protection Act of 1972, \$7,223,000 for fiscal year 1982, \$8,000,000 for fiscal year 1983, and \$8,800,000 for each of fiscal years 1984, 1985, 1986, 1987, and 1988. There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under such title (other than section 114(e)(8)), \$12,250,000 for fiscal year 1989, \$12,740,000 for fiscal year 1990, \$13,250,000 for fiscal year 1991, \$13,780,000 for fiscal year 1992, and \$14,331,000 for fiscal year 1993.]

(a) Department of Commerce.-There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, \$21,636,000 for fiscal year 1994, \$16,618,000 for fiscal year 1995, \$22,502,000 for fiscal year 1995, \$23,402,000 for fiscal year 1996, \$24,338,000 for fiscal year 1997, and \$25,311,000 for fiscal year 1998.

[(b) Department of the Interior.-There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, \$1,600,000 for fiscal year 1982, \$1,760,000 for fiscal year 1983, \$2,000,000 for fiscal year 1984, \$2,500,000 for fiscal year 1985, \$3,000,000 for each of fiscal years 1986, 1987, 1988, and 1989, \$3,120,000 for fiscal year 1990, \$3,240,000 for fiscal year 1991, \$3,370,000 for fiscal year 1992, and \$3,500,000 for fiscal year 1993.]

(b) Department of the Interior.-There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, \$8,000,000 for fiscal year

1994,;16775;16775 \$8,600,000 for fiscal year 1995, \$9,000,000 for fiscal year 1996, \$9,400,000 for fiscal year 1997, and \$9,900,000 for fiscal year 1998.

[(c) Marine Mammal Commission.-There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, \$672,000 for fiscal year 1982, \$1,000,000 for fiscal year 1983, \$1,000,000 for each of fiscal years 1984, 1985, 1986, 1987, 1988, and 1989, \$1,140,000 for fiscal year 1990, \$1,190,000 for fiscal year 1991, \$1,230,000 for fiscal year 1992, and \$1,280,000 for fiscal year 1993.]

(c) Marine Mammal Commission.-There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, \$1,350,000 for fiscal year 1994,;16913;16913 \$1,400,000 for fiscal year 1995, \$1,450,000 for fiscal year 1996, \$1,500,000 for fiscal year 1997, and \$1,550,000 for fiscal year 1998.

S. REP. 103-220, S. Rep. No. 220, 103RD Cong., 2ND Sess. 1994, 1994 U.S.C.C.A.N. 518, 1994