

Calendar No. 348

103^D CONGRESS
2^D SESSION

S. 1636

[Report No. 103-220]

A BILL

To authorize appropriations for the Marine Mammal Protection Act of 1972 and to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes.

JANUARY 25, 1994

Reported with amendments

Calendar No. 348103^D CONGRESS
2^D SESSION**S. 1636****[Report No. 103-220]**

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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8 (legislative day, NOVEMBER 2), 1993

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

JANUARY 25, 1994

Reported by Mr. HOLLINGS, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize appropriations for the Marine Mammal Protection Act of 1972 and to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Marine Mammal Pro-
3 tection Act Amendments of 1993”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are to—

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

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

16 (3) avoid restrictions on fishing operations
17 when such restrictions are not necessary to meet the
18 purpose described in paragraph (2);

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

23 (5) focus efforts on identifying and addressing
24 the most significant problems involving fishery-ma-
25 rine mammal interactions, considering both the sta-
26 tus of the affected marine mammal stocks and the

1 numbers of marine mammals that are taken inciden-
2 tally in each fishery;

3 (6) streamline the procedure for authorizing the
4 incidental taking of marine mammals in commercial
5 fisheries, consistent with the long-term objective of
6 identifying and taking such steps as may be prac-
7 ticable to reduce mortality and serious injury inci-
8 dental to commercial fishing operations to insignifi-
9 cant ~~levels~~ *rates* approaching zero; and

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

15 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

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

21 “(a) DEPARTMENT OF COMMERCE.—There are au-
22 thorized to be appropriated to the Department of Com-
23 merce, for purposes of carrying out such functions and
24 responsibilities as it may have been given under title I of
25 the Marine Mammal Protection Act of 1972, \$21,636,000

1 for fiscal year 1994, \$22,502,000 for fiscal year 1995,
2 \$23,402,000 for fiscal year 1996, \$24,338,000 for fiscal
3 year 1997, and \$25,311,000 for fiscal year 1998.”.

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

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

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

22 “(c) MARINE MAMMAL COMMISSION.—There are au-
23 thorized to be appropriated to the Marine Mammal Com-
24 mission, for purposes of carrying out such functions and
25 responsibilities as it may have been given under title II

1 of the Marine Mammal Protection Act of 1972,
2 \$1,350,000 for fiscal year 1994, \$1,400,000 for fiscal year
3 1995, \$1,450,000 for fiscal year 1996, \$1,500,000 for fis-
4 cal year 1997, and \$1,550,000 for fiscal year 1998.”.

5 **SEC. 4. INCIDENTAL TAKING OF ENDANGERED AND**
6 **THREATENED SPECIES.**

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

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

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

24 (b) CONFORMING AMENDMENT.—Section 7(b)(4)(C)
25 of the Endangered Species Act of 1973 (16 U.S.C.

1 1536(b)(4)(C)) is amended by inserting “101(a)(4) or”
 2 immediately before “101 (a)(5)” each place it appears.

3 **SEC. 5. CONSERVATION PLANS.**

4 Section 115(b) of the Marine Mammal Protection Act
 5 of 1972 (16 U.S.C. ~~13836(b)~~ *1383b(b)*) is amended by
 6 adding at the end the following new paragraph:

7 “(4) If the Secretary determines that an incidental
 8 taking plan is necessary to reduce the incidental taking
 9 of marine mammals in the course of commercial fishing
 10 operations from a stock identified as a critical stock under
 11 section ~~118(e)~~, *117(c)*, any conservation plan required
 12 under this subsection for such stock shall only address
 13 non-incidental takings.”.

14 **SEC. 6. TAKING OF MARINE MAMMALS INCIDENTAL TO**
 15 **COMMERCIAL FISHING OPERATIONS.**

16 Title I of the Marine Mammal Protection Act of 1972
 17 (16 U.S.C. 1371 et seq.) is amended by adding at the end
 18 the following new section:

19 **“SEC. ~~118.~~ 117. TAKING OF MARINE MAMMALS INCIDENTAL**
 20 **TO COMMERCIAL FISHING OPERATIONS.**

21 “(a) IN GENERAL.—(1) Except as provided in section
 22 114 and in paragraphs (2), (3), and (4) of this section,
 23 and notwithstanding section 101, the provisions of this
 24 section shall govern the incidental taking of marine mam-
 25 mals in the course of commercial fishing operations by

1 persons using vessels of the United States or vessels which
2 have valid fishing permits issued by the Secretary in ac-
3 cordance with section 204(b) of the Magnuson Fishery
4 Conservation and Management Act (16 U.S.C. 1824(b)).
5 The Secretary shall develop and implement incidental tak-
6 ing plans under this section to reduce the incidental lethal
7 taking of marine mammals, from stocks listed as critical
8 stocks under subsection (c), to a level below the calculated
9 acceptable removal level.

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

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

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

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

1 “(b) SCIENTIFIC CONSULTATION.—In implementing
2 the incidental taking program under this section, the Sec-
3 retary shall seek the advice of individuals with expertise
4 in marine mammal biology and ecology, population dy-
5 namics and modeling, and commercial fishing technology
6 and practices. Such advice should be sought with respect
7 to information available, and actions proposed, for such
8 implementation, including—

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

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

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

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

23 “(c) STOCK ASSESSMENTS.—(1) Using the best sci-
24 entific information available and in accordance with this
25 subsection, the Secretary shall prepare and issue, and

1 thereafter (as appropriate) revise, a stock assessment for
2 each marine mammal stock which occurs in waters under
3 the jurisdiction of the United States. The stock assess-
4 ment shall include—

5 “(A) a definition of the stock by species ~~of~~ *or*
6 subspecies and its spatial and temporal distribution;

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

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

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

17 “(i) the approximate number of vessels
18 participating in the fishery;

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

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

1 “(iv) the rate of incidental mortality in the
2 stock caused by such fishing, based on a unit
3 of fishing effort;

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

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

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

23 “(i) Class 1, consisting of stocks whose
24 population size is declining, or whose population
25 trend is unknown and whose realistic minimum

1 population is less than 10,000, and from which
2 the total annual lethal take exceeds the net pro-
3 ductivity of the population when it is at its
4 maximum net productivity level.

5 “(ii) Class 2, consisting of stocks—

6 “(I) whose population size is declin-
7 ing, or whose population trend is unknown
8 and whose realistic minimum population is
9 less than 10,000; and from which the total
10 annual lethal take is between 20 percent
11 and 100 percent of the net productivity of
12 the stock’s population when it is at its
13 maximum net productivity level; or

14 “(II) whose population size is stable,
15 or whose population trend is unknown and
16 ~~the~~ *whose* realistic minimum population is
17 greater than 10,000 but less than 100,000;
18 and from which the total annual lethal
19 take exceeds the net productivity of the
20 stock’s population when it is at its maxi-
21 mum net productivity level.

22 “(iii) Class 3, consisting of stocks—

23 “(I) whose population size is declin-
24 ing, or whose population trend is unknown
25 and whose realistic minimum population is

1 less than 10,000; and from which the total
2 annual lethal take is less than 20 percent
3 of the net productivity of the stock's popu-
4 lation when it is at its maximum net pro-
5 ductivity level;

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

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

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

24 “(I) whose population size is stable, or
25 whose population trend is unknown and

1 ~~the~~ *whose* realistic minimum population is
2 greater than *10,000 but less than* 100,000;
3 and from which the total annual lethal
4 take is ~~between~~ *less than* 20 percent ~~and~~
5 100 percent of the net productivity of the
6 stock's population when it is at its maxi-
7 mum net productivity level; or

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

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

24 “(2) Not later than 240 days after the date of enact-
25 ment of this section, the Secretary shall issue a draft of

1 each stock assessment required by this subsection, after
2 seeking advice from the experts described in subsection
3 (b). The Secretary shall publish in the Federal Register
4 a notice of availability of the draft and provide an oppor-
5 tunity for public review and comment during a period of
6 not to exceed 60 days.

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

13 “(4) The Secretary shall review stock assessments in
14 accordance with this subsection, and obtain advice and
15 recommendations from experts—

16 “(A) on an annual basis for stocks listed as
17 critical stocks or for which new information is avail-
18 able; and

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

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

24 “(d) INCIDENTAL TAKING PLAN.—(1) The Secretary
25 shall develop and implement an incidental taking plan de-

1 signed to assist in the recovery of each marine mammal
2 stock that is listed as a critical stock and interacts with
3 commercial fisheries. Such plan shall be developed in con-
4 sultation with the incidental take team established for the
5 plan under this subsection. If there is insufficient funding
6 available to develop and implement an incidental taking
7 plan for all critical stocks that interact with commercial
8 fisheries, the Secretary shall give highest priority to the
9 development and implementation of *incidental taking*
10 *plans* for Class 1 stocks. Within a particular class of criti-
11 cal stocks that interact with commercial fisheries, the Sec-
12 retary shall give highest priority to the development and
13 implementation of plans for stocks that the Secretary con-
14 siders the most critical within the class.

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

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

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

1 “(C) Proposed management measures or vol-
2 untary actions for the reduction of incidental taking
3 by commercial fisheries. Such proposed measures
4 and actions shall be developed in light of the plan’s
5 immediate objective of reducing incidental lethal and
6 serious injury take by commercial fisheries by the
7 same proportion as their proportion of the total le-
8 thal and serious injury take from all sources.

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

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

22 “(4)(A) At the earliest possible time (not later than
23 120 days) after the Secretary issues a final stock assess-
24 ment listing a stock as a critical stock, the Secretary
25 shall—

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

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

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

15 “(C) Members of incidental take teams shall be indi-
16 viduals knowledgeable and experienced regarding the
17 measures to conserve such stocks and to reduce any
18 takings from such stock incidental to commercial fishing
19 operations. Members may include representatives of Fed-
20 eral and State agencies, regional fishery management
21 councils and commissions, academic and scientific organi-
22 zations, environmental and fishery groups, and others as
23 the Secretary considers appropriate. Incidental take teams
24 shall, to the maximum extent practicable, consist of an
25 equitable balance among representatives of government,

1 resource user interests, and non-user interests. Incidental
2 take teams shall not be subject to the Federal Advisory
3 Committee Act (5 App. U.S.C.) but their meetings shall
4 be open to the public, after timely publicity on the time
5 and place of such meetings.

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

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

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

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

1 “(B)(i) The Secretary shall take the draft inci-
2 dental taking plan into consideration and, not later
3 than 60 days after the submission of the draft plan
4 by the team, the Secretary shall publish in the Fed-
5 eral Register a proposed incidental taking plan and
6 proposed regulations to implement such plan, for
7 public review and comment.

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

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

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

1 “(E) The Secretary may, in consultation with
2 the incidental take team, amend the incidental tak-
3 ing plan and implementing regulations as necessary,
4 consistent with the procedures in this section for the
5 issuance of such plans and regulations.

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

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

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

24 “(ii) In the event that the incidental take team
25 does not submit a draft plan to the Secretary within

1 11 months, the Secretary shall, not later than 13
2 months after the establishment of the team, publish
3 in the Federal Register a proposed incidental taking
4 plan and implementing regulations, for public review
5 and comment.

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

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

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

21 “(7) If the Secretary finds, prior to the issuance of
22 a final incidental taking plan, that the incidental taking
23 of marine mammals in a commercial fishery is having an
24 immediate and significant adverse impact on the stock to
25 which the plan would apply, the Secretary may, after con-

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

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

13 “(B) shall remain in effect for not more than
14 180 days, until such time as a final incidental taking
15 plan for the stock is issued, or until the end of the
16 applicable fishing season, whichever is earlier; and

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

22 “(e) REGULATORY MEASURES.—(1)(A) The Sec-
23 retary shall, after notice and opportunity for public com-
24 ment, promulgate regulations to implement an incidental

1 taking plan necessary to accomplish the objectives set
2 forth in ~~subsection (i)~~. *subsections (d) and (i)*.

3 “(B) Nothing in this paragraph shall be construed
4 to limit the authority of the Secretary to modify the inci-
5 dental taking plan at the request of the appropriate Re-
6 gional Fishery Management Council or State or tribal
7 management authority.

8 “(2) In implementing an incidental taking plan issued
9 pursuant to this section, the Secretary may promulgate
10 regulations which include, but are not limited to, measures
11 to—

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

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

17 “(C) require the use of alternative gear tech-
18 niques and new technologies, encourage the develop-
19 ment of such gear or technology, or convene expert
20 skippers’ panels;

21 “(D) educate commercial fishermen and other
22 individuals, through workshops and other means, on
23 the importance of reducing the incidental lethal tak-
24 ing of marine mammals from critical stocks; and

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

4 “(f) REGISTRATION OF VESSELS.—(1) Subject to the
5 provisions of this subsection, the Secretary may develop
6 a system to register commercial fishing vessels and to as-
7 sess fishery effort, where such system is necessary, to un-
8 derstand the interaction between commercial fisheries and
9 marine mammal stocks in a region.

10 “(2) In developing a registration system to under-
11 stand such interactions, the Secretary shall rely upon ex-
12 isting Federal, State, or tribal data bases which provide
13 the following information about an affected commercial
14 fishery:

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

17 “(B) The identity of specific vessels to be reg-
18 istered.

19 “(C) The owner of *or* operator, or both, of such
20 vessels.

21 “(D) The time period in which the fishery oc-
22 curs.

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

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

3 “(3) The incidental take teams shall advise the Sec-
4 retary as to whether existing Federal, State, or tribal data
5 bases are capable of being utilized to understand the inter-
6 action between commercial fisheries and critical stocks in
7 a region. If the Secretary determines, after consultation
8 with such a team, that data bases for specific fisheries
9 which provide the information required under paragraph
10 (2) are not available to the Secretary or the team, the
11 Secretary may require through regulation separate reg-
12 istration to obtain the information set forth in paragraph
13 (2).

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

21 “(B) To the extent the Secretary determines that
22 separate registration is required for a specific fishery pur-
23 suant to paragraph (3), the Secretary is authorized to
24 charge a fee for the issuance of a decal or other evidence
25 indicating the registration is current. The fee charged

1 under this subparagraph shall not exceed the administra-
2 tive costs incurred in issuing the decal or other evidence.
3 Fees collected under this subparagraph shall be available
4 to the Under Secretary of Commerce for Oceans and At-
5 mosphere for expenses incurred in the ~~issuances~~ *issuance*
6 of such decal or other evidence.

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

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

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

23 “(1) The vessel name, and Federal, ~~State~~ *State*,
24 or tribal registration numbers of the registered ves-
25 sel.

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

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

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

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

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

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

21 “(A) recording other sources of mortality;

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

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

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

7 “(3)(A) The Secretary may establish an incidental
8 take monitoring program to achieve the objectives of this
9 ~~paragraph~~ *subsection*, which may include, but not be lim-
10 ited to, direct observation of fishing activities from vessels,
11 airplanes, video observation, or points on shore.

12 “(B) Individuals engaged in such monitoring pro-
13 gram shall collect scientific information on ~~fisheries ma-~~
14 *rine mammal interactions* consistent with the require-
15 ments of this ~~paragraph~~ *subsection*.

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

20 “(A) The highest priority shall be given to fish-
21 eries that incidentally lethally take or seriously in-
22 jure animals from (i) stocks designated as depleted
23 on the basis of their listing as endangered or threat-
24 ened species under the Endangered Species Act of
25 ~~1993~~, *1973*, or (ii) critical stocks.

1 “(B) The second highest priority shall be given
2 to fisheries other than those described in subpara-
3 graph (A) in which the greatest incidental lethal
4 take and serious injury of marine mammals occurs.
5 When the Secretary determines ~~the~~ *that* sufficient observa-
6 tion of a specific fishery has occurred, the Secretary may
7 discontinue such observation and direct available observer
8 resources to the next fishery in priority. Nothing in this
9 subsection precludes the Secretary from resuming observa-
10 tion of a fishery when necessary to achieve additional ver-
11 ification of the nature of interactions with marine mammal
12 stocks.

13 “(5) Notwithstanding paragraph (4), the Secretary
14 may initiate, where necessary, additional monitoring pro-
15 grams to gather information on the interaction between
16 commercial fisheries and marine mammal stocks not iden-
17 tified as critical stocks. Such information may be used to
18 verify—

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

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

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

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

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

11 “(3) Three years after such date of enactment, the
12 Secretary shall review the ~~progress~~, *progress of commercial*
13 *fisheries*, by fishery, toward reducing mortality and serious
14 injury rates to insignificant rates approaching zero. The
15 Secretary shall submit to the Committee on Commerce,
16 Science, and Transportation of the Senate and the Com-
17 mittee on Merchant Marine and Fisheries of the House
18 of Representatives a report setting forth the results of
19 such review within 1 year after commencement of the re-
20 view. The Secretary shall note any *commercial* fishery for
21 which no information exists on its incidental serious injury
22 or mortality rate of marine mammals.

23 “(4) If the Secretary determines after review under
24 paragraph (3) that the rate of incidental lethal and serious
25 injury taking in a *commercial* fishery is not consistent with

1 paragraph (1), then the Secretary shall make rec-
2 ommendations to the Committee on Commerce, Science,
3 and Transportation of the Senate and the Committee on
4 Merchant Marine and Fisheries of the House of Rep-
5 resentatives on further actions to achieve the goal speci-
6 fied in paragraph (1).

7 “(j) PENALTIES.—(1) Except as provided in para-
8 graph (2), a person who violates this section, or any regu-
9 lations thereunder, may be assessed a civil penalty of not
10 more than \$5,000 for each violation, and shall not be sub-
11 ject to penalty under any other provision of this Act. The
12 penalty shall reflect the severity of the violation in relation
13 to preventing the reduction of incidental lethal taking of
14 marine mammals, or the accomplishment of other express
15 objectives of this section.

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

20 “(3) Each owner or operator of a vessel engaged in
21 a fishery that has a remote likelihood of or no known inci-
22 dental taking of marine mammals, and the master and
23 crew members of such vessel, shall not be subject to pen-
24 alties under this section or any other provision of this Act
25 for the incidental taking of marine mammals if such owner

1 or operator reports to the Secretary in accordance with
2 subsection ~~(f)(4)~~ (g)(4).

3 “(k) VOLUNTARY MEASURES.—Nothing in this sec-
4 tion shall be construed to limit the Secretary’s authority
5 to permit voluntary measures to be utilized in reducing
6 the incidental taking of marine mammals in commercial
7 fisheries.

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

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

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

16 “(3) the term ‘incidental take team’ means an
17 incidental take team established under subsection
18 (d)(4);

19 “(4) the term ‘incidental taking plan’ means an
20 incidental taking plan developed under subsection
21 (d);

22 “(5) the term ‘maximum net productivity level’
23 means the population size of a stock which results
24 in the greatest net productivity;

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

5 “(7) the term ‘net productivity rate’ means the
6 net annual per capita rate of increase of a stock at
7 is *its* maximum net productivity level;

8 “(8) the term ‘non-critical stock’ means a ma-
9 rine mammal stock that is listed as a Class 3, 4, or
10 5 stock pursuant to subsection (c)(1)(G);

11 “(9) the term ‘realistic minimum population’
12 means an estimate of the number of animals in a
13 stock that provides reasonable assurance that the
14 population size is equal to or greater than the esti-
15 mate; and

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

21 **SEC. 7. PENALTIES; PROHIBITIONS.**

22 (a) CIVIL PENALTIES.—Section 105(a)(1) of the Ma-
23 rine Mammal Protection Act of 1972 (16 U.S.C.
24 1375(a)(1)) is amended by inserting “, except as provided

1 in section ~~118(j),~~ 117(j),” immediately after “there-
2 under”.

3 (b) CRIMINAL PENALTIES.—Section 105(b) of the
4 Marine Mammal Protection Act of 1972 (16 U.S.C.
5 1375(b)) is amended by inserting “(except as provided in
6 section ~~118(j),~~ 117(j))” immediately after “thereunder”.

7 (c) PROHIBITIONS.—Section 102(a) of the Marine
8 Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is
9 amended by striking “and ~~114~~ 114 of this title or title
10 III” and inserting in lieu thereof “114, and ~~118~~. 117 of
11 this title and title IV”.

12 **SEC. 8. ALASKA HARBOR SEALS AND GULF OF MARINE**
13 **HARBOR PORPOISES.**

14 Notwithstanding any other provision of this Act, in-
15 cluding section ~~118~~ 117 of the Marine Mammal Protection
16 Act of 1972 (as added by this Act), the Secretary of Com-
17 merce shall establish an incidental take team for the har-
18 bor seal stock in Alaska and for the harbor porpoise stock
19 in the Gulf of Maine, within 60 days after the date of
20 enactment of this Act. The incidental take teams shall
21 begin work immediately on a draft incidental taking plan
22 in accordance with such section ~~118~~, 117, and shall use
23 the best scientific information available. The draft inciden-
24 tal taking plan shall be reviewed by the Secretary, after
25 consultation with scientific experts as described in sub-

1 section (b) of such section ~~118~~ 117 and after notice and
2 opportunity for public comment, and shall be approved
3 and implemented as quickly as practicable.

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

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

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

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

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

14 “(C) endangering personal safety,

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

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

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

1 **SEC. 10. TREATY RIGHTS.**

2 Nothing in this Act, including any amendments made
3 by this Act, is intended to abrogate or diminish existing
4 Indian treaty fishing or hunting rights, and regulation of
5 Native American fishing and hunting activities shall be
6 limited to measures consistent with existing treaty rights.

7 **SEC. 11. TRANSITION RULE.**

8 Section 114(a)(1) of the Marine Mammal Protection
9 Act of 1972 (16 U.S.C. 1383a(a)(1)) is amended by strik-
10 ing “ending April 1, 1994,” and inserting in lieu thereof
11 “until superseded by regulations prescribed under section
12 ~~118,~~ 117.”

13 **SEC. 12. TECHNICAL AMENDMENTS.**

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

18 (b) MARINE MAMMAL HEALTH AND STRANDING RE-
19 SPONSE.—The Marine Mammal Protection Act of 1972
20 (16 U.S.C. 1361 et seq.) is amended—

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

23 (2) by redesignating the sections of that title
24 (16 U.S.C. 1421 through 1421h) as sections 401
25 through 409, respectively.

1 **SEC. 13. HUMAN ACTIVITIES WITHIN PROXIMITY OF**
2 **WHALES.**

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

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

15 **SEC. 14. PINNIPED-FISHERY INTERACTION TASK FORCE.**

16 *Title I of the Marine Mammal Protection Act of 1972*
17 *(16 U.S.C. 1371 et seq.), as amended by this Act, is further*
18 *amended by adding at the end the following new section:*

19 **“SEC. 118. PINNIPED-FISHERY INTERACTION TASK FORCE.**

20 *“(a) PINNIPED REMOVAL AUTHORITY.—Notwithstand-*
21 *ing any other provision of this title, the Secretary may per-*
22 *mit the lethal removal of pinnipeds in accordance with this*
23 *section.*

24 *“(b) APPLICATION.—Any person may apply to the Sec-*
25 *retary to authorize the lethal removal of pinnipeds identi-*
26 *fied as habitually exhibiting dangerous or damaging behav-*

1 *ior that cannot otherwise be deterred. Any such application*
2 *shall include a means of identifying the individual*
3 *pinniped or pinnipeds, and shall include a detailed descrip-*
4 *tion of the problem interaction and expected benefits of the*
5 *removal.*

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

16 “(2) *A Pinniped-Fishery Interaction Task Force estab-*
17 *lished under paragraph (1) shall consist of designated em-*
18 *ployees of the Department of Commerce, scientists who are*
19 *knowledgeable about the pinniped interaction that the ap-*
20 *plication addresses, representatives of affected conservation*
21 *and fishing community organizations, Indian Treaty*
22 *tribes, the States, and such other organizations as the Sec-*
23 *retary deems appropriate.*

24 “(3) *Within 60 days after establishment, and after re-*
25 *viewing public comments in response to the Federal Reg-*

1 *ister notice, the Pinniped-Fishery Interaction Task Force*
2 *shall—*

3 “(A) *recommend to the Secretary whether to ap-*
4 *prove or deny the proposed lethal removal of the*
5 *pinniped or pinnipeds, including along with the rec-*
6 *ommendation a description of the specific pinniped*
7 *individual or individuals, the proposed location, time,*
8 *and method of removal, criteria for evaluating the*
9 *success of the action, and the duration of the author-*
10 *ity; and*

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

14 “(4) *Within 30 days after receipt of recommendations*
15 *from the Pinniped-Fishery Interaction Task Force, the Sec-*
16 *retary shall either approve or deny the application. If such*
17 *application is approved, the Secretary shall immediately*
18 *take steps to implement the lethal removal, which shall be*
19 *performed by Federal or State agencies, or qualified indi-*
20 *viduals under contract to such agencies.*

21 “(5) *After implementation of an approved application,*
22 *the Pinniped-Fishery Interaction Task Force shall evaluate*
23 *the effectiveness of the permitted lethal removal or alter-*
24 *native actions implemented. If implementation was ineffec-*
25 *tive in eliminating the problem interaction, the Task Force*

1 *shall recommend additional actions. If the implementation*
2 *was effective, the Task Force shall so advise the Secretary*
3 *and the Secretary shall disband the Task Force.*

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

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

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

16 “(3) *the extent to which such pinnipeds are caus-*
17 *ing undue harm, impact, or imbalance with other*
18 *species in the ecosystem, including fish populations;*
19 *and*

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

23 “(e) *LIMITATION.—The Secretary shall not approve le-*
24 *thal removal for any pinniped from a species or stock that*
25 *is listed as threatened or endangered under the Endangered*

1 *Species Act of 1973, designated as depleted under this Act,*
2 *or identified by the Secretary as a critical stock under sec-*
3 *tion 117 of this Act.”*

S 1636 RS—2

S 1636 RS—3

S 1636 RS—4