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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 108–787

PRESCOTT MARINE MAMMAL STRANDING PROGRAM AMENDMENTS OF 2004

NOVEMBER 19, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources, submitted the following

R E P O R T

[To accompany H.R. 5104]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 5104) to amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 5104 is to amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to protect and conserve marine mammal populations. The original Act established a moratorium on the taking or importing of marine mammals and marine mammal products except for certain activities which are regulated and permitted. The MMPA defines "take" as "to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal." Under the Act, the Secretaries of Commerce and the Interior share jurisdiction of marine mammals in the wild. Interior has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus, while Commerce has jurisdiction over all other marine mammals.

39–006

In 1992, Congress enacted the Marine Mammal Health and Stranding Response Act (Title IV of the MMPA) which: (1) statutorily recognized the marine mammal stranding network; (2) established procedures for responding to unusual mortality events affecting marine mammals; and (3) established the National Marine Mammal Tissue Bank.

However, most marine mammal strandings are not associated with unusual mortality events. They involve the recovery of a dead marine mammal or the rescue of an animal that can be rehabilitated and released back into the wild. In most cases, this assistance is provided by small, underfunded members of the Marine Mammal Stranding Network, who take on the financial burden to rescue and rehabilitate stranded mammals.

In 2000, the John H. Prescott Marine Mammal Rescue Assistance Grant Program was enacted into law (Public Law 106–555). This federal grant program was established to help defray the high cost of recovery and rehabilitation of marine mammals that fall outside the existing MMPA Title IV program. The Prescott stranding assistance program allows eligible Stranding Network participants to use funds for: (1) recovery and treatment of marine mammals; (2) collection of scientific data from live and dead animals; and (3) improving the treatment and operation of rescue and rehabilitation centers.

The overall MMPA was also amended in 1994. These amendments established a new incidental take regime for commercial fisheries and required the National Marine Fisheries Service (NMFS) to institute marine mammal stock assessments and abundance estimates to provide the necessary scientific basis for a new incidental take regime. A captive marine mammal inventory was also established and is maintained by NMFS. The permit process was eased for scientific research and for educational and commercial photography. The permit process was also modified for the public display community, allowing them to notify the relevant Secretary 15 days prior to a transfer, export, or sale of a marine mammal instead of applying for additional permits. Furthermore, no additional permits were to be required for the progeny of captive marine mammals. A process authorizing cooperative agreements between Alaska natives and the agency of jurisdiction for the management and conservation of marine mammals was also established. The Pinniped-Fishery Interaction Task Forces were authorized to review the interactions of marine mammals with fish populations on the west coast with regard to listed salmon stocks, and for the Gulf of Maine with respect to aquaculture facilities.

H.R. 5104 authorizes $5 million in appropriations for each fiscal year 2005–2009 for the grant program. It also authorizes appropriations for the Unusual Mortality Event Fund ($125,000 for each fiscal year 2005–2009). The bill also prohibits the relevant Secretary from retaining funds beyond those for administrating the Prescott Grant Program, and requires that any unused administration funds shall be included in the grant funding. The bill also allows the relevant Secretary to accept gifts to administer the Prescott Grant Program. H.R. 5104 also contains provisions from H.R. 2693, the Marine Mammal Protection Act Amendments of 2003, which the Committee passed in November 2003, addressing many of the 1994 MMPA amendments.

COMMITTEE ACTION

H.R. 5104 was introduced on September 17, 2004, by Congressman Wayne Gilchrest (R–MD). The bill was referred to the Committee on Resources. On September 22, 2004, the Full Resources Committee met to consider the bill. There were no amendments offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the bill as the "Prescott Marine Mammal Stranding Program Amendments of 2004."

Section 2. Amendment references

This section states that any amendment or repeal of a section shall be made to such section of the Marine Mammal Protection Act of 1972.

Section 3. Authorization of appropriations for John H. Prescott Marine Mammal Rescue Assistance Grant Program

This section also authorizes appropriations for the Prescott Grant Program and the Unusual Mortality Event Fund authorized in section 409 of the MMPA.

This section amends Title IV of the Marine Mammal Protection Act to authorize the relevant Secretary to enter into response agreements for marine mammal entanglements in addition to strandings. The term entanglement is also defined in this section.

The Secretary is prohibited from retaining funds under MMPA section 408 (Prescott Grant Program), except for administrative costs. Any remaining funds are required to be issued in the form of grants to stranding facilities.

Section 4. Technical corrections

This section replaces "Committee on Merchant Marine and Fisheries" with "Committee on Resources" and deletes an obsolete reference in MMPA section 118.

Section 5. Limited authority to export marine mammal products

This section clarifies that any U.S. citizen who legally possesses a marine mammal product may export it in conjunction with travel outside the U.S. These exports shall be for non-commercial purposes and the product has to be imported back into the U.S. at the termination of travel. A foreign national is also allowed to export a marine mammal product for noncommercial purposes. This section also allows native handicrafts to be exported for noncommercial purposes if owned by a native of Canada, Greenland or Russia or if possessed by an Alaska Native and exported as a part of a cultural exchange. The import language in section 101(a)(6)(A)(i) of the MMPA is amended to state that imports are for non-commercial purposes.

Section 6. Take reduction plans

This section amends MMPA section 118 to include recreational fisheries in the list of fisheries that could have interactions with

marine mammals that are frequent or occasional and result in the incidental mortality and serious injury of marine mammals. NMFS would be required to include both commercial and recreational fishermen's interactions with marine mammals in assessing whether a particular fishery should be placed in either category I (frequent incidental mortality or serious injury) or category II (occasional incidental mortality and serious injury). All recreational fishermen who participate in a category I or II fishery would be required to obtain the same annual authorizations and file the same reports regarding marine mammal interactions as are now required of commercial fishermen. In such cases, a recreational fishing representative will also be included in the take reduction plan process.

This section does not alter existing law for category III fisheries where there is only a remote likelihood of or no known incidental mortality or serious injury of marine mammals. By not expanding category III to include the millions of recreational fishermen who only fish with rods and reels, the regulatory burden on both the relevant Secretary and the public is kept to a minimum. However, the Committee strongly supports the inclusion of those recreational fisheries using commercial-type fishing gear, if they are contributing to the mortality or serious injury to marine mammals in a category I or II fishery. These recreational fishermen should be subject to the same regulatory requirements as commercial fishermen when using the same gear and having the same affect on marine mammals.

The timelines in this section are modified to allow the Secretary of Commerce additional time to meet the requirements of this section. The Secretary will be given six extra months to complete the take reduction plans. The Committee was concerned with groups using missed timelines as the basis for litigation against the Secretary. The Committee believes the extension to the timelines in this section will not reduce protections for marine mammals, but will provide litigation relief for the Secretary allowing staff and funding to be used for conservation and management activities rather than preparing documents for litigation.

The Secretary of Commerce, where appropriate, should include at take reduction team meetings a representative from each of the following National Oceanic and Atmospheric Administration (NOAA) offices—the NOAA General Counsel office, the appropriate regional Administrator's office, NMFS fisheries, and NMFS law enforcement.

This section also requires the relevant Secretary to reconvene a take reduction team (TRT) and explain any differences the Secretary makes between the draft plan, which was drafted by the TRT, and the published plan. A TRT should not be reconvened for minor changes to a plan, which might include technical or unsubstantial changes like typographical errors. Instead, the Secretary should reconvene a TRT when changes are made to the reduction measures required in the plan which were recommended by the TRT. It is the understanding of the Committee that the involvement of additional agency personnel, as mentioned above, early in the process will help facilitate the process and ensure that appropriate measures are included in the TRT's recommendations.

This section clarifies that contributions from private sources can be used for observers, research, education and outreach programs.

This section gives the Secretary some flexibility on convening TRTs. After notice and pubic comment, the Secretary may decide not to convene TRTs for those fisheries that are having a negligible impact on the marine mammal stock. This flexibility will allow the Secretary to focus staff time and resources on those fisheries that have high interactions with marine mammals.

This section amends MMPA 118(a)(1) and (b)(1) to delete the phrase "within 7 years after the date of enactment of this section." Discussions with the agency have clarified that the removal of the expired date should not adversely affect how NMFS must now implement the zero mortality rate goal under MMPA section 118, 16 U.S.C. 1387. The removal of the expired date does not require immediate development of a take reduction plan. As stated in the Administration's views letter, section 118 requires NMFS to develop and implement take reduction plans for commercial fisheries that have an incidental mortality inconsistent with the zero mortality rate goal. However, the take reduction process remains dependent on prioritization and availability of information and resources. Specifically, section 118(f)(3) of the MMPA provides priorities for development and implementation of take reduction plans if funds are insufficient for all necessary plans. The deletion of the expired date removes potential litigation and frees the agency to prioritize and implement the requirements of this section.

This section also clarifies that MMPA 118(c)(3)(E), which applies to category III fisheries, is a requirement for commercial vessels only. Owners of a vessel are not subject to penalties of the Act if they report any incidental mortality or injury of marine mammals in the course of the fishery.

A conforming amendment to MMPA section 101(a)(5)(E) has been included to clarify that both commercial and recreational fisheries can incidentally take endangered marine mammals, as long as the taking would have a negligible effect and is in accordance with a take reduction plan.

MMPA section 117(a)(4) is amended to require that conservation benefits provided by State and regional fishery management regulations be included in the scientific review of marine mammal stocks. Similar changes are made in the take reduction plan process in section 118, to allow the take reduction teams to review the conservation benefits of state and regional fishery management regulations.

The Committee is concerned that benefits of State and regional management actions may have been overlooked by TRTs in the past and the measures and the benefits these regulations may have had on marine mammal populations have been ignored. The Committee intends that State and regional management measures should be factored into the TRT process. The Committee does not want this process to become burdensome on the TRT; however, every effort should be made to understand what actions have been taken and how commercial fisheries may have changed due to State or regional management measures and if those changes have been beneficial to marine mammal populations. The TRT should work to ensure that measures are developed to protect marine mammals, but it should include an analysis of restrictions already in place from State and regional management actions.

Section 7. Pinniped research

This section amends MMPA section 120 to require the relevant Secretary to conduct research on the nonlethal removal and control of nuisance pinnipeds. The Secretary shall include representatives from commercial and recreational fishing industries and where appropriate use independent marine mammal research institutions. The Secretary shall report annually to the House Committee on Resources and the Senate Committee on Commerce, Science and Transportation.

This section authorizes "Qualified Nonlethal Control Projects." The relevant Secretary is authorized to issue grants to a State, local government, or interstate or regional agency to carry out and monitor or maintain a nonlethal control of nuisance pinnipeds project. The grants are authorized for up to two years and the recipient is required to report to the Secretary when the grant expires. The report is required to contain information on the methods and techniques used and the ensuing results. The federal share of these projects shall not exceed 75% of the overall cost. In-kind contributions are authorized for the non-federal share of the activity. This section authorizes an appropriation of $1.5 million for these activities.

Section 8. Marine Mammal Commission

This section deletes the $100 per diem rate cap and clarifies the staffing authorization for the Commission. It also removes the requirement that the Commission use the General Services Administration for its financial and administrative services.

Section 9. Scrimshaw exemption

This section continues the permits for those individuals with pre-Endangered Species Act ivory to continue to possess, carve, and sell the ivory for the authorization period of this bill.

Section 10. Captive release prohibition

This section amends section 102 of the MMPA to make it illegal to release a captive marine mammal without prior approval from the relevant Secretary. Temporary releases by the Navy are not subject to this prohibition due to current authorizations for their activities.

Section 11. Tropical treaty conforming amendments

This section makes a technical and clarifying change to the Dolphin Protection Consumer Information Act. The reference to "160 degrees west longitude" is changed to "150 degrees west longitude".

Section 12. Permit clarifications

This section amends MMPA section 104(c)(7) to make it clear that the relevant Secretary is required to issue a public display permit to a facility holding a stranded animal that has been determined under the guidelines developed under MMPA section 402(a) to not meet the standards for release. The Committee does not intend that permits be given to those marine mammals that can be legitimately rehabilitated for release in the wild; however, the Committee is very concerned that the Secretaries have not been issuing public display permits to facilities caring for stranded ani-

mals that are not viable release candidates. The Committee's intent is that facilities shall receive public display permits for animals that do not meet the release requirements. The Committee does not intend for the issuance of these permits to diminish research activities involving these animals and encourages the facilities to continue to work with the Secretaries to allow important research activities to continue on these animals.

The Committee commends the public display community for its role in the conservation and management of marine mammals. Activities sponsored by public display facilities—research, educational programs and presentations, animal husbandry, breeding, and rescue and rehabilitation—are important aspects to the conservation of marine mammals. The rescue and rehabilitation programs run by these facilities are critical to the survival of stranded animals and for many years participating institutions ran these programs using their own funds. In addition, these facilities play an invaluable role for the general public. These public display facilities are the only place for many Americans to view marine mammals and learn about the conservation needs of these animals. These facilities help generate the general public's good will toward marine mammals and develop their support for conservation and management measures for these and many other ocean creatures.

This section amends the export provisions of MMPA section 104 to clarify that the Secretary of Agriculture is the appropriate entity for determining the adequacy of facilities holding captive marine mammals. No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the Secretary of Agriculture determines and then notifies the relevant Secretary that the receiving facility meets standards of care and maintenance that are comparable to the standards of care and maintenance required for a person to receive a permit under this subsection for that purpose. The Secretary may not require or request, through comity or any other means, that any exported marine mammal or its progeny remain subject to the jurisdiction of the United States when located in waters or on lands that are subject to the jurisdiction of another country.

The inventory provision subsection (c)(10) is amended to clarify that the inventory is for marine mammals in facilities under the jurisdiction of the United States. In addition, it clarifies that the inventory is to be updated annually. It is further amended to specify that facilities have ownership of the marine mammals in their care.

This section also requires the Secretaries of Commerce and the Interior to jointly conduct a review of the marine mammal inventory regarding the use of the information in the inventory, and the costs, benefits, and issues associated with potentially providing the information through an online inventory.

Section 13. Fisheries gear development

This section amends section 111 to authorize the Secretary of Commerce to carry out a program of research and development for the purpose of devising improved fishing methods and gear to reduce, to the maximum extent practicable, the incidental taking of marine mammals in connection with fishing operations. It author-

izes a mini-grant program, subject to the availability of appropriations, and allows the Secretary to receive donations to carry out the grant program. An authorization of appropriation of $1.5 million for each of the fiscal years 2005–2009 is also included.

Section 14. Marine mammal research grants

This section amends MMPA section 110 to delete expired provisions and authorize the relevant Secretary to make grants or other financial assistance to Federal or State agencies, public or private institutions, or other persons to undertake research in subjects relevant to the protection and conservation of marine mammals, and the ecosystem upon which they depend. The relevant Secretary is authorized to receive gifts to carry out this section. An authorization of appropriation of $1.5 million for each of the fiscal years 2005–2009 is also included.

Section 15. Fines and penalties

This section increases the fines in MMPA section 105 from $10,000 to $20,000 for civil penalties and from $20,000 to $30,000 for criminal penalties. It also increases the penalty in MMPA section 106 from $25,000 to $35,000.

Section 16. Cooperative agreements in Alaska

This section amends MMPA section 119 to allow the Secretaries of Commerce and the Interior, in coordination with Alaska Native organizations, to develop harvest management plans within existing or newly developed cooperative management agreements. The Alaska Native organizations are authorized to adopt regulations and ordinances, that apply to Alaska Natives only, to implement the harvest management plan. The relevant Secretary is required to solicit recommendations from Alaska Native organizations when developing regulations and will publish each harvest management plan entered into under this section. Appropriations are authorized for the Secretaries of Commerce and the Interior to carry out the provisions of this section for fiscal years 2005–2009.

Section 17. Annual report requirement

This section reinstates the requirement that the Secretaries of Commerce and the Interior report annually to Congress on the current status of marine mammals.

This section also requires federal agencies that conduct and provide funds for research on marine mammals to report annually to the Committee on Resources and the Senate Committee on Commerce, Science, and Transportation.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or a decrease in tax expenditures. The Congressional Budget Office estimates that implementing H.R. 5104 would cost $1 million in 2005 and $47 million over the 2005–2009 period. The bill could increase revenues and subsequent direct spending of those revenues but the Congressional Budget Office expects that any increase in direct spending and revenues would be negligible.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 2004.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5104, the Prescott Marine Mammal Stranding Program Amendments of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 5104—Prescott Marine Mammal Stranding Program Amendments of 2004

Summary: H.R. 5104 would authorize appropriations for programs to protect and conserve marine mammals. CBO estimates that implementing the bill would cost $1 million in 2005 and $47 million over the 2005–2009 period, assuming appropriation of the authorized amounts. We also estimate that H.R. 5104 would in-

crease both direct spending and revenues by less than $500,000 a year.

H.R. 5104 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Alaska Native organizations, universities, and other public entities that participate in grant programs or cooperative agreements would incur costs voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5104 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATIONS					
Authorization Level	16	16	16	16	16
Estimated Outlays	1	5	11	14	16

Basis of estimate: H.R. 5104 would authorize the appropriation of $16 million a year over the 2005–2009 period for programs to protect and conserve marine mammals. The amount authorized for each year includes $6 million to support efforts by Alaska Native organizations to manage marine mammals for subsistence, $5 million for grants to organizations that rescue marine mammals, $3 million for research on pinnipeds and marine mammals, $1.5 million for efforts to design fishing equipment that minimizes adverse impacts on marine mammals, and $125,000 for grants to respond to stranded animals. Based on historical spending patterns for similar programs, CBO estimates that fully funding those activities would cost $1 million in 2005 and $47 million over the 2005–2009 period.

In addition, H.R. 5104 could increase revenues and subsequent direct spending of those revenues. The bill would increase fines for certain violations of federal law related to the protection of marine mammals. Under current law, the Secretary of the Interior can spend such fines, without further appropriation, for programs to protect and conserve those mammals. Based on information from the Department of the Interior, CBO expects that a relatively small number of cases would be affected and that any increases in revenues and direct spending from this provision would be negligible.

Intergovernmental and private-sector impact: H.R. 5104 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local or tribal governments. Alaska Native organizations, universities, and other public entities that participate in grant programs or cooperative agreements would incur costs voluntarily.

Estimate prepared by: Federal Costs: Megan Carroll (226–2860); Impact on State, Local, and Tribal Governments: (225–3220); and Impact on the Private Sector: Amina Masood (226–2949).

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

* * * * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "depletion" or "depleted" means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II [of this Act,] *and, for any stock subject to a cooperative management agreement with a harvest management plan entered into under section 119, those Alaska Native organizations that are signatories to such an agreement,* determines that a species or population stock is below its optimum sustainable population;

* * * * * * *

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal 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) * * *

* * * * * * *

(5)(A) * * *

* * * * * * *

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking 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)), while engaging in commercial *or recreational* fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species 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—

(I) the incidental mortality and serious injury from commercial *or recreational* fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

* * * * * * *

(iii) If, during the course of the commercial *or recreational* fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial *or recreational* fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

* * * * * * *

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

(i) was legally possessed and exported by any citizen of the United States *for noncommercial purposes* in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

* * * * * * *

(B) A marine mammal product may be exported from the United States if the product—

(i) is legally possessed, and exported by, a citizen of the United States for noncommercial purposes in conjunction with travel outside the United States and the product is imported into the United States by the same person upon the termination of travel;

(ii) is legally possessed, and exported by, a person that is not a citizen of the United States for noncommercial purposes;

(iii) is legally possessed and exported as part of a cultural exchange, by an Indian, Aleut, or Eskimo residing in Alaska; or

(iv) is owned by a Native inhabitant of Russia, Canada, or Greenland and is exported for noncommercial purposes—

(I) in conjunction with, and upon the completion of, travel within the United States; or

(II) as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

[(B)] *(C)* For the purposes of this paragraph, the term—

(i) * * *

* * * * * * *

(b) Except as provided in [section 109] *sections 109 and 119(c) and (d)*, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) * * *

* * * * * * *

PROHIBITIONS

SEC. 102. (a) Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV, it is unlawful—

(1) * * *

* * * * * * *

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

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

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under [subsection 104(c); and] *section 104(c);*

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act[.]*; and*

(6) for any person that is subject to the jurisdiction of the United States to release any captive marine mammal unless specifically authorized to do so under section 104(c)(3)(A), 104(c)(4)(A), or 109(h), except that this paragraph shall not apply to the temporary release of any marine mammal that is—

(A) maintained in captivity under section 7524 of title 10, United States Code (including any progeny of a marine mammal maintained under that section); or

(B) the progeny of a marine mammal excluded from coverage under this Act by section 102(e).

* * * * * * *

REGULATIONS ON TAKING OF MARINE MAMMALS

SEC. 103. (a) * * *

* * * * * * *

(f) Within six months after the effective date of this Act and every twelve months thereafter *and notwithstanding Public Law 104–66,*, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where ap-

propriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals.

(g) The head of each Federal agency that conducts and provides funds for research on marine mammals shall report annually to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on funding provided and research conducted regarding marine mammals during the preceding year.

PERMITS

SEC. 104. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit *notwithstanding any other provision of law* if that person—

(A) * * *

* * * * * * *

[(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.**]**

(9)(A) No marine mammal may be exported—

(i) for the purpose of public display, unless the Secretary of Agriculture evaluates and verifies, and thereafter notifies the Secretary, that the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose; or

(ii) for the purpose of scientific research or enhancing the survival or recovery of a species or stock, unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(B) The Secretary may not require or request, through comity or any other means, that any marine mammal or its progeny remain subject to the jurisdiction of the United States when located in waters or on lands that are subject to the jurisdiction of another country.

(10) The Secretary shall establish and maintain an inventory of all marine mammals *held within the lands and waters of the United States* possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals *held within the lands and waters of the United States. The Secretary shall update the inventory on an annual basis.* The inventory shall

contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) * * *

* * * * * * *

(D) The date of *ownership, or other* acquisition or disposition of the marine mammal by the permit holder.

* * * * * * *

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 118, may be assessed a civil penalty by the Secretary of not more than [$10,000] *$20,000* 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.

* * * * * * *

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder (except as provided in section 118) shall, upon conviction, be fined not more than [$20,000] *$30,000* for each such violation, or imprisoned for not more than one year, or both.

VESSEL FINE, CARGO FORFEITURE, AND REWARDS

SEC. 106. (a) * * *

(b) Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than [$25,000] *$35,000*. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

* * * * * * *

ENFORCEMENT

SEC. 107. (a) Except as otherwise provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency*, or of an Alaska Native organization for purposes of enforcing this title pursuant to a harvest management plan*

with the organization under section 119 for purposes of enforcing this title.

* * * * * * *

MARINE MAMMAL RESEARCH GRANTS

SEC. 110. [(a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).]

(a) AUTHORIZATION OF ASSISTANCE; ANNUAL REPORT.—

(1) AUTHORIZATION OF ASSISTANCE.—The Secretary may make grants, or provide financial assistance in such other form as the Secretary considers appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects that are relevant to the protection and conservation of marine mammals, and the ecosystems upon which they depend, including, but not limited to, the Bering/Chukchi Sea ecosystem and the California coastal marine ecosystem.

(2) INCLUSION OF INFORMATION IN REPORTS.—The Secretary shall include a description of the annual results of research carried out with assistance under this section in the report required under section 103(f).

(3) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

* * * * * * *

[(c)(1) No later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of Commerce shall convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health and stability of that marine ecosystem, of which marine mammals are a part. The workshop shall be conducted in consultation with the Marine Mammal Commission, the adjacent coastal States, individuals with expertise in marine mammal biology and ecology, representatives from environmental organizations, the fishing industry, and other appropriate persons. The goal of the workshop shall be to identify such factors, and to recommend a program of research and management to restore or maintain that marine ecosystem and its key components that—

[(A) protects and encourages marine mammals to develop to the greatest extent feasible commensurate with sound policies of resource management;

[(B) has as the primary management objective the maintenance of the health and stability of the marine ecosystems;

[(C) ensures the fullest possible range of management options for future generations; and

[(D) permits nonwasteful, environmentally sound development of renewable and nonrenewable resources.

[(2) On or before December 31, 1995, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate a report containing the results of the workshop under this subsection, proposed regulatory or research actions, and recommended legislative action.

[(d)(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native organizations, shall, not later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

[(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary of Commerce shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

[(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 103(f) and 204 of this Act.]

(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary $1,500,000 for each of fiscal years 2005 through 2009.

COMMERCIAL FISHERIES GEAR DEVELOPMENT

SEC. 111. [(a) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following the date of the enactment of this Act, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of $1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.]

(a) RESEARCH AND DEVELOPMENT PROGRAM.—

(1) IN GENERAL.—The Secretary of Commerce (in this section referred to as the "Secretary") shall—

(A) carry out a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with fishing operations; and

(B) make every practicable effort to develop, evaluate, and make available to owners and operators of fishing vessels such gear and fishing method improvements as quickly as possible.

(2) COORDINATION WITH OTHER COUNTRIES.—The Secretary may coordinate with other countries to foster gear technology transfer initiatives to reduce to the maximum extent practicable the incidental mortality and serious injury of marine mammals throughout the full extent of their range.

* * * * * * *

(e) GEAR RESEARCH MINI-GRANT PROGRAM.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary may establish a grant program to provide financial assistance for developing, manufacturing, testing, or designing new types of fishing gear designed to reduce to the maximum extent practicable the incidental taking (including incidental mortality and serious injury) of marine mammals.

(2) GRANT AMOUNT AND PURPOSES.—The amount of a grant under this subsection may not exceed $20,000.

(3) GRANT APPLICATIONS.—To receive a grant under this section, an applicant must submit an application in such form and manner as the Secretary may prescribe.

(4) CONSULTATION REGARDING CRITERIA.—The Secretary shall consult with the Secretary of the Interior and the Marine Mammal Commission regarding the development of criteria for the awarding of grants under this subsection.

(5) ADMINISTRATIVE COSTS.—Of amounts available each fiscal year to carry out this subsection, the Secretary may expend not more than $40,000 to pay the administrative expenses necessary to carry out this subsection.

(6) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

(f) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary $1,500,000 for each of fiscal years 2005 through 2009.

* * * * * * *

APPLICATION TO OTHER TREATIES AND CONVENTIONS

SEC. 113. (a) * * *

* * * * * * *

(c) The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on ❚Merchant Marine and Fisheries❚ *Resources* of the House of Representa-

tives and the Committee on Commerce, Science, and Transportation of the Senate not later than April 1, 1995.

(d) Not later than 6 months after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, shall consult with the appropriate officials of the Russian Federation on the development and implementation of enhanced cooperative research and management programs for the conservation of polar bears in Alaska and Russia. The Secretary shall report the results of this consultation and provide periodic progress reports on the research and management programs to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate.

INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

SEC. 114. (a) * * *

* * * * * * *

(l)(1) * * *

* * * * * * *

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The recommendations shall include—

(A) * * *

* * * * * * *

SEC. 117. STOCK ASSESSMENTS.

(a) IN GENERAL.—Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

(1) * * *

* * * * * * *

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

(A) * * *

* * * * * * *

(C) seasonal or area differences in such incidental mortality or serious injury; [and]

(D) the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate; *and*

(E) potential conservation benefits provided by State and regional fishery management regulations;

* * * * * * *

SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

(a) IN GENERAL.—(1) Effective on the date of enactment of this section, and except as provided in section 114 and in paragraphs (2), (3), and (4) of this subsection, 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)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of [commercial] fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate [within 7 years after the date of enactment of this section].

* * * * * * *

(5) Except as provided in section 101(c), the intentional lethal take of any marine mammal in the course of [commercial] fishing operations is prohibited.

* * * * * * *

(b) ZERO MORTALITY RATE GOAL.—(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate [within 7 years after the date of enactment of this section].

* * * * * * *

(3) Three years after such date of enactment, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Merchant Marine and Fisheries] *Resources* 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 additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

* * * * * * *

[(c) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of this section—

[(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 114(b)(1) and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in,

each such fishery), with respect to commercial fisheries that have—

[(i) frequent incidental mortality and serious injury of marine mammals;

[(ii) occasional incidental mortality and serious injury of marine mammals; or

[(iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;]

(c) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of the Marine Mammal Protection Act Amendments of 2004—

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of fisheries published under section 114(b)(1) in the Federal Register on August 24, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to—

(i) commercial and recreational fisheries that have frequent incidental mortality and serious injury of marine mammals;

(ii) commercial and recreational fisheries that have occasional incidental mortality and serious injury of marine mammals; or

(iii) commercial fisheries that have a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

(B) after the close of the period for such public comment, publish in the Federal Register a revised list of [commercial] fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this Act and other relevant sources and after notice and opportunity for public comment, the classification of [commercial] fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a [commercial] fishery listed under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as

the authorization remains current and valid, shall be reissued annually thereafter.

* * * * * * *

(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A) (i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in [a commercial fishery] *that fishery—*

(i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section[, except that owners of vessels holding valid certificates of exemption under section 114 are deemed to have registered for purposes of this subsection for the period during which such exemption is valid];

* * * * * * *

(E) Each owner of a vessel engaged in any *commercial* fishery not listed under paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e), instances of incidental mortality or injury of marine mammals in the course of that fishery.

* * * * * * *

(5)(A) * * *

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising [commercial] fishermen of the provisions of this section and the means by which they can comply with its requirements.

* * * * * * *

(d) MONITORING OF INCIDENTAL TAKES.—(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of [commercial fishing operations] *fishing operations in a fishery listed under subsection (c)(1)(A)(i) or (ii)*. The purposes of the monitoring program shall be to—

(A) * * *

* * * * * * *

[(C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.]

(C) identify current fishery regulations and changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

* * * * * * *

(3) In determining the distribution of observers among [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* and vessels within a fishery, the Secretary shall be guided by the following standards:

(A) * * *

* * * * * * *

(4) To the extent practicable, the Secretary shall allocate observers among [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* in accordance with the following priority:

(A) The highest priority for allocation shall be for [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(B) The second highest priority for allocation shall be for [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that have incidental mortality and serious injury of marine mammals from strategic stocks.

(C) The third highest priority for allocation shall be for [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

(5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of [commercial fishing operations] *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)*. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

* * * * * * *

(e) REPORTING REQUIREMENT.—The owner or operator of a [commercial] fishing vessel subject to this [Act] *section* shall report all incidental mortality and injury of marine mammals in the course of [commercial] fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

(1) * * *

* * * * * * *

[(f) TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A) (i) or (ii), and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.]

(f) TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), unless the Secretary determines, after notice and opportunity for public comment, that the level of fishery related mortality and serious injury is hav-

ing a negligible impact on that stock. The Secretary may develop and implement a take reduction plan for any other marine mammal stocks which interact with a fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

(2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within ⟦6⟧ *9* months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of ⟦commercial fishing operations⟧ *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)* to levels less than the potential biological removal level established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of ⟦commercial fishing operations⟧ *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)* to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing *conservation benefits of* State or regional fishery management plans.

(3) If there is insufficient funding available to develop and implement a take reduction plan for all such stocks that interact with ⟦commercial⟧ fisheries listed under subsection (c)(1)(A) (i) or (ii), the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most rapidly.

(4) Each take reduction plan shall include—

⟦(A) a review of the information in the final stock assessment published under section 117(b) and any substantial new information;⟧

(A) a review of the information in the final stock assessment published under section 117(b), any substantial new information, a review of the conservation benefits from current State and regional fishery management regulations;

(B) an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of ⟦commercial fishing operations⟧ *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)*, by fishery;

* * * * * * *

(5)(A) For any stock in which incidental mortality and serious injury from ⟦commercial⟧ fisheries exceeds the potential biological removal level established under section 117, the plan shall include measures the Secretary expects will reduce, within ⟦6⟧ *9* months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.

(B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such ⟦commercial⟧ fish-

eries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.

(6)(A) At the earliest possible time ⟦(not later than 30 days)⟧ after the Secretary issues a final stock assessment under section 117(b) for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

(i) establish a take reduction team for such 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 stock, and a list of all ⟦commercial fisheries⟧ *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that cause incidental mortality and serious injury of marine mammals from such stock.

* * * * * * *

(C) Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, *where appropriate a representative of the office of General Counsel of the National Oceanic and Atmospheric Administration, a representative of the National Marine Fisheries Service having responsibilities related to fisheries science, a representative of the National Marine Fisheries Service having responsibilities related to law enforcement, and a representative of the appropriate National Marine Fisheries Service Regional Administrator*, and others as the Secretary deems appropriate. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests.

* * * * * * *

(7) Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A) (i) or (ii), the following procedures shall apply in the development of the take reduction plan for the stock:

(A)(i) Not later than ⟦6⟧ *9* months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

* * * * * * *

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than [60] *120* days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days. *Before publishing any plan that is different than the draft plan proposed by a take reduction team, the Secretary shall reconvene the team and explain to the team the differences between the published plan and the draft plan proposed by the team.*

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within [6] *9* months, the Secretary shall, not later than [8] *11* months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than [60] *90* days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising [commercial] fishermen of the requirements of the plan and how to comply with them.

* * * * * * *

(8) Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), or for any marine mammal stocks which interact with a [commercial] fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:

(A) * * *

* * * * * * *

(C) Not later than [60] *180* days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising [commercial] fishermen of the requirements of the plan and how to comply with them.

* * * * * * *

(9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock

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

(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in [commercial fisheries or restrict commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii) or restrict such fisheries* by time or area;

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

(C) educate [commercial] fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected [commercial] fisheries; and

(D) monitor, in accordance with subsection (d), the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of [commercial fishing operations] *participation in a fishery listed under subsection (c)(1)(A)(i) or (ii).*

* * * * * * *

(g) EMERGENCY REGULATIONS.—(1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from [commercial fisheries] *fisheries listed under subsection (c)(1)(A)(i) or (ii)* is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:

(A) * * *

* * * * * * *

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for not more than 180 days or until the end of the applicable [commercial] fishing season, whichever is earlier; and

* * * * * * *

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a [commercial fishery] *fishery listed under subsection (c)(1)(A)(i) or (ii)* is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

* * * * * * *

(j) CONTRIBUTIONS.—For purposes of carrying out this section, *including observer, research, and education and outreach programs,* the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

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SEC. 119. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

[(a) IN GENERAL.—The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine

mammals and provide co-management of subsistence use by Alaska Natives.

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

[(1) collecting and analyzing data on marine mammal populations;

[(2) monitoring the harvest of marine mammals for subsistence use;

[(3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and

[(4) developing marine mammal co-management structures with Federal and State agencies.]

(a) IN GENERAL.—The Secretary may enter into cooperative management agreements with Alaska Native organizations to conserve and manage any stock of marine mammals and provide comanagement of subsistence use by Alaska Natives. Such agreements may include a harvest management plan governing Alaska Native subsistence use for those stocks or species covered by the cooperative management agreement.

(b) MANAGEMENT PLAN REQUIREMENTS.—A harvest management plan under this section with an Alaska Native organization shall—

(1) apply only to Alaska Natives, as defined in section 101(b);

(2) identify the signatories to the plan, and the stock or species and geographic area covered by the plan;

(3) be based on biological information and traditional ecological knowledge;

(4) provide for a sustainable harvest of each stock or species covered by the plan, and is designed to prevent populations of such stocks and species from becoming depleted;

(5) have a clearly defined process and authority for enforcement and implementation of any management prescriptions under the plan; and

(6) specify the duration of the plan and set forth procedures for periodic review and termination of the plan.

(c) IMPLEMENTING REGULATIONS AND ORDINANCES.—

(1) IN GENERAL.—An Alaska Native organization may adopt regulations and ordinances that apply to Alaska Natives exclusively and that are consistent with, and necessary to implement and enforce, a harvest management plan entered into by the organization under this section.

(2) DEPLETED STOCKS.—A regulation or ordinance adopted pursuant to this subsection for a depleted stock shall apply only to the extent the regulation or ordinance is consistent with regulations issued by the Secretary under sections 101(b) and 103 that apply to such stock.

(d) PROHIBITION.—It is unlawful for any Alaska Native within the geographic area to which a harvest management plan under this section applies, to take, transport, sell, or possess a marine mammal in violation of any regulation or ordinance adopted by an Alaska Native organization to implement and enforce a harvest management plan.

(e) GRANTS.—Agreements entered into under this section may include a grant to Alaska Native organizations for, among other purposes—

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

(2) monitoring the harvest of marine mammals for subsistence and handicraft uses;

(3) participating in marine mammal research conducted by the Federal Government, the State of Alaska, academic institutions, and private organizations; and

(4) developing marine mammal comanagement structures with Federal and State agencies, and implementing, and enforcing any harvest management plan included in the agreement.

(f) OPPORTUNITY FOR ADVANCE NOTICE AND COMMENT REGARDING PROPOSED REGULATIONS.—Before proposing any regulation under section 101(b) relating to the taking of a stock of marine mammals that is the subject of a harvest management plan under this section, the Secretary shall—

(1) solicit recommendations for such proposed regulation from each Alaska Native organization engaged in harvest management of the species or stock pursuant to this section; and

(2) provide to each such organization—

(A) each draft of the proposed regulation;

(B) an analysis of how the proposed regulation would achieve the goal of being the least restrictive measures upon subsistence use of the stock and the conservation goals of the Act; and

(C) an opportunity to comment on the proposed regulation prior to publication of any proposed regulations in the Federal Register.

(g) PUBLIC NOTICE.—The Secretary shall publish each harvest management plan entered into under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of carrying out this section—

(1) to the Secretary of the Interior, $3,000,000 for each of fiscal years 2005 through 2009; and

(2) to the Secretary of Commerce, $3,000,000 for each of fiscal years 2005 through 2009.

(i) FACA EXEMPTION.—The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply with respect to the provision of any advice or recommendations to the Secretary by any Alaska Native organization (including any scientific review group associated with such an organization), or the obtaining of any advice or recommendations by the Secretary from such an organization, for the purpose of formulation or implementation of a cooperative management agreement under this section.

[(c)**]** *(j)* EFFECT OF JURISDICTION.—Nothing in this section is intended or shall be construed—

(1) * * *

* * * * * * *

[(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of carrying out this section—

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

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

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 116.]

SEC. 120. PACIFIC COAST TASK FORCE; GULF OF MAINE.

(a) * * *

* * * * * * *

(f) CALIFORNIA SEA LIONS AND PACIFIC HARBOR SEALS; INVESTIGATION AND REPORT.—

(1) * * *

(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

* * * * * * *

(g) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.—

(1) * * *

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives.

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(h) GULF OF MAINE TASK FORCE.—The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from the date of enactment of this section, the Secretary shall after notice and opportunity for public comment submit to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.

* * * * * * *

(k) RESEARCH ON NONLETHAL REMOVAL AND CONTROL.—(1) The Secretary shall conduct research on the nonlethal removal and control of nuisance pinnipeds. The research shall include a review of measures that have been taken to effect such removal and control, the effectiveness of these measures, and the development of new technologies to deter nuisance pinnipeds.

(2) The Secretary shall include, among the individuals that develop the research program under this subsection, representatives of the commercial and recreational fishing industries.

(3) The Secretary is encouraged, where appropriate, to use independent marine mammal research institutions in developing and in conducting the research program.

(4) The Secretary shall, by December 31 of each year, submit an annual report on the results of research under this subsection to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(l) QUALIFIED NONLETHAL CONTROL PROJECTS.—

(1) IN GENERAL.—The Secretary may, to the extent amounts are available to carry out this subsection, provide a grant to any eligible applicant to carry out a qualified nonlethal control project in accordance with this subsection.

(2) APPLICATIONS.—The Secretary shall—

(A) publish guidelines for and solicit applications for grants under this subsection not later than 6 months after the date of enactment of this subsection; and

(B) receive, review, evaluate, and approve applications for grants under this subsection.

(3) ELIGIBLE APPLICANT.—To be an eligible applicant for purposes of paragraph (1), an applicant must—

(A) be a State, local government, or interstate or regional agency; and

(B) have adequate personnel, funding, and authority to carry out and monitor or maintain a nonlethal control of nuisance pinnipeds project.

(4) QUALIFIED CONTROL PROJECT.—To be a qualified control project under this subsection, a project must—

(A) by humane and nonlethal means, remove, deter, and control nuisance pinnipeds in areas where they are a recurrent and persistent threat to public health and safety; and

(B) encourage public notice, education, and outreach on project activities in the affected community.

(5) GRANT DURATION.—Each grant under this subsection shall be to provide funding for the Federal share of the cost of a project carried out with the grant for up to 2 fiscal years.

(6) REPORTING BY GRANTEE.—

(A) IN GENERAL.—A grantee carrying out a control project with a grant under this subsection shall report to the Secretary at the expiration of the grant.

(B) REPORT CONTENTS.—Each report under this subsection shall include specific information on the methods and techniques used to control nuisance pinniped species in the project area, and on the ensuing results.

(7) COST SHARING.—

(A) FEDERAL SHARE.—Except as provided in paragraphs (2) and (3), the Federal share of the cost of a project carried out with a grant under this subsection shall not exceed 75 percent of such cost.

(B) APPLICATION OF IN-KIND CONTRIBUTIONS.—The Secretary may apply to the non-Federal share of costs of a control project carried out with a grant under this subsection the fair market value of services or any other form of in-

kind contribution to the project made by non-Federal interests that the Secretary determines to be an appropriate contribution equivalent to the monetary amount required for the non-Federal share of the activity.

(C) DERIVATION OF NON-FEDERAL SHARE.—The non-Federal share of the cost of a control project carried out with a grant under this subsection may not be derived from a Federal grant program or other Federal funds.

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $1,500,000 for each of fiscal years 2005 through 2009.

(9) CLARIFICATION.—Nothing in this subsection shall be interpreted as suspending or waiving any requirement under any other provision of this Act.

TITLE II—MARINE MAMMAL COMMISSION

* * * * * * *

ADMINISTRATION OF COMMISSION

SEC. 206. The Commission, in carrying out its responsibilities under this title, may—

(1) * * *

* * * * * * *

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of Title 5, United States Code **[**(but at rates for individuals not to exceed $100 per diem)**]**; and

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this title**[**; except that no fewer than 11 employees must be employed under paragraph (1) at any time. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.**]**.

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TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

* * * * * * *

SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT PROGRAM.

(a) IN GENERAL.—(1) Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue Assistance Grant Program, to provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes. *All funds available*

to implement this section shall be distributed to eligible stranding network participants for the purposes set forth in this paragraph, except as provided in subsection (f).

* * * * * * *

[(f) ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this section, the Secretary may expend not more than 6 percent or $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this section.]

(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of the amounts available each fiscal year to carry out this section, the Secretary may expend not more than 6 percent or $80,000, whichever is greater, to pay the administrative costs and administrative expenses to implement the grant program under subsection (a). Any such funds retained by the Secretary for a fiscal year for such costs and expenses that are not used for such costs and expenses before the end of the fiscal year shall be provided as grants under subsection (a).

* * * * * * *

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years [2001 through 2003] *2005 through 2009*, to remain available until expended, of which—

(1) * * *

* * * * * * *

(i) CONTRIBUTIONS.—For purposes of carrying out this section, the Secretary may solicit, accept, receive, hold, administer, and use gifts, devises, and bequests.

SEC. 409. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated—

(1) * * *

* * * * * * *

(3) to the Fund, [$500,000 for fiscal year 1993] *$125,000 for each of fiscal years 2005 through 2009*.

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DOLPHIN PROTECTION CONSUMER INFORMATION ACT

DOLPHIN PROTECTION

SEC. 901. (a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

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(c) DEFINITIONS.—For purposes of this section—

(1) * * *

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, [160 degrees west longitude] *150 de-*

grees west longitude, and the western coastlines of North, Central, and South America;

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