direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of section 47(a) of title 18 shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary. Nothing in this chapter shall be deemed to limit the authority of the Secretary in the management of units of the National Park System, and the Secretary may, without regard either to the provisions of this chapter, or the provisions of section 47(a) of title 18, use motor vehicles, fixed-wing aircraft, or helicopters, or to contract for such use, in furtherance of the management of the National Park System, and section 47(a) of title 18 shall be applicable to such use.

(Pub. L. 92–195, § 9, as added Pub. L. 94–579, title IV, § 404, Oct. 21, 1976, 90 Stat. 2775; amended Pub. L. 104–333, div. I, title VIII, § 803(a), Nov. 12, 1996, 110 Stat. 4186.)

REFERENCES IN TEXT

This chapter, referred to in last sentence, was in the original ''this title'', and was translated as reading ''this Act'', meaning the Wild Free-Roaming Horses and Burros Act which enacted this chapter, to reflect the probable intent of Congress, because that Act does not contain titles.

AMENDMENTS

1996—Pub. L. 104–333 inserted at end ''Nothing in this chapter shall be deemed to limit the authority of the Secretary in the management of units of the National Park System, and the Secretary may, without regard either to the provisions of this chapter, or the provisions of section 47(a) of title 18, use motor vehicles, fixed-wing aircraft, or helicopters, or to contract for such use, in furtherance of the management of the National Park System, and section 47(a) of title 18 shall be applicable to such use.''

§ 1339. Limitation of authority

Nothing in this chapter shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist.

(Pub. L. 92–195, § 10, formerly § 9, Dec. 15, 1971, 85 Stat. 651, renumbered Pub. L. 94–579, title IV, § 404, Oct. 21, 1976, 90 Stat. 2775.)

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After the expiration of thirty calendar months following December 15, 1971, and every twenty-four calendar months thereafter, the Secretaries of the Interior and Agriculture will submit to Congress a joint report on the administration of this chapter, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as he might deem appropriate.

The Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this chapter and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this chapter. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros that they may deem necessary in order to carry out the provisions of this chapter.

(Pub. L. 92–195, § 11, formerly § 10, Dec. 15, 1971, 85 Stat. 651, renumbered Pub. L. 94–579, title IV, § 404, Oct. 21, 1976, 90 Stat. 2775.)

CHAPTER 31—MARINE MAMMAL PROTECTION

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This chapter is referred to in sections 1543, 1881, 1881a, 1881b, 2407, 2408, 3125 of this title; title 10 section 7524.

SUBCHAPTER I—GENERALLY

§ 1361. Congressional findings and declaration of policy

The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such ma-

rine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

(Pub. L. 92–522, § 2, Oct. 21, 1972, 86 Stat. 1027; Pub. L. 97–58, § 1(b)(1), Oct. 9, 1981, 95 Stat. 979; Pub. L. 103–238, § 3, Apr. 30, 1994, 108 Stat. 532.)

AMENDMENTS

1994—Par. (2). Pub. L. 103–238, § 3(1), inserted ''essential habitats, including'' after ''made to protect''.

Par. (5). Pub. L. 103–238, § 3(2), inserted ''and their habitats'' before ''is therefore necessary'' in concluding provisions.

1981—Par. (6). Pub. L. 97–58 substituted ''carrying capacity'' for ''optimum carrying capacity''.

EFFECTIVE DATE

Section 4 of Pub. L. 92–522 provided that: ''The provisions of this Act [enacting this chapter] shall take effect upon the expiration of the sixty-day period following the date of its enactment [Oct. 21, 1972].''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–42, § 1(a), Aug. 15, 1997, 111 Stat. 1122, provided that: ''This Act [enacting sections 962, 1412, 1413, 1414a to 1416 of this title, amending sections 952, 953, 1362, 1371, 1374, 1378, 1380, 1385, 1411, and 1417 of this title, repealing sections 1412 to 1416 and 1418 of this title, and enacting provisions set out as notes under this section and section 1362 of this title] may be cited as the 'International Dolphin Conservation Program Act'.''

SHORT TITLE OF 1994 AMENDMENT

Section 1 of Pub. L. 103–238 provided that: ''This Act [enacting sections 1386 to 1389 of this title, amending this section and sections 1362, 1371, 1372, 1374, 1375, 1379, 1380, 1382 to 1384, 1407, 1421 to 1421h, and 4107 of this title, repealing sections 1384 and 1407 of this title, and enacting provisions set out as notes under this section and sections 1362, 1374, 1538, and 1539 of this title] may be cited as the 'Marine Mammal Protection Act Amendments of 1994'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–587, title III, § 3001, Nov. 4, 1992, 106 Stat. 5059, provided that: ''This title [enacting subchapter V of this chapter, amending sections 1362, 1372, 1379, and 1382 of this title and section 183c of Title 46, Appendix, Shipping, and enacting provisions set out as notes under sections 1421 and 1421a of this title] may be cited as the 'Marine Mammal Health and Stranding Response Act'.''

Pub. L. 102–523, § 1, Oct. 26, 1992, 106 Stat. 3425, provided that: ''This Act [enacting subchapter IV of this chapter and amending sections 952, 953, 973r, and 1362 of this title] may be cited as the 'International Dolphin Conservation Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–711, § 1, Nov. 23, 1988, 102 Stat. 4755, provided: ''That this Act [enacting sections 1383a and 1383b of this title, amending sections 1166, 1371, 1372, 1374, 1378 to 1380, 1384, 1402, and 1407 of this title and section 1978 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1384 of this title] may be cited as the 'Marine Mammal Protection Act Amendments of 1988'.''

SHORT TITLE

Section 1 of Pub. L. 92–522 provided in part that: ''This Act [enacting this chapter] may be cited as the 'Marine Mammal Protection Act of 1972'.''

REGULATIONS

Section 15(b) of Pub. L. 103–238 provided that: ''Except as provided otherwise in this Act [see Short Title of 1994 Amendment note above], or the amendments to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) made by this Act, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall, after notice and opportunity for public comment, promulgate regulations to implement this Act and the amendments made by this Act by January 1, 1995.''

PURPOSES AND FINDINGS

Pub. L. 105–42, § 2, Aug. 15, 1997, 111 Stat. 1122, provided that:

''(a) PURPOSES.—The purposes of this Act [see Short Title of 1997 Amendment note above] are—

''(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

''(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

''(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

''(b) FINDINGS.—The Congress finds that—

''(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

''(2) the provisions of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

''(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

''(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that

Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.''

RELATIONSHIP OF MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1994 TO OTHER LAW

Section 2(b) of Pub. L. 103–238 provided that: ''Except as otherwise expressly provided, nothing in this Act [see Short Title of 1994 Amendment note above] is intended to amend, repeal, or otherwise affect any other provision of law.''

INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSISTENCE

Section 14 of Pub. L. 103–238 provided that: ''Nothing in this Act [see Short Title of 1994 Amendment note above], including any amendments to the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] made by this Act—

''(1) alters or is intended to alter any treaty between the United States and one or more Indian tribes; or

''(2) affects or otherwise modifies the provisions of section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)), except as specifically provided in the amendment made by section 4(b) of this Act [amending section 1371 of this title].''

STUDY ON EFFECTS OF DOLPHIN FEEDING

Pub. L. 102–567, title III, § 306, Oct. 29, 1992, 106 Stat. 4284, directed Secretary of Commerce to conduct a study in the eastern Gulf of Mexico on the effects of feeding of noncaptive dolphins by human beings, such study to be designed to detect any behavior or diet modification resulting from this feeding and to identify the effects, if any, of these modifications on the health and well-being of the dolphins, directed Secretary to consult with National Academy of Sciences and Marine Mammal Commission in design and conduct of the study, and directed Secretary, within 18 months after Oct. 29, 1992, to submit to Congress a report on results of the study.

STUDY ON MORTALITY OF ATLANTIC DOLPHIN

Pub. L. 100–711, § 7, Nov. 23, 1988, 102 Stat. 4771, directed Secretary of Commerce to conduct a study regarding east coast epidemic during 1987 and 1988 which caused substantial mortality within North Atlantic coastal population of Atlantic bottle-nosed dolphin, such study to examine (1) cause or causes of epidemic, (2) effect of epidemic on coastal and offshore populations of Atlantic bottle-nosed dolphin, (3) extent to which pollution may have contributed to epidemic, (4) whether other species and populations of marine mammals were affected by those factors which contributed to epidemic, and (5) any other matters pertaining to causes and effects of epidemic, with Secretary to submit on or before Jan. 1, 1989, to Committee on Commerce, Science, and Transportation of the Senate and Committee on Merchant Marine and Fisheries of the House of Representatives a plan for conducting the study.

INTERNATIONAL DISCUSSION TO ADVANCE UNDERSTANDING OF CETACEAN LIFE

Pub. L. 95–426, title VI, § 602, Oct. 7, 1978, 92 Stat. 985, provided that: ''It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries—

''(1) to join in international discussions with other such countries in order to advance general understanding of cetacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

''(2) to participate in an exchange of information with the National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of—

''(A) the impact of cetaceans on ecologically related human foodstuffs, and

''(B) alternative methods of dealing with cetacean problems as they occur;

''(3) to cooperate in establishing an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

''(4) to adopt comprehensive marine mammal protection legislation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1372, 1373 of this title.

§ 1362. Definitions

For the purposes of this chapter—

(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 subchapter III of this chapter, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 1379 of this title, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.].

(2) The terms ''conservation'' and ''management'' means the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term ''district court of the United States'' includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term ''humane'' in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term ''intermediary nation'' means a nation that exports yellowfin tuna or yellowfin

tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 1371(a)(2)(B) of this title.

(6) The term ''marine mammal'' means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term ''marine mammal product'' means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term ''moratorium'' means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this chapter.

(9) The term ''optimum sustainable population'' means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term ''person'' includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term ''population stock'' or ''stock'' means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)(A) Except as provided in subparagraph (B), the term ''Secretary'' means—

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

(B) in[1] section 1387 of this title and subchapter V of this chapter the term ''Secretary'' means the Secretary of Commerce.

(13) The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term ''United States'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term ''waters under the jurisdiction of the United States'' means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16) The term ''fishery'' means—

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

(B) any fishing for such stocks.

(17) The term ''competent regional organization''—

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

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

(18)(A) The term ''harassment'' means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term ''Level A harassment'' means harassment described in subparagraph (A)(i).

(C) The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

(19) The term ''strategic stock'' means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely

[1] So in original. Probably should be capitalized.

to be listed as a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.] within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this chapter.

(20) The term ''potential biological removal level'' means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term ''Regional Fishery Management Council'' means a Regional Fishery Management Council established under section 1852 of this title.

(22) The term ''bona fide research'' means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term ''Alaska Native organization'' means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term ''take reduction plan'' means a plan developed under section 1387 of this title.

(25) The term ''take reduction team'' means a team established under section 1387 of this title.

(26) The term ''net productivity rate'' means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term ''minimum population estimate'' means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(Pub. L. 92–522, § 3, Oct. 21, 1972, 86 Stat. 1028; Pub. L. 93–205, § 13(e)(1), Dec. 28, 1973, 87 Stat. 903; Pub. L. 94–265, title IV, § 404(a), Apr. 13, 1976, 90 Stat. 360; Pub. L. 97–58, § 1(a), (b)(2), Oct. 9, 1981, 95 Stat. 979; Pub. L. 102–251, title III, § 304, Mar. 9, 1992, 106 Stat. 65; Pub. L. 102–523, § 2(c), Oct. 26, 1992, 106 Stat. 3432; Pub. L. 102–582, title IV, § 401(a), Nov. 2, 1992, 106 Stat. 4909; Pub. L. 102–587, title III, § 3004(b), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103–238, §§ 12, 16(a), 24(a)(2), Apr. 30, 1994, 108 Stat. 557, 559, 565; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–297, title IV, § 405(b)(2), (3), Oct. 11, 1996, 110 Stat. 3621; Pub. L. 105–42, § 3, Aug. 15, 1997, 111 Stat. 1123.)

AMENDMENT OF SECTION

Pub. L. 105–42, §§ 3, 8, Aug. 15, 1997, 111 Stat. 1123, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, set out as an Effective Date of 1997 Amendment note below, this section is amended by adding the following new paragraphs:

(28) The term ''International Dolphin Conservation Program'' means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

(29) The term ''Declaration of Panama'' means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in pars. (1)(C) and (19)(B), (C), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

AMENDMENTS

1996—Par. (15). Pub. L. 104–297, § 405(b)(2), repealed Pub. L. 102–251, § 304. See 1992 Amendment note below.

Pub. L. 104–297, § 404(b)(3), amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''The term 'waters under the jurisdiction of the United States' means—

''(A) the territorial sea of the United States, and

''(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.''

Par. (21). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1852 of this title.

1994—Par. (12)(B). Pub. L. 103–238, § 24(a)(2), substituted ''in section 1387 of this title and subchapter V of this chapter'' for ''in subchapter V of this chapter''.

Pars. (15) to (17). Pub. L. 103–238, § 16(a), redesignated par. (15) defining ''fishery'', and par. (16), as pars. (16) and (17), respectively, and struck out former par. (17) which defined ''intermediary nation''.

Pars. (18) to (27). Pub. L. 103–238, § 12, added pars. (18) to (27).

1992—Pars. (5) to (11). Pub. L. 102–582 added par. (5) and redesignated former pars. (5) to (10) as (6) to (11), respectively.

Par. (12). Pub. L. 102–587 substituted ''(A) Except as provided in subparagraph (B), the term'' for ''The term'', redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B). See Construction of Amendment by Pub. L. 102–587 note below.

Pub. L. 102–582 redesignated par. (11) as (12). Former par. (12) redesignated (13).

Pars. (13), (14). Pub. L. 102–582 redesignated pars. (12) and (13) as (13) and (14), respectively. Former par. (14) redesignated (15).

Par. (15). Pub. L. 102–582 redesignated par. (14), defining waters under the jurisdiction of the United States, as (15).

Pub. L. 102–523 added par. (15) defining fishery.

Pub. L. 102–251, § 304, which directed the general amendment of par. (15) by reenacting the introductory

provisions and subpars. (A) and (B) without substantial change and adding subpar. (C) which read ''the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.'', was repealed by Pub. L. 104–297, § 405(b)(2).

Pars. (16), (17). Pub. L. 102–523 added pars. (16) and (17).

1981—Par. (1). Pub. L. 97–58, § 1(b)(2)(A), substituted a single management standard, that is, the maintenance of species at their optimum sustainable population, for the former management standard which had included the decline of a species or population stock that had declined to a significant degree over a period of years, the decline of a species or population stock which, if continued or resumed, would place the species or stock within the provisions of the Endangered Species Act of 1973, and a species or population stock that was below the optimum carrying capacity for the species or stock within its environment.

Par. (2). Pub. L. 97–58, § 1(b)(2)(B), substituted ''their optimum sustainable population'' for ''the optimum carrying capacity of their habitat''.

Par. (8). Pub. L. 97–58, § 1(a), (b)(2)(C), (D), redesignated par. (9) as (8) and substituted ''carrying capacity'' for ''optimum carrying capacity''. Former par. (8), which defined ''optimum carrying capacity'' was struck out.

Pars. (9) to (12). Pub. L. 97–58, § 1(b)(2)(C), redesignated pars. (9) to (13) as (8) to (12), respectively.

Par. (13). Pub. L. 97–58, § 1(b)(2)(C), (E), redesignated par. (14) as (13) and substituted ''the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands'' for ''the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands''. Former par. (13) redesignated (12).

Pars. (14), (15). Pub. L. 97–58, § 1(b)(2)(C), redesignated pars. (14) and (15) as (13) and (14), respectively.

1976—Par. (15)(B). Pub. L. 94–265 substituted ''the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured'' for ''the fisheries zone established pursuant to the Act of October 14, 1966''.

1973—Par. (1)(B). Pub. L. 93–205 substituted ''Endangered Species Act of 1973'' for ''Endangered Species Conservation Act of 1969''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 8 of Pub. L. 105–42 provided that:

''(a) AMENDMENTS TO TAKE EFFECT WHEN IDCP IN FORCE.—Sections 3 through 7 of this Act [enacting sections 962, 1412, 1413, 1414a to 1416 of this title, amending sections 952, 953, 1362, 1371, 1374, 1378, 1380, 1385, 1411, and 1417 of this title, and repealing sections 1412 to 1416 and 1418 of this title] (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act [section 1414a of this title]) shall become effective upon—

''(1) certification by the Secretary of Commerce that—

''(A) sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972, as so added; and

''(B) the study has commenced; and

''(2) certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

''(b) SPECIAL EFFECTIVE DATE.—Notwithstanding subsection (a), the Secretary of Commerce may issue regulations under—

''(1) subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 5(b) of this Act;

''(2) section 303(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1413(a)), as added by section 6(c) of this Act,

at any time after the date of enactment of this Act [Aug. 15, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 24(e) of Pub. L. 103–238 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if enacted as part of section 3004 of the Marine Mammal Health and Stranding Response Act (106 Stat. 5067) [Pub. L. 102–587].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102–251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 404(b) of Pub. L. 94–265 provided that the amendment made by section 404(a) of Pub. L. 94–265 to this section was to take effect Mar. 1, 1977, prior to the general amendment of title IV of Pub. L. 94–265 by Pub. L. 104–297.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–205 effective Dec. 28, 1973, see section 16 of Pub. L. 93–205, set out as an Effective Date note under section 1531 of this title.

CONSTRUCTION OF AMENDMENT BY PUB. L. 102–587

Section 24(a)(1) of Pub. L. 103–238 provided that: ''The amendments set forth in section 3004(b) of the Marine Mammal Health and Stranding Response Act (106 Stat. 5067) [Pub. L. 102–587, amending this section]—

''(A) are deemed to have been made by that section to section 3(12) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(12)); and

''(B) shall not be considered to have been made by that section to section 3(11) of that Act (16 U.S.C. 1362(11)).''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1379, 2404, 2902, 3743 of this title.

SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1371. Moratorium on taking and importing marine mammals and marine mammal products

(a) Imposition; exceptions

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, 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) Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 1374(c)(5) of this title, may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 1374(c)(5) of this title, which is consistent with the purposes and policies of section 1361 of this title. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting,

except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless—

(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

(III) the total number of eastern spinner dolphin (Stenella longirostris) incidentally

taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 percent of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dolphin (Stenella attenuata) incidentally taken by such vessels in such seasons does not exceed 2 percent of the total number of all marine mammals incidentally taken by such vessels in such year;

(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 1374(h)(3) of this title;

(C) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(D) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 1978(a) of title 22 for as long as such ban is in effect; and

(E)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (E), the term ''driftnet'' has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term ''driftnet'' does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however*, That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: *Provided, further, however*, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this chapter shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this chapter.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this chapter.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this chapter.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382(c) of this title; and

(ii) prescribes regulations setting forth—

(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(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 1824(b) of this title, while engaging in commercial 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 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 1387 of this title, 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.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial 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 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99–625; 100 Stat. 3500).

(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 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;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) ''Native inhabitant of Russia, Canada, or Greenland'' means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) ''cultural exchange'' means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Exemptions for Alaskan natives

Except as provided in section 1379 of this title, the provisions of this chapter 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) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided*, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further*, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term ''authentic native articles of handicrafts and clothing'' means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386(b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) Taking in defense of self or others

It shall not be a violation of this chapter to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) Good Samaritan exemption

It shall not be a violation of this chapter to take a marine mammal if—

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(Pub. L. 92–522, title I, § 101, Oct. 21, 1972, 86 Stat. 1029; Pub. L. 93–205, § 13(e)(2), Dec. 28, 1973, 87 Stat. 903; Pub. L. 97–58, § 2, Oct. 9, 1981, 95 Stat. 979; Pub. L. 98–364, title I, § 101, July 17, 1984, 98 Stat. 440; Pub. L. 99–659, title IV, § 411(a), Nov. 14, 1986, 100 Stat. 3741; Pub. L. 100–711, §§ 4(a), 5(c), (e)(1), Nov. 23, 1988, 102 Stat. 4765, 4769, 4771; Pub. L. 101–627, title IX, § 901(g), Nov. 28, 1990, 104 Stat. 4467; Pub. L. 102–582, title I, § 103, title IV, § 401(b), Nov. 2, 1992, 106 Stat. 4903, 4909; Pub. L. 103–238, § 4, Apr. 30, 1994, 108 Stat. 532; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 105–18, title II, § 2003, June 12, 1997, 111 Stat. 174; Pub. L. 105–42, § 4(a)–(c), Aug. 15, 1997, 111 Stat. 1123, 1124.)

AMENDMENT OF SUBSECTIONS (a)(2) AND (e)

Pub. L. 105–42, §§ 4(a)–(c), 8, Aug. 15, 1997, 111 Stat. 1123, 1124, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, this section is amended as follows:

Subsec. (a)(2) is amended—

(1) by inserting after the first sentence ''Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title.'';

(2) by striking the semicolon in the second sentence and all that follows through ''practicable'';

(3) by striking subparagraph (B) and inserting the following:

''(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

''(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

''(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

''(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

''(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;'';

(4) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following:

''(C) shall not accept such documentary evidence if—

''(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

''(I) to allow determination of compliance with the International Dolphin Conservation Program; and

''(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under section 1385(f) of this title; or

''(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.''; and

(5) by striking ''subparagraph (E)'' in the matter after subparagraph (F), as redesignated, and inserting ''subparagraph (F)''.

Subsec. (e) is added reading as follows:

(e) Chapter not to apply to incidental takings by United States citizens employed on foreign vessels outside United States EEZ

The provisions of this chapter shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 1802 of this title) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), means the effective date of Pub. L. 92–522. See section 4 of Pub. L. 92–522, set out as an Effective Date note under section 1361 of this title.

The Endangered Species Act of 1973, referred to in subsec. (a)(4)(B), (5)(E)(i), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Whaling Convention Act of 1949, referred to in subsec. (a)(5)(A)(i), is act Aug. 9, 1950, ch. 653, 64 Stat. 421, as amended, which is classified generally to subchapter II (§916 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 916 of this title and Tables.

Act of November 7, 1986, referred to in subsec. (a)(5)(E)(vi), is Pub. L. 99–625, Nov. 7, 1986, 100 Stat. 3500, which amended section 718b of this title and provisions listed in a table of National Wildlife Refuges set out under section 668dd of this title and enacted provisions set out as a note under section 1536 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–18 added subsec. (d).

1996—Subsec. (a)(5)(E)(i). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1824(b) of this title.

1994—Subsec. (a)(1). Pub. L. 103–238, §4(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock if—

''(A) the taking proposed in the application for any such permit, or

''(B) the importation proposed to be made,

is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 1361 of this title. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.''

Subsec. (a)(2). Pub. L. 103–238, §4(a)(2), inserted before period at end of first sentence '', or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title''.

Subsec. (a)(3)(B). Pub. L. 103–238, §4(a)(3), inserted '', photography for educational or commercial purposes,'' after ''purposes'' and ''or as provided for under paragraph (5) of this subsection,'' after ''subsection,''.

Subsec. (a)(4). Pub. L. 103–238, §4(a)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

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

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

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

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

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

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

Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.''

Subsec. (a)(5)(D), (E). Pub. L. 103–238, § 4(a)(5), added subpars. (D) and (E).

Subsec. (a)(6). Pub. L. 103–238, § 4(a)(6), added par. (6).

Subsec. (b). Pub. L. 103–238, § 4(b), inserted at end ''In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386(b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.''

Subsec. (c). Pub. L. 103–238, § 4(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''In order to minimize undue economic hardship to persons subject to this chapter, other than those engaged in commercial fishing operations referred to in subsection (a)(2) of this section, the Secretary, upon any such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may exempt such person or class of persons from provisions of this chapter for no more than one year from October 21, 1972, as he determines to be appropriate.''

1992—Subsec. (a)(2). Pub. L. 102–582, § 103(2), inserted before period at end '', except that, until January 1, 1994, the term 'driftnet' does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community''.

Subsec. (a)(2)(C). Pub. L. 102–582, § 401(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''shall require the government of any intermediary nation from which yellowfin tuna or tuna products will be exported to the United States to certify and provide reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States of such tuna and tuna products is banned under this section within sixty days following the effective date of such ban on importation to the United States;''.

Subsec. (a)(2)(E)(i). Pub. L. 102–582, § 103(1), substituted ''January 1, 1993'' for ''July 1, 1992''.

1990—Subsec. (a)(2). Pub. L. 101–627 added subpar. (E) and concluding provisions.

1988—Subsec. (a)(1). Pub. L. 100–711, § 5(c), which directed that par. (1) be amended generally to read as follows: ''(1) Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock if—'', was executed as the probable intent of Congress by substituting such provisions for provisions of par. (1) before subpar. (A) which read as follows: ''Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—''.

Subsec. (a)(2). Pub. L. 100–711, § 4(a), inserted provisions at end of subpar. (B) relating to finding by Secretary that regulatory program, or average rate of incidental taking by vessels, of harvesting nation is comparable to that of United States, and added subpars. (C) and (D).

Subsec. (a)(3)(B). Pub. L. 100–711, § 5(e)(1), inserted ''or enhancing the survival or recovery of a species or stock'' after ''scientific research purposes''.

1986—Subsec. (a)(5)(A). Pub. L. 99–659, § 411(a)(1), in provisions preceding cl. (i) struck out ''that is not depleted'' after ''population stock''.

Subsec. (a)(5)(A)(i). Pub. L. 99–659, § 411(a)(2), substituted ''will not have an unmitigable adverse impact'' for ''its habitat, and'', and inserted ''or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382(c) of this title''.

Subsec. (a)(5)(A)(ii)(I). Pub. L. 99–659, § 411(a)(3), inserted '', and on the availability of such species or stock for subsistence uses''.

1984—Subsec. (a)(2). Pub. L. 98–364 amended last sentence generally, restating existing provisions in cl. (A) and adding cl. (B).

1981—Subsec. (a)(2). Pub. L. 97–58, § 2(1)(A), provided that the immediate goal of reducing to insignificant levels approaching a zero mortality and serious injury rate the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be satisfied in the case of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.

Subsec. (a)(3)(B). Pub. L. 97–58, § 2(1)(B), struck out ''is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or'' after ''the taking of any marine mammal which''.

Subsec. (a)(4), (5). Pub. L. 97–58, § 2(1)(C), added pars. (4) and (5).

Subsec. (b). Pub. L. 97–58, § 2(2), substituted ''Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and'' for ''The provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo'' in provisions preceding par. (1) and, in par. (1), substituted ''is for subsistence purposes; or'' for ''is for subsistence purposes by Alaskan natives who reside in Alaska, or''.

1973—Subsec. (a)(3)(B). Pub. L. 93–205 substituted ''or threatened species pursuant to the Endangered Species Act of 1973'' for ''pursuant to the Endangered Species Conservation Act of 1969''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–205 effective Dec. 28, 1973, see section 16 of Pub. L. 93–205, set out as an Effective Date note under section 1531 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1362, 1372, 1373, 1374, 1379, 1381, 1383a, 1386, 1387, 1415, 1417, 1536 of this title.

§ 1372. Prohibitions

(a) Taking

Except as provided in sections 1371, 1373, 1374, 1379, 1381, 1383, 1383a, and 1387 of this title and subchapter V of this chapter, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this subchapter or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this subchapter, to possess that mammal or any product from that mammal;

(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 chapter; 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 1374(c) of this title; and

(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 chapter.

(b) Importation of pregnant or nursing mammals; depleted species or stock; inhumane taking

Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 1374(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or

(4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.

(c) Importation of illegally taken mammals

It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this subchapter; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Nonapplicability of prohibitions

Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) Retroactive effect

This chapter shall not apply with respect to any marine mammal taken before the effective

date of this chapter, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) Commercial taking of whales

It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

(Pub. L. 92–522, title I, § 102, Oct. 21, 1972, 86 Stat. 1032; Pub. L. 93–205, § 13(e)(3), Dec. 28, 1973, 87 Stat. 903; Pub. L. 95–136, § 4, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 97–58, § 3(a), Oct. 9, 1981, 95 Stat. 981; Pub. L. 100–711, §§ 2(b), 5(b), (e)(2), Nov. 23, 1988, 102 Stat. 4763, 4769, 4771; Pub. L. 102–587, title III, § 3004(a)(1), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103–238, §§ 5(a), 13(c), 24(c)(9), Apr. 30, 1994, 108 Stat. 536, 558, 566.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a)(2), means the effective date of title I of Pub. L. 92–522. See section 4 of Pub. L. 92–522, set out as an Effective Date note under section 1361 of this title.

The effective date of this chapter referred to in subsec. (e), means the effective date of Pub. L. 92–522. See section 4 of Pub. L. 92–522, set out as an Effective Date note under section 1361 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–238, § 24(c)(9), which directed technical amendment to reference to subchapter V of this chapter in introductory provisions to reflect renumbering of corresponding title of original act, could not be executed to text because of prior amendment by section 13(c) of Pub. L. 103–238. See below.

Pub. L. 103–238, § 13(c), in introductory provisions inserted reference to section 1387 of this title and made technical amendment to reference to subchapter V of this chapter to reflect renumbering of corresponding title of original act.

Subsec. (a)(2)(B). Pub. L. 103–238, § 5(a)(1), substituted ''to take or import'' for ''for any purpose in any way connected with the taking or importation of''.

Subsec. (a)(4). Pub. L. 103–238, § 5(a)(2), substituted ''export, or offer to purchase, sell, or export'' for ''or offer to purchase or sell'' and ''product—'' for ''product; and'' and added subpars. (A) and (B).

1992—Subsec. (a). Pub. L. 102–587 inserted ''or subchapter V of this chapter'' in introductory provisions.

1988—Subsec. (a). Pub. L. 100–711, § 2(b), substituted ''1383, and 1383a'' for ''and 1383''.

Subsec. (b). Pub. L. 100–711, § 5(e)(2), substituted ''research, or for enhancing the survival or recovery of a species or stock,'' for ''research''.

Pub. L. 100–711, § 5(b), inserted sentence at end authorizing Secretary to issue permit for importation of marine mammal.

1981—Subsec. (a). Pub. L. 97–58, § 3(a)(1), inserted reference to section 1379 of this title in the enumeration of sections preceding par. (1), redesignated par. (4) as (5), and revised as pars. (3) and (4) the provisions of former par. (3) amending those provisions so as to make it illegal for any person to possess a marine mammal, or any product from that mammal, and for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product.

Subsec. (b)(3). Pub. L. 97–58, § 3(a)(2), struck out ''or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973'' after ''designated as a depleted species or stock''.

Subsec. (d)(1). Pub. L. 97–58, § 3(b)(3), struck out ''or endangered'' after ''concerned as depleted''.

1977—Subsec. (f). Pub. L. 95–136 added subsec. (f).

1973—Subsec. (b)(3). Pub. L. 93–205 substituted ''an endangered species or threatened species pursuant to the Endangered Species Act of 1973'' for ''endangered under the Endangered Species Conservation Act of 1969''.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–205 effective Dec. 28, 1973, see section 16 of Pub. L. 93–205, set out as an Effective Date note under section 1531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1374, 1536 of this title.

§ 1373. Regulations on taking of marine mammals

(a) Necessity and appropriateness

The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 1361 of this title.

(b) Factors considered in prescribing regulations

In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) Allowable restrictions

The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 1374 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Procedure

Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the

Secretary's determination to waive the moratorium pursuant to section 1371(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements, imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the Publication of notice in the Federal Register of his intention to prescribe regulations under this section—

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Periodic review

Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this chapter.

(f) Report to Congress

Within six months after the effective date of this chapter and every twelve months thereafter, 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 chapter. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this subchapter to assure the well-being of such marine mammals.

(Pub. L. 92–522, title I, § 103, Oct. 21, 1972, 86 Stat. 1033.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (f), means the effective date of Pub. L. 92–522, See section 4 of Pub. L. 92–522, set out as an Effective Date note under section 1361 of this title.

MARINE MAMMAL POPULATIONS REPORT

Pub. L. 101–627, title XI, § 1101, Nov. 28, 1990, 104 Stat. 4468, directed Secretary of Commerce, in consultation with Secretary of the Interior, to provide to Congress within 12 months after Nov. 28, 1990, a report assessing population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions off the coast of the State of Washington; assessing the effectiveness of 16 U.S.C. 1371(a)(3)(A) and 1379(h); and specifying long range management plans for the species of marine mammals listed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1372, 1374, 1378, 1379, 1380, 1382, 1383a, 1383b, 1387, 1415, 1539 of this title.

§ 1374. Permits

(a) Issuance

The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections[1] 1371(a)(5) or 1416 of this title, or subsection (h) of this section.

(b) Requisite provisions

Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 1373 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Importation for scientific research, public display, or enhancing survival or recovery of species or stock

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that

[1] So in original. Probably should be "section".

access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this chapter, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this chapter. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with subsection (e) of this section, seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this chapter for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) of this section if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after April 30, 1994, the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established under this chapter would apply.

(v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 1383b(b) of this title or any recovery plan developed under section 1533(f) of this title for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 1383(d) of this title.

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after April 30, 1994. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2) of this section, issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before April 30, 1994, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 1371 and 1372 of this title. This subparagraph shall not apply to polar bear parts that were imported before June 12, 1997.

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(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 chapter and which is determined under guidance under section 1421a(a) of this title not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before April 30, 1994, and held in captivity for the purpose of public display shall be treated as though born after April 30, 1994.

(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.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. 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 chapter:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

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

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) Application procedures; notice; hearing; review

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this chapter and the applicable regulations established under section 1373 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) Modification, suspension, and revocation

(1) The Secretary may modify, suspend, or revoke in whole or in part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 1373 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) of this section authorizing im-

portation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Possession of permit by issuee or his agent

Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under a such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) Fees

The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) General permits; extension of general permit to American Tunaboat Association; monitoring of incidental taking of marine mammals

(1) Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

(2)(A) Subject to subparagraph (B), the general permit issued under paragraph (1) on December 1, 1980 to the American Tunaboat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

(B) The extension granted under subparagraph (A) is subject to the following conditions:

(i) The extension shall cease to have force and effect at the time the general permit is surrendered or terminated.

(ii) The permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable.

(iii) During the period of the extension, the terms and conditions of the general permit that are in effect on July 17, 1984, shall apply, except that—

(I) the Secretary may make such adjustments as may be appropriate to those terms and conditions that pertain to fishing gear and fishing practice requirements and to permit administration;

(II) any such term and condition may be amended or terminated if the amendment or termination is based on the best scientific information available, including that obtained under the monitoring program required under paragraph (3)(A); and

(III) during each year of the extension, not to exceed 250 coastal spotted dolphin (Stenella attenuata) and not to exceed 2,750 eastern spinner dolphin (Stenella longirostris) may be incidentally taken under the general permit, and no accidental taking of either species is authorized at any time when incidental taking of that species is permitted.

(iv) The Secretary shall, by January 1, 1989, prescribe regulations to ensure that the backdown procedure during sets of the purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than thirty minutes after sundown. The Secretary may waive or otherwise modify such regulations for—

(I) a designated certificate holder on an observed trip if the Secretary determines, based on observer reports, that such restriction is not necessary because the certificate holder has consistently utilized fishing techniques and equipment so as to result in an incidental marine mammal mortality rate during sundown sets that is no higher than the average such rate for the fleet during daylight sets; or

(II) all certificate holders on observed trips if the Secretary determines that such restriction is not necessary because all certificate holders have developed and are utilizing fishing techniques and equipment that assure that the incidental marine mammal mortality rate during sundown sets will be no higher than such rate during daylight sets.

(v) The Secretary may authorize, after public notice and opportunity for comment, designated certificate holders to conduct experimental fishing operations on observed trips, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce the incidental mortality of marine mammals in the course of commercial yellowfin tuna fishing operations, and the Secretary may waive such terms and conditions of the general permit and this section, other than the quotas on incidental taking of marine mammals and the prohibition against encircling pure schools of

certain species of marine mammals, as the Secretary determines to be necessary and appropriate for the conduct of such experimental fishing.

(vi) The Secretary, after public notice and opportunity for comment and consultation with the skippers' panel of experts established pursuant to the general permit, shall develop and implement by not later than the beginning of the 1990 fishing season a system of performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The system shall include such arrangements as are necessary for the identification of certificate holders whose incidental marine mammal mortality rate is consistently and substantially higher than the average rate of the fleet, and for the supplemental training and observation of such certificate holders, and provisions for suspension or revocation of certificates of inclusion of those certificate holders whose unacceptably high rate of incidental taking reflects a lack of diligence or proficiency in the use of the best marine mammal safety techniques and equipment.

(vii) It shall be unlawful to use any explosive devices other than class C explosive pest control devices in the course of commercial yellowfin tuna fishing subject to the general permit. The Secretary shall prescribe regulations, effective April 1, 1990, to prohibit or restrict the use of class C explosive pest control devices in the course of commercial yellowfin tuna fishing unless the Secretary determines, based on a study which the Secretary shall undertake, that the use of such devices does not result in physical impairment or increased mortality of marine mammals.

(viii) During the 1989 and subsequent fishing seasons, each certificated vessel shall carry on every fishing trip subject to this subsection an official observer certified by the Secretary or by the Inter-American Tropical Tuna Commission for the purpose of conducting research and observing fishing operations unless, for reasons beyond the control of the Secretary, an observer is not available for such purpose. The Secretary may waive this requirement after the 1991 fishing season and establish a less extensive observer program if the Secretary, after notice and opportunity for comment, determines that such an alternative program will provide sufficiently reliable information.

(ix) The Secretary shall annually convene meetings with representatives of conservation and environmental organizations, the commercial tuna fishing industry, and other interested persons for the purpose of discussing the results of efforts to reduce the incidental mortality and serious injury of marine mammals under this subsection as well as throughout the international fleet as a whole and developing plans for such efforts during the next year. On or before April 1, 1992, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a comprehensive report on the results of such efforts. The report shall discuss the results of the scientific research programs, performance standards, observer program, prohibition on sundown sets, development of alternative fishing techniques, and other efforts required by this section, and shall include recommendations for such action as the Secretary considers necessary and desirable to reduce further the total mortality and serious injury of marine mammals in the course of commercial yellowfin tuna fishing throughout the international fleet.

(C) The quota on the incidental taking of coastal spotted dolphin and eastern spinner dolphin under paragraph (2)(B)(iii)(III) shall be treated—

(i) as within, and not in addition to, the overall annual quota under the general permit on the incidental taking of marine mammals; and

(ii) for purposes of paragraph (2)(B)(iii)(II), as a term of the general permit in effect on July 17, 1984.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 1373(f) of this title a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed $4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

(Pub. L. 92–522, title I, § 104, Oct. 21, 1972, 86 Stat. 1034; Pub. L. 98–364, title I, § 102, July 17, 1984, 98 Stat. 440; Pub. L. 100–711, §§ 4(d), 5(d), Nov. 23, 1988, 102 Stat. 4767, 4769; Pub. L. 103–238, § 5(b), Apr. 30, 1994, 108 Stat. 537; Pub. L. 105–18, title V, § 5004, June 12, 1997, 111 Stat. 187; Pub. L. 105–42, § 4(d), Aug. 15, 1997, 111 Stat. 1125.)

AMENDMENT OF SUBSECTION (h)

Pub. L. 105–42, §§ 4(d), 8, Aug. 15, 1997, 111 Stat. 1125, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, subsection (h) of this section is amended to read as follows:

(h) General permits

(1) Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 1416 of this title, subject to the regulations issued pursuant to section 1413 of this title.

REFERENCES IN TEXT

7 U.S.C. 2131 et seq., referred to in subsec. (c)(2)(A)(ii), is the classification for Pub. L. 89–544, Aug. 24, 1966, 80 Stat. 350, as amended, known as the Animal Welfare Act, which is classified generally to chapter 54 (§ 2131 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2131 of Title 7 and Tables.

AMENDMENTS

1997—Subsec. (c)(5)(A). Pub. L. 105–18, § 5004(1), struck out ", including polar bears taken but not imported prior to April 30, 1994," after "sport hunts in Canada".

Subsec. (c)(5)(D). Pub. L. 105–18, § 5004(2), added subpar. (D).

1994—Subsec. (a). Pub. L. 103–238, § 5(b)(1), inserted at end "Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 1371(a)(5) or 1416 of this title, or subsection (h) of this section."

Subsec. (c)(1). Pub. L. 103–238, § 5(b)(2)(A), struck out "and after" after "must be observed pursuant to".

Subsec. (c)(2). Pub. L. 103–238, § 5(b)(2)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A permit may be issued for public display purposes only to an applicant which offers a program for education or conservation purposes that, based on professionally recognized standards of the public display community, is acceptable to the Secretary and which submits with the permit application information indicating that the applicant's facilities are open to the public on a regularly scheduled basis and that access to the facilities is not limited or restricted other than by the charging of an admission fee."

Subsec. (c)(3). Pub. L. 103–238, § 5(b)(2)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A permit may be issued for scientific research purposes only to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No permit issued for purposes of scientific research shall authorize the killing of a marine mammal unless the applicant demonstrates that a nonlethal method for carrying out the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need."

Subsec. (c)(5) to (10). Pub. L. 103–238, § 5(b)(2)(D), added pars. (5) to (10).

Subsec. (e)(1)(C). Pub. L. 103–238, § 5(b)(3), added subpar. (C).

1988—Subsec. (c). Pub. L. 100–711, § 5(d), designated existing provisions as par. (1) and substituted "scientific research, public display, or enhancing the survival or recovery of a species or stock" for "display or scientific research" in two places, and added pars. (2) to (4).

Subsec. (h)(2)(B). Pub. L. 100–711, § 4(d), added cls. (iv) to (ix).

1984—Subsec. (h). Pub. L. 98–364 designated existing provisions as par. (1), and added pars. (2) and (3).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

MODIFICATION OF PERMITS EXISTING PRIOR TO APRIL 30, 1994

Section 5(c) of Pub. L. 103–238 provided that: "Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act [Apr. 30, 1994] is hereby modified to be consistent with that section as amended by this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 973g, 1371, 1372, 1373, 1383a, 1384, 1387, 1421d of this title; title 19 section 1466.

§ 1375. Penalties

(a)(1) Any person who violates any provision of this subchapter or of any permit or regulation issued thereunder, except as provided in section 1387 of this title, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.

(b) Any person who knowingly violates any provision of this subchapter or of any permit or regulation issued thereunder (except as provided in section 1387 of this title) shall, upon conviction, be fined not more than $20,000 for each such violation, or imprisoned for not more than one year, or both.

(Pub. L. 92–522, title I, § 105, Oct. 21, 1972, 86 Stat. 1036; Pub. L. 97–58, § 3(b), Oct. 9, 1981, 95 Stat. 982; Pub. L. 103–238, § 13(a), (b), Apr. 30, 1994, 108 Stat. 558.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–238, § 13(a), inserted ‘‘, except as provided in section 1387 of this title,’’ after ‘‘thereunder’’.

Subsec. (b). Pub. L. 103–238, § 13(b), inserted ‘‘(except as provided in section 1387 of this title)’’ after ‘‘thereunder’’.

1981—Subsec. (a). Pub. L. 97–58 designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1377, 1379, 1383, 1387, 1417 of this title.

§ 1376. Seizure and forfeiture of cargo

(a) Application of consistent provisions

Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter.

(b) Penalties

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. 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.

(c) Reward for information leading to conviction

Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed $2,500 to any person who furnishes information which leads to a conviction for a violation of this subchapter. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(Pub. L. 92–522, title I, § 106, Oct. 21, 1972, 86 Stat. 1036.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1379, 1387 of this title.

§ 1377. Enforcement

(a) Utilization of personnel

Except as otherwise provided in this subchapter, the Secretary shall enforce the provisions of this subchapter. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this subchapter.

(b) State officers and employees

The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this subchapter. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

(c) Warrants and other process for enforcement

The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this subchapter and any regulations issued thereunder.

(d) Execution of process; arrest; search; seizure

Any person authorized by the Secretary to enforce this subchapter may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this subchapter. Such a person so authorized may, in addition to any other authority conferred by law—

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this subchapter or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any

person on board is in violation of any provision of this subchapter or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this subchapter or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammals products taken or retained in violation of this subchapter or the regulations issued thereunder and shall dispose of them, in accordance with regulations prescribed by the Secretary.

(e) Disposition of seized cargo

(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 1375(a) or (b) of this title. All marine mammal or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 1375(a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 1375(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 1375(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized—

(A) a civil penalty is assessed under section 1375(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 1375(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with[1] thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 1375(a) of this title.

(Pub. L. 92–522, title I, § 107, Oct. 21, 1972, 86 Stat. 1037; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (b) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1379, 1387 of this title.

§ 1378. International program

(a) Duties of Secretary

The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this chapter;

(2) initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums; and

(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of

[1] So in original. Probably should be ''within''.

locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;

(3) encourage such other agreements to promote the purposes of this chapter with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this chapter;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after October 21, 1972, a full report on the results of his efforts under this section.

(b) Consultations and studies concerning North Pacific fur seals

(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 1401 of this title, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this chapter, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the ''Convention''), to determine what modifications, if any, should be made to the provisions of the Convention, or of this chapter, or both, to make the Convention and this chapter consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after October 21, 1972, and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this chapter consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this chapter consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c) Description of annual results of discussions; proposals for further action

The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B) of this section, as well as any proposals for further action to achieve the purposes of that subsection, in the report required under section 1373(f) of this title.

(Pub. L. 92–522, title I, § 108, Oct. 21, 1972, 86 Stat. 1038; Pub. L. 100–711, § 4(b), (c), Nov. 23, 1988, 102 Stat. 4766, 4767; Pub. L. 105–42, § 4(e), Aug. 15, 1997, 111 Stat. 1125.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 105–42, §§ 4(e), 8, Aug. 15, 1997, 111 Stat. 1125, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, subsection (a)(2) of this section is amended as follows:

(1) by striking ''and'' at the end of subparagraph (A); and

(2) by inserting after subparagraph (B) the following:

''(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

''(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

''(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

''(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and

other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;''.

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–711, § 4(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;''.

Subsec. (c). Pub. L. 100–711, § 4(c), added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

§ 1379. Transfer of management authority

(a) State enforcement of State laws or regulations prohibited without transfer to State of management authority by Secretary

No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as ''management authority'') to the State under subsection (b)(1) of this section.

(b) Findings prerequisite to transfer of authority; State program; implementation

(1) Subject to paragraph (2) and subsection (f) of this section, the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

(A) is consistent with the purposes, policies, and goals of this chapter and with international treaty obligations;

(B) requires that all taking of the species be humane;

(C) does not permit the taking of the species unless and until—

(i) the State has determined, under a process consistent with the standards set forth in subsection (c) of this section—

(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as ''OSP''), and

(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1) of this section, such as agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2) of this section), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research, public display, or enhancing the survival or recovery of a species or stock, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at the level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1) of this section; and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with—

(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 1371 of this title; and

(B) the Secretary shall continue to regulate, under this subchapter, all takings of the species within the State.

(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1) of this section, if required, is implemented for such species—

(A) such determination shall be treated, for purposes of applying this subchapter beyond the territory of the State, as a determination made in accordance with section 1373 of this title and as an applicable waiver under section 1371(a)(3) of this title;

(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the taking of the species—

(i) incidentally in the course of commercial fishing operations (whether provided for under section 1371(a)(2) or (4) of this title), or in the course of other specified activities

provided for under section 1371(a)(5) of this title, in the zone described in section 1362(14)(B)[1] of this title, and

(ii) for scientific research, public display, or enhancing the survival or recovery of a species or stock (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 1371(a)(1) of this title after October 9, 1981, allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

(C) section 1371(b) of this title shall not apply.

(c) Standards with which State process must comply

The State process required under subsection (b)(1)(C) of this section must comply with the following standards:

(1) The State agency with management authority for the species (hereinafter in this section referred to as the ''State agency'') must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may—

(A) present oral and written evidence in support of or against such determination; and

(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2)(A) through (E) of title 5, must be available under State law. The Secretary may not initiate judicial review of any such decision.

(d) Cooperative allocation agreements

(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) of this section is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 1852 of this title) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b) of this section, as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 1371(a) of this title within the zone described in section 1362(14)(B)[2] of this title.

(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 1362(14)(B)[2] of this title for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 1371(a) of this title within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of title 5, and with respect to such issuance the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act,[2] Executive Order Numbered 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 1375, 1376, and 1377 of this title, such regulations shall be treated as having been issued under this subchapter.

(e) Revocation of transfer of management authority

(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) of this section if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1) of this section.

(2)(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

(i) the Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

(ii) during the ninety-day period after the date of the notice of intent to revoke—

[1] See References in Text note below.

[2] See References in Text note below.

(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this chapter (and in the case of Alaskan Natives, section 1371(b) of this title and subsection (i) of this section shall apply upon such revocation or return of management authority).

(f) Transfer of management authority to State of Alaska

(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) of this section for any species of marine mammal unless—

(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

(i) is accomplished in a nonwasteful manner,

(ii) will be the priority consumptive use of the species, and

(iii) if required to be restricted, such restriction will be based upon—

(I) the customary and direct dependence upon the species as the mainstay of livelihood,

(II) local residency, and

(III) the availability of alternative resources; and

(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

(i) such use will have no significant adverse impact upon subsistence uses of the species, and

(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

(2) For purposes of paragraph (1), the term ''subsistence uses'' means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

(A) The term ''family'' means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term ''barter'' means the exchange of marine mammals or their parts, taken for subsistence uses—

(i) for other wildlife or fish or their parts, or

(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(g) Environmental impact statement not required

Neither the transfer of management authority to a State under subsection (b)(1) of this section, nor the revocation or voluntary return of such authority under subsection (e) of this section, shall be deemed to be an action for which an environmental impact statement is required under section 4332 of title 42.

(h) Taking of marine mammals as part of official duties

(1) Nothing in this subchapter or subchapter V of this chapter shall prevent a Federal, State, or local government official or employee or a person designated under section 1382(c) of this title from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

(A) the protection or welfare of the mammal,

(B) the protection of the public health and welfare, or

(C) the nonlethal removal of nuisance animals.

(2) Nothing in this subchapter shall prevent the Secretary or a person designated under section 1382(c) of this title from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.

(i) Regulations covering taking of marine mammals by Alaskan natives

The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 1371(b) of this title.

(j) Grants to develop or administer State conservation and management programs

The Secretary may make grants to States to assist them—

(1) in developing programs, to be submitted for approval under subsection (b) of this section, for the conservation and management of species of marine mammals; and

(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.

(k) Delegation of administration and enforcement to States

The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this subchapter: *Provided*, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this chapter will be carried out.

(*l*) Authorization of appropriations

(1) There are authorized to be appropriated to the Department of the Interior, for the purposes of carrying out this section, not to exceed $400,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(2) There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this section, not to exceed $225,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(Pub. L. 92–522, title I, § 109, Oct. 21, 1972, 86 Stat. 1040; Pub. L. 95–316, § 1, July 10, 1978, 92 Stat. 380; Pub. L. 97–58, § 4(a), Oct. 9, 1981, 95 Stat. 982; Pub. L. 100–711, § 5(a), (e)(3), Nov. 23, 1988, 102 Stat. 4769, 4771; Pub. L. 102–587, title III, § 3004(a)(2), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103–238, § 24(c)(10), Apr. 30, 1994, 108 Stat. 566.)

REFERENCES IN TEXT

Section 1362(14) of this title, referred to in subsecs. (b)(3)(B)(i) and (d), was redesignated section 1362(15) by Pub. L. 102–582, title IV, § 401(a), Nov. 2, 1992, 106 Stat. 4909.

The Regulatory Flexibility Act, referred to in subsec. (d)(2), is Pub. L. 96–354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§ 601 et seq.) of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Paperwork Reduction Act, referred to in subsec. (d)(2), probably means the Paperwork Reduction Act of 1980, Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by the Paperwork Reduction Act of 1995, Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

Executive Order Numbered 12291, dated February 17, 1981, referred to in subsec. (d)(2), was formerly set out as a note under section 601 of Title 5, Government Organization and Employees, and was revoked by Ex. Ord. No. 12866, § 11, Sept. 30, 1993, 58 F.R. 51735.

AMENDMENTS

1994—Subsec. (h)(1). Pub. L. 103–238 made technical amendment to reference to subchapter V of this chapter to reflect renumbering of corresponding title of original act.

1992—Subsec. (h)(1). Pub. L. 102–587 inserted ''or subchapter V of this chapter'' in introductory provisions.

1988—Subsec. (b)(1)(E). Pub. L. 100–711, § 5(e)(3)(A), substituted ''research, public display, or enhancing the survival or recovery of a species or stock'' for ''research and public display purposes''.

Subsec. (b)(3)(B)(ii). Pub. L. 100–711, § 5(e)(3)(B), substituted ''research, public display, or enhancing the survival or recovery of a species or stock'' for ''research or public display purposes''.

Subsec. (h). Pub. L. 100–711, § 5(a), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Nothing in this subchapter shall prevent a Federal, State, or local government official or employee or a person designated under section 1382(c) of this title from taking, in the course of his duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

''(1) the protection or welfare of the mammal,

''(2) the protection of the public health and welfare, or

''(3) the nonlethal removal of nuisance animals,

and, in any case in which the return of the mammal to its natural habitat is feasible, includes steps designed to achieve that result.''

1981—Subsec. (a). Pub. L. 97–58, § 4(a)(2), added subsec. (a). Former subsec. (a), relating to State regulation of the taking of marine mammals, was struck out.

Subsec. (b). Pub. L. 97–58, § 4(a)(2), added subsec. (b). Former subsec. (b), relating to the making of grants to States by the Secretary, was struck out. See subsec. (j) of this section.

Subsecs. (c), (d). Pub. L. 97–58, § 4(a)(1), (2), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (k) and (*l*), respectively.

Subsecs. (e) to (j). Pub. L. 97–58, § 4(a)(2), added subsecs. (e) to (j).

Subsecs. (k), (*l*). Pub. L. 97–58, § 4(a)(1), redesignated subsecs. (c) and (d) as (k) and (*l*), respectively.

1978—Subsec. (d). Pub. L. 95–316 added subsec. (d).

COOPERATIVE AGREEMENTS UNDER ENDANGERED SPECIES ACT

Section 4(b) of Pub. L. 97–58 provided that: ''Nothing in the amendments made by subsection (a) [amending this section] shall be construed as affecting in any manner, or to any extent, any cooperative agreement entered into by a State under section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) before, on, or after the date of the enactment of this Act [Oct. 9, 1981].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1362, 1371, 1372, 1421b, 1421h of this title.

§ 1380. Marine mammal research grants

(a) Authorization; research concerning yellowfin tuna; annual report

(1) 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 1373(f) of this title.

(2) For purposes of identifying appropriate research into promising new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, the Secretary shall contract for an independent review of information pertaining to such potential alternative methods to be conducted by the National Academy of Sciences with individuals having scientific, technical, or other expertise that may be relevant to the identification of promising alternative fishing techniques. The Secretary shall request that the independent review be submitted to the Secretary on or before September 8, 1989, and the Secretary shall submit the report of the independent review, together with a proposed plan for research, development, and implementation of alternative fishing techniques, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on or before December 5, 1989.

(b) Terms and conditions

Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) Gulf of Maine ecosystem protection

(1) No later than 1 year after April 30, 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) Bering Sea ecosystem protection

(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 April 30, 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 1373(f) and 1404 of this title.

(Pub. L. 92–522, title I, § 110, Oct. 21, 1972, 86 Stat. 1041; Pub. L. 95–136, § 1, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 95–316, § 2, July 10, 1978, 92 Stat. 380; Pub. L. 97–58, § 5, Oct. 9, 1981, 95 Stat. 986; Pub. L. 100–711, § 4(e), Nov. 23, 1988, 102 Stat. 4768; Pub. L. 103–238, § 20, Apr. 30, 1994, 108 Stat. 560; Pub. L. 105–42, § 4(f), Aug. 15, 1997, 111 Stat. 1125.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 105–42, §§ 4(f), 8, Aug. 15, 1997, 111 Stat. 1125, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, subsection (a) of this section is amended by striking ''(1)'' in paragraph (1) and by striking paragraph (2).

AMENDMENTS

1994—Subsecs. (c), (d). Pub. L. 103–238 added subsecs. (c) and (d) and struck out former subsec. (c) which authorized appropriations to be made available to the Secretary of Commerce and the Secretary of the Interior for purposes of carrying out this section for fiscal year ending June 30, 1973, to fiscal year ending Sept. 30, 1981.

1988—Subsec. (a). Pub. L. 100–711 designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (a). Pub. L. 97–58 directed the Secretary to undertake a program of research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals and directed that the Secretary include a description of the annual results of that research in the report required under section 1373(f) of this title.

1978—Subsec. (c)(4) to (6). Pub. L. 95–316 added pars. (4) to (6).

1977—Subsec. (c). Pub. L. 95–136 incorporated existing provisions into text preceding par. (1) and, as so incor-

porated, struck out provisions authorizing to be appropriated such sums as may be necessary to carry out this section for the fiscal year in which this section takes effect and the next four years thereafter, limiting appropriations for any one year to $2,500,000, and requiring that one-third of such sums be made available to the Secretary of the Interior and two-thirds of such sums be made available to the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, and added pars. (1) to (3).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1381. Commercial fisheries gear development

(a) Research and development program; report to Congress; authorization of appropriations

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 October 21, 1972, 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.

(b) Reduction of level of taking of marine mammals incidental to commercial fishing operations

The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 1371(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of title 5. In issuing such regulations, the Secretary shall take into account the results of any scientific research under subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

(c) Reduction of level of taking of marine mammals in tuna fishery

Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations of the Commission as soon as is practicable as to the utilization of methods and gear devised under subsection (a) of this section.

(d) Research and observation

Furthermore, after timely notice and during the period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section.

(Pub. L. 92–522, title I, § 111, Oct. 21, 1972, 86 Stat. 1041.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1372 of this title.

§ 1382. Regulations and administration

(a) Consultation with Federal agencies

The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subchapter.

(b) Cooperation by Federal agencies

Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this subchapter.

(c) Contracts, leases, and cooperative agreements

The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this subchapter or subchapter V of this chapter and on such terms as he deems ap-

propriate with any Federal or State agency, public or private institution, or other person.

(d) Annual review; suspension of program

The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on lands. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this chapter, he shall suspend the operation of that program and shall include in the annual report to the public and the Congress required under section 1373(f) of this title his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

(e) Measures to alleviate impacts on strategic stocks

If the Secretary determines, based on a stock assessment under section 1386 of this title or other significant new information obtained under this chapter, that impacts on rookeries, mating grounds, or other areas of similar ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, the Secretary may develop and implement conservation or management measures to alleviate those impacts. Such measures shall be developed and implemented after consultation with the Marine Mammal Commission and the appropriate Federal agencies and after notice and opportunity for public comment.

(Pub. L. 92–522, title I, § 112, Oct. 21, 1972, 86 Stat. 1042; Pub. L. 96–470, title II, § 201(e), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 102–587, title III, § 3004(a)(3), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103–238, §§ 7(a), 24(c)(11), Apr. 30, 1994, 108 Stat. 542, 566.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–238, § 24(c)(11), made technical amendment to reference to subchapter V of this chapter to reflect renumbering of corresponding title of original act.

Subsec. (e). Pub. L. 103–238, § 7(a), added subsec. (e).

1992—Subsec. (c). Pub. L. 102–587 inserted ''or subchapter V of this chapter'' after ''of this subchapter''.

1980—Subsec. (d). Pub. L. 96–470 substituted ''include in the annual report to the public and the Congress required under section 1373(f) of this title'' for ''forthwith submit to Congress''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1379, 1421b, 1421e, 1421h of this title.

§ 1383. Application to other treaties and conventions

(a) Generally; findings; waiver of penalties

The provisions of this subchapter shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this subchapter in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 1375 of this title may not apply to such persons.

(b) Review of effectiveness of Agreement on the Conservation of Polar Bears

Not later than 1 year after April 30, 1994, the Secretary of the Interior shall, in consultation with the contracting parties, initiate a review of the effectiveness of the Agreement on the Conservation of Polar Bears, as provided for in Article IX of the Agreement, and establish a process by which future reviews shall be conducted.

(c) Review of implementation of Agreement on the Conservation of Polar Bears; report

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

(d) Consultation regarding conservation of polar bears in Russia and Alaska; report

Not later than 6 months after April 30, 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 of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate.

(Pub. L. 92–522, title I, § 113, Oct. 21, 1972, 86 Stat. 1042; Pub. L. 103–238, § 7(b), Apr. 30, 1994, 108 Stat. 542.)

CODIFICATION

A prior subsec. (b) of section 113 of Pub. L. 92–522 amended section 659 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–238, § 7(b)(1), directed the amendment of this section by ''designating the existing paragraph'' as subsec. (a), notwithstanding the existing first par. of this section was already designated (a).

Subsecs. (b) to (d). Pub. L. 103–238, § 7(b)(2), added subsecs. (b) to (d). See Codification note above.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction

transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1372, 1374 of this title.

§ 1383a. Interim exemption for commercial fisheries

(a) Effective and termination dates of preemptive provisions; law governing incidental taking of marine mammals in course of commercial yellowfin tuna fishing

(1) During the period beginning on November 23, 1988, and until superseded by regulations prescribed under section 1387 of this title, or until September 1, 1995, whichever is earlier, except as provided in paragraph (2), the provisions of this section, rather than sections 1371, 1373, and 1374 of this title, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 1824(b) of this title. In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

(2) The provisions of this section other than subsection (e)(6)(A) of this section shall not govern the incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 1374(h)(2) of this title.

(b) Proposed and final list of fisheries taking marine mammals; publication in Federal Register; grant of exemption; conditions; suspension of grant of exemption; administration of exemption provisions; fees

(1) The Secretary shall, after consultation with the Marine Mammal Commission—

(A) publish in the Federal Register, for public comment, not later than sixty days after November 23, 1988, a proposed list of those fisheries, along with a statement of the marine mammals and the approximate number of vessels or persons involved in each such fishery, that have—

(i) frequent incidental taking of marine mammals;

(ii) occasional incidental taking of marine mammals; or

(iii) a remote likelihood of or no known incidental taking of marine mammals;

(B) publish in the Federal Register not later than one hundred and twenty days after November 23, 1988, a final list of the fisheries and other information required by paragraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an exemption 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 from the program established under subsections (c), (d), (e), and (f) of this section, and other relevant sources and after notice and opportunity for public comment, the classification of fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An exemption shall be granted by the Secretary in accordance with this section for a vessel engaged in a fishery identified under paragraph (1)(A)(i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner, the name and description of the vessel, the fisheries in which it will be engaged, and such other information as the Secretary considers necessary. A decal or other physical evidence that the exemption is current and valid shall be issued by the Secretary at the time an exemption is granted, and so long as the exemption remains current and valid, shall be reissued annually thereafter.

(B) No exemption may be granted under this section to the owner of a vessel unless such vessel—

(i) is a vessel of the United States; or

(ii) has a valid fishing permit issued by the Secretary in accordance with section 1824(b) of this title.

(C) Notwithstanding any other provision of this subchapter, exemptions granted under this section shall authorize the incidental taking of marine mammals, other than California sea otters, from any species or stock, including a population stock designated as depleted, but shall not authorize the intentional lethal taking of any Steller sea lion, any cetacean, or any marine mammals from a population stock designated as depleted.

(3)(A) Beginning two hundred and forty days after November 23, 1988, each owner of a vessel engaged in any fishery identified under paragraph (1)(A)(i) or (ii) shall, in order to engage lawfully in that fishery—

(i) have registered with the Secretary in order to obtain for each such vessel owned an exemption for the purpose of incidentally taking marine mammals in accordance with this section;

(ii) ensure that a decal or such other physical evidence of a current and valid exemption as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

(iii) report as required by subsection (c) of this section.

(B) Any owner of a vessel receiving an exemption under this section for any fishery identified under paragraph (1)(A)(i) shall, as a condition of that exemption, take on board a natural resource observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery identified under paragraph (1)(A)(i) or (ii) who—

(i) fails to obtain from the Secretary an exemption under this section;

(ii) fails to maintain a current and valid exemption; or

(iii) fails to ensure that a decal or other physical evidence of such exemption issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this subchapter, and shall be subject to the penalties of this subchapter except in the case of unknowing violations before January 1, 1990.

(D) If the owner of a vessel has obtained and maintains a current and valid exemption from the Secretary under this section and meets the requirements set forth in this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the exemption applies.

(E) Each owner of a vessel engaged in any fishery not identified in 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 subchapter for the incidental taking of marine mammals if such owner reports to the Secretary, in such form and manner as the Secretary may require, instances of lethal incidental taking in the course of that fishery.

(4) The Secretary shall suspend or revoke an exemption granted under this section and shall not issue a decal or other physical evidence of the exemption for any vessel until the owner of such vessel complies with the reporting requirements under subsection (c) of this section and such requirements to take on board a natural resource observer under paragraph (3)(B) as are applicable to such vessel.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, Regional Fishery Management Councils, and other interested parties, the means by which the granting and administration of exemptions under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(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.

(C) The Secretary is authorized to charge a fee for the granting of an exemption under this subsection. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an exemption. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of exemptions under this section.

(c) Compilation of information by vessel owners; contents

The owner of each vessel holding an exemption granted under subsection (b) of this section shall regularly compile information which shall be used in a report to be submitted to the Secretary at the close of the fishing season or annually, as the Secretary may prescribe. Such report shall be submitted in such form as the Secretary may require and shall include the following:

(1) the type of fishery engaged in by the owner's vessel;

(2) the date and approximate time of any incidental taking of a marine mammal, together with the area in which the incidental taking occurred, the fishing gear used at the time of the incidental taking, and the species of fish involved; and

(3) for each incidental taking, the number and species of marine mammals involved, whether the marine mammals were deterred from gear or catch, incidentally injured, incidentally killed, or lethally removed to protect gear, catch, or human life.

If there was no incidental taking of marine mammals during the reporting period, a report stating that fact shall be filed with the Secretary.

(d) Program for enhancement and verification of information received from vessel owners; confidentiality of information

(1) The Secretary shall establish a program to enhance the quality of and verify information received from reports submitted by owners of vessels who have been granted an exemption under subsection (b) of this section. The program shall include, but not be limited to—

(A) education efforts regarding the information that must be submitted;

(B) interviews with fishermen; and

(C) other such information gathering and verification activities that will enable the Secretary to determine reliably the nature, type, and extent of the incidental taking of marine mammals that occurs in a fishery.

Except to the extent authorized by the provisions of subsection (e) of this section, the program shall not include placement of observers aboard exempted vessels.

(2) Information obtained under this subsection shall be subject to the confidentiality provisions of subsection (j) of this section.

(e) Observers on board exempted vessels; confidentiality of information; authorization of appropriations

(1) For each fishery identified under subsection (b)(1)(A)(i) of this section, the Secretary shall, after consultation with the appropriate Regional Fishery Management Councils, other Federal and State agencies, and other interested parties, and subject to paragraph (6), place observers on board exempted vessels so as to monitor not less than 20 percent nor more than 35 percent of the fishing operations by vessels in the fishery to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery. If the Secretary determines that fewer than 20 percent of the fishing operations by vessels in the fishery will be monitored during the course of the fishing season, the Secretary shall implement the alternative observation program de-

scribed in subsection (f) of this section to the extent necessary to supplement the observer program described in this subsection.

(2) When determining the distribution of observers among fisheries and between vessels in a particular fishery, the Secretary shall be guided by the following standards:

(A) the requirement to obtain the best scientific information available;

(B) the requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(C) consistent with paragraph (1), the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

(D) where practicable, the need to minimize costs and avoid duplication.

(3) If the Secretary finds that, for reasons beyond his or her control, the Secretary cannot assign observers to all the fisheries identified under subsection (b)(1)(A)(i) of this section at the level of observer coverage set forth in paragraph (1), the Secretary shall allocate available observers among such fisheries, consistent with paragraph (2), according to the following priority:

(A) those fisheries that incidentally take marine mammals from any population stock designated as depleted;

(B) those fisheries that incidentally take marine mammals from population stocks that the Secretary believes are declining;

(C) those fisheries other than those described in subparagraphs (A) and (B) in which the greatest incidental take of marine mammals occur; and

(D) any other fishery identified under subsection (b)(1)(A)(i) of this section.

The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not identified under subsection (b)(1)(A)(i) of this section.

(4) Information gathered by observers shall be subject to the provisions of subsection (j) of this section. Consistent with the requirements of paragraph (1), the Secretary shall, if requested by the Appropriate[1] Regional Fishery Management Council, or in the case of a State fishery, the State, require observers to collect additional information, including but not limited to the quantities, species, and physical condition of target and non-target fishery resources and, if requested by the Secretary of the Interior, seabirds.

(5) Notwithstanding the provisions of paragraph (4), the Secretary may decline to require observers to collect information described in such paragraph, if the Secretary finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

(6) The Secretary shall not be required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities of a vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7)(A) An observer on a vessel (or the observer's personal representative) under the requirements of this section or section 1374 of this title that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(B) This paragraph does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(8) There are authorized to be appropriated to the Department of Commerce for the purposes of carrying out this subsection not to exceed $2,700,000 for fiscal year 1989 and not to exceed $8,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.

(f) Alternative observation program

(1) The Secretary shall establish an alternative observation program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries identified pursuant to subsection (b)(1)(A)(i) of this section for which the required level of observer coverage has not been met or for any other fisheries about which such reliable information is not otherwise available. The alternative program shall include, but not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

(2) Individuals engaged in the alternative observation program shall collect scientific information on the fisheries subject to observation, consistent with the requirements of paragraph (1) and subsection (e)(4) and (5) of this section. All information collected shall be subject to the provisions of subsection (j) of this section.

(g) Review of information and evaluation of effects of incidental taking on population stocks of marine mammals; promulgation of emergency regulations to mitigate immediate and significant adverse impacts; action to mitigate non-immediate impacts

(1) The Secretary shall review information regarding the incidental taking of marine mammals and evaluate the effects of such incidental taking on the affected population stocks of marine mammals.

(2) If the Secretary finds, based on the information received from the programs established under subsections (c), (d), (e), and (f) of this sec-

[1] So in original. Probably should not be capitalized.

tion, that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population stock or, in the case of Steller sea lions and North Pacific fur seals, that more than 1,350 and 50, respectively, will be incidentally killed during a calendar year, the Secretary shall consult with appropriate Regional Fishery Management Councils and State fishery managers and prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Any emergency regulations prescribed under this paragraph—

(A) shall, to the maximum extent practicable, avoid interfering with existing State or regional fishery management plans;

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

(C) shall remain in effect for not more than one hundred and eighty days or until the end of the fishing season, whichever is earlier; and

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

In prescribing emergency regulations under this paragraph, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.

(3) If the Secretary finds, based on information received from the programs established under subsections (c), (d), (e), and (f) of this section, that incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population stock but that it will likely have a significant adverse impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or State to initiate, recommend, or take such action within its authority as it considers necessary to mitigate the adverse impacts, including adjustments to requirements on fishing times or areas or the imposition of restrictions on the use of vessels or gear.

(4) The Secretary shall impose appropriate conditions and restrictions on an exemption granted under subsection (b) of this section if—

(A) a Regional Fishery Management Council or State does not act in a reasonable period of time on a request made by the Secretary under paragraph (3); or

(B) if the Secretary determines after notice and opportunity for public comment that the purposes of this section would be better served by such action.

(h) Information and management system for processing and analyzing reports and information; accessibility to public

The Secretary shall design and implement an information management system capable of processing and analyzing reports received from the programs established under subsections (c), (d), (e), and (f) of this section, and other relevant sources, including Federal and State enforcement authorities, marine mammal stranding networks, and the marine mammal researchers. The information shall be made accessible to the public on a continuing basis, but in any case no later than six months after it is received, subject to the provisions of subsection (j) of this section.

(i) Utilization of services of State and Federal agencies and private entities

When carrying out the Secretary's responsibilities under subsections (b), (d), (e), (f), and (h) of this section, the Secretary shall, to the maximum extent practicable, utilize the services and programs of State agencies, Federal agencies (including programs established by Regional Fishery Management Councils), marine fisheries commissions, universities, and private entities, on a reimbursable basis or otherwise. The Secretary is authorized to enter into contracts and agreements to carry out his or her responsibilities and shall establish appropriate guidelines to ensure that other programs used or contracted for will meet the same standards as a program established by the Secretary. A person contracting with the Secretary to provide observer services under subsection (e) of this section must provide evidence of financial responsibility in an amount and form prescribed by the Secretary to compensate employees (or their survivors) adequately for any illness, disability, injury, or death from service on a vessel.

(j) Confidentiality of information; exceptions

(1) Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(2) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(k) Regulations

The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as necessary and appropriate to carry out the purposes of this section.

***(l)* Suggested regime governing incidental taking of marine mammals following termination of interim exemptions**

(1) The Chairman of the Marine Mammal Commission shall, after consultation with interested parties and not later than February 1, 1990, transmit to the Secretary and make available to the public recommended guidelines to govern the incidental taking of marine mammals in the course of commercial fishing operations, other

than those subject to section 1374(h)(2) of this title, after October 1, 1993. Such guidelines shall be developed by the Commission and its Committee of Scientific Advisers on Marine Mammals and shall—

(A) be designed to provide a scientific rationale and basis for determining how many marine mammals may be incidentally taken under a regime to be adopted to govern such taking after October 1, 1993;

(B) be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in this chapter; and

(C) to the maximum extent practicable, include as factors to be considered and utilized in determining permissible levels of such taking—

(i) the status and trends of the affected marine mammal population stocks;

(ii) the abundance and annual net recruitment of such stocks;

(iii) the level of confidence in the knowledge of the affected stocks; and

(iv) the extent to which incidental taking will likely cause or contribute to their decline or prevent their recovery to optimum sustainable population levels.

(2) The Secretary shall advise the Chairman of the Commission in writing if the Secretary determines that any additional information or explanation of the Chairman's recommendations is needed, and the Chairman shall respond in writing to any such request by the Secretary.

(3) On or before February 1, 1991, the Secretary, after consultation with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and nongovernmental organizations, shall publish in the Federal Register, for public comment, the suggested regime that the Secretary considers should, if authorized by enactment of any additional legislation, govern incidental taking of marine mammals, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. The suggested regime shall include—

(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

(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 of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. The recommendations shall include—

(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

(B) a proposed schedule for implementing the suggested regime; and

(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

(m) Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this subchapter.

(n) Owner of fixed commercial fishing gear deemed owner of vessel engaged in fishery in which gear deployed

For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

(*o*) Definitions

As used in this section—

(1) the term ''fishery'' has the same meaning as it does in section 1802(8)[2] of this title.

(2) the term ''Secretary'' means the Secretary of Commerce.

(3) the term ''vessel engaged in a fishery'' means a fishing vessel as defined in section 2101(11a) of title 46 or a fish processing vessel as defined in section 2101(11b) of that title, which is engaged in fishery.

(4) the term ''vessel of the United States'' has the same meaning as it does in section 1802(27)[2] of this title.

(Pub. L. 92–522, title I, § 114, as added Pub. L. 100–711, § 2(a)(2), Nov. 23, 1988, 102 Stat. 4755; amended Pub. L. 103–86, Sept. 30, 1993, 107 Stat. 930; Pub. L. 103–228, Mar. 31, 1994, 108 Stat. 281; Pub. L. 103–238, § 15(a), Apr. 30, 1994, 108 Stat. 559; Pub. L. 104–43, title IV, § 404(a)(1), Nov. 3, 1995, 109 Stat. 390; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

REFERENCES IN TEXT

Section 1802 of this title, referred to in subsec. (*o*)(1), (4), was subsequently amended, and section 1802(8) and (27) no longer defines the terms ''fishery'' and ''vessel of the United States''. However, such terms are defined elsewhere in that section.

AMENDMENTS

1996—Subsecs. (a)(1), (b)(2)(B)(ii), (*o*)(1), (4). Pub. L. 104–208 made technical amendment to references in original act which appear in text as references to sections 1802(8), (27) and 1824(b) of this title.

1995—Pub. L. 104–43 amended directory language of Pub. L. 103–238. See 1994 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103–238, as amended by Pub. L. 104–43, substituted ''until superseded by regulations prescribed under section 1387 of this title, or until September 1, 1995, whichever is earlier,'' for ''ending May 1, 1994.''

Pub. L. 103–228 substituted ''May 1, 1994.'' for ''April 1, 1994,''.

[2] See References in Text note below.

1993—Subsec. (a)(1). Pub. L. 103–86 substituted ''April 1, 1994'' for ''October 1, 1993''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 404(a)(2) of Pub. L. 104–43 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on and after April 30, 1994.''

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1372, 1384, 1387 of this title.

§ 1383b. Status review; conservation plans

(a) Determinations by rule; notice and hearing; findings; final rule on status of species or stock involved

(1) In any action by the Secretary to determine if a species or stock should be designated as depleted, or should no longer be designated as depleted, regardless of whether such action is taken on the initiative of the Secretary or in response to a petition for a status review, the Secretary shall only make such a determination by issuance of a rule, after notice and opportunity for public comment and after a call for information in accordance with paragraph (2).

(2) The Secretary shall make any determination described in paragraph (1) solely on the basis of the best scientific information available. Prior to the issuance of a proposed rule concerning any such determination, the Secretary shall publish in the Federal Register a call to assist the Secretary in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent the Secretary determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

(3)(A) If the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the Federal Register that such a petition has been received and is available for public review.

(B) Within sixty days after receipt of the petition, the Secretary shall publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

(C) If the Secretary makes a positive finding under subparagraph (B), the Secretary shall include in the Federal Register notice, a finding that—

(i) a review of the status of the species or stock will be commenced promptly; or

(ii) a prompt review of the petition is precluded by other pending status determination petitions and that expeditious progress is being made to process pending status determination petitions under this subchapter.

In no case after making a finding under this subparagraph shall the Secretary delay commencing a review of the status of a species or stock for more than one hundred and twenty days after receipt of the petition.

(D) No later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the Federal Register a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Persons shall have at least sixty days to submit comments on such a proposed rule.

(E) Not later than ninety days after the close of the comment period on a proposed rule issued under subparagraph (D), the Secretary shall issue a final rule on the status of the species or stock involved, along with the reasons for the status determination. If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information.

(F) Notwithstanding subparagraphs (D) and (E) of this paragraph and section 553 of title 5, the Secretary may issue a final rule as to the status of a species or stock any time sixty or more days after a positive finding under subparagraph (B) if the Secretary determines there is substantial information available to warrant such final status determination and further delay would pose a significant risk to the well-being of any species or stock. Along with the final rule, the Secretary shall publish in the Federal Register detailed reasons for the expedited determination.

(b) Conservation plans; preparation and implementation

(1) The Secretary shall prepare conservation plans—

(A) By[1] December 31, 1989, for North Pacific fur seals;

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

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

(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary

[1] So in original. Probably should not be capitalized.

shall model such plans on recovery plans required under section 1533(f) of this title.

(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 1373(f) of this title what measures have been taken to prepare and implement such plans.

(4) If the Secretary determines that a take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a strategic stock, or for species or stocks which interact with a commercial fishery for which the Secretary has made a determination under section 1387(f)(1) of this title, any conservation plan prepared under this subsection for such species or stock shall incorporate the take reduction plan required under section 1387 of this title for such species or stock.

(Pub. L. 92–522, title I, § 115, as added Pub. L. 100–711, § 3(a), Nov. 23, 1988, 102 Stat. 4763; amended Pub. L. 103–238, § 8, Apr. 30, 1994, 108 Stat. 543.)

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–238 added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1374 of this title.

§ 1384. Authorization of appropriations

(a) Department of Commerce

(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this subchapter (other than sections 1386 and 1387 of this title) and subchapter V of this chapter, $12,138,000 for fiscal year 1994, $12,623,000 for fiscal year 1995, $13,128,000 for fiscal year 1996, $13,653,000 for fiscal year 1997, $14,200,000 for fiscal year 1998, and $14,768,000 for fiscal year 1999.

(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 1386 and 1387 of this title, $20,000,000 for each of the fiscal years 1994 through 1999.

(b) Department of the Interior

There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this subchapter, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, $9,900,000 for fiscal year 1998, and $10,296,000 for fiscal year 1999.

(Pub. L. 92–522, title I, § 116, formerly § 114, Oct. 21, 1972, 86 Stat. 1043; Pub. L. 95–136, § 2, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 95–316, § 3, July 10, 1978, 92 Stat. 380; renumbered § 116, Pub. L. 100–711, § 2(a)(1), Nov. 23, 1988, 102 Stat. 4755; Pub. L. 103–238, § 9(a), Apr. 30, 1994, 108 Stat. 543.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–58, § 7(a), (b), Oct. 9, 1981, 95 Stat. 987; Pub. L. 98–364, title I, § 104(1), (2), July 17, 1984, 98 Stat. 442; Pub. L. 100–711, § 6(1), (2), Nov. 23, 1988, 102 Stat. 4771, prior to repeal by Pub. L. 103–238, § 9(c), Apr. 30, 1994, 108 Stat. 543.

AMENDMENTS

1994—Pub. L. 103–238 amended section generally. Prior to amendment, section read as follows:

''(a) There are authorized to be appropriated not to exceed $2,000,000 for the fiscal year ending June 30, 1973, and the four next following fiscal years, not to exceed $11,500,000 for the fiscal year ending September 30, 1978, not to exceed $8,500,000 for the fiscal year ending September 30, 1979, not to exceed $9,000,000 for the fiscal year ending September 30, 1980, and not to exceed $9,500,000 for the fiscal year ending September 30, 1981, to enable the department in which the National Oceanic and Atmospheric Administration is operating to carry out such functions and responsibilities as it may have been given under this subchapter (other than sections 1379 and 1380 of this title).

''(b) There are authorized to be appropriated not to exceed $700,000 for the fiscal year ending June 30, 1973, not to exceed $525,000 for each of the next four fiscal years thereafter, not to exceed $850,000 for the fiscal year ending September 30, 1978, not to exceed $650,000 for the fiscal year ending September 30, 1979, not to exceed $760,000 for the fiscal year ending September 30, 1980, and not to exceed $876,000 for the fiscal year ending September 30, 1981 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this subchapter (other than sections 1379 and 1380 of this title).''

1978—Subsec. (a). Pub. L. 95–316, § 3(1), added reference to sections 1379 and 1380 of this title and provisions authorizing appropriations for the fiscal years ending Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981.

Subsec. (b). Pub. L. 95–316, § 3(2), added reference to sections 1379 and 1380 of this title and provisions authorizing appropriations for the fiscal years Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981.

1977—Subsec. (a). Pub. L. 95–136, § 2(1), inserted '', and not to exceed $11,500,000 for the fiscal year ending September 30, 1978,'' after ''fiscal years''.

Subsec. (b). Pub. L. 95–136, § 2(2), inserted '', and not to exceed $850,000 for the fiscal year ending September 30, 1978'' after ''thereafter''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1388 of this title.

§ 1385. Dolphin protection

(a) Short title

This section may be cited as the ''Dolphin Protection Consumer Information Act''.

(b) Findings

The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) Definitions

For purposes of this section—

(1) the terms ''driftnet'' and ''driftnet fishing'' have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(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, and the western coastlines of North, Central, and South America;

(3) the term ''label'' means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term ''Secretary'' means the Secretary of Commerce; and

(5) the term ''tuna product'' means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) Labeling standard

(1) It is a violation of section 45 of title 15 for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term ''Dolphin Safe'' or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee, or

(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.

(e) Enforcement

Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) of this section that is false is liable for a civil penalty of not to exceed $100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

(f) Regulations

The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after November 28, 1990, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d) of this section.

(g) Omitted

(h) Negotiations

The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

(i) Effective date

Subsections (d) and (e) of this section shall take effect 6 months after November 28, 1990.

(Pub. L. 101–627, title IX, § 901, Nov. 28, 1990, 104 Stat. 4465; Pub. L. 105–42, § 5, Aug. 15, 1997, 111 Stat. 1125.)

AMENDMENT OF SECTION

Pub. L. 105–42, §§ 5(a), 8, Aug. 15, 1997, 111 Stat. 1125, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, this section is amended as follows:

(1) Subsection (d) is amended to read as follows:

(d) Labeling standard

(1) It is a violation of section 45 of title 15 for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term ''dolphin safe'' or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

(A) on the high seas by a vessel engaged in driftnet fishing;

(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written state-

ment executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h) of this section;

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee;

(II) a representative of the Inter-American Tropical Tuna Commission; or

(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h) of this section; and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this section.

(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

(C) It is a violation of section 45 of title 15 to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless—

(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f) of this section; and

(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

(E) It is a violation of section 45 of title 15 willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.

(2) Subsection (f) is amended to read as follows:

(f) Regulations

The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section, including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d) of this section. In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d) of this section.

(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d) of this section.

(7) The provision of timely access to data required under this subsection by the Secretary from

harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.

(3) Subsections (g) to (i) are struck out and new subsections (g) and (h) are inserted reading as follows:

(g) Secretarial findings

(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 1414a(a) of this title, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 1414a(a) of this title, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(h) Certification by captain and observer

(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) of this section and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) of this section shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) The certification by the captain under subsection (d)(2)(B)(i) of this section and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) of this section shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing—

(A) before the effective date of the initial finding by the Secretary under subsection (g)(1) of this section;

(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2) of this section, where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

(C) after the effective date of the finding under subsection (g)(2) of this section, where such finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any such depleted stock.

REFERENCES IN TEXT

This section, referred to in subsecs. (d)(3)(A) and (f) (first place appearing), as set out in italicized note above, was in the original ''this Act'' and was translated as meaning section 901 of Pub. L. 101–627, known as the Dolphin Protection Consumer Information Act, which is classified to this section, to reflect the probable intent of Congress.

CODIFICATION

Section is comprised of section 901 of Pub. L. 101–627. Subsec. (g) of section 901 of Pub. L. 101–627 amended section 1371 of this title.

Section was not enacted as part of the Marine Mammal Protection Act of 1972 which comprises this chapter.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42 effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, except that Secretary of Commerce may issue regulations under subsec. (f)(2) of this section at any time after Aug. 15, 1997, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1414a, 1417 of this title.

§ 1386. 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) of this section, 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) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;

(2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;

(3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;

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

(A) the approximate number of vessels actively participating in each such fishery;

(B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;

(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;

(5) categorize the status of the stock as one that either—

(A) has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or

(B) is a strategic stock, with a description of the reasons therefor; and

(6) estimate the potential biological removal level for the stock, describing the information used to calculate it, including the recovery factor.

(b) Public comment

(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 1371(b) of this title applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 1371(b) of this title.

(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d) of this section, and the comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

(A) the close of the public comment period on a draft stock assessment or revision thereof; or

(B) final action on an agency proceeding pursuant to paragraph (2).

(c) Review and revision

(1) The Secretary shall review stock assessments in accordance with this subsection—

(A) at least annually for stocks which are specified as strategic stocks;

(B) at least annually for stocks for which significant new information is available; and

(C) at least once every 3 years for all other stocks.

(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b) of this section.

(d) Regional scientific review groups

(1) Not later than 60 days after April 30, 1994, the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups, establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico), consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 1371(b) of this title. The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific review group. The regional scientific review groups shall advise the Secretary on—

(A) population estimates and the population status and trends of such stocks;

(B) uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

(C) uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

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

(E) the actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

(F) any other issue which the Secretary or the groups consider appropriate.

(2) The scientific review groups established under this subsection shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(3) Members of the scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their obligations.

(4) The Secretary may appoint or reappoint individuals to the regional scientific review groups under paragraph (1) as needed.

(e) Effect on section 1371(b) of this title

This section shall not affect or otherwise modify the provisions of section 1371(b) of this title.

(Pub. L. 92–522, title I, § 117, as added Pub. L. 103–238, § 10, Apr. 30, 1994, 108 Stat. 543.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(2), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1382, 1384, 1387, 1389 of this title.

§ 1387. Taking of marine mammals incidental to commercial fishing operations

(a) In general

(1) Effective on April 30, 1994, and except as provided in section 1383a of this title 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 1824(b) of this title. 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 April 30, 1994.

(2) In the case of the incidental taking of marine mammals from species or stocks designated under this chapter as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 1371(a)(5)(E) of this chapter shall apply.

(3) Sections[1] 1374(h) of this title and subchapter IV of this chapter, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(4) This section shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99–625; 100 Stat. 3500).

(5) Except as provided in section 1371(c) of this title, the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.

(6) Sections 1373 and 1374 of this title shall not apply to the incidental taking of marine mammals under the authority of this section.

(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 April 30, 1994.

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

(3) Three years after April 30, 1994, 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 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.

(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (f) of this section.

(c) Registration and authorization

(1) The Secretary shall, within 90 days after April 30, 1994—

(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 1383a(b)(1) of this title 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;

(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 chapter 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.

[1] So in original. Probably should be "Section".

(B) No authorization may be granted under this section to the owner of a vessel unless such vessel—

(i) is a vessel of the United States; or

(ii) has a valid fishing permit issued by the Secretary in accordance with section 1824(b) of this title.

(C) Except as provided in subsection (a) of this section, an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this chapter applies.

(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—

(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 1383a of this title are deemed to have registered for purposes of this subsection for the period during which such exemption is valid;

(ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;

(iii) report as required by subsection (e) of this section; and

(iv) comply with any applicable take reduction plan and emergency regulations issued under this section.

(B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A)(i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A)(i) or (ii) who—

(i) fails to obtain from the Secretary an authorization for such vessel under this section;

(ii) fails to maintain a current and valid authorization for such vessel; or

(iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this subchapter, and for violations of clauses (i) and (ii) shall be subject to the penalties of this subchapter, and for violations of clause (iii) shall be subject to a fine of not more than $100 for each offense.

(D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement a take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.

(E) Each owner of a vessel engaged in any 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 subchapter for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e) of this section, instances of incidental mortality or injury of marine mammals in the course of that fishery.

(4)(A) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (e) of this section and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 1383a of this title shall not bar authorization under this section for an owner who complies with the requirements of this section.

(B) The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with a take reduction plan or emergency regulations issued under this section.

(C) The owner and master of a vessel which fails to comply with a take reduction plan shall be subject to the penalties of sections 1375 and 1377 of this title, and may be subject to section 1376 of this title.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(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.

(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.

(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. The purposes of the monitoring program shall be to—

(A) obtain statistically reliable estimates of incidental mortality and serious injury;

(B) determine the reliability of reports of incidental mortality and serious injury under subsection (e) of this section; and

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

(2) Pursuant to paragraph (1), the Secretary may place observers on board vessels as necessary, subject to the provisions of this section. Observers may, among other tasks—

(A) record incidental mortality and injury, or by catch of other nontarget species;

(B) record numbers of marine mammals sighted; and

(C) perform other scientific investigations.

(3) In determining the distribution of observers among commercial fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:

(A) The requirement to obtain statistically reliable information.

(B) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery.

(C) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage.

(D) To the extent practicable, the need to minimize costs and avoid duplication.

(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

(A) The highest priority for allocation shall be for commercial fisheries 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 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 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. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

(6) The Secretary is not required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation in which harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities on a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not listed under subsection (c)(1)(A)(i) or (ii) of this section.

(8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(9) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(e) Reporting requirement

The owner or operator of a commercial fishing vessel subject to this chapter 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) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

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

(3) The name and description of the fishery.

(4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

(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) of this section, 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) of this section 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 months of its implementation, the inci-

dental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section 1386 of this title. 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 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 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) of this section, 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 1386(b) of this title and any substantial new information;

(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, by fishery;

(C) recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury;

(D) recommended dates for achieving the specific objectives of the plan.

(5)(A) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the potential biological removal level established under section 1386 of this title, the plan shall include measures the Secretary expects will reduce, within 6 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 fisheries 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 1386(b) of this title for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) of this section 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 that cause incidental mortality and serious injury of marine mammals from such stock.

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

(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, 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.

(D) Take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings of take reduction teams shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

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

(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 1386 of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, the following procedures shall apply in the development of the take reduction plan for the stock:

(A)(i) Not later than 6 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.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register 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.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed 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 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.

(E) The Secretary and the take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(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 1386 of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, or for any marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section 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)(i) Not later than 11 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register 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.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed 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 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.

(E) The Secretary and the take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(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 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) of this section, 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.

(10)(A) Notwithstanding paragraph (6), in the case of any stock to which paragraph (1) applies for which a final stock assessment has not been published under section 1386(b)(3) of this title by April 1, 1995, due to a proceeding under section 1386(b)(2) of this title, or any Federal court review of such proceeding, the Secretary shall establish a take reduction team under paragraph (6) for such stock as if a final stock assessment had been published.

(B) The draft stock assessment published for such stock under section 1386(b)(1) of this title shall be deemed the final stock assessment for purposes of preparing and implementing a take reduction plan for such stock under this section.

(C) Upon publication of a final stock assessment for such stock under section 1386(b)(3) of this title the Secretary shall immediately reconvene the take reduction team for such stock for the purpose of amending the take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (7)(F) or (8)(F), as appropriate.

(D) A draft stock assessment may only be used as the basis for a take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section 1386(a)(5)(A) of this title and shall revoke any regulations to implement a take reduction plan for such stock.

(E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

(11) Take reduction plans developed under this section for a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act [16 U.S.C. 1533].

(g) Emergency regulations

(1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from commercial fisheries 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) In the case of a stock or species for which a take reduction plan is in effect, the Secretary shall—

(i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

(B) In the case of a stock or species for which a take reduction plan is being developed, the Secretary shall—

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

(C) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) of this section which the Secretary believes may be contributing to such adverse impact, the Secretary shall—

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) may, where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), place observers on vessels in a commercial fishery listed under subsection (c)(1)(A)(iii) of this section, if the Secretary has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(2) Prior to taking action under paragraph (1)(A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, State fishery managers, and the appropriate take reduction team (if established).

(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

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

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery 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.

(h) Penalties

Except as provided in subsection (c) of this section, any person who violates this section shall be subject to the provisions of sections 1375 and 1377 of this title, and may be subject to section 1376 of this title as the Secretary shall establish by regulations.

(i) Assistance

The Secretary shall provide assistance to Regional Fishery Management Councils, States, interstate fishery commissions, and Indian tribal organizations in meeting the goal of reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

(j) Contributions

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

(k) Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this subchapter.

(*l*) Definitions

As used in this section and section 1371(a)(5)(E) of this title, each of the terms ''fishery'' and ''vessel of the United States'' has the same meaning it does in section 1802 of this title.

(Pub. L. 92–522, title I, § 118, as added Pub. L. 103–238, § 11, Apr. 30, 1994, 108 Stat. 546; amended Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsecs. (a)(2), (d)(4)(A), (f)(11), and (g)(1)(C)(iii), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

Act of November 7, 1986, referred to in subsec. (a)(4), is Pub. L. 99–625, Nov. 7, 1986, 100 Stat. 3500, which amended section 718b of this title and provisions set out as a table of National Wildlife Refuges under section 668dd of this title and enacted provisions set out as a note under section 1536 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(6)(D), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsecs. (a)(1), (c)(2)(B)(ii), (*l*). Pub. L. 104–208 made technical amendment to references in original act which appear in text as references to sections 1802 and 1824(b) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1362, 1371, 1372, 1375, 1383a, 1383b, 1384, 1389 of this title.

§ 1388. 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.

(c) Effect of jurisdiction

Nothing in this section is intended or shall be construed—

(1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or

(2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(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 1384 of this title.

(Pub. L. 92–522, title I, § 119, as added Pub. L. 103–238, § 19, Apr. 30, 1994, 108 Stat. 559.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1371 of this title.

§ 1389. Pacific Coast Task Force; Gulf of Maine

(a) Pinniped removal authority

Notwithstanding any other provision of this subchapter, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) Application

(1) A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

(C) migrate through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) Actions in response to application

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

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

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall—

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

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

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

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

(d) Considerations

In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) Limitation

The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is—

(1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) depleted under this chapter; or

(3) a strategic stock.

(f) California sea lions and Pacific harbor seals; investigation and report

(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals—

(A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or

(B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

(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 of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

(5) The amounts appropriated under section 4107(c) of this title and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).

(g) Regionwide pinniped-fishery interaction study

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

(A) fish behavior in the presence of predators generally;

(B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;

(C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

(D) other issues the Secretary considers relevant.

(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 of the House of Representatives.

(3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d) of this section.

(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 April 30, 1994, the Secretary shall after notice and opportunity for public comment 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 recommended available alternatives to mitigate such interactions.

(i) Requirements applicable to task forces

(1) Any task force established under this section—

(A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and

(B) shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) Gulf of Maine harbor porpoise

(1) Nothing in section 1386 of this title shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 1387 of this title for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 1387(f)(5)(A) of this title, but in no case may such modification extend the date of compliance beyond April 1, 1997.

(Pub. L. 92–522, title I, § 120, as added Pub. L. 103–238, § 23, Apr. 30, 1994, 108 Stat. 562.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsecs. (b)(1)(A), (B), (e)(1), and (f)(1)(A), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (i)(B), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SUBCHAPTER III—MARINE MAMMAL COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1362, 1371 of this title.

§ 1401. Establishment

(a) Designation

There is hereby established the Marine Mammal Commission (hereafter referred to in this subchapter as the ''Commission'').

(b) Membership and term of office

(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with

the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The President shall designate a Chairman of the Commission (hereafter referred to in this subchapter as the ''Chairman'') from among its members.

(d) Compensation; reimbursement for travel expenses

Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(e) Executive Director

The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5 governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS–18 of the General Schedule under section 5332 of title 5. The Executive Director shall have such duties as the Chairman may assign.

(Pub. L. 92–522, title II, § 201, Oct. 21, 1972, 86 Stat. 1043; Pub. L. 97–389, title II, § 202, Dec. 29, 1982, 96 Stat. 1951; Pub. L. 98–364, title I, § 103(a), July 17, 1984, 98 Stat. 441.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–364 substituted ''The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences'' for ''The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals''.

1982—Subsec. (b)(1). Pub. L. 97–389 inserted requirement that, effective Sept. 1, 1982, the three members of the Commission be appointed by and with the advice and consent of the Senate.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1378, 1413 of this title; title 10 section 7524.

§ 1402. Duties of Commission

(a) Reports and recommendations

The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949 [16 U.S.C. 916 et seq.], the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966 [16 U.S.C. 1151 et seq.];

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this chapter, and of all applications for permits for scientific research, public display, or enhancing the survival or recovery of a species or stock;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest

appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this chapter, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this chapter.

(b) Consultation with Secretary; reports to Secretary before publication

The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 1404 of this title, before submission to Congress, to the Secretary for comment.

(c) Availability of reports for public inspection

The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5.

(d) Recommendations; explanation for nonadoption

Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

(Pub. L. 92–522, title II, § 202, Oct. 21, 1972, 86 Stat. 1044; Pub. L. 93–205, § 13(e)(4), Dec. 28, 1973, 87 Stat. 903; Pub. L. 97–58, § 6(1), Oct. 9, 1981, 95 Stat. 987; Pub. L. 100–711, § 5(e)(4), Nov. 23, 1988, 102 Stat. 4771.)

REFERENCES IN TEXT

The Whaling Convention Act of 1949, referred to in subsec. (a)(1), is act Aug. 9, 1950, ch. 653, 64 Stat. 421, as amended, which is classified generally to subchapter II (§ 916 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 916 of this title and Tables.

The Fur Seal Act of 1966, referred to in subsec. (a)(1), is Pub. L. 89–702, Nov. 2, 1966, 80 Stat. 1091, as amended, which is classified generally to chapter 24 (§ 1151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1151 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–711 inserted ‘‘, public display, or enhancing the survival or recovery of a species or stock’’ after ‘‘scientific research’’.

1981—Subsec. (b). Pub. L. 97–58 substituted ‘‘provide each annual report required under section 1404 of this title, before submission to Congress, to the Secretary for comment’’ for ‘‘furnish its reports and recommendations to him, before publication, for his comment’’.

1973—Subsec. (a)(6). Pub. L. 93–205 substituted ‘‘such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title’’ for ‘‘of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,’’.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–205 effective Dec. 28, 1973, see section 16 of Pub. L. 93–205, set out as an Effective Date note under section 1531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1404 of this title.

§ 1403. Committee of Scientific Advisors on Marine Mammals

(a) Establishment; membership

The Commission shall establish, within ninety days after its establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter referred to in this subchapter as the ‘‘Committee’’). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) Compensation; reimbursement for travel expenses

Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(c) Consultation with Commission on studies and recommendations; explanation for nonadoption

The Commission shall consult with the Committee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this chapter, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations.

(Pub. L. 92–522, title II, § 203, Oct. 21, 1972, 86 Stat. 1044.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by

appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1404. Reports

The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 1402 of this title together with the responses made to these recommendations.

(Pub. L. 92–522, title II, § 204, Oct. 21, 1972, 86 Stat. 1045.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1380, 1402 of this title.

§ 1405. Coordination with other Federal agencies

The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this chapter.

(Pub. L. 92–522, title II, § 205, Oct. 21, 1972, 86 Stat. 1045.)

§ 1406. Administration

The Commission, in carrying out its responsibilities under this subchapter, may—

(1) employ and fix the compensation of such personnel;

(2) acquire, furnish, and equip such office space;

(3) enter into such contracts or agreements with, or provide such grants to, other organizations, both public and private;

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of title 5 (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 subchapter; 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.

(Pub. L. 92–522, title II, § 206, Oct. 21, 1972, 86 Stat. 1045; Pub. L. 97–58, § 6(2), Oct. 9, 1981, 95 Stat. 987; Pub. L. 98–364, title I, § 103(b), July 17, 1984, 98 Stat. 442.)

AMENDMENTS

1984—Par. (5). Pub. L. 98–364 inserted "; except that no fewer than 11 employees must be employed under paragraph (1) at any time" at end.

1981—Par. (3). Pub. L. 97–58 substituted "contracts or agreements with, or provide such grants to, other organizations" for "contracts or agreements with other organizations".

§ 1407. Authorization of appropriations

There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this subchapter, $1,500,000 for fiscal year 1994, $1,550,000 for fiscal year 1995, $1,600,000 for fiscal year 1996, $1,650,000 for fiscal year 1997, $1,700,000 for fiscal year 1998, and $1,750,000 for fiscal year 1999.

(Pub. L. 92–522, title II, § 207, Oct. 21, 1972, 86 Stat. 1046; Pub. L. 95–136, § 3, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 95–316, § 4, July 10, 1978, 92 Stat. 381; Pub. L. 103–238, § 9(b), Apr. 30, 1994, 108 Stat. 543.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–58, § 7(c), Oct. 9, 1981, 95 Stat. 987; Pub. L. 98–364, title I, § 104(3), July 17, 1984, 98 Stat. 442; Pub. L. 100–711, § 6(3), Nov. 23, 1988, 102 Stat. 4771, prior to repeal by Pub. L. 103–238, § 9(c).

AMENDMENTS

1994—Pub. L. 103–238 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated for the fiscal year in which this subchapter is enacted and for the next five fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed $1,000,000, the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed $2,000,000, the sum appropriated for the fiscal year ending September 30, 1979, shall not exceed $1,000,000, the sum appropriated for the fiscal year ending September 30, 1980, shall not exceed $1,000,000, and the sum appropriated for the fiscal year ending September 30, 1981, shall not exceed $1,000,000."

1978—Pub. L. 95–316 added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981.

1977—Pub. L. 95–136 substituted "five fiscal years" for "four fiscal years" and "the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed $1,000,000, and the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed $2,000,000" for "the sums appropriated for any such year shall not exceed $1,000,000" and struck out requirement that not less than two-thirds of the sums appropriated pursuant to this section for any such year be expended on research and studies under authority of section 1402(a)(2) and (3) of this title.

SUBCHAPTER IV—GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1371, 1387 of this title.

§ 1411. Findings and policy

(a) Findings

The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.

(b) Policy

It is the policy of the United States to—

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

(Pub. L. 92–522, title III, § 301, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3425; amended Pub. L. 105–42, § 6(b), Aug. 15, 1997, 111 Stat. 1129.)

AMENDMENT OF SUBSECTIONS (a) AND (b)

Pub. L. 105–42, §§ 6(b), 8, Aug. 15, 1997, 111 Stat. 1129, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, this section is amended as follows:

(1) by striking paragraph (4) of subsection (a) and inserting the following:

''(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.''; and

(2) by striking paragraphs (2) and (3) of subsection (b) and inserting the following:

''(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

''(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;''.

CODIFICATION

Another section 301 of Pub. L. 92–522 was renumbered section 401 and is classified to section 1421 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

§ 1412. International agreements to establish global moratorium to prohibit certain tuna harvesting practices

(a) In general

The Secretary of State, in consultation with the Secretary, may enter into international agreements which establish, in accordance with this subchapter, a global moratorium of at least 5 years duration to prohibit harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals.

(b) Terms of agreement

Any agreement entered into under this section shall—

(1) establish a moratorium described in subsection (a) of this section which takes effect on March 1, 1994;

(2) include an international research program and, notwithstanding the moratorium, authorize harvesting of tuna under that program;

(3) provide for reviews and reports in accordance with section 1414 of this title on results of research conducted under the research program;

(4) require each country that is a party to the agreement to take all the necessary and

appropriate steps to ensure compliance with the moratorium; and

(5) encourage each country that is a party to the agreement to seek, through bilateral and multilateral negotiations, to encourage other countries that participate in fisheries to which the agreement applies to become parties to the agreement.

(c) Compliance by United States with moratorium

The moratorium authorized under subsection (a) of this section may be terminated prior to December 31, 1999, with respect to the United States for the harvesting of tuna in the eastern tropical Pacific Ocean only if—

(1) the Secretary submits to the Congress in accordance with section 1414(b) of this title a recommendation that the moratorium be terminated; and

(2) the recommendation is approved by enactment of a joint resolution of approval.

(Pub. L. 92–522, title III, § 302, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3426.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 105–42, §§ 6(c), 8, Aug. 15, 1997, 111 Stat. 1130, 1139, provided that, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required under section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, this section is repealed and a new section 1412 is added reading as follows:

§ 1412. International Dolphin Conservation Program

The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

(4) that if a dolphin mortality limit is exceeded under—

(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

(5) a scientific review and assessment to be conducted in calendar year 1998 to—

(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

(B) as appropriate, consider recommendations for meeting these objectives;

(6) a scientific review and assessment to be conducted in calendar year 2000—

(A) to review the stocks covered under paragraph (3); and

(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

CODIFICATION

Another section 302 of Pub. L. 92–522 was renumbered section 402 and is classified to section 1421a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1414, 1415, 1416, 1417 of this title.

§ 1413. Research programs

(a) In general

An agreement entered into under section 1412 of this title shall—

(1) establish an international research program to develop methods of fishing for large yellowfin tuna—

(A) without setting nets on dolphins or other marine mammals; or

(B) by setting nets on dolphins or other marine mammals with zero set-caused mortality;

(2) require that proposals for research under the program be reviewed and authorized by a competent regional organization;

(3) require that research under the program be conducted by dedicated vessels that—

(A) are authorized to conduct that research by a competent regional organization; and

(B) have on board in accordance with section 1415(a)(2) of this title an observer who is responsible to, and supervised by, a competent regional organization.

(b) Limitations on dolphin mortality

For the eastern tropical Pacific Ocean, an agreement entered into under section 1412 of this title shall require that—

(1) the total number of research sets on dolphins conducted pursuant to this section during the period beginning March 1, 1994, and ending December 31, 1999, shall not exceed 400 annually, and that the total annual dolphin mortality shall not exceed 1,000;

(2) the Inter-American Tropical Tuna Commission shall establish a panel to review and report on the compliance of the international yellowfin tuna fishery fleet with the limits established in paragraph (1) and make recommendations as appropriate; and

(3) the Inter-American Tropical Tuna Commission shall establish an Advisory Board of technical specialists from the international communities of scientists, government agencies, environmental groups, and the fishing industry, to assist that commission in efforts to coordinate, facilitate, and guide research.

(c) Funding

(1) In general

An agreement entered into under section 1412 of this title shall establish fair and equitable mechanisms for funding research conducted pursuant to this section.

(2) Proceeds of research harvests

An agreement entered into under section 1412 of this title shall provide that the proceeds of any tuna harvested for the purpose of research conducted pursuant to this section should, to the extent possible, be used for funding research conducted pursuant to this section.

(3) Limitation on use of United States funding

Funding provided by the United States for research shall be used only for the purpose of developing methods of fishing for large yellowfin tuna that do not involve intentionally encircling dolphins or other marine mammals.

(d) Review of research proposals

The Marine Mammal Commission established under section 1401 of this title shall—

(1) review all research proposals submitted to the Inter-American Tropical Tuna Commission; and

(2) recommend an appropriate response to each of those proposals, to the United States Commissioners on the Inter-American Tropical Tuna Commission.

(Pub. L. 92–522, title III, § 303, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3426.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 105–42, §§ 6(c), 8, Aug. 15, 1997, 111 Stat. 1130, 1131, 1139, provided that, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required under section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, except that Secretary of Commerce may issue regulations under new subsection (a) at any time after August 15, 1997, this section is repealed and a new section 1413 is added reading as follows:

§ 1413. Regulatory authority of Secretary

(a) Regulations

(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this chapter but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

(B) Regulations issued under this section shall include provisions—

(i) requiring observers on each vessel;

(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

(vi) banning the use of explosive devices in all purse seine operations;

(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) Consultation

In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 952 of this title.

(c) Emergency regulations

(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 1414a of this title and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this subchapter is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

(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 the duration of the applicable fishing year; and

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

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

CODIFICATION

Another section 303 of Pub. L. 92–522 was renumbered section 403 and is classified to section 1421b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1374, 1414, 1416, 1418 of this title.

§ 1414. Reviews, reports, and recommendations

(a) Reports by Secretary

The Secretary shall submit annual reports to the Congress which include—

(1) results of research conducted pursuant to section 1413 of this title;

(2) a description of the status of stocks of yellowfin tuna;

(3) an assessment of the economic impacts on the tuna industry and consumers caused by the moratorium established by agreements entered into under section 1412 of this title;

(4) an assessment of the effectiveness of the moratorium in protecting dolphin populations in the eastern tropical Pacific Ocean;

(5) results of reviews conducted under section 1415(c) of this title;

(6) copies of any international agreements or undertakings authorized by or related to this subchapter;

(7) an assessment of the impact on fishery resources, other than yellowfin tuna, of methods of fishing for large yellowfin tuna in the eastern tropical Pacific Ocean that do not involve the intentional encirclement of dolphins; and

(8) any other relevant information.

(b) Recommendations of Secretary

If a competent regional organization under the auspices of which research is conducted pursuant to section 1413 of this title, or any country which participates in such an organization, submits to the United States a recommendation that a moratorium established by agreements entered into under section 1412 of this title should be terminated prior to December 31, 1999, the Secretary shall—

(1) review the information on which the recommendation is based;

(2) consult with relevant Federal agencies, including the Marine Mammal Commission, and other interested persons; and

(3) submit to the Congress a recommendation regarding the termination of the moratorium.

(Pub. L. 92–522, title III, § 304, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3428.)

REPEAL OF SECTION

Pub. L. 105–42, §§ 6(c), 8, Aug. 15, 1997, 111 Stat. 1130, 1139, provided that, effective upon

certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, this section is repealed.

CODIFICATION

Another section 304 of Pub. L. 92–522 was enacted by Pub. L. 105–42, § 6(c), Aug. 15, 1997, 111 Stat. 1133, and is classified to section 1414a of this title.

Another section 304 of Pub. L. 92–522 was renumbered section 404 and is classified to section 1421c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1412, 1415 of this title.

§ 1414a. Research

(a) Required research

(1) In general

The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

(2) Population abundance surveys

The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

(3) Stress studies

The stress studies under this subsection shall include—

(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

(4) Report

No later than 90 days after publishing the finding under subsection (g)(2) of section 1385 of this title, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

(b) Other research

(1) In general

In addition to conducting the research described in subsection (a) of this section, the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

(2) Specific areas of research

Research carried out under paragraph (1) may include—

(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

(c) Authorization of appropriations

(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a) of this section:

(A) $4,000,000 for fiscal year 1998.

(B) $3,000,000 for fiscal year 1999.

(C) $4,000,000 for fiscal year 2000.

(D) $1,000,000 for fiscal year 2001.

(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section $3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

(Pub. L. 92–522, title III, § 304, as added Pub. L. 105–42, § 6(c), Aug. 15, 1997, 111 Stat. 1133.)

CODIFICATION

Another section 304 of Pub. L. 92–522 was enacted by Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3428, and is classified to section 1414 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1385, 1413, 1415 of this title.

§ 1415. International commitments

(a) Limitation on application of ban on imports

Except as provided in subsection (b) of this section, the Secretary of the Treasury shall not, under section 1371(a)(2)(A) and (B) of this title, ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to—

(1) implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 1412(c) of this title;

(2) require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization;

(3) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to a level that is lower than such mortality in 1991 by a statistically significant margin; and

(4) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993, and ending February 28, 1994, to a level that is lower than such mortality in 1992 by a statistically significant margin.

(b) Subsequent bans on fish and fish product imports for failure to comply with commitments

(1) Ban on imports of yellowfin tuna and yellowfin tuna products

The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) of this section is fully implementing those commitments. If the Secretary determines that any such country is not implementing those commitments—

(A) the Secretary shall notify the President and the Congress of that determination; and

(B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

(2) Ban on imports of other fish and fish products

(A) In general

If—

(i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a)(1) of this section or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a)(2), (3), and (4) of this section; and

(ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from that country of all articles (other than those subject to an importation ban under paragraph (1)(B)) that are classified under one or more of those fish and fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph.

(B) Ban criteria

The one or more fish and fish product categories to which the President imposes an import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported from that country in the base year had an aggregate customs valuation equal to 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the base year.

(C) "Base year" defined

For purposes of subparagraph (B), the term ''base year'' means the calendar year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country.

(3) Duration of import bans

Bans on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that the country is implementing the commitments described in subsection (a) of this section.

(4) Implementation of import bans

The Secretary of the Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2).

(c) Reviews and reports

The Secretary, in consultation with the Secretary of State, shall—

(1) periodically review the activities of countries which have transmitted to the Secretary of State formal communications expressing the commitments described in subsection (a) of this section, to determine whether those countries are complying with those commitments; and

(2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 1414(a) of this title.

(Pub. L. 92–522, title III, § 305, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3428.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 105–42, §§ 6(c), 8, Aug. 15, 1997, 111 Stat. 1130, 1134, 1139, provided that, effective

upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, this section is repealed and a new section 1415 is added reading as follows:

§ 1415. Reports by Secretary

Notwithstanding section 1373(f) of this title, the Secretary shall submit annual reports to the Congress which include—

(1) results of research conducted pursuant to section 1414a of this title;

(2) a description of the status and trends of stocks of tuna;

(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

(5) actions taken by the Secretary under section 1371(a)(2)(B) of this title and section 1371(d) of this title;

(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this subchapter; and

(7) any other information deemed relevant by the Secretary.

CODIFICATION

Another section 305 of Pub. L. 92–522 was renumbered section 405 and is classified to section 1421d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1414, 1417 of this title.

§ 1416. Permits for taking dolphins

(a) Additional restrictions under general permit

Notwithstanding section 1374(h) of this title, the general permit issued to the American Tunaboat Association on December 1, 1980, shall be subject to the following additional restrictions:

(1) Total dolphin mortalities (including mortalities resulting from research) authorized by the permit shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994.

(2) No purse seine net may be deployed under the permit on or to encircle any school of dolphins in which any eastern spinner dolphin (Stenella longirostris) or coastal spotted dolphin (Stenella attenuata) is observed prior to release of the net skiff.

(3) The permit shall expire March 1, 1994, unless no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 1412 of this title before that date (notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country).

(4) If no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 1412 of this title before March 1, 1994, and notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country—

(A) the total dolphin mortalities authorized by the permit for each year after 1992, including mortalities caused by research, shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year;

(B) the total dolphin mortalities occurring under the permit each year shall continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999;

(C) the permit shall be subject to any additional restrictions that the Secretary considers appropriate; and

(D) the permit shall expire December 31, 1999.

(b) Permits required for taking dolphins for research purposes

An agreement entered into under section 1412 of this title shall not supersede or be interpreted to supersede any provision of this chapter under which a permit under this chapter is required for activities conducted pursuant to this subchapter.

(c) "Major purse seine tuna fishing country" defined

For purposes of this section, the term ''major purse seine tuna fishing country'' means a country which on October 26, 1992, has an active purse seine tuna fishing fleet of 20 or more vessels.

(Pub. L. 92–522, title III, § 306, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3430.)

REPEAL OF SECTION AND ENACTMENT OF NEW SECTION

Pub. L. 105–42, §§ 6(c), 8, Aug. 15, 1997, 111 Stat. 1130, 1135, 1139, provided that, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, this section is repealed and a new section 1416 is added reading as follows:

§ 1416. Permits

(a) In general

(1) Consistent with the regulations issued pursuant to section 1413 of this title, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for

the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 1413 of this title, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) Permit sanctions

(1) In any case in which—

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 1417 of this title;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 1417 of this title; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this subchapter or otherwise.

CODIFICATION

Another section 306 of Pub. L. 92–522 was renumbered section 406 and is classified to section 1421e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 973g, 1374, 1417 of this title.

§ 1417. Prohibitions

(a) In general

It is unlawful—

(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;

(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—

(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

(B) in accordance with a recommendation that is approved under section 1412(c)(2) of this title; or

(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 1416(a) of this title), notwithstanding any agreement under section 1412 of this title with a country that is not a major purse seine tuna fishing country (as that term is defined in section 1416(c) of this title);

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 1415(b)(1) or (2) of this title;

(4) for any person to violate any regulation promulgated under this subchapter;

(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this subchapter; and

(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

(b) Penalties

(1) Civil penalty

A person that knowingly and willfully violates subsection (a)(1), (2), (3), (4), or (5) of this

section shall be subject to a civil penalty under section 1375(a) of this title.

(2) Criminal penalty

A person that knowingly and willfully violates subsection (a)(6) of this section shall be subject to a criminal penalty under section 1375(b) of this title.

(c) Civil forfeitures

Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 1860 of this title.

(d) Dolphin safe tuna

For purposes of this section, tuna or a tuna product is dolphin safe if—

(1) it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is defined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987;

(2) in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of section 1385 of this title;

(3) in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

(Pub. L. 92–522, title III, § 307, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3431; amended Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 105–42, § 6(d), Aug. 15, 1997, 111 Stat. 1136.)

AMENDMENT OF SECTION

Pub. L. 105–42, §§ 6(d), 8, Aug. 15, 1997, 111 Stat. 1130, 1136, 1139, provided that, effective as provided by section 8 of Pub. L. 105–42, see Effective Date of 1997 Amendment note below, this section is amended as follows:

(1) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

''(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

''(2) except as provided for in subsection 1371(d) of this title, for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this subchapter and regulations issued pursuant to this subchapter; and

''(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 1371(a)(2) of this title;'';

(2) by inserting ''(a)(5) or'' before ''(a)(6)'' in subsection (b)(2); and

(3) by striking subsection (d).

REFERENCES IN TEXT

Section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987, referred to in subsec. (d)(1), is section 4003 of Pub. L. 100–220, which is set out as a note under section 1822 of this title.

CODIFICATION

Another section 307 of Pub. L. 92–522 was renumbered section 407 and is classified to section 1421f of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1860 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–42, effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1416 of this title.

§ 1418. Authorization of appropriations

There are authorized to be appropriated to the National Marine Fisheries Service for carrying out section 1413 of this title, $3,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 92–522, title III, § 308, as added Pub. L. 102–523, § 2(a), Oct. 26, 1992, 106 Stat. 3432.)

REPEAL OF SECTION

Pub. L. 105–42, §§ 6(e), 8, Aug. 15, 1997, 111 Stat. 1137, 1139, provided that, effective upon

certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, this section is repealed.

CODIFICATION

Another section 308 of Pub. L. 92–522 was renumbered section 408 and is classified to section 1421g of this title.

SUBCHAPTER V—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1362, 1372, 1379, 1382, 1384 of this title.

§ 1421. Establishment of Program

(a) Establishment

The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program to be known as the ''Marine Mammal Health and Stranding Response Program''.

(b) Purposes

The purposes of the Program shall be to—

(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

(2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and

(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 1421c of this title.

(Pub. L. 92–522, title IV, § 401, formerly title III, § 301, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5060; renumbered title IV, § 401, and amended Pub. L. 103–238, § 24(b), (c)(1), Apr. 30, 1994, 108 Stat. 565, 566.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–238, § 24(c)(1), made technical amendment to reference to section 1421c of this title to reflect renumbering of corresponding section of original act.

FINDINGS

Section 3002 of Pub. L. 102–587 provided that: ''The Congress finds the following:

''(1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years.

''(2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events.

''(3) An accurate assessment of marine mammal health, health trends in marine mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live.

''(4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events and may serve as an indicator of the general health of our coastal and marine environments.

''(5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.

''(6) Standardized methods for the reporting of dying, dead, or otherwise incapacitated marine mammals in the wild would greatly assist in the determination of the causes of marine mammal unusual mortality events and enhance general knowledge of marine mammal species.

''(7) A formal system for collection, preparation, and archiving of, and providing access to, marine mammal tissues will enhance efforts to investigate the health of marine mammals and health trends of marine mammal populations, and to develop reference data.

''(8) Information on marine mammals, including results of analyses of marine mammal tissues, should be broadly available to the scientific community, including stranding network participants, through a marine mammal data base.''

§ 1421a. Determination; data collection and dissemination

(a) Determination for release

The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

(b) Collection

The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on—

(1) procedures and practices for—

(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

(c) Availability

The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

(Pub. L. 92–522, title IV, § 402, formerly title III, § 302, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5061; renumbered title IV, § 402, Pub. L. 103–238, § 24(b), Apr. 30, 1994, 108 Stat. 565.)

IMPLEMENTATION

Section 3003(b) of Pub. L. 102–587 provided that: ''The Secretary of Commerce shall—

''(1) in accordance with section 302(a) and (b) [now 402(a), (b)] of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1421a(a), (b)], as amended by this Act, and not later than 24 months after the date of enactment of this Act [Nov. 4, 1992]—

''(A) develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild; and

''(B) collect and make available information on marine mammal health and health trends; and

''(2) in accordance with section 304(b) [now 404(b)] of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1421c(b)], as amended by this Act, issue a detailed contingency plan for responding to any unusual mortality event—

''(A) in proposed form by not later than 18 months after the date of enactment of this Act; and

''(B) in final form by not later than 24 months after the date of enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1374 of this title.

§ 1421b. Stranding response agreements

(a) In general

The Secretary may enter into an agreement under section 1382(c) of this title with any person to take marine mammals under section 1379(h)(1) of this title in response to a stranding.

(b) Required provision

An agreement authorized by subsection (a) of this section shall—

(1) specify each person who is authorized to perform activities under the agreement; and

(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

(c) Review

The Secretary shall periodically review agreements under section 1382(c) of this title that are entered into pursuant to this subchapter, for performance adequacy and effectiveness.

(Pub. L. 92–522, title IV, § 403, formerly title III, § 303, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5061; renumbered title IV, § 403, Pub. L. 103–238, § 24(b), Apr. 30, 1994, 108 Stat. 565.)

§ 1421c. Unusual mortality event response

(a) Response

(1) Working group

(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

(i) determining whether an unusual mortality event is occurring;

(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

(iii) developing the contingency plan in accordance with subsection (b) of this section, to assist the Secretary in responding to unusual mortality events.

(B) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

(2) Response timing

The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

(B) within 48 hours after receiving such notification—

(i) make a determination as to whether an unusual mortality event is occurring;

(ii) inform the stranding network participant of that determination; and

(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c) of this section.

(b) Contingency plan

(1) In general

The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

(2) Contents

The contingency plan required under this subsection shall include—

(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

(D) such requirements as are necessary to—

(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

(ii) assist in identifying the cause or causes of an unusual mortality event;

(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

(c) Onsite coordinators

(1) Designation

(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

(C) If, because of the wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

(2) Functions

(A) An Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons responding to an unusual mortality event in accordance with the contingency plan issued under subsection (b) of this section, except that—

(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this subchapter.

(Pub. L. 92–522, title IV, § 404, formerly title III, § 304, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5062; renumbered title IV, § 404, Pub. L. 103–238, § 24(b), Apr. 30, 1994, 108 Stat. 565.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1)(B), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1421, 1421d, 1421e of this title.

§ 1421d. Unusual mortality event activity funding

(a) Establishment of Fund

There is established in the Treasury an interest bearing fund to be known as the ''Marine Mammal Unusual Mortality Event Fund'', which shall consist of amounts deposited into the Fund under subsection (c) of this section.

(b) Uses

(1) In general

Amounts in the Fund—

(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 1421c(b) of this title or under the direction of an Onsite Coordinator for an unusual mortality event;

(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

(iii) for care and maintenance of marine mammal seized under section 1374(c)(2)(D) of this title; and

(B) shall remain available until expended.

(2) Pending claims

If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

(c) Deposits into Fund

There shall be deposited into the Fund—

(1) amounts appropriated to the Fund;

(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d) of this section.

(d) Acceptance of donations

For purposes of carrying out this subchapter and section 1374(c)(2)(D) of this title, the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

(Pub. L. 92–522, title IV, § 405, formerly title III, § 305, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5064; renumbered title IV, § 405, and amended Pub. L. 103–238, §§ 6, 16(b), 24(b), (c)(2), Apr. 30, 1994, 108 Stat. 542, 559, 565, 566.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–238, § 16(b), substituted ''an interest bearing fund'' for ''a fund''.

Subsec. (b)(1)(A)(i). Pub. L. 103–238, § 24(c)(2), made technical amendment to reference to section 1421c(b) of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(1)(A)(iii). Pub. L. 103–238, § 6(1), added cl. (iii).

Subsec. (d). Pub. L. 103–238, § 6(2), inserted ''and section 1374(c)(2)(D) of this title''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1421g, 1421h of this title.

§ 1421e. Liability

(a) In general

A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 1382(c) of this title is deemed to be an employee of the government for purposes of chapter 171 of title 28, with respect to actions of the person that are—

(1) in accordance with the agreement; and

(2) in the case of an unusual mortality event, in accordance with—

(A) the contingency plan issued under section 1421c(b) of this title;

(B) the instructions of an Onsite Coordinator designated under section 1421c(c) of this title; or

(C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

(b) Limitation

Subsection (a) of this section does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

(Pub. L. 92–522, title IV, § 406, formerly title III, § 306, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5064; renumbered title IV, § 406, and amended Pub. L. 103–238, § 24(b), (c)(3), (4), Apr. 30, 1994, 108 Stat. 565, 566.)

AMENDMENTS

1994—Subsec. (a)(2)(A), (B). Pub. L. 103–238, § 24(c)(3), (4), made technical amendment to references to section 1421c of this title to reflect renumbering of corresponding section of original act.

§ 1421f. National Marine Mammal Tissue Bank and tissue analysis

(a) Tissue Bank

(1) In general

The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the ''National Marine Mammal Tissue Bank''.

(2) Guidance for marine mammal tissue collection, preparation, and archiving

The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

(A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

(B) documentation of procedures used for collecting, preparing, and archiving those samples.

(3) Source of tissue

In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources in the wild, including—

(A) samples from marine mammals taken incidental to commercial fishing operations;

(B) samples from marine mammals taken for subsistence purposes;

(C) biopsy samples; and

(D) any other samples properly collected.

(b) Tissue analysis

The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for analyzing tissue samples (by use of the most effective and advanced diagnostic technologies and tools practicable) as a means to monitor and measure overall health trends in representative species or populations of marine mammals, including—

(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and

(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

(c) Data base

(1) In general

The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

(2) Contents

The data base established under this subsection shall include—

(A) reference data on the health of marine mammals and populations of marine mammals; and

(B) data on species of marine mammals that are subject to unusual mortality events.

(d) Access

The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

(1) marine mammal tissues in the Tissue Bank;

(2) analyses conducted pursuant to subsection (b) of this section; and

(3) marine mammal data in the data base maintained under subsection (c) of this section;

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

(Pub. L. 92–522, title IV, § 407, formerly title III, § 307, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5065; renumbered title IV, § 407, Pub. L. 103–238, § 24(b), Apr. 30, 1994, 108 Stat. 565.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1421g, 1421h of this title.

§ 1421g. Authorization of appropriations

There is authorized to be appropriated—

(1) to the Secretary for carrying out this subchapter (other than sections 1421d and 1421f of this title) $250,000 for each of fiscal years 1993 and 1994;

(2) to the Secretary for carrying out section 1421f of this title, $250,000 for each of fiscal years 1993 and 1994; and

(3) to the Fund, $500,000 for fiscal year 1993.

(Pub. L. 92–522, title IV, § 408, formerly title III, § 308, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5066; renumbered title IV, § 408, and amended Pub. L. 103–238, § 24(b), (c)(5), (6), Apr. 30, 1994, 108 Stat. 565, 566.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–238, § 24(c)(5), made technical amendment to references to sections 1421d and 1421f of this title to reflect renumbering of corresponding sections of original act.

Par. (2). Pub. L. 103–238, § 24(c)(6), made technical amendment to reference to section 1421f of this title to reflect renumbering of corresponding section of original act.

§ 1421h. Definitions

In this subchapter, the following definitions apply:

(1) The term ''Fund'' means the Marine Mammal Unusual Mortality Event Fund established by section 1421d(a) of this title.

(2) The term ''Office'' means the Office of Protected Resources, in the National Marine Fisheries Service.

(3) The term ''stranding'' means an event in the wild in which—

(A) a marine mammal is dead and is—

(i) on a beach or shore of the United States; or

(ii) in waters under the jurisdiction of the United States (including any navigable waters); or

(B) a marine mammal is alive and is—

(i) on a beach or shore of the United States and unable to return to the water;

(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

(4) The term ''stranding network participant'' means a person who is authorized by an agreement under section 1382(c) of this title to take marine mammals as described in section 1379(h)(1) of this title in response to a stranding.

(5) The term ''Tissue Bank'' means the National Marine Tissue Bank provided for under section 1421f(a) of this title.

(6) The term ''unusual mortality event'' means a stranding that—

(A) is unexpected;

(B) involves a significant die-off of any marine mammal population; and

(C) demands immediate response.

(Pub. L. 92–522, title IV, § 409, formerly title III, § 309, as added Pub. L. 102–587, title III, § 3003(a), Nov. 4, 1992, 106 Stat. 5066; renumbered title IV, § 409, and amended Pub. L. 103–238, § 24(b), (c)(7), (8), Apr. 30, 1994, 108 Stat. 565, 566.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–238, § 24(c)(7), made technical amendment to reference to section 1421d(a) of this title to reflect renumbering of corresponding section of original act.

Par. (5). Pub. L. 103–238, § 24(c)(8), made technical amendment to reference to section 1421f(a) of this title to reflect renumbering of corresponding section of original act.

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