

MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 2005

JULY 21, 2005.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2130]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2130) to amend the Marine Mammal Protection Act of 1972 to authorize research programs to better understand and protect marine mammals, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2130 is to amend the Marine Mammal Protection Act of 1972 to authorize research programs to better understand and protect marine mammals, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to protect and conserve marine mammal populations. The original Act established a moratorium on the taking or importing of marine mammals and marine mammal products except for certain activities which are regulated and permitted. The MMPA defines “take” as “to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal.” Under the MMPA, the Secretaries of Commerce and the Interior share jurisdiction of

marine mammals in the wild. Interior has jurisdiction over sea otters, polar bears, manatees, dugongs, and walruses, while Commerce has jurisdiction over all other marine mammals.

The MMPA has been amended numerous times since 1972; the last comprehensive reauthorization occurred in 1994. The authorization of appropriations for the MMPA expired in 1999. The Committee on Resources has held four oversight hearings and three legislative hearings with 72 witnesses over the last three Congresses.

In the 108th Congress, the Resources Committee passed three different bills which amended the MMPA. H.R. 1835 amended the MMPA definition of harassment and the incidental take authorization for military activities. This bill was enacted as part of Public Law 108–136. H.R. 2693 was a comprehensive reauthorization of the MMPA which included: broader changes to the definition of harassment and incidental take authorization; modifications to the take reduction plans; public display permit clarifications; authorizations for research and certain exports; and authorizations of appropriations for the Departments of Commerce and the Interior. H.R. 5104 contained certain provisions from H.R. 2693 including: the take reduction plan changes; public display and export permit clarifications; captive release prohibitions; and changes to the Prescott grant program. Both H.R. 2693 and H.R. 5104 passed out of the Resources Committee by voice vote; however, no further action was taken.

H.R. 2130 is similar to H.R. 5104, with these additions: it clarifies the notification process for marine mammal transfers where there is no change in ownership; it includes an emergency assistance process in the Prescott Marine Mammal Stranding Grant Program; and increases the funding for the Prescott program.

COMMITTEE ACTION

H.R. 2130 was introduced on May 5, 2005, by Congressman Wayne Gilchrest (R-MD). The bill was referred to the Committee on Resources. On May 18, 2005, the Full Resources Committee met to consider H.R. 2103. There were no amendments offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the bill as the “Marine Mammal Protection Act Amendments of 2005.”

Section 2. Amendment references

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

Section 3. Technical corrections

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

Section 4. Limited authority to export marine mammal products

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

Section 5. Captive release prohibition

This section amends section 102 of the MMPA to prohibit the release of captive marine mammals without prior approval from the Secretary. Temporary releases by the Navy are not subject to this prohibition.

Section 6. Annual report requirement

This section reinstates the annual reporting requirement on the status of marine mammal stocks to Congress by the Secretaries of Commerce and the Interior. It also requires any federal agency funding or conducting research on marine mammals to report to the Committee on Resources and Senate Commerce Committee.

Section 7. Permit clarifications

This section amends MMPA section 104(c)(7) to strengthen existing language which requires the Secretary to issue a public display permit to a facility holding a stranded animal that has been determined under the guidelines developed under MMPA section 402(a) to not meet the standards for release. The Committee does not intend that permits be given to those marine mammals that can be legitimately rehabilitated for release in the wild; however, the Committee is very concerned that the Secretary has not been issuing public display permits to facilities caring for stranded animals that are not viable release candidates. The Committee's intent is that facilities shall receive public display permits for animals that do not meet the release requirements. The Committee does not intend for the issuance of these permits to diminish research activities involving these animals and encourages the facilities to continue to work with the Secretaries to allow important research activities to continue on these animals.

The Committee commends the public display community for its role in the conservation and management of marine mammals. Activities sponsored by public display facilities—research, educational programs and presentations, animal husbandry, breeding, and rescue and rehabilitation—are important aspects to the conservation of marine mammals. The rescue and rehabilitation programs run by these facilities are critical to the survival of stranded animals and for many years participating institutions ran these programs using their own funds. In addition, these facilities play an invaluable role for the general public. These public display facilities are the only place for many Americans to view marine mammals and

learn about the conservation needs of these animals. These facilities help generate the general public's goodwill toward marine mammals and develops their support for conservation and management measures for these and many other marine species. By allowing facilities to display unreleasable stranded marine mammals, educational programs can be developed to further the public's awareness of potential threats to marine mammals.

This section also amends the export provisions of MMPA section 104 to clarify that the Secretary of Agriculture is the appropriate entity for determining the adequacy of facilities holding captive marine mammals. This section further clarifies that no marine mammal may be exported for the purpose of public display unless the Secretary of Agriculture determines and then notifies the relevant Secretary that the receiving facility meets standards of care and maintenance that are comparable to the standards of care and maintenance required for a person to receive a permit under this subsection for that purpose. The Secretaries of Commerce and the Interior will continue to make the export determination for marine mammals exported for scientific research, or enhancing the survival or recovery of a species or stock.

This section also clarifies that the Secretary may not require or request, through comity or any other means, that any exported marine mammal or its progeny remain subject to the jurisdiction of the United States when located in waters or on lands that are subject to the jurisdiction of another country.

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

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

This section also clarifies that the 15-day waiting period will not apply if a marine mammal is transferred between facilities under the same Department of Agriculture permit where the ownership of the animal does not change. However, a notice of the transfer must be sent to the appropriate Secretary after the animal has been relocated.

Section 8. Fines and penalties

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

Section 9. Marine mammal research grants

Section 110 of the MMPA is amended by this section to delete expired provisions and authorize the Secretary to make grants or other financial assistance to federal or State agencies, public or private institutions, or other persons to undertake research in subjects relevant to the protection and conservation of marine mam-

mals, and the ecosystem upon which they depend. The Secretary is authorized to receive gifts to carry out this section. An authorization of appropriation of \$1.5 million for each of the fiscal years 2006–2010 is also included.

Section 10. Fisheries gear development

This section amends section 111 of the MMPA to authorize the Secretary to carry out a program of research and development for the purpose of devising improved fishing methods and gear to reduce, to the maximum extent practicable, the incidental taking of marine mammals in connection with fishing operations. It authorizes a mini-grant program, subject to the availability of appropriations, and allows the Secretary to receive donations to carry out the grant program. An authorization of appropriation is included for \$1.5 million for each of the fiscal years 2006–2010.

Section 11. Tropical treaty conforming amendment

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

Section 12. Take reduction plans

This section amends section 118 of the MMPA to include recreational fisheries in the list of fisheries that could have interactions with marine mammals that are frequent or occasional and result in the incidental mortality and serious injury of marine mammals. The National Marine Fisheries Service (NMFS) of the Department of Commerce would be required to include both commercial and recreational fishermen’s interactions with marine mammals in assessing whether a particular fishery should be placed in either category I (frequent incidental mortality or serious injury) or category II (occasional incidental mortality and serious injury). All recreational fishermen who participate in a category I or II fishery would be required to obtain the same annual authorizations and file the same reports regarding marine mammal interactions as are now required of commercial fishermen. In such cases, a recreational fishing representative will also be included in the take reduction plan process.

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

The timelines in this section of the MMPA are modified to allow the Secretary of Commerce additional time to meet the requirements of this section. The Secretary will be given six extra months to complete the take reduction plans. The Committee was con-

cerned with groups using missed timelines as the basis for litigation against the Secretary. The Committee believes the extension to the timelines in this section will not reduce protections for marine mammals, but will provide litigation relief for the Secretary—allowing staff and funding to be used for conservation and management activities rather than preparing documents for litigation.

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

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

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

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

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

This section also clarifies that section 118(c)(3)(E), which applies to category III fisheries, is a requirement for commercial vessels

only. Owners of a vessel are not subject to penalties of the MMPA if they report any incidental mortality or injury of marine mammals in the course of the fishery.

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

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

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

Section 13. Pinniped research

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

This section also authorizes "Qualified Nonlethal Control Projects." The Secretary is authorized to issue grants to a State, local government, or interstate or regional agency to carry out and monitor or maintain a nonlethal control of nuisance pinnipeds project. The grants are authorized for up to two years and the recipient is required to report to the Secretary when the grant expires. The report is required to contain information on the methods and techniques used and the ensuing results. The federal share of these projects shall not exceed 75% of the overall cost. In-kind contributions are authorized for the non-federal share of the activity. This section authorizes an appropriation of \$1.5 million for these activities for each of fiscal years 2006–2010.

Section 14. Marine mammal commission

This section deletes the \$100 per diem rate cap which is currently in the MMPA. It also clarifies the staffing authorization for the Commission. Finally, it removes the requirement that the Com-

mission use the General Services Administration for its financial and administrative services.

Section 15. Stranding and entanglement response

This section authorizes the Secretary of Commerce to enter into agreements with qualified facilities to assist in removing line, gear, rope, net or other material from marine mammals while at sea.

This section prohibits the Secretary from retaining funds beyond those needed for administering the stranding and entanglement response program. The cap on administrative costs is reduced from 6 percent to 5 percent. The MMPA is also amended to allow the Secretary to accept gifts, devise and bequests to run the program. In addition, funding for the Prescott Marine Mammal Stranding Grant program is increased by \$2 million for a total of \$7 million for each of fiscal years 2006–2010. Finally, this section authorizes funding for the Unusual Mortality Event Fund.

This section also authorizes the Secretary to enter into cooperative agreements, contracts or other agreements to address stranding events that need emergency assistance. Emergency assistance is defined as stranding events that: are not an unusual mortality event; lead to an immediate increase in costs; may be cyclical or endemic; and may involve out-of-habitat animals. It also clarifies that funding for emergency assistance is not subject to the funding limit of \$100,000 and the matching requirement does not apply.

Section 16. Scrimshaw exemption

This section continues the authorization for permits for those individuals that obtained ivory prior to the enactment of the Endangered Species Act to continue to possess, carve, and sell the ivory for the length of the authorization contained in this bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

FEDERAL ADVISORY COMMITTEE STATEMENT

The bill reauthorizes the functions of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

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

COMPLIANCE WITH HOUSE RULE XIII

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

pared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill would increase direct spending and revenues by less than \$500,000 a year.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Marine Mammal Protection Act of 1972 to authorize research programs to better understand and protect marine mammals.

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

H.R. 2130—Marine Mammal Protection Act Amendment of 2005

Summary: H.R. 2130 would authorize appropriations for programs to protect and conserve marine mammals. CBO estimates that implementing the bill would cost \$1 million in 2006 and \$35 million over the 2006–2010 period, assuming appropriation of the authorized amounts. We also estimate that H.R. 2130 would increase both direct spending and revenues by less than \$500,000 a year.

H.R. 2130 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2130 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	12	12	12	12	12
Estimated Outlays	1	4	8	10	12

Basis of estimate: H.R. 2130 would authorize the appropriation of almost \$12 million a year over the 2006–2010 period for programs to protect and conserve marine mammals. The amount authorized for each year includes \$7 million for grants to organizations that rescue marine mammals, \$3 million for research on pinnipeds and marine mammals, \$1.5 million for efforts to design fishing equipment that minimizes adverse impacts on marine mammals, and \$125,000 for grants to respond to stranded animals. Based on historical spending patterns for similar programs, CBO estimates that fully funding those activities would cost \$1 million in 2006 and \$35 million over the 2006–2010 period.

In addition, H.R. 2130 could increase revenues and subsequent direct spending of those revenues. The bill would increase fines for

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

Intergovernmental and private-sector impact: H.R. 2130 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Megan Carroll. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

AN ACT To protect marine mammals; to establish a Marine Mammal Commission; for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the “Marine Mammal Protection Act of 1972”.

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Sec. 2. Findings and declaration of policy.

* * * * *

TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

Sec. 401. Establishment of program.

Sec. 402. Determination; data collection and dissemination.

[Sec. 403. Stranding response agreements.]

Sec. 403. *Stranding or entanglement response agreements.*

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

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

(1) * * *

* * * * *

(5)(A) * * *

* * * * *

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial *or recreational* fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

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

* * * * *

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

* * * * *

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

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

* * * * *

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

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

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

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

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

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

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

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

(i) * * *

* * * * *

PROHIBITIONS

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

(1) * * *

* * * * *

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

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

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

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

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

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

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

* * * * *

REGULATIONS ON TAKING OF MARINE MAMMALS

SEC. 103. (a) * * *

* * * * *

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

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

PERMITS

SEC. 104. (a) * * *

* * * * *

(c)(1) * * *

(2)(A) * * *

* * * * *

(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, *except that if the transport is for purposes of public display and the transfer is between facilities where the ownership and care of the marine mammal will be under the same license or registration issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.) then only a notice of transport is required.* The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

* * * * *

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

(A) * * *

* * * * *

(8)(A) * * *

(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, *except that if the transport is for purposes of public display and the transfer is between facilities where the ownership and care of the marine mammal will be under the same license or registration issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.) then only a notice of transport is required.*

* * * * *

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

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

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

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

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

(10) The Secretary shall establish and maintain an inventory of all marine mammals *held within the lands and waters of the United States* possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals *held within the lands and waters of the United States*. The Secretary shall update the inventory on an annual basis. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) * * *

* * * * *

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

* * * * *

PENALTIES

SEC. 105. (a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder, except as provided in section 118, may be assessed a civil penalty by the Secretary of not more than ~~【\$10,000】~~ \$20,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

* * * * *

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

VESSEL FINE, CARGO FORFEITURE, AND REWARDS

SEC. 106. (a) * * *

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

* * * * *

MARINE MAMMAL RESEARCH GRANTS

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

(a) *AUTHORIZATION OF ASSISTANCE; ANNUAL REPORT.*—

(1) *AUTHORIZATION OF ASSISTANCE.*—*The Secretary may make grants, or provide financial assistance in such other form*

as the Secretary considers appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects that are relevant to the protection and conservation of marine mammals, and the ecosystems upon which they depend, including, but not limited to, the Bering/Chukchi Sea ecosystem and the California coastal marine ecosystem.

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

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

* * * * *

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

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

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

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

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

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

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

subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

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

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

(c) *AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2006 through 2010.*

COMMERCIAL FISHERIES GEAR DEVELOPMENT

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

(a) *RESEARCH AND DEVELOPMENT PROGRAM.—*

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

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

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

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

* * * * *

(e) *GEAR RESEARCH MINI-GRANT PROGRAM.—*

(1) *IN GENERAL.—Subject to the availability of appropriations, the Secretary may establish a grant program to provide financial assistance for developing, manufacturing, testing, or designing new types of fishing gear designed to reduce to the*

maximum extent practicable the incidental taking (including incidental mortality and serious injury) of marine mammals.

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

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

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

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

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

(f) *AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2006 through 2010.*

* * * * *

APPLICATION TO OTHER TREATIES AND CONVENTIONS

SEC. 113. (a) * * *

* * * * *

(c) The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than April 1, 1995.

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

INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

SEC. 114. (a) * * *

* * * * *

(1)(1) * * *

* * * * *

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

(A) * * *

* * * * *

SEC. 117. STOCK ASSESSMENTS.

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

(1) * * *

* * * * *

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

(A) * * *

* * * * *

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

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

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

* * * * *

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

(a) IN GENERAL.—(1) Effective on the date of enactment of this section, and except as provided in section 114 and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of [commercial] fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of [commercial] fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate [within 7 years after the date of enactment of this section].

* * * * *

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

(6) Sections 103 and 104 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 the date of enactment of this section**.

(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 such date of enactment, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on **Merchant Marine and Fisheries** *Resources* of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

(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).

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

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

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

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

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

(c) REGISTRATION AND AUTHORIZATION.—(1) *The Secretary shall, within 90 days after the date of enactment of the Marine Mammal Protection Act Amendments of 2005—*

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of fisheries published under section 114(b)(1) in the Federal Register on August 24, 1994 (along with an explanation of such changes and a statement describing the marine

mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to—

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

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

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

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

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

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

* * * * *

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

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

purposes of this subsection for the period during which such exemption is valid];

* * * * *

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

* * * * *

(5)(A) * * *

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

* * * * *

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

(A) * * *

* * * * *

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

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

* * * * *

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

(A) * * *

* * * * *

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

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

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

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

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

* * * * *

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

(1) * * *

* * * * *

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

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

(2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within **【6】** 9 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of **【commercial fishing operations】** *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)* to levels less than the potential biological removal level established for that stock under section 117. The long-term goal of the

plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of **commercial fishing operations** *fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)* to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing *conservation benefits* of State or regional fishery management plans.

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

(4) Each take reduction plan shall include—

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

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

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

* * * * *

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

(B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such **commercial** 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 117(b) for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

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

(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all **commercial fisheries** *fisheries listed under subsection (c)(1)(A)(i) or (ii)* that cause incidental mortality and serious injury of marine mammals from such stock.

* * * * *

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

* * * * *

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

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

* * * * *

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

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

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

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

* * * * *

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

(A) * * *

* * * * *

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

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

* * * * *

(9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—

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

(B) require the use of alternative **[commercial]** fishing gear or techniques and new technologies, encourage the develop-

ment of such gear or technology, or convene expert skippers' panels;

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

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

* * * * *

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

(A) * * *

* * * * *

(3) Emergency regulations prescribed under this subsection—

(A) * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

(a) * * *

* * * * *

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

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

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

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

(I) **QUALIFIED NONLETHAL CONTROL PROJECTS.**—

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

(2) **APPLICATIONS.**—*The Secretary shall—*

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

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

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

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

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

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

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

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

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

(6) **REPORTING BY GRANTEE.**—

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

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

(7) **COST SHARING.**—

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

(B) **APPLICATION OF IN-KIND CONTRIBUTIONS.**—*The Secretary may apply to the non-Federal share of costs of a control project carried out with a grant under this subsection the fair market value of services or any other form of in-kind contribution to the project made by non-Federal interests that the Secretary determines to be an appropriate con-*

tribution equivalent to the monetary amount required for the non-Federal share of the activity.

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

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2006 through 2010.

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

TITLE II—MARINE MAMMAL COMMISSION

* * * * *

ADMINISTRATION OF COMMISSION

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

(1) * * *

* * * * *

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

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

* * * * *

TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

* * * * *

SEC. 402. DETERMINATION; DATA COLLECTION AND DISSEMINATION.

(a) * * *

(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 *or entangled* marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for deter-

mining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

* * * * *

[SEC. 403. STRANDING RESPONSE AGREEMENTS.]

SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a stranding *or entanglement*.

* * * * *

SEC. 406. LIABILITY.

(a) IN GENERAL.—A person who is authorized to respond to a stranding *or entanglement* pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

(1) * * *

* * * * *

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

(a) IN GENERAL.—(1) Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue Assistance Grant Program, to provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes. *All funds available to implement this section shall be distributed to eligible stranding network participants for the purposes set forth in this paragraph and paragraph (2), except as provided in subsection (f).*

(2) *Subject to the availability of appropriations, the Secretary may also enter into cooperative agreements, contracts, or such other agreements or arrangements as the Secretary considers appropriate to address stranding events requiring emergency assistance.*

[(2)] (3)(A) The Secretary shall ensure that, to the greatest extent practicable, funds provided as grants under this subsection are distributed equitably among the stranding regions designated as of the date of the enactment of the Marine Mammal Rescue Assistance Act of 2000, and in making such grants shall give preference to those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals in each of the respective regions, or subregions.

(B) In determining priorities among such regions, the Secretary may consider—

(i) any episodic stranding or any mortality event other than an event described in section [410(6)] 410(7), that occurred in any region in the preceding year;

* * * * *

(d) LIMITATION.—(1) The amount of a grant under this section shall not exceed \$100,000.

(2) *Funding for emergency stranding projects shall not be subject to the funding limit established in paragraph (1).*

(e) MATCHING REQUIREMENT.—

(1) IN GENERAL.—~~【The non-Federal】~~ *Except as provided in paragraph (2), the non-Federal* share of the costs of an activity conducted with a grant under this section shall be 25 percent of such costs.

(2) EMERGENCY ASSISTANCE.—*No non-Federal contribution shall be required for funding for a response to an emergency stranding event.*

~~【(2)】~~ (3) IN-KIND CONTRIBUTIONS.—The Secretary may apply to the non-Federal share of an activity conducted with a grant under this section the amount of funds, and the fair market value of property and services, provided by non-Federal sources and used for the activity.

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

~~(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of the amounts available each fiscal year to carry out this section, the Secretary may expend not more than 5 percent or \$80,000, whichever is greater, to pay the administrative costs and administrative expenses to implement the grant program under subsection (a). Any such funds retained by the Secretary for a fiscal year for such costs and expenses that are not used for such costs and expenses before the end of the fiscal year shall be provided as grants under subsection (a).~~

(g) DEFINITIONS.—In this section:

(1) * * *

(2) EMERGENCY ASSISTANCE.—*The term “emergency assistance” means assistance provided for a stranding event that—*

(A) is not an unusual mortality event as defined in section 409(6);

(B) leads to an immediate increase in required costs for stranding response, recovery, or rehabilitation in excess of regularly scheduled costs;

(C) may be cyclical or endemic; and

(D) may involve out-of-habitat animals.

~~【(2)】~~ (3) SECRETARY.—The term “Secretary” has the meaning given that term in section 3(12)(A).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section ~~【\$5,000,000 for each of fiscal years 2001 through 2003】~~ *\$7,000,000 for each of fiscal years 2006 through 2010*, to remain available until expended, of which—

(1) ~~【\$4,000,000】~~ *\$6,000,000* may be available to the Secretary of Commerce; and

* * * * *

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

SEC. 409. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated—

(1) * * *

* * * * *

(3) to the Fund, ~~【\$500,000 for fiscal year 1993】~~ *\$125,000 for each of fiscal years 2006 through 2010.*

SEC. 410. DEFINITIONS.

In this title, the following definitions apply:

(1) *The term “entanglement” means an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and is—*

(A) *on a beach or shore of the United States; or*

(B) *in waters under the jurisdiction of the United States.*

[(1)] (2) The term “Fund” means the Marine Mammal Unusual Mortality Event Fund established by section 405(a).

[(2)] (3) The term “Office” means the Office of Protected Resources, in the National Marine Fisheries Service.

[(3)] (4) The term “stranding” means an event in the wild in which—

(A) * * *

* * * * *

[(4)] (5) The term “stranding network participant” means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

[(5)] (6) The term “Tissue Bank” means the National Marine Tissue Bank provided for under section 407(a).

[(6)] (7) The term “unusual mortality event” means a stranding that—

(A) * * *

* * * * *

DOLPHIN PROTECTION CONSUMER INFORMATION ACT
DOLPHIN PROTECTION

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

* * * * *

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

(1) * * *

(2) the term “eastern tropical Pacific Ocean” means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, [160 degrees west longitude] *150 degrees west longitude*, and the western coastlines of North, Central, and South America;

* * * * *

ADDITIONAL VIEWS

H.R. 2130 is the product of lengthy negotiations with the Majority. Ideally, we would draft a very different bill, but this effort is intended to avoid major controversies.

Some marine mammals in U.S. waters have rebounded since the passage of the original Marine Mammal Protection Act in 1972 and the international moratorium on commercial whaling in 1986. However, the status of many others remains poorly understood and some struggle on the brink of extinction.

H.R. 2130 modestly improves the Marine Mammal Protection Act. However, as Ranking Minority member Rahall noted at the markup, the bill fails to meaningfully address bycatch and harassment issues, particularly the exemptions for Department of Defense enacted over our objections in the prior Congress. During committee consideration of this measure, we received assurances from subcommittee Chairman Gilchrest that this is the beginning of a process and we look forward to working with the majority to address those concerns in subsequent legislation.

NICK J. RAHALL, II.
FRANK PALLONE, JR.

