

103^D CONGRESS
2^D SESSION

H. R. 2760

AN ACT

To authorize the Marine Mammal Protection Act of 1972 for 6 fiscal years, to establish a new regime to govern the incidental taking of marine mammals in the course of commercial fishing operations, and for other purposes.

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To authorize the Marine Mammal Protection Act of 1972 for 6 fiscal years, to establish a new regime to govern the incidental taking of marine mammals in the course of commercial fishing operations, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marine Mammal Pro-
5 tection Act Amendments of 1994”.

1 **SEC. 2. AMENDMENT OF MARINE MAMMAL PROTECTION**
2 **ACT OF 1972.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Marine Mammal Protec-
8 tion Act of 1972 (16 U.S.C. 1361 et seq.).

9 **SEC. 3. FINDINGS AND DECLARATION OF POLICY.**

10 Section 2 (16 U.S.C. 1361) is amended—

11 (1) in paragraph (2) by inserting “essential
12 habitats, including” after “made to protect”; and

13 (2) in paragraph (5) in the matter following
14 subparagraph (B) by inserting “and their habitats”
15 before “is therefore necessary”.

16 **SEC. 4. MORATORIUM AND EXCEPTIONS.**

17 (a) Section 101(a) (16 U.S.C. 1371(a)) is amended—

18 (1) by amending paragraph (1) to read as fol-
19 lows:

20 “(1) Consistent with the provisions of section
21 104, permits may be issued by the Secretary for tak-
22 ing, and importation for purposes of scientific re-
23 search, public display, photography for educational
24 or commercial purposes, or enhancing the survival or
25 recovery of a species or stock, or for importation of
26 polar bear parts (other than internal organs) taken

1 in sport hunts in Canada. Such permits, except per-
2 mits issued under section 104(c)(5), may be issued
3 if the taking or importation proposed to be made is
4 first reviewed by the Marine Mammal Commission
5 and the Committee of Scientific Advisors on Marine
6 Mammals established under title II. The Commis-
7 sion and Committee shall recommend any proposed
8 taking or importation, other than importation under
9 section 104(c)(5), which is consistent with the pur-
10 poses and policies of section 2 of this Act. If the
11 Secretary issues such a permit for importation, the
12 Secretary shall issue to the importer concerned a
13 certificate to that effect in such form as the Sec-
14 retary of the Treasury prescribes, and such importa-
15 tion may be made upon presentation of the certifi-
16 cate to the customs officer concerned.”;

17 (2) in paragraph (2) in the first sentence by
18 striking “and permits may” and all that follows
19 through “section 103.” and inserting “and author-
20 izations may be granted therefor under section 118
21 subject to regulations prescribed by the Secretary.”;

22 (3) in paragraph (3)(B)—

23 (A) by inserting “, photography for edu-
24 cational or commercial purposes,” after “pur-
25 poses”; and

1 (B) by inserting “or as provided for under
2 paragraph (5) of this subsection,” after “sub-
3 section,”;

4 (4) by amending paragraph (4) to read as fol-
5 lows:

6 “(4)(A) Except as provided in subparagraph
7 (C), the provisions of this Act shall not apply to the
8 use of measures—

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

13 “(ii) by the owner of other private prop-
14 erty, or an agent, bailee, or employee of such
15 owner, to deter a marine mammal from damag-
16 ing private property;

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

19 “(iv) by a government employee, to deter a
20 marine mammal from damaging public prop-
21 erty,

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

24 “(B) The Secretary shall, through consultation
25 with appropriate experts, and after notice and op-

1 portunity for public comment, publish in the Federal
2 Register a list of guidelines for use in safely deter-
3 ring marine mammals. In the case of marine mam-
4 mals listed as endangered species or threatened spe-
5 cies under the Endangered Species Act of 1973, the
6 Secretary shall recommend specific measures which
7 may be used to nonlethally deter marine mammals.
8 Actions to deter marine mammals consistent with
9 such guidelines shall not be a violation of this Act.

10 “(C) If the Secretary determines, using the best
11 scientific information available, that certain forms of
12 deterrence have a significant adverse effect on ma-
13 rine mammals, the Secretary may prohibit such de-
14 terrent methods, after notice and opportunity for
15 public comment, through regulation under this Act.

16 “(D) The authority to deter marine mammals
17 pursuant to subparagraph (A) applies to all marine
18 mammals, including all stocks designated as de-
19 pleted under this Act.”.

20 (5) in paragraph (5)(A) by inserting “, other
21 than by harassment,” after “taking” the first place
22 it appears;

23 (6) in paragraph (5) by adding at the end the
24 following new subparagraphs:

1 “(D)(i) Upon request therefor by citizens of the
2 United States who engage in a specified activity
3 (other than commercial fishing) within a specific ge-
4 ographic region, the Secretary shall authorize, for
5 periods of not more than 1 year, subject to such
6 conditions as the Secretary may specify, the inciden-
7 tal, but not intentional, taking by harassment of
8 small numbers of marine mammals of a species or
9 population stock by such citizens while engaging in
10 that activity within that region if the Secretary finds
11 that such harassment during each period con-
12 cerned—

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

15 “(II) will not have an unmitigable adverse
16 impact on the availability of such species or
17 stock for taking for subsistence uses pursuant
18 to subsection (b), or section 109(f) or 119.

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

21 “(I) permissible methods of taking pursu-
22 ant to such activity, and other means of
23 effecting the least practicable impact on such
24 species or stock and its habitat, paying particu-
25 lar attention to rookeries, mating grounds, and

1 areas of similar significance, and on the avail-
2 ability of such species or stock for subsistence
3 uses pursuant to subsection (b) or section
4 109(f) or 119,

5 “(II) the measures that the Secretary de-
6 termines are necessary to ensure no unmitigable
7 adverse impact on the availability of the species
8 or stock for subsistence uses pursuant to sub-
9 section (b) or section 109(f) or 119, and

10 “(III) requirements pertaining to the mon-
11 itoring and reporting of such taking, including
12 requirements for the independent peer review of
13 proposed monitoring plans or other research
14 proposals where the proposed activity may af-
15 fect the availability of a species or stock for
16 taking for subsistence uses pursuant to sub-
17 section (b) or section 109(f) or 119.

18 “(iii) The Secretary shall publish a proposed
19 authorization not later than 45 days after receiving
20 an application under this subparagraph and request
21 public comment through notice in the Federal Reg-
22 ister, newspapers of general circulation, and appro-
23 priate electronic media and to all locally affected
24 communities for a period of 30 days after publica-
25 tion. Not later than 45 days after the close of the

1 public comment period, if the Secretary makes the
2 findings set forth in clause (i), the Secretary shall
3 issue an authorization with appropriate conditions to
4 meet the requirements of clause (ii).

5 “(iv) The Secretary may annually renew an au-
6 thorization issued under this subparagraph after
7 providing for 30 days of public comment and con-
8 sulting with the parties affected by the authoriza-
9 tion, if the Secretary finds that the requirements of
10 clause (i) continue to be met.

11 “(v) The Secretary shall establish additional
12 conditions or restrictions on an authorization re-
13 newed under clause (iv) if the Secretary finds, based
14 on public comment, that such conditions or restric-
15 tions are necessary to meet the provisions of clause
16 (ii).

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

20 “(vii) A person conducting an activity for which
21 an authorization has been granted under this sub-
22 paragraph shall not be subject to the penalties of
23 this Act for taking by harassment that occurs in
24 compliance with such authorization.

1 “(E) The Secretary may issue a permit under
2 this paragraph for periods of up to 3 years for the
3 incidental, but not the intentional, taking by persons
4 using vessels of the United States and vessels which
5 have valid fishing permits issued by the Secretary in
6 accordance with section 204(b) of the Magnuson
7 Fishery Conservation and Management Act (16
8 U.S.C. 1824(b)), while engaging in commercial fish-
9 ing operations, of small numbers of marine mam-
10 mals from a species or population stock that is listed
11 as an endangered species or threatened species
12 under the Endangered Species Act of 1973. Such
13 permit may be issued only if the Secretary deter-
14 mines, after notice and opportunity for public com-
15 ment, that—

16 “(i) such taking will have a negligible im-
17 pact on the species or stock;

18 “(ii) a program is in place which will allow
19 reliable estimation and monitoring of the level
20 of incidental take; and

21 “(iii) a recovery plan has been developed or
22 is in the process of being developed for the spe-
23 cies or stock pursuant to the Endangered Spe-
24 cies Act of 1973. A permit may be issued under

1 this subparagraph to an organization represent-
2 ing more than 1 individual or fishing vessel.

3 “(F) If the Secretary determines that the issu-
4 ance of a permit under this paragraph for a species
5 or stock has resulted or is likely to result in levels
6 of incidental takes which will have an impact that is
7 more than negligible on the species or stock, the
8 Secretary shall modify, suspend, or revoke the per-
9 mit. In making a determination under this subpara-
10 graph, the Secretary shall consider the level of inci-
11 dental takes by each permit holder in a fishery and
12 whether a permit holder has failed to comply with
13 the terms and conditions of the permit. The Sec-
14 retary shall notify the permit holder before modify-
15 ing, suspending, or revoking a permit.

16 “(G) The Secretary shall prescribe such proce-
17 dures as are necessary to carry out this paragraph,
18 including the form and manner in which application
19 for permits may be made.

20 “(H) This paragraph shall not govern the inci-
21 dental taking of California sea otters and shall not
22 be deemed to amend or repeal the Act of November
23 7, 1986 (Public Law 99–625; 100 Stat. 3500).”.

24 (7) by adding at the end the following new
25 paragraph:

1 “(6)(A) A marine mammal product may be im-
2 ported into the United States if the product—

3 “(i) was legally possessed and exported by
4 any citizen of the United States in conjunction
5 with travel outside the United States, provided
6 that the product is imported into the United
7 States by the same person upon the termination
8 of travel and is registered at the time of export
9 and import;

10 “(ii) was acquired outside of the United
11 States as part of a cultural exchange by an In-
12 dian, Aleut, or Eskimo residing in Alaska, and
13 is registered at the time of import; or

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

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

21 “(i) ‘Native inhabitant of Russia, Canada,
22 or Greenland’ means a person residing in Rus-
23 sia, Canada, or Greenland who is related by
24 blood to, is a member of the same clan or eth-
25 nological grouping as, or shares a common her-

1 itage with, an Indian, Aleut, or Eskimo residing
2 in Alaska; and

3 “(ii) ‘cultural exchange’ means the sharing
4 or exchange of ideas, information, gifts, cloth-
5 ing, or handicrafts between an Indian, Aleut, or
6 Eskimo residing in Alaska and a Native inhab-
7 itant of Russia, Canada, or Greenland, includ-
8 ing for the purpose of rendering of raw marine
9 mammal parts into clothing or handicrafts
10 through carving, painting, sewing, or decorating
11 but does not include an exchange for commer-
12 cial purposes.

13 “(C) Raw marine mammal parts imported
14 under subparagraph (A)(ii) or (iii) shall be marked
15 or tagged under the requirements of section
16 109(i).”.

17 (b) Section 101(c) is amended to read as follows:

18 “(c) It shall not be a violation of this Act to take
19 a marine mammal if such taking is imminently necessary
20 in self-defense or to save the life of a person in immediate
21 danger, and such taking is reported to the Secretary with-
22 in 48 hours.”.

23 **SEC. 5. DEPLETION DETERMINATION.**

24 Section 101(b) (16 U.S.C. 1371) is amended by add-
25 ing the following at the end: “Before making a determina-

1 tion under this subsection that a species or stock of ma-
2 rine mammal is depleted, the Secretary shall identify and
3 make available to the public the reasons for making a de-
4 termination and provide opportunity, at the request of any
5 interested party, for a hearing on the record with respect
6 to the determination.”.

7 **SEC. 6. PERMITS.**

8 (a) PROHIBITIONS.—Section 102(a) (16 U.S.C.
9 1372(a)) is amended—

10 (1) in paragraph (2)(B) by striking “for any
11 purpose in any way connected with the taking or im-
12 portation of” and inserting “to take or import”; and

13 (2) in paragraph (4) by—

14 (A) striking “or offer to purchase or sell”
15 and inserting “export, or offer to purchase, sell,
16 or export”;

17 (B) striking “product; and” and inserting
18 “product—”; and

19 (C) inserting after and below the text of
20 the paragraph the following:

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

22 or

23 “(B) for any purpose other than public
24 display, scientific research, or enhancing the

1 survival of a species or stock as provided for
2 under subsection 104(c); and”.

3 (b) PERMITS.—Section 104 (16 U.S.C. 1374) is
4 amended—

5 (1) in subsection (a) by inserting “except for
6 the incidental taking of marine mammals in the
7 course of commercial fishing operations” before the
8 period at the end;

9 (2) in subsection (c)—

10 (A) in paragraph (1) in the first sentence
11 by striking “and after”;

12 (B) by amending paragraph (2) to read as
13 follows:

14 “(2)(A) A permit may be issued to take or im-
15 port a marine mammal for the purpose of public dis-
16 play only to a person which the Secretary deter-
17 mines—

18 “(i) offers a program for education or con-
19 servation purposes that is based on profes-
20 sionally recognized standards of the public dis-
21 play community;

22 “(ii) is registered or holds a license issued
23 under 7 U.S.C. 2131; and

24 “(iii) maintains facilities for the public dis-
25 play of marine mammals that are open to the

1 public on a regularly scheduled basis and that
2 access to such facilities is not limited or re-
3 stricted other than by charging of an admission
4 fee.

5 “(B) A permit under this paragraph shall grant
6 to the person to which it is issued the right, without
7 obtaining any additional permit or authorization
8 under this Act, to—

9 “(i) take, import, purchase, offer to pur-
10 chase, possess, or transport the marine mam-
11 mal that is the subject of the permit; and

12 “(ii) sell, export, or otherwise transfer pos-
13 session of the marine mammal, or offer to sell,
14 export, or otherwise transfer possession of the
15 marine mammal—

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

20 “(II) for the purpose of scientific re-
21 search, to a person that meets the require-
22 ments of paragraph (3); or

23 “(III) for the purpose of enhancing
24 the survival or recovery of a species or

1 stock, to a person that meets the require-
2 ments of paragraph (4).

3 “(C) A person to which a marine mammal is
4 sold or exported or to which possession of a marine
5 mammal is otherwise transferred under the author-
6 ity of subparagraph (B) shall have the rights and re-
7 sponsibilities described in subparagraph (B) with re-
8 spect to the marine mammal without obtaining any
9 additional permit or authorization under this Act.
10 Such responsibilities shall be limited to—

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

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

17 “(iii) for the purpose of enhancing the sur-
18 vival or recovery of a species or stock, the re-
19 sponsibility to meet the requirements of para-
20 graph (4).

21 “(D) If the Secretary—

22 “(i) finds in concurrence with the Sec-
23 retary of Agriculture, that a person that holds
24 a permit under this paragraph for a marine
25 mammal, or a person exercising rights under

1 subparagraph (C), no longer meets the require-
2 ments of subparagraph (A)(ii) and is not rea-
3 sonably likely to meet those requirements in the
4 near future, or

5 “(ii) finds that a person that holds a per-
6 mit under this paragraph for a marine mam-
7 mal, or a person exercising rights under sub-
8 paragraph (C), no longer meets the require-
9 ments of subparagraph (A)(i) or (iii) and is not
10 reasonably likely to meet those requirements in
11 the near future,

12 the Secretary may revoke the permit in accordance
13 with section 104(e), seize the marine mammal, or
14 cooperate with other persons authorized to hold ma-
15 rine mammals under this Act for disposition of the
16 marine mammal. The Secretary may recover from
17 the person expenses incurred by the Secretary for
18 that seizure.

19 “(E) No marine mammal held pursuant to a
20 permit issued under subparagraph (A), or by a per-
21 son exercising rights under subparagraph (C), may
22 be sold, purchased, exported, or transported unless
23 the Secretary is notified of such action no later than
24 15 days before such action, and such action is for
25 purposes of public display, scientific research, or en-

1 hancing the survival or recovery of a species or
2 stock. The Secretary may only require the notifica-
3 tion to include the information required for the in-
4 ventory established under paragraph (10).”;

5 (C) by amending paragraph (3) to read as
6 follows:

7 “(3)(A) The Secretary may issue a permit
8 under this paragraph for scientific research purposes
9 that may result in a taking of a marine mammal to
10 an applicant which submits with its permit applica-
11 tion information indicating that the taking is re-
12 quired to further a bona fide scientific purpose. The
13 Secretary may issue a permit under this paragraph
14 before the end of the public review and comment pe-
15 riod required under subsection (d)(2) if delaying is-
16 suance of the permit could result in harm to a spe-
17 cies, population, or individual, or in loss of unique
18 research opportunities.

19 “(B) No permit issued for purposes of scientific
20 research shall authorize the lethal taking of a ma-
21 rine mammal unless the applicant demonstrates that
22 a nonlethal method of conducting the research is not
23 feasible. The Secretary shall not issue a permit for
24 research which involves the lethal taking of a marine
25 mammal from a species or stock that is depleted,

1 unless the Secretary determines that the results of
2 such research will directly benefit that species or
3 stock, or that such research fulfills a critically im-
4 portant research need.

5 “(C) Not later than 120 days after the date of
6 enactment of the Marine Mammal Protection Act
7 Amendments of 1994, the Secretary shall issue a
8 general authorization and implementing regulations
9 allowing bona fide scientific research that may result
10 only in taking by Level B harassment of a marine
11 mammal. Such authorization shall apply to persons
12 which submit, by 60 days before commencement of
13 such research, a letter of intent via certified mail to
14 the Secretary containing the following:

15 “(i) The species or stocks of marine mam-
16 mals which may be harassed.

17 “(ii) Geographic location of the research.

18 “(iii) The period of time over which the re-
19 search will be conducted.

20 “(iv) The purpose of the research, includ-
21 ing a description of how the definition of bona
22 fide research as established under this Act
23 would apply.

24 “(v) Methods to be used to conduct the re-
25 search.

1 Not later than 30 days after receipt of a letter of
2 intent to conduct scientific research under the gen-
3 eral authorization, the Secretary may notify the ap-
4 plicant that the proposed research is likely to result
5 in the taking, including Level A harassment, of a
6 marine mammal, and that subparagraph (A) applies.
7 If no such notification is received, the proposed re-
8 search shall be covered under the general authoriza-
9 tion.”; and

10 (D) by adding at the end the following new
11 paragraphs:

12 “(5)(A) The Secretary may issue a permit for
13 the importation of polar bear parts (other than in-
14 ternal organs) taken in sport hunts in Canada, in-
15 cluding polar bears taken prior to the date of enact-
16 ment of the Marine Mammal Protection Act Amend-
17 ments of 1994, to an applicant which submits with
18 its permit application proof that the polar bear was
19 legally harvested in Canada. Such a permit shall be
20 issued if the Secretary, in consultation with the Ma-
21 rine Mammal Commission and after notice and op-
22 portunity for public comment, finds that—

23 “(i) Canada has a monitored and enforced
24 sport hunting program consistent with the pur-

1 poses of the Agreement on the Conservation of
2 Polar Bears;

3 “(ii) Canada has a sport hunting program
4 based on scientifically sound quotas ensuring
5 sustainable populations;

6 “(iii) the export and subsequent import are
7 consistent with the provisions of the Convention
8 on International Trade in Endangered Species
9 of Wild Fauna and Flora and other inter-
10 national agreements and conventions; and

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

14 “(B) The Secretary shall establish and charge
15 a reasonable fee for permits issued under this para-
16 graph. All fees collected under this paragraph shall
17 be available to the Secretary for use in developing
18 and implementing cooperative research and manage-
19 ment programs for the conservation of polar bears in
20 Alaska and Russia pursuant to section 113(d).

21 “(6) A permit may be issued for photography
22 for educational or commercial purposes involving
23 marine mammals in the wild only to an applicant
24 which submits with its permit application informa-
25 tion indicating that the taking will be limited to

1 Level B harassment, and the manner in which the
2 products of such activities will be made available to
3 the public.

4 “(7) Upon request by a person for a permit
5 under paragraph (2), (3), or (4) for a marine mam-
6 mal which is in the possession of any person author-
7 ized to possess it under this Act and which is deter-
8 mined under guidance under section 402(a) not to
9 be releasable to the wild, the Secretary shall issue
10 the permit to the person requesting the permit if
11 that person—

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

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

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

21 “(8)(A) No additional permit or authorization
22 shall be required to possess, sell, purchase, trans-
23 port, export, or offer to sell or purchase the progeny
24 of marine mammals taken or imported under this

1 subsection, if such possession, sale, purchase, trans-
2 port, export, or offer to sell or purchase is—

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

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

10 “(iii) for the purpose of enhancing the sur-
11 vival or recovery of a species or stock, and by
12 or to, respectively, a person which meets the re-
13 quirements of paragraph (4).

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

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

21 “(II) notify the Secretary of the sale, pur-
22 chase, or transport of such progeny no later
23 than 15 days before such action.

24 “(ii) The Secretary may only require notifica-
25 tion under clause (i) to include the information re-

1 quired for the inventory established under paragraph
2 (10).

3 “(C) Any progeny of a marine mammal born in
4 captivity before the date of the enactment of the Ma-
5 rine Mammal Protection Act Amendments of 1994
6 and held in captivity for the purpose of public dis-
7 play shall be treated as though born after that date
8 of enactment.

9 “(9) No marine mammal may be exported for
10 the purpose of public display, scientific research, or
11 enhancing the survival or recovery of a species or
12 stock unless the receiving facility meets standards
13 that are comparable to the requirements that a per-
14 son must meet to receive a permit under this sub-
15 section for that purpose.

16 “(10) The Secretary shall establish and main-
17 tain an inventory of all marine mammals possessed
18 pursuant to permits issued under paragraph (2)(A),
19 by persons exercising rights under paragraph (2)(C),
20 and all progeny of such marine mammals. The in-
21 ventory shall contain, for each marine mammal, only
22 the following information which shall be provided by
23 a person holding a marine mammal under this Act:

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

1 “(B) The sex of the marine mammal.

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

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

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

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

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

13 “(H) The date of death of the marine
14 mammal and the cause of death when deter-
15 mined.”; and

16 (3) in subsection (e)(1) by—

17 (A) striking “or” at the end of subpara-
18 graph (A);

19 (B) striking the period at the end of sub-
20 paragraph (B) and inserting “, or”; and

21 (C) adding at the end the following new
22 subparagraph:

23 “(C) if, in the case of a permit under sub-
24 section (c)(5) authorizing importation of polar bear
25 parts, the Secretary, in consultation with the appro-

1 piate authority in Canada, determines that the sus-
2 tainability of Canada’s polar bear populations are
3 being adversely affected or that sport hunting may
4 be having a detrimental effect on maintaining polar
5 bear populations throughout their range.”.

6 (c) EXISTING PERMITS.—Any permit issued under
7 section 104(c)(2) of the Marine Mammal Protection Act
8 of 1972 (16 U.S.C. 1374(c)(2)) before the date of the en-
9 actment of this Act is hereby modified to be consistent
10 with that section as amended by this Act.

11 **SEC. 7. PURPOSE AND USE OF THE FUND.**

12 Section 405 (16 U.S.C. 1421d) as amended by this
13 Act is further amended—

14 (1)(A) in subsection (b)(1)(A) by striking
15 “and” at the end of clause (i); and

16 (B) by inserting a new clause (iii) as follows:

17 “(iii) for care and maintenance of a marine
18 mammal seized under section 104(c)(2)(C);
19 and”; and

20 (2) in subsection (d) by striking “For purposes
21 of carrying out this title, the” and inserting “The”.

22 **SEC. 8. APPLICATION TO OTHER TREATIES AND CONVEN-**
23 **TIONS.**

24 Section 113 (16 U.S.C. 1383) is amended by—

1 (1) designating the existing paragraph as sub-
2 section (a); and

3 (2) adding at the end the following new sub-
4 sections:

5 “(b) Not later than 1 year after the date of enact-
6 ment of the Marine Mammal Protection Act Amendments
7 of 1994, the Secretary of the Interior shall, in consultation
8 with the contracting parties, initiate a review of the effec-
9 tiveness of the Agreement on the Conservation of Polar
10 Bears, as provided for in Article IX of the Agreement, and
11 establish a process by which future reviews shall be con-
12 ducted.

13 “(c) The Secretary of the Interior, in consultation
14 with the Secretary of State and the Marine Mammal Com-
15 mission, shall review the effectiveness of United States im-
16 plementation of the Agreement on the Conservation of
17 Polar Bears, particularly with respect to the habitat pro-
18 tection mandates contained in Article II. The Secretary
19 shall report the results of this review to the Committee
20 on Merchant Marine and Fisheries of the House of Rep-
21 resentatives and the Committee on Commerce, Science,
22 and Transportation of the Senate not later than April 1,
23 1995.

24 “(d) Not later than 6 months after the date of enact-
25 ment of the Marine Mammal Protection Act Amendments

1 of 1994, the Secretary of the Interior, acting through the
2 Secretary of State and in consultation with the Marine
3 Mammal Commission and the State of Alaska, shall con-
4 sult with the appropriate officials of the Russian Federa-
5 tion on the development and implementation of enhanced
6 cooperative research and management programs for the
7 conservation of polar bears in Alaska and Russia. The
8 Secretary shall report the results of this consultation and
9 provide periodic progress reports on the research and
10 management programs to the Committee on Merchant
11 Marine and Fisheries of the House of Representatives and
12 the Committee on Commerce, Science and Transportation
13 of the Senate.”.

14 **SEC. 9. TAKING OF MARINE MAMMALS INCIDENTAL TO**
15 **COMMERCIAL FISHING OPERATIONS; COOP-**
16 **ERATIVE AGREEMENTS IN ALASKA.**

17 (a) IN GENERAL.—Title I (16 U.S.C. 1371 et seq.)
18 is amended by adding at the end the following new sec-
19 tions:

20 **“SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO**
21 **COMMERCIAL FISHING OPERATIONS.**

22 “(a) IN GENERAL.—

23 “(1) Effective on the date of enactment of the
24 Marine Mammal Protection Act Amendments of
25 1994 and except as provided in paragraphs (2), (3),

1 and (4), the provisions of this section shall govern
2 the incidental taking of marine mammals in the
3 course of commercial fishing operations by persons
4 using vessels of the United States and vessels which
5 have valid fishing permits issued by the Secretary in
6 accordance with section 204(b) of the Magnuson
7 Fishery Conservation and Management Act (16
8 U.S.C. 1824(b)). It shall be the immediate goal that
9 the incidental kill or serious injury of marine mam-
10 mals permitted in the course of commercial fishing
11 operations be reduced to insignificant levels ap-
12 proaching a zero mortality and serious injury rate
13 within 5 years after the date of enactment of the
14 Marine Mammal Protection Act Amendments of
15 1994.

16 “(2) Section 101 and not this section shall gov-
17 ern the incidental taking of a marine mammal listed
18 as an endangered species or threatened species
19 under the Endangered Species Act of 1973.

20 “(3) Section 104(h) and title III and not this
21 section shall govern the taking of marine mammals
22 in the course of commercial purse seine fishing for
23 yellowfin tuna in the eastern tropical Pacific Ocean.

24 “(4) This section shall not govern the incidental
25 taking of California sea otters and shall not be

1 deemed to amend or repeal the Act of November 7,
2 1986 (Public Law 99–625; 100 Stat. 3500).

3 “(5) Except as provided in section 101(c), the
4 intentional lethal take of any marine mammal in the
5 course of commercial fishing operations is prohib-
6 ited.

7 “(b) SCIENTIFIC CONSULTATION.—

8 “(1) Not later than 60 days after the date of
9 enactment of the Marine Mammal Protection Act
10 Amendments of 1994, the Secretary shall, in con-
11 sultation with the Marine Mammal Commission, es-
12 tablish independent scientific review groups rep-
13 resenting Alaska, the Pacific coast (including Ha-
14 waii), the Gulf of Mexico, and the Atlantic coast
15 consisting of individuals with expertise in marine
16 mammal biology and ecology, population dynamics
17 and modeling, and commercial fishing technology
18 and practices, and representatives of coastal States,
19 for the purposes of reviewing proposed actions under
20 this section. The groups shall advise the Secretary
21 on—

22 “(A) population estimates for those marine
23 mammal stocks taken incidental to commercial
24 fishing operations;

1 “(B) the population status and trends of
2 such stocks;

3 “(C) uncertainties and research needed re-
4 garding stock separation, abundance, or trends,
5 and factors affecting the distribution, size, or
6 productivity of the stock;

7 “(D) uncertainties and research needed re-
8 garding the species, number, ages, gender, and
9 reproductive status of marine mammals taken
10 incidental to commercial fishing operations;

11 “(E) research needed to identify modifica-
12 tions in fishing gear and practices likely to re-
13 duce the mortality and serious injury of marine
14 mammals incidental to commercial fishing oper-
15 ations;

16 “(F) the potential impacts of habitat de-
17 struction, including marine pollution and natu-
18 ral environmental change, on specific marine
19 mammal species or stocks; and

20 “(G) any other issue which the Secretary
21 or the groups consider appropriate.

22 “(2) The scientific review groups established
23 under this subsection shall not be subject to the
24 Federal Advisory Committee Act (5 App. U.S.C.).

1 “(3) Members of the scientific review groups
2 shall serve without compensation, but may be reim-
3 bursed by the Secretary, upon request, for reason-
4 able travel costs and expenses incurred in perform-
5 ing their obligations.

6 “(c) STOCK ASSESSMENTS AND DETERMINATIONS OF
7 STRATEGIC STOCKS.—

8 “(1) Not later than 60 days after the establish-
9 ment of the scientific review groups under subsection
10 (b), the Secretary shall, in consultation with the sci-
11 entific review groups, prepare proposed stock assess-
12 ments of each marine mammal stock which occurs in
13 waters under the jurisdiction of the United States
14 and which is taken incidental to commercial fishing
15 operations, and shall publish notice of its availability
16 in the Federal Register for public review and com-
17 ment for a period which shall not exceed 60 days.
18 Each proposed stock assessment shall include—

19 “(A) the area in which each stock is lo-
20 cated and, if migratory, the season of its loca-
21 tion in that area;

22 “(B) the best available estimates of mini-
23 mum population size, most likely population
24 size, stock separation, productivity, current pop-

1 ulation trend, and estimated optimum sustain-
2 able population range if available;

3 “(C) estimates of total lethal and serious
4 injury take from each stock by source and, for
5 depleted stocks, other factors that may cause
6 the further decline or impede the recovery of
7 that stock, including impacts on marine mam-
8 mal habitat and prey;

9 “(D) a description of the commercial fish-
10 eries that may incur incidental lethal and seri-
11 ous injury takes from each stock, including—

12 “(i) the approximate number of ves-
13 sels actively participating in each fishery;

14 “(ii) the best available estimates of in-
15 cidental lethal and serious injury take from
16 the stock by each fishery on an annual
17 basis;

18 “(iii) seasonal or area differences in
19 levels of such take; and

20 “(iv) the rate at which such take oc-
21 curs, based on the appropriate standard
22 unit of fishing effort, with an analysis of
23 whether the rate at which the take occurs
24 is exceeding or has achieved insignificant

1 levels approaching a zero mortality and se-
2 rious injury rate;

3 “(E) the status of each stock, specifying—

4 “(i) whether the stock has been deter-
5 mined to be within its optimum sustainable
6 population range, is depleted, is listed as a
7 threatened species or endangered species
8 under the Endangered Species Act of 1973
9 (16 U.S.C. 1531 et seq.), or is a strategic
10 stock; or

11 “(ii) that the status of the stock is
12 unknown;

13 “(F) the estimated potential biological re-
14 moval level for each stock and the factors used
15 to calculate it; and

16 “(G) the information or sources of infor-
17 mation upon which the assessment is based.

18 “(2) Not later than 90 days after the close of
19 the public comment period on a proposed stock as-
20 sessment, the Secretary shall publish a final stock
21 assessment and make it available to the public.

22 “(3) The Secretary shall review stock assess-
23 ments in accordance with this subsection—

24 “(A) at least annually for stocks which
25 are—

1 “(i) specified as strategic stocks in a
2 final stock assessment under this sub-
3 section;

4 “(ii) listed as a threatened species or
5 endangered species under the Endangered
6 Species Act of 1973 (16 U.S.C. 1531 et
7 seq.);

8 “(B) at least annually for stocks for which
9 significant new information is available; and

10 “(C) at least once every 3 years for all
11 other stocks.

12 “(4) Nothing in this subsection shall prevent
13 the Secretary from publishing stock assessments for
14 strategic stocks in an expedited fashion.

15 “(d) AUTHORIZATION TO TAKE MARINE MAM-
16 MALS.—

17 “(1) Not later than 30 days after the date of
18 the publication of the final stock assessments under
19 subsection (c), or September 1, 1995, whichever is
20 earlier, the Secretary shall issue a general authoriza-
21 tion and implementing regulations allowing inciden-
22 tal, but not intentional, taking of marine mammals
23 in the course of commercial fishing operations sub-
24 ject to the provisions of this section. The implement-
25 ing regulations shall identify the fisheries in which

1 vessels shall be considered to be operating under the
2 general authorization and shall establish additional
3 permit requirements for fisheries that are not so
4 identified under the general authorization.

5 “(2) The Secretary shall, within 90 days after
6 the date of enactment of this section—

7 “(A) publish in the Federal Register for
8 public comment, for a period of not less than
9 90 days, any necessary changes to the Sec-
10 retary’s list of commercial fisheries published
11 under section 114(b)(1) and which is in exist-
12 ence on March 31, 1994 (along with an expla-
13 nation of such changes and a statement of the
14 marine mammals and the approximate number
15 of vessels or persons actively involved in each
16 such fishery), that have—

17 “(i) frequent incidental taking of ma-
18 rine mammals;

19 “(ii) occasional incidental taking of
20 marine mammals; or

21 “(iii) a remote likelihood of or no
22 known incidental taking of marine mam-
23 mals;

24 “(B) after the close of the period for such
25 public comment, publish in the Federal Register

1 a revised list of commercial fisheries and an up-
2 date of information required by subparagraph
3 (A), together with a summary of the provisions
4 of this section and information sufficient to ad-
5 vise vessel owners on how to obtain an author-
6 ization and otherwise comply with the require-
7 ments of this section; and

8 “(C) at least once each year thereafter,
9 and at such other times as the Secretary con-
10 siders appropriate, reexamine, based on infor-
11 mation gathered under this Act and other rel-
12 evant sources and after notice and opportunity
13 for public comment, the classification of com-
14 mercial fisheries and other determinations re-
15 quired under subparagraph (A) and publish in
16 the Federal Register any necessary changes.

17 “(3)(A) An authorization shall be granted by
18 the Secretary in accordance with this section for a
19 vessel engaged in a commercial fishery listed under
20 paragraph (2)(A)(i) or (ii), upon receipt by the Sec-
21 retary of a completed registration form providing the
22 name of the vessel owner and operator, the name
23 and description of the vessel, the fisheries in which
24 it will be engaged, the approximate time, duration,
25 and location of such fishery operations, and the gen-

1 eral type and nature of use of the fishing gear and
2 techniques used. Such information shall be in a
3 readily usable format that can be efficiently entered
4 into and utilized by an automated or computerized
5 data processing system. A decal or other physical
6 evidence that the authorization is current and valid
7 shall be issued by the Secretary at the time an au-
8 thorization is granted, and so long as the authoriza-
9 tion remains current and valid, shall be reissued an-
10 nually thereafter.

11 “(B) No authorization may be granted under
12 this section to the owner of a vessel unless such ves-
13 sel—

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

15 “(ii) has a valid fishing permit issued by
16 the Secretary in accordance with section 204(b)
17 of the Magnuson Fishery Conservation and
18 Management Act (16 U.S.C. 1824(b)).

19 “(C) Except as provided in subsection (a), an
20 authorization granted under this section shall allow
21 the incidental taking of all species and stocks of ma-
22 rine mammals to which this Act applies.

23 “(4)(A) An owner of a vessel engaged in any
24 fishery listed under paragraph (2)(A)(i) or (ii) shall,

1 in order to engage in the lawful incidental taking of
2 marine mammals in a commercial fishery—

3 “(i) have registered as required under
4 paragraph (3) with the Secretary in order to
5 obtain for each such vessel owned and used in
6 the fishery an authorization for the purpose of
7 incidentally taking marine mammals in accord-
8 ance with this section, except that owners of
9 vessels holding valid certificates of exemption
10 under section 114 are deemed to have reg-
11 istered for purposes of this subsection for the
12 period during which such registration is valid;

13 “(ii) ensure that a decal or such other
14 physical evidence of a current and valid author-
15 ization as the Secretary may require is dis-
16 played on or is in the possession of the master
17 of each such vessel;

18 “(iii) report as required by subsection (h);

19 and

20 “(iv) comply with a take reduction plan
21 and emergency regulations issued under this
22 section.

23 “(B) Any owner of a vessel receiving an author-
24 ization under this section for any fishery listed
25 under paragraph (2)(A)(i) or (ii) shall, as a condi-

1 tion of that authorization, take on board an observer
2 if requested to do so by the Secretary.

3 “(C) An owner of a vessel engaged in a fishery
4 listed under paragraph (2)(A)(i) or (ii) who—

5 “(i) fails to obtain from the Secretary an
6 authorization for such vessel under this section;

7 “(ii) fails to maintain a current and valid
8 authorization for such vessel; or

9 “(iii) fails to ensure that a decal or other
10 physical evidence of such authorization issued
11 by the Secretary is displayed on or is in posses-
12 sion of the master of the vessel,

13 and the master of any such vessel engaged in such
14 fishery, shall be deemed to have violated this title,
15 and for violations of clauses (i) and (ii) shall be sub-
16 ject to the penalties of this title, and for violations
17 of clause (iii) shall be subject to a fine of not more
18 than \$100 for each offense.

19 “(D) If the owner of a vessel has obtained and
20 maintains a current and valid authorization from the
21 Secretary under this section and meets the require-
22 ments set forth in this section, including compliance
23 with any regulations to implement a take reduction
24 plan under this section, the owner of such vessel,
25 and the master and crew members of the vessel,

1 shall not be subject to the penalties set forth in this
2 title for the incidental taking of marine mammals
3 while such vessel is engaged in a fishery to which
4 the authorization applies.

5 “(E) Each owner of a vessel engaged in any
6 fishery not listed under paragraph (2)(A)(i) or (ii),
7 and the master and crew members of such a vessel,
8 shall not be subject to the penalties set forth in this
9 title for the incidental taking of marine mammals if
10 such owner reports to the Secretary, in the form and
11 manner required under subsection (h), instances of
12 incidental mortality or injury of marine mammals in
13 the course of that fishery.

14 “(5) The Secretary shall suspend or revoke an
15 authorization granted under this section and shall
16 not issue a decal or other physical evidence of the
17 authorization for any vessel until the owner of such
18 vessel complies with the reporting requirements
19 under subsection (h) and such requirements to take
20 on board an observer under paragraph (4)(B) as are
21 applicable to such vessel. Previous failure to comply
22 with the requirements of section 114 shall not bar
23 authorization under this section for an owner who
24 complies with the requirements of this section. The
25 Secretary may suspend or revoke an authorization

1 granted under this subsection, and may not issue a
2 decal or other physical evidence of the authorization
3 for any vessel which fails to comply with a take re-
4 duction plan or emergency regulations issued under
5 this section.

6 “(6)(A) The Secretary shall develop, in con-
7 sultation with the appropriate States, affected Re-
8 gional Fishery Management Councils, and other
9 interested persons, the means by which the granting
10 and administration of authorizations under this sec-
11 tion shall be integrated and coordinated, to the max-
12 imum extent practicable, with existing fishery li-
13 censes, registrations, and related programs.

14 “(B) The Secretary shall utilize newspapers of
15 general circulation, fishery trade associations, elec-
16 tronic media, and other means of advising commer-
17 cial fishermen of the provisions of this section and
18 the means by which they can comply with its re-
19 quirements.

20 “(C) The Secretary is authorized to charge a
21 fee for the granting of an authorization under this
22 section. The level of fees charged under this sub-
23 paragraph shall not exceed the administrative costs
24 incurred in granting an authorization. Fees collected
25 under this subparagraph shall be available to the

1 Under Secretary of Commerce for Oceans and At-
2 mosphere for expenses incurred in the granting and
3 administration of authorizations under this section.

4 “(e) TAKE REDUCTION TEAMS.—

5 “(1) No later than 30 days after the publication
6 of a final stock assessment under subsection (c), the
7 Secretary shall establish take reduction teams for
8 those marine mammal species or stocks which are
9 specified as strategic stocks in final stock assess-
10 ments under subsection (c) and publish notice of
11 that establishment in the Federal Register. The Sec-
12 retary shall establish take reduction teams for stocks
13 which are not specified as strategic stocks in final
14 stock assessments under subsection (c), as the Sec-
15 retary considers necessary in accordance with sub-
16 section (f).

17 “(2) The Secretary may request a take reduc-
18 tion team to consider and provide advice on meas-
19 ures necessary to reduce incidental lethal takes from
20 a marine mammal stock whose range extends over
21 more than 1 region, or on multiple marine mammal
22 stocks within a region.

23 “(3) Members of take reduction teams shall
24 have expertise regarding the conservation or biology
25 of the marine mammal species which the incidental

1 take plan will address, or the fishing practices in-
2 volved in the incidental lethal taking of such species.
3 Members shall include representatives of Federal
4 agencies, each coastal State which has fisheries
5 which interact with the species or stock, appropriate
6 Regional Fishery Management Councils, interstate
7 fisheries commissions, academic and scientific orga-
8 nizations, environmental groups, all commercial and
9 recreational fisheries groups and gear types which
10 incidentally take the species or stock, Alaska Native
11 organizations or Indian tribal organizations, and
12 others as the Secretary deems appropriate. Take re-
13 duction teams shall, to the maximum extent prac-
14 ticable, consist of an equitable balance among rep-
15 resentatives of resource user interests and nonuser
16 interests.

17 “(4) Take reduction teams shall not be subject
18 to the Federal Advisory Committee Act (5 App.
19 U.S.C.). Meetings of take reduction teams shall be
20 open to the public, and prior notice of meetings shall
21 be made public in a timely fashion.

22 “(5) Members of take reduction teams shall
23 serve without compensation. Members of take reduc-
24 tion teams who are not Federal or State government
25 employees shall be reimbursed by the Secretary,

1 upon request, for reasonable travel costs and ex-
2 penses incurred in performing their obligations.

3 “(f) TAKE REDUCTION PLANS.—

4 “(1) The Secretary shall issue take reduction
5 plans for marine mammal stocks in accordance with
6 this subsection. The immediate goal of a take reduc-
7 tion plan shall be reduce, within 1 year of its imple-
8 mentation, the lethal take or serious injury of ma-
9 rine mammals incidentally taken in the course of
10 commercial fishing operations to levels less than the
11 potential biological removal level established in this
12 section. The long-term goal of the plan shall be to
13 reduce, within 5 years of its implementation, the le-
14 thal take or serious injury of marine mammals inci-
15 dentally taken in the course of commercial fishing
16 operations to insignificant levels approaching a zero
17 mortality and serious injury rate, taking into ac-
18 count the economics of the fishery, the availability of
19 existing technology, and existing State or regional
20 fishery management plans.

21 “(2) 2 years after the issuance of the general
22 authorization under subsection (d), the Secretary
23 shall review the progress, by fishery, toward reduc-
24 ing incidental lethal takes and serious injury of ma-
25 rine mammals in the course of commercial fishing

1 operations to insignificant levels approaching a zero
2 mortality and serious injury rate. The Secretary
3 shall submit to the Committee on Commerce,
4 Science, and Transportation of the Senate and the
5 Committee on Merchant Marine and Fisheries of the
6 House of Representatives a report setting forth the
7 results of such review within 1 year after commence-
8 ment of the review.

9 “(3) The Secretary shall give priority to the de-
10 velopment of take reduction plans for marine mam-
11 mal stocks or species—

12 “(A) which are specified as strategic stocks
13 and which are incidentally taken in fisheries
14 listed under subsection (d)(2)(A)(i);

15 “(B) which are specified as strategic stocks
16 and which are incidentally taken in fisheries
17 listed under subsection (d)(2)(A)(ii); and

18 “(C) which are not specified as strategic
19 stocks but which the Secretary finds are ap-
20 proaching strategic stock status.

21 “(4) Each take reduction plan shall include—

22 “(A) a review of the information in the
23 final stock assessment published under sub-
24 section (c) and any new information;

1 “(B) an estimate of the total number and,
2 if possible, age and gender, of animals from the
3 stock that are being incidentally lethally taken
4 each year during the course of commercial fish-
5 ing operations, by fishery;

6 “(C) recommended regulatory or voluntary
7 measures for the reduction of incidental lethal
8 takes; and

9 “(D) recommended dates for achieving the
10 specific objectives of the plan.

11 “(5) Recommended take reduction plans devel-
12 oped by a take reduction team under this subsection
13 for submission to the Secretary shall be developed by
14 consensus. In the event that a consensus cannot be
15 reached, the team shall advise the Secretary on the
16 range of possibilities considered by the team, and
17 the views of both the majority and the minority. The
18 Secretary shall then propose a take reduction plan
19 consistent with the provisions of this subsection.

20 “(6) In the case of those marine mammal spe-
21 cies or stocks which are specified as strategic stocks
22 in final stock assessments under subsection (c), the
23 following provisions apply:

24 “(A) Not later than 6 months after the
25 date of establishment of a take reduction team

1 for that stock, the take reduction team shall
2 recommend a take reduction plan to the Sec-
3 retary, consistent with the other provisions of
4 this subsection.

5 “(B) The Secretary shall consider the rec-
6 ommended take reduction plan and, not later
7 than 60 days after the submission of the rec-
8 ommended take reduction plan, the Secretary
9 shall publish in the Federal Register the rec-
10 ommended take reduction plan, any changes
11 proposed by the Secretary along with the reason
12 for the proposed changes, and proposed imple-
13 menting regulations, for public review and com-
14 ment.

15 “(C) If the take reduction team does not
16 recommend a take reduction plan to the Sec-
17 retary within 6 months, the Secretary shall, not
18 later than 8 months after the establishment of
19 the take reduction team, publish in the Federal
20 Register a proposed take reduction plan and
21 proposed implementing regulations, for public
22 review and comment.

23 “(D) Not later than 60 days after the close
24 of the comment period required under this
25 paragraph, the Secretary shall issue a final take

1 reduction plan and implementing regulations,
2 consistent with the other provisions of this sub-
3 section. If the Secretary rejects or significantly
4 modifies a plan recommended under subpara-
5 graph (B), the Secretary shall notify the take
6 reduction team and specify in writing the rea-
7 sons for the rejection or modification.

8 “(E) The Secretary and the take reduction
9 team shall meet every 6 months to monitor the
10 implementation of the take reduction plan until
11 such time as the Secretary determines that
12 meetings are no longer necessary.

13 “(7) In the case of those marine mammal spe-
14 cies or stocks which are not specified as strategic
15 stocks in final stock assessments under subsection
16 (c), the following provisions apply:

17 “(A) Within 11 months after the establish-
18 ment of the take reduction team, the team shall
19 recommend a take reduction plan for that stock
20 to the Secretary, consistent with the other pro-
21 visions of this subsection.

22 “(B) The Secretary shall consider the rec-
23 ommended take reduction plan and, not later
24 than 60 days after the submission of the rec-
25 ommended take reduction plan, the Secretary

1 shall publish in the Federal Register the rec-
2 ommended take reduction plan, any changes
3 proposed by the Secretary along with the reason
4 for the proposed changes, and proposed imple-
5 menting regulations for public review and com-
6 ment.

7 “(C) If the take reduction team does not
8 recommend a take reduction plan to the Sec-
9 retary within 11 months, the Secretary shall,
10 not later than 13 months after the establish-
11 ment of the take reduction team, publish in the
12 Federal Register a proposed take reduction
13 plan and implementing regulations for public
14 review and comment.

15 “(D) Not later than 60 days after the close
16 of the comment period required under this
17 paragraph, the Secretary shall issue a final take
18 reduction plan and implementing regulations,
19 consistent with the other provisions of this sub-
20 section. If the Secretary rejects or significantly
21 modifies a plan recommended under subpara-
22 graph (B), the Secretary shall notify the take
23 reduction team and specify in writing the rea-
24 sons for the rejection or modification.

1 “(E) The Secretary and the take reduction
2 team shall meet on an annual basis to monitor
3 the implementation of the take reduction plan
4 until such time as the Secretary determines
5 that meetings are no longer necessary.

6 “(8) If a take reduction plan does not achieve
7 its immediate goal of reducing incidental lethal takes
8 in the course of commercial fishing operations to lev-
9 els less than the potential biological removal level
10 within 1 year, or its long-term goal of reducing inci-
11 dental lethal takes in the course of commercial fish-
12 ing operations to insignificant levels approaching a
13 zero mortality and serious injury rate within 5
14 years, the Secretary shall, in consultation with the
15 take reduction team, amend the take reduction plan
16 and implementing regulations as necessary to
17 achieve the goal, consistent with the procedures in
18 this subsection for the issuance of such plans and
19 regulations.

20 “(9) In implementing a take reduction plan is-
21 sued pursuant to this subsection, the Secretary may
22 promulgate regulations which include measures
23 which—

24 “(A) establish fishery-specific limits on in-
25 cidental lethal takes;

1 “(B) restrict commercial fisheries by time
2 or area;

3 “(C) require the use of alternative gear
4 techniques or technology, and encourage the de-
5 velopment of such gear or technology;

6 “(D) educate commercial fishermen and
7 others on the importance and means of reduc-
8 ing incidental lethal takes of marine mammals;
9 and

10 “(E) in promulgating such regulations, the
11 Secretary shall conform such regulations, to the
12 maximum extent practicable, with State or re-
13 gional fishery management plans.

14 “(10) If the Secretary finds that a significant
15 level of incidental lethal taking of a marine mammal
16 stock is occurring within a fishery within the juris-
17 diction of a State, the Secretary and take reduction
18 team shall consult with State fishery managers to
19 develop a take reduction plan for that fishery.

20 “(g) EMERGENCY REGULATIONS.—(1) If the Sec-
21 retary finds that the incidental lethal take and serious in-
22 jury of marine mammals from commercial fisheries is hav-
23 ing, or is likely to have, an immediate and significant ad-
24 verse impact on a stock or species, the Secretary shall take
25 actions as follows:

1 “(A) In the case of a stock or species for which
2 a take reduction plan is in effect, the Secretary
3 shall—

4 “(i) prescribe emergency regulations that,
5 consistent with such plan to the maximum ex-
6 tent practicable, reduce incidental lethal take
7 and serious injury in that fishery; and

8 “(ii) approve and implement, on an expe-
9 dited basis, any amendments to such plan that
10 are recommended by the take reduction team to
11 address such adverse impact.

12 “(B) In the case of a stock or species for which
13 a take reduction plan is being developed, the Sec-
14 retary shall—

15 “(i) prescribe emergency regulations to re-
16 duce such incidental lethal take and serious in-
17 jury in that fishery; and

18 “(ii) approve and implement, on an expe-
19 dited basis, such plan, which shall provide
20 methods to address such adverse impact if still
21 necessary.

22 “(C) In the case of a stock or species for which
23 a take reduction plan does not exist and is not being
24 developed, or in the case of a commercial fishery list-
25 ed under subsection (d)(1)(A)(iii) which the Sec-

1 retary believes may be contributing to such adverse
2 impact, the Secretary shall—

3 “(i) prescribe emergency regulations to re-
4 duce such incidental lethal take and serious in-
5 jury in that fishery, to the extent necessary to
6 mitigate such adverse impact;

7 “(ii) immediately review the stock assess-
8 ment for such stock or species and the classi-
9 fication of such commercial fishery under this
10 section to determine if a take reduction team
11 should be established; and

12 “(iii) may, where necessary to address
13 such adverse impact, place observers on vessels
14 in a commercial fishery listed under subsection
15 (d)(2)(A)(iii), if the Secretary has reason to be-
16 lieve such vessels may be causing the incidental
17 lethal take and serious injury to marine mam-
18 mals from such stock and the vessel owner
19 agrees to take an observer on board.

20 “(2) Prior to taking action under paragraph (1)(A),
21 (B), or (C), the Secretary shall consult with the Marine
22 Mammal Commission, all appropriate Regional Fishery
23 Management Councils, State fishery managers, and the
24 appropriate take reduction team (if established).

1 “(3) Emergency regulations prescribed under this
2 subsection—

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

5 “(B) shall remain in effect for not more than
6 180 days or until the end of the applicable commer-
7 cial fishing season, whichever is earlier; and

8 “(C) may be terminated by the Secretary at an
9 earlier date by publication in the Federal Register of
10 a notice of termination, if the Secretary determines
11 that the reasons for emergency regulations no longer
12 exist.

13 “(h) REPORTING REQUIREMENT.—The owner or op-
14 erator of a commercial fishing vessel subject to this Act
15 shall report all incidental mortality and serious injury of
16 marine mammals in the course of commercial fishing oper-
17 ations to the Secretary by mail or other means acceptable
18 to the Secretary within 48 hours after the end of each
19 fishing trip on a standard form to be developed by the
20 Secretary under this section. Such form shall be readily
21 usable by an automated or computerized data processing
22 system and shall require the vessel owner or operator to
23 provide the following:

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

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

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

4 “(4) The species of each marine mammal inci-
5 dentally killed or seriously injured, and the date,
6 time, and approximate geographic location of such
7 occurrence.

8 “(i) MONITORING OF INCIDENTAL TAKES.—

9 “(1) The Secretary shall establish a program to
10 monitor incidental lethal takes and serious injury of
11 marine mammals during the course of commercial
12 fishing operations. The purposes of the monitoring
13 program shall be to—

14 “(A) obtain statistically reliable estimates
15 of incidental lethal takes and serious injury;

16 “(B) determine the reliability of reports of
17 incidental lethal takes and serious injury under
18 subsection (h); and

19 “(C) identify changes in fishing methods
20 or technology that may increase or decrease in-
21 cidental lethal takes.

22 “(2) Pursuant to paragraph (1), the Secretary
23 may place observers on board vessels as necessary,
24 subject to the provisions of this section. Observers
25 may, among other tasks—

1 “(A) record incidental mortality or by-
2 catch of other nontarget species;

3 “(B) record numbers of marine mammals
4 sighted; and

5 “(C) perform other scientific investiga-
6 tions.

7 “(3) In determining the distribution of observ-
8 ers among fisheries and vessels within a fishery, the
9 Secretary shall be guided by the following standards:

10 “(A) The requirement to obtain statis-
11 tically reliable information.

12 “(B) The requirement that assignment of
13 observers is fair and equitable among fisheries
14 and among vessels in a fishery.

15 “(C) The requirement that no individual
16 person or vessel, or group of persons or vessels,
17 be subject to excessive or overly burdensome ob-
18 server coverage.

19 “(D) To the extent practicable, the need to
20 minimize costs and avoid duplication.

21 “(4) To the extent practicable, the Secretary
22 shall allocate observers among fisheries consistent
23 with the following priorities:

24 “(A) First, fisheries that incidentally le-
25 thally take or seriously injure marine mammals

1 from stocks that are depleted because of their
2 listing as an endangered species or threatened
3 species under the Endangered Species Act of
4 1973.

5 “(B) Second, fisheries that incidentally le-
6 thally take or seriously injure marine mammals
7 from stocks which are specified as strategic
8 stocks in final stock assessments under sub-
9 section (c).

10 “(C) Third, fisheries that incidentally le-
11 thally take or seriously injure marine mammals
12 from stocks for which the level of incidental le-
13 thal takes is unknown but is suspected to be
14 high.

15 “(D) Fourth, species not described in sub-
16 paragraph (A), (B), or (C).

17 “(5) The Secretary may establish an alternative
18 observer program to provide statistically reliable in-
19 formation on the species and number of marine
20 mammals incidentally taken in the course of com-
21 mercial fishing operations. The alternative observer
22 program may include direct observation of fishing
23 activities from vessels, airplanes, or points on shore.

1 “(6) The Secretary is not required to place an
2 observer on a vessel in a fishery if the Secretary
3 finds that—

4 “(A) in a situation in which harvesting
5 vessels are delivering fish to a processing vessel
6 and the catch is not taken on board the har-
7 vesting vessel, statistically reliable information
8 can be obtained from an observer on board the
9 processing vessel to which the fish are delivered;

10 “(B) the facilities on a vessel for quarter-
11 ing of an observer, or for carrying out observer
12 functions, are so inadequate or unsafe that the
13 health or safety of the observer or the safe op-
14 eration of the vessel would be jeopardized; or

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

17 “(7) Any proprietary information collected
18 under this subsection shall be confidential and shall
19 not be disclosed except—

20 “(A) to Federal employees whose duties re-
21 quire access to such information;

22 “(B) to State or tribal employees pursuant
23 to an agreement with the Secretary that pre-
24 vents public disclosure of the identity or busi-
25 ness of any person;

1 “(C) when required by court order; or

2 “(D) in the case of scientific information
3 involving fisheries, to employees of Regional
4 Fishery Management Councils who are respon-
5 sible for fishery management plan development
6 and monitoring.

7 “(8) The Secretary shall prescribe such proce-
8 dures as may be necessary to preserve such con-
9 fidentiality, except that the Secretary shall release or
10 make public upon request any such information in
11 aggregate, summary, or other form which does not
12 directly or indirectly disclose the identity or business
13 of any person.

14 “(j) PENALTIES.—Any person who violates the provi-
15 sions of this section shall be subject to the provisions of
16 sections 105, 106, and 107 as the Secretary considers ap-
17 propriate.

18 “(k) ASSISTANCE.—The Secretary shall provide as-
19 sistance to Regional Fishery Management Councils,
20 States, interstate fishery commissions, and Indian tribal
21 organizations in meeting the goal of reducing incidental
22 lethal takes and serious injury to insignificant levels ap-
23 proaching a zero mortality and serious injury rate.

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

4 “(m) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary of Com-
6 merce for carrying out this section \$15,000,000 for each
7 of fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.

8 “(n) SECTION 101(b).—Nothing in this section shall
9 affect section 101(b).

10 “(o) CONSULTATION WITH SECRETARY OF THE IN-
11 TERIOR.—The Secretary shall consult with the Secretary
12 of the Interior prior to taking actions or making deter-
13 minations under this section that affect or relate to species
14 or population stocks of marine mammals for which the
15 Secretary of the Interior is responsible under this title.

16 “(p) DEFINITIONS.—As used in this section—

17 “(1) the term ‘fishery’ has the same meaning as
18 it does in section 3 of the Magnuson Fishery Con-
19 servation and Management Act (16 U.S.C. 1802);

20 “(2) the term ‘Secretary’ means the Secretary
21 of Commerce; and

22 “(3) the term ‘vessel of the United States’ has
23 the same meaning as it does in section 3 of the
24 Magnuson Fishery Conservation and Management
25 Act (16 U.S.C. 1802).

1 **“SEC. 119. MARINE MAMMAL COOPERATIVE AGREEMENTS**
2 **IN ALASKA.**

3 “(a) IN GENERAL.—The Secretary may enter into co-
4 operative agreements with Alaska Native organizations to
5 conserve marine mammals and provide comanagement of
6 subsistence use by Alaska Natives.

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

10 “(1) collection and analysis of data on marine
11 mammal populations;

12 “(2) monitoring the harvest of marine mam-
13 mals for subsistence use;

14 “(3) participating in marine mammal research
15 conducted by the Federal Government, States, aca-
16 demic institutions, and private organizations; and

17 “(4) developing marine mammal co-manage-
18 ment structures with Federal and State agencies.

19 “(c) EFFECT OF JURISDICTION.—

20 “(1) Nothing in this section is intended or shall
21 be construed as authorizing any expansion or change
22 in the respective jurisdiction of Federal, State, or
23 tribal governments over fish and wildlife resources.

24 “(2) Nothing in this section is intended or shall
25 be construed to alter in any respect the existing po-
26 litical or legal status of Alaska Natives, or the gov-

1 ernmental or jurisdictional status of Alaska Native
2 communities or Alaska Native entities.

3 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated for carrying out this sec-
5 tion—

6 “(1) \$1,500,000 to the Secretary of Commerce
7 for each of fiscal years 1994, 1995, 1996, 1997,
8 1998, and 1999; and

9 “(2) \$1,000,000 to the Secretary of the Interior
10 for each of fiscal years 1994, 1995, 1996, 1997,
11 1998, and 1999.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in the first section, as amended by section 14(b), is
14 amended by adding at the end the following:

“Sec. 118. Taking of marine mammals incidental to commercial fishing oper-
ations.

“Sec. 119. Marine mammal cooperative agreements in Alaska.”.

15 **SEC. 10. PINNIPED TASK FORCE; MANAGEMENT OF CALI-**
16 **FORNIA SEA LIONS AND PACIFIC HARBOR**
17 **SEALS.**

18 (a) TASK FORCE.—Section 104 (16 U.S.C. 1374) is
19 amended by adding at the end the following:

20 “(i)(1) No later than 90 days after the date of enact-
21 ment of the Marine Mammal Protection Act Amendments
22 of 1994, the Secretary, in consultation with the Marine
23 Mammal Commission, shall establish a Pinniped-Fishery
24 Interaction Task Force (in this subsection referred to as

1 the ‘Task Force’) to advise the Secretary on management
2 practices regarding seals and sea lions interacting in a
3 dangerous or damaging manner with fishery stocks.

4 “(2) The Task Force shall consist of individuals des-
5 ignated by the Secretary, including—

6 “(A) employees of the Department of Com-
7 merce,

8 “(B) scientists knowledgeable in pinniped biol-
9 ogy and ecology,

10 “(C) representatives of conservation organiza-
11 tions, and

12 “(D) representatives of affected sectors of the
13 fishing industry, Indian treaty tribes, States, and
14 other interests as the Secretary considers appro-
15 priate.

16 “(3) The Task Force shall advise the Secretary re-
17 garding—

18 “(A) the level of impact of pinniped stocks on
19 the decline or recovery of threatened or endangered
20 salmonids and other declining fish stocks;

21 “(B) the level of impact of pinniped stocks on
22 other fishery resources;

23 “(C) other factors affecting the decline or re-
24 covery of threatened or endangered salmonids and
25 other declining fish stocks;

1 “(D) available alternatives to effectively miti-
2 gate negative impacts, including alternative tech-
3 nologies, relocation of animals, or nonlethal deter-
4 rence of animals, and the estimated cost of such al-
5 ternatives;

6 “(E) for negative impacts for which no mitigat-
7 ing alternatives are known, research to identify such
8 alternatives; and

9 “(F) limited intentional lethal takes of
10 pinnipeds.

11 “(4) The Secretary shall establish within the Task
12 Force a special committee to advise the Secretary on man-
13 agement practices regarding seals interacting in a dan-
14 gerous or damaging manner with aquaculture resources
15 in the Gulf of Maine. No later than 2 years from the date
16 of enactment, the Secretary shall submit to the Committee
17 on Merchant Marine and Fisheries of the House of Rep-
18 resentatives and the Committee on Commerce, Science,
19 and Transportation of the Senate a report containing rec-
20 ommended available alternatives to mitigate such inter-
21 actions.

22 “(5)(A) Any State may petition the Secretary to au-
23 thorize the lethal removal of individually identifiable
24 pinnipeds which are having a significant negative impact
25 on the decline or recovery of salmonid fishery stocks which

1 have been listed as threatened species or endangered spe-
2 cies under the Endangered Species Act of 1973 or which
3 the Secretary finds are approaching endangered species or
4 threatened species status (as those terms are defined in
5 that Act). Such authority shall be granted for periods of
6 1 to 3 years. Additional authorizations shall be dependent
7 upon the success of the action. Within 30 days after re-
8 ceiving a petition, the Secretary shall consult with the
9 Task Force to determine whether the petition has pro-
10 duced sufficient evidence to warrant further investigation.
11 If further investigation is considered necessary, the Sec-
12 retary shall publish a notice in the Federal Register re-
13 questing public comment.

14 “(B) Not later than 60 days after the close of the
15 public comment period for a petition under subparagraph
16 (A), the Task Force shall recommend to the Secretary
17 whether to authorize the lethal removal that is the subject
18 of the petition. If authorization is recommended, the Task
19 Force shall also recommend—

20 “(i) a method of removal;

21 “(ii) criteria for evaluating the success of the
22 action; and

23 “(iii) a duration for the authority.

1 “(C) If authorization is not recommended, the Task
2 Force shall also recommend nonlethal alternatives, if ap-
3 propriate.

4 “(D) Not later than 30 days after the receipt of rec-
5 ommendations from the Task Force, the Secretary shall
6 either approve or deny the petition for lethal removal. If
7 approved, implementation shall occur as soon as prac-
8 ticable. Lethal removal shall be performed by State agen-
9 cies or qualified individuals under contract to such agen-
10 cies, in consultation with the Secretary.

11 “(6) The costs of lethal removal shall be borne in
12 equal amounts by the Secretary and the State or States
13 having fishery resources that have been affected.

14 “(7) Following lethal removal, carcasses or parts of
15 carcasses shall be made available for bona fide research
16 or educational purposes upon request.

17 “(8) The Secretary shall not approve under this sub-
18 section lethal removal for any pinniped from a species or
19 stock that is listed as a threatened species or endangered
20 species under the Endangered Species Act of 1973, other-
21 wise depleted, or specified as a strategic stock in a final
22 stock assessment under section 118(c).”.

23 (b) MANAGEMENT OF CALIFORNIA SEA LIONS AND
24 PACIFIC HARBOR SEALS.—

1 (1) COOPERATIVE AGREEMENT.—The Sec-
2 retary of Commerce shall enter into negotiations
3 with the States of Washington, Oregon, and Califor-
4 nia to establish a cooperative agreement for the
5 management of California sea lion and Pacific har-
6 bor seal populations in those States. The purposes
7 of the cooperative agreement shall be to—

8 (A) determine whether California sea lions
9 and Pacific harbor seals are having a signifi-
10 cant negative impact on the recovery of fishery
11 stocks in those States;

12 (B) determine the broader impacts of
13 growing populations of California sea lions and
14 Pacific harbor seals on the coastal ecosystems
15 of Washington, Oregon, and California; and

16 (C) develop a plan to—

17 (i) reduce, to the extent practicable,
18 negative impacts referred to in subpara-
19 graph (A); and

20 (ii) mitigate impacts referred to in
21 subparagraph (B).

22 (2) DEVELOPMENT AND REVIEW OF DRAFT
23 PLAN.—No later than 12 months after the date of
24 the enactment of this Act, the Secretary of Com-
25 merce shall develop a draft of a plan described in

1 paragraph (1)(C) and submit it for review by the
2 Marine Mammal Commission, independent scientists
3 with expertise in marine mammal biology and man-
4 agement, representatives of national environmental
5 organizations, and other interested persons deter-
6 mined by the Secretary.

7 (3) SUBMISSION OF PLAN TO CONGRESS.—No
8 later than 18 months after the date of the enact-
9 ment of this Act, the Secretary of Commerce shall
10 submit to the Committee on Merchant Marine and
11 Fisheries of the House of Representatives and the
12 Committee on Commerce, Science, and Transpor-
13 tation of the Senate—

14 (A) a plan described in paragraph (1)(C);

15 and

16 (B) a report containing—

17 (i) responses of the Secretary to com-
18 ments received from the review required by
19 paragraph (2); and

20 (ii) an explanation of any provisions
21 of the plan with which any of the States of
22 Washington, Oregon, and California do not
23 agree.

24 (4) CONSIDERATION OF OTHER FACTORS.—Any
25 plan under this subsection shall take into account, in

1 addition to California sea lions and Pacific harbor
2 seals, other factors that are slowing or impeding the
3 recovery of fishery stocks or adversely affecting the
4 coastal ecosystems of Washington, Oregon, and Cali-
5 fornia.

6 (5) NO LEGAL EFFECT.—A plan under this
7 subsection shall have no force or effect except as
8 provided by a law enacted after the date the plan is
9 submitted to the Congress under paragraph (3).

10 **SEC. 11. MARINE ECOSYSTEM PROTECTION.**

11 Section 110 (16 U.S.C. 1380) is amended by striking
12 subsection (c) and inserting the following:

13 “(c)(1) No later than 1 year after the date of enact-
14 ment of the Marine Mammal Protection Act Amendments
15 of 1994, the Secretary of Commerce shall convene a re-
16 gional workshop for the Gulf of Maine to assess human-
17 caused factors affecting the health and stability of that
18 marine ecosystem, of which marine mammals are a part.
19 The workshop shall be conducted in consultation with the
20 Marine Mammal Commission, the adjacent coastal States,
21 individuals with expertise in marine mammal biology and
22 ecology, representatives from environmental organizations,
23 the fishing industry, and other appropriate persons. The
24 goal of the workshop shall be to identify such factors, and
25 to recommend a program of research and management to

1 restore or maintain that marine ecosystem and its key
2 components that—

3 “(A) protects and encourages marine mammals
4 to develop to the greatest extent feasible commensu-
5 rate with sound policies of resource management;

6 “(B) has as the primary management objective
7 the maintenance of the health and stability of the
8 marine ecosystems;

9 “(C) ensures the fullest possible range of man-
10 agement options for future generations; and

11 “(D) permits nonwasteful, environmentally
12 sound development of renewable and nonrenewable
13 resources.

14 “(2) On or before December 31, 1995, the Secretary
15 of Commerce shall submit to the Committee on Merchant
16 Marine and Fisheries of the House of Representatives and
17 the Committee on Commerce, Science, and Transportation
18 of the Senate a report containing the results of the work-
19 shop under this subsection, proposed regulatory or re-
20 search actions, and recommended legislative action.

21 “(d)(1) The Secretary of Commerce, in consultation
22 with the Secretary of the Interior, the Marine Mammal
23 Commission, the State of Alaska, and Alaska Native orga-
24 nizations, shall, not later than 180 days after the date of
25 enactment of the Marine Mammal Protection Act Amend-

1 ments of 1994, undertake a scientific research program
2 to monitor the health and stability of the Bering Sea ma-
3 rine ecosystem and to resolve uncertainties concerning the
4 causes of population declines of marine mammals, sea
5 birds, and other living resources of that marine ecosystem.
6 The program shall address the research recommendations
7 developed by previous workshops on Bering Sea living ma-
8 rine resources, and shall include research on subsistence
9 uses of such resources and ways to provide for the contin-
10 ued opportunity for such uses.

11 “(2) To the maximum extent practicable, the re-
12 search program undertaken pursuant to subsection (d)(1)
13 shall be conducted in Alaska. The Secretary shall utilize,
14 where appropriate, traditional local knowledge and may
15 contract with a qualified Alaska Native organization to
16 conduct such research.

17 “(3) The Secretary of Commerce, the Secretary of the
18 Interior, and the Commission shall address the status and
19 findings of the research program in their annual reports
20 to Congress required by sections 103(f) and 204 of this
21 Act.”.

22 **SEC. 12. TREATY RIGHTS.**

23 Nothing in these amendments alters or is intended
24 to alter any treaties between the United States and Indian
25 tribes.

1 **SEC. 13. TRANSITION RULE.**

2 Section 114(a)(1) of the Marine Mammal Protection
3 Act (16 U.S.C. 1383(a)(1)) is amended by striking “April
4 1, 1994,” and inserting “on the effective date of regula-
5 tions prescribed under section 118,”.

6 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) DEPARTMENT OF COMMERCE.—Title I is amend-
8 ed by inserting after section 115 the following:

9 **“SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

10 “(a) SECRETARY OF COMMERCE.—There are author-
11 ized to be appropriated to the Secretary of Commerce for
12 carrying out functions and responsibilities under title I
13 and title IV, other than under section 118, \$6,636,000
14 for fiscal year 1994, \$7,502,000 for fiscal year 1995,
15 \$8,402,000 for fiscal year 1996, \$9,338,000 for fiscal year
16 1997, \$10,311,000 for fiscal year 1998, and \$11,000,000
17 for fiscal year 1999.

18 “(b) SECRETARY OF THE INTERIOR.—There are au-
19 thorized to be appropriated to the Secretary of the Interior
20 for carrying out functions and responsibilities under title
21 I, \$8,000,000 for fiscal year 1994, \$8,600,000 for fiscal
22 year 1995, \$9,000,000 for fiscal year 1996, \$9,400,000
23 for fiscal year 1997, \$9,900,000 for fiscal year 1998, and
24 \$10,500,000 for fiscal year 1999.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in the first section is amended by inserting after the item
3 relating to section 115 the following:

“Sec. 116. Authorization of appropriations.”.

4 **SEC. 15. DEFINITIONS.**

5 Section 3 (16 U.S.C. 1362) is amended—

6 (1) in paragraph (13) by inserting “harm,” be-
7 fore “harass” each place it appears; and

8 (2) by adding at the end the following:

9 “(18)(A) The term ‘harassment’ means any act
10 of approach, pursuit, torment, or annoyance which—

11 “(i) has the potential to harm a marine
12 mammal or marine mammal stock in the wild;
13 or

14 “(ii) has the potential to disturb a marine
15 mammal or marine mammal stock in the wild
16 by causing disruption of behavioral patterns, in-
17 cluding, but not limited to, migration, respira-
18 tion, nursing, breeding, feeding, or sheltering.

19 “(B) The term ‘Level A harassment’ means
20 harassment described in subparagraph (A)(i).

21 “(C) The term ‘Level B harassment’ means
22 harassment described in subparagraph (A)(ii).

23 “(19) The term ‘harm’ means an act which is
24 likely to kill or injure a marine mammal, signifi-
25 cantly reduce its reproductive potential, or result in

1 habitat modification or degradation that is likely to
2 significantly impair essential behavioral patterns.

3 “(20) The term ‘strategic stock’ means a ma-
4 rine mammal population or stock—

5 “(A) for which the level of direct human-
6 caused mortality exceeds the potential biological
7 removal level; or

8 “(B) which, based on the best available sci-
9 entific information, is declining and is likely to
10 be listed as a threatened species under the En-
11 dangered Species Act of 1973 within the fore-
12 seeable future.

13 “(21) The term ‘potential biological removal
14 level’ means the maximum number of animals, not
15 including natural mortalities, that may be removed
16 from a marine mammal population or stock without
17 affecting that population’s or stock’s ability to reach
18 or maintain its optimum sustainable population. The
19 potential biological removal level is the product of
20 the following factors:

21 “(A) The best available minimum popu-
22 lation estimate of the population or stock.

23 “(B) One-half the maximum theoretical or
24 estimated net productivity rate of the popu-
25 lation or stock.

1 “(C) A recovery factor of between 0.1 and
2 1.0.

3 “(22) The term ‘Regional Fishery Management
4 Council’ means a Regional Fishery Management
5 Council established under section 302 of the Magnu-
6 son Fishery Conservation and Management Act.

7 “(23) The term ‘bona fide research’ means sci-
8 entific research on marine mammals, the results of
9 which—

10 “(A) likely would be accepted for publica-
11 tion in a referred scientific journal;

12 “(B) are likely to contribute to the basic
13 knowledge of marine mammal biology or ecol-
14 ogy; or

15 “(C) are likely to identify, evaluate, or re-
16 solve conservation problems.

17 “(24) The term ‘Alaska Native organization’
18 means a group designated by law or formally char-
19 tered which represents or consists of Indians, Aleuts,
20 or Eskimos residing in Alaska.”.

21 **SEC. 16. SCRIMSHAW EXEMPTIONS.**

22 Notwithstanding any other provision of law, any valid
23 certificate of exemption renewed by the Secretary (or
24 deemed to be renewed) under section 10(f)(8) of the En-
25 dangered Species Act of 1973 (16 U.S.C. 1539(f)(8)) for

1 any person holding such a certificate with respect to the
2 possession of pre-Act finished scrimshaw products or raw
3 material for such products shall remain valid for a period
4 not to exceed 5 years beginning on the date of enactment
5 of this Act.

6 **SEC. 17. TECHNICAL AND CONFORMING AMENDMENTS.**

7 The Act is amended—

8 (1) by redesignating, as title IV, the title III of
9 that Act that was added by section 3003 of the Ma-
10 rine Mammal Health and Stranding Response Act
11 (106 Stat. 5060);

12 (2) by redesignating the sections of that title in
13 order as sections 401, 402, 403, 404, 405, 406, 407,
14 408, and 409;

15 (3) in section 401(b)(3) (as redesignated by
16 this section) by striking “304” and inserting “404”;

17 (4) in section 405(b)(1)(A)(i) (as redesignated
18 by this section) by striking “304(b)” and inserting
19 “404(b)”;

20 (5) in section 406(a)(2)(A) (as redesignated by
21 this section) by striking “304(b)” and inserting
22 “404(b)”;

23 (6) in section 406(a)(2)(B) (as redesignated by
24 this section) by striking “304(c)” and inserting
25 “404(c)”;

1 (7) in section 408(1) (as redesignated by this
2 section)—

3 (A) by striking “305” and inserting
4 “405”, and

5 (B) by striking “307” and inserting
6 “407”;

7 (8) in section 408(2) (as redesignated by this
8 section) by striking “307” and inserting “407”;

9 (9) in section 409(1) (as redesignated by this
10 section) by striking “305(a)” and inserting
11 “405(a)”;

12 (10) in section 409(5) (as redesignated by this
13 section) by striking “307(a)” and inserting
14 “407(a)”;

15 (11) in section 102(a) (16 U.S.C. 1372(a)) by
16 striking “title III” and inserting “title IV”;

17 (12) in section 109(h)(1) (16 U.S.C.
18 1379(h)(1)) by striking “title III” and inserting
19 “title IV”;

20 (13) in section 112(c) (16 U.S.C. 1382(c)) by
21 striking “or title III” and inserting “or title IV”;
22 and

23 (14) in the table of contents in the first section,
24 by striking the items relating to the title that is re-
25 designated by paragraph (2) of this section and the

1 sections that are redesignated by paragraph (3) of
 2 this section and inserting the following:

“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. 404. Unusual mortality event response.
 “Sec. 405. Unusual mortality event activity funding.
 “Sec. 406. Liability.
 “Sec. 407. National Marine Mammal Tissue Bank and tissue analysis.
 “Sec. 408. Authorization of appropriations.
 “Sec. 409. Definitions.”.

3 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS FOR MA-**
 4 **RINE MAMMAL COMMISSION.**

5 (a) AUTHORIZATION.—Title II (16 U.S.C. 1401 et
 6 seq.) is amended by adding at the end the following:

7 **“SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

8 “There are authorized to be appropriated to the Ma-
 9 rine Mammal Commission for carrying out this title
 10 \$1,500,000 for fiscal year 1994, \$1,550,000 for fiscal year
 11 1995, \$1,600,000 for fiscal year 1996, \$1,650,000 for fis-
 12 cal year 1997, \$1,700,000 for fiscal year 1998, and
 13 \$1,750,000 for fiscal year 1999.”.

14 (b) CLERICAL AMENDMENT.—The table of contents
 15 in the first section is amended by inserting after the item
 16 relating to section 206 the following:

“Sec. 207. Authorization of appropriations.”.

1 **SEC. 19. FURTHER TECHNICAL AND CONFORMING AMEND-**
2 **MENTS.**

3 (a) AMENDMENTS RELATING TO DEFINITION OF
4 SECRETARY.—Section 3(12) of the Marine Mammal Pro-
5 tection Act of 1972 (16 U.S.C. 1362(12)) is amended in
6 subparagraph (B) by striking “title III” and inserting
7 “title IV”.

8 (b) AMENDMENTS RELATING TO DEFINITION OF
9 POPULATION STOCK AND STOCK.—Section 3(11) of the
10 Marine Mammal Protection Act of 1972 (16 U.S.C.
11 1362(11)) is amended to read as if section 3004(b) of the
12 Marine Mammal Health and Stranding Response Act were
13 not enacted (106 Stat. 5067).

14 (c) FURTHER CORRECTIONS TO DEFINITIONS.—Sec-
15 tion 3 (16 U.S.C. 1362) is amended—

16 (1) by striking paragraph (5);

17 (2) by redesignating paragraph (17) as para-
18 graph (5), and moving that paragraph so as to ap-
19 pear immediately following paragraph (4); and

20 (3) by redesignating the second paragraph (15)
21 (relating to the definition of the term “fishery”) and
22 paragraph (16) in order as paragraphs (16) and
23 (17).

24 (d) EFFECTIVE DATE.—The amendments made by
25 subsections (a) and (b) shall be effective as if enacted as

- 1 part of section 3004 of the Marine Mammal Health and
- 2 Stranding Response Act (106 Stat. 5067).

Passed the House of Representatives March 21,
1994.

Attest:

Clerk.

HR 2760 EH—2

HR 2760 EH—3

HR 2760 EH—4

HR 2760 EH—5

HR 2760 EH—6