

**Calendar No. 394**

103D CONGRESS  
2D 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.

MARCH 23 (legislative day, FEBRUARY 22), 1994  
Placed on the calendar

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**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.

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        appropriate 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”;

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 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: DONNALD K. ANDERSON,  
*Clerk.*

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HR 2760 PCS—5

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