

# MMPA Bulletin

NMFS Office of Protected Resources

September, 1994

## THE MARINE MAMMAL PROTECTION ACT IS AMENDED

On April 30, 1994, the Marine Mammal Protection Act was amended (P.L. 103-238). Congress made substantial changes to many provisions of the act, including:

- significantly altering the current regime governing marine mammals caught incidentally to commercial fishing;
- establishing scientific review groups and task forces;
- highlighting authority to include effects on the ecosystem in managing marine mammal stocks;
- significantly reducing fisheries service jurisdiction over the care and maintenance of captive marine mammals held for public display;
- providing for a general authorization for non-injurious scientific research on marine mammals; and,
- establishing a new permit category for photographing marine mammals.

A brief summary of the principal changes to the law is included in the middle insert of this bulletin. The following articles highlight what NMFS is doing or has done in response to these changes.

### Stock Assessment Reports

On August 9, NMFS made available to the public draft marine mammal stock assessment reports and a summary of the Potential Biological Removal (PBR) Workshop held in June of this year. Recognizing the need for consistency in preparing the draft stock assessments, NMFS convened the PBR workshop to ensure that a single interpretation of the terms referred to in the amendments were used to prepare the reports. As such, NMFS is seeking comments on both the individual draft stock assessment reports and on the draft methodologies outlined in the PBR Workshop report.

The draft stock assessment reports have been divided into three separate regions -- Alaska, Pacific, and Atlantic -- to correspond to the three regional scientific review groups specified by the amendments. NMFS used an open nomination process before establishing the review groups on

June 30. Each group consists of ten to twelve persons with expertise ranging from population dynamics and modeling to commercial fishing technologies. The groups represent a balance of regional, conservation and industry interests.

NMFS forwarded preliminary draft assessments to the appropriate scientific review groups on July 20 to begin the consultation process with NMFS. NMFS will continue to consult with the review groups and provide them with a summary of the public comments received on each stock assessment for their consideration when preparing final recommendations. NMFS is also attempting to develop a strategy for co-management with Alaska Native organizations regarding those stocks taken for subsistence purposes.

The public comment period will end on November 7. For more information, contact Tom Eagle, (301) 713-2319.

NMFS has also established a computer bulletin board for electronic retrieval of stock assessment reports. See the back page for instructions on how to access the bulletin board.

### List of Fisheries

Every year, NMFS publishes a list of fisheries which classifies each U.S. fishery based on how often it interacts with marine mammals. The fisheries are classified according to whether they interact frequently (Category I), occasionally (Category II), or rarely (Category III) with marine mammals. On August 25, NMFS published in the Federal Register the final list of fisheries for 1994. This list was based on the standards for classifying fisheries used for the interim exemption program, and will remain in effect until replaced by a revised list of fisheries, based on provisions of the MMPA's section 118.

A revised list of fisheries under section 118 will need to be completed by September, 1995. NMFS published in the *Federal Register* proposed changes to the list of fisheries on September 1, recognizing that the criteria for classifying fisheries may need to be changed because of the amendments. For example, "fishery interaction rates" will

*(continued on page 2)*

*This is the first in a planned series of bulletins on what the National Marine Fisheries Service is doing to implement the Marine Mammal Protection Act (MMPA). This first bulletin summarizes some of the major provisions of recent amendments to the law, yet is not intended to be a comprehensive summary. Rather, it highlights some significant changes included in the amendments. For more details, please refer directly to the amendments themselves.*

*To suggest future bulletin topics, or to be included on the mailing list for future editions, please call Nancy Daves or Laurel Bryant, Office of Protected Resources, (301) 713-2319 or 713-2289, respectively. Or mail your comments to the National Marine Fisheries Service, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, Attn: MMPA Bulletin.*



National Marine Fisheries Service, Silver Spring, MD 20910

now be based only on whether marine mammals are seriously injured or killed. Also, the amendments prohibit intentionally killing or injuring a marine mammal.

NMFS is asking for suggestions on how to revise the classification criteria to better define the terms "frequent," "occasional," or "remote likelihood", as well as on the proposed changes to the list. NMFS is also asking for suggestions on possible methods by which the accuracy and timeliness of information on incidental serious injuries and mortalities, and fishing effort, might be improved.

The public comment period will end on November 30. For more information, contact Vicki Credle, (301) 713-2322.

### Scientific Research

The amendments require NMFS to issue a general authorization and implementing regulations for scientific research involving Level B harassment of marine mammals in the wild. The amendments define Level B harassment as any act of pursuit, torment, or annoyance which has the potential to disturb by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding or sheltering. An Endangered Species Act (ESA) permit holder is not required to submit a letter of intent under the general authorization if the taking authorized under their ESA permit involves only level B harassment.

The statutory deadline does not allow sufficient time for the public to comment on a proposed rule. However, NMFS is asking for comments received in response to an interim final rule before the final rule is developed.

The interim final rule will (1) establish a general authorization for scientific research involving Level B harassment; (2) describe the research activities most likely to be included under the general authorization; (3) identify the submission requirements for the letter of intent; (4) establish procedures for confirming that the general authorization applies or notifying the applicant that a scientific research permit is required to conduct the activity described in the letter of intent; and (5) specify the conditions of the general authorization including reporting requirements.

The interim rule will be published in the *Federal Register* in September for public comment. For more information, contact Ann Terbush, Permits Division, (301) 713-2289. [Discussions are also underway with the Fish and Wildlife Service regarding the possibility of issuing a joint final rule to be published in January 1995.]

### Non-Lethal Deterrence Measures

NMFS is currently investigating non-injurious measures that should be included in the guidelines for deterring marine mammals, and drafting proposed regulations that would implement this provision. The proposed guidelines will be published in the *Federal Register* in the next few months. For more information, contact Ken Hollingshead, (301) 713-2055, or Doug Beach, NMFS Northeast Region, (508) 281-9254.

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The *MMPA Bulletin* is published periodically by the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713-2319. Comments and suggestions should be sent to the above address, Attn: MMPA Bulletin, or faxed to (301) 713-0376.

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### IMPLEMENTING THE AMENDMENTS: STATUTORY DEADLINES

DATE	TASK
04/30/94	Enactment of the 1994 MMPA amendments
07/94	Establish regional scientific review groups
08/94	Publish proposed changes to the List of Fisheries
08/94	Complete draft stock assessments
09/94	Issue general authorization for scientific research
11/94	Start program to monitor the Bering Sea ecosystem
01/95	Publish proposed implementing regulations for the amendments
02/95	Publish final stock assessments
03/95	Establish take reduction teams for strategic stocks
05/95	Convene workshop on Gulf of Maine ecosystem
09/95	Develop draft take reduction plans for strategic stocks for which human-caused deaths exceed PBR
10/95	Report on impacts of California sea lions and harbor seals on salmonids
01/96	Report on Gulf of Maine workshop
02/96	Develop draft take-reduction plans for non-strategic stocks and strategic stocks where human-caused takes are less than PBR
04/96	Complete plans for strategic stocks for which takes are greater than PBR
05/96	Report on interactions between pinnipeds and Gulf of Maine aquaculture operations
07/96	Complete final take-reduction plans for non-strategic stocks and strategic stocks where human-caused takes are less than PBR
05/97	Begin review of progress towards Zero Mortality Rate Goal
05/98	Report on review of progress towards Zero Mortality Rate Goal
05/2001	Zero Mortality Rate Goal to be achieved

## Washington State Request

On July 12, the Washington Department of Fish and Wildlife (WDFW) requested that NMFS authorize the intentional killing of individually identifiable California sea lions that were preying on wild winter-run steelhead trout migrating through the Ballard Locks in Seattle. The WDFW also requested that NMFS establish a Pinniped/Fishery Interaction Task Force and immediately start the process provided by section 120 of the MMPA, so that authorization for killing, if approved, would be in time for protection of the steelhead run that will migrate through the Ballard Locks from December, 1994 through the end of March, 1995.

The winter-run steelhead trout population in the Lake Washington drainage basin has declined dramatically in recent years. The causes for the decline are not known exactly, but may include competition with other salmon, authorized and unauthorized high seas driftnet fishery takes, habitat degradation in the lakes, rivers and streams of the Lake Washington watershed, and large-scale environmental changes (e.g., El Nino events).

Predation by sea lions of steelhead returning from the ocean also affects this run. Studies at Ballard Locks show that California sea lions have consumed over 50 percent of the adult returns in recent years. Non-lethal means of controlling sea lion predation -- including firecrackers, rubber-tipped arrows and temporary removal of the offending sea lions -- have been used in recent years, but have not been successful. Wild steelhead spawning escapement into the Lake Washington drainage has declined from about 2,500 fish in the mid-1980's to only 70 last season.

NMFS determined that the WDFW's application provides sufficient evidence to warrant establishment of the task force,

and notice was published in the *Federal Register* on August 2. Task force meetings will be open to the public and comments on the application were accepted up to September 2.

For more information, contact Ken Hollingshead, (301) 713-2055, or Joe Scordino, NMFS Northwest Region, (206) 526-6143.

### Take a Ride On NMFS' Information Superhighway.

NMFS has established a bulletin board for electronic retrieval of stock assessment reports and other documents. Documents are stored as Wordperfect 5.1 files and may be downloaded by a modem link to the NMFS bulletin board number: (703) 218-2595. Within your communications software, specify 8 data bits, no parity, and 1 stop bit. Set up as an ANSI terminal and set the appropriate baud rate up to 19,200. Instructions to download files are available on screen, or by writing to us.

More general information about NMFS is available on the INTERNET. A user-friendly approach is to access NMFS' "home page" using a software program called MOSAIC. The MOSAIC software is available via the anonymous file transfer protocol, or FTP, on INTERNET. Type: ftp ftp.ncsa.uiuc.edu at the command prompt and find the program in the MOSAIC directory. Connect to the HQ home page by clicking on the File header and Open URL Type: <http://kingfish.ssp.nmfs.gov:80/home-page> to connect to the NMFS home page. If you have any questions, email them to [spoulton@solidsparc.ssp.nmfs.gov](mailto:spoulton@solidsparc.ssp.nmfs.gov)

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## Overview of the 1994 MMPA Amendments

### Governing Incidental Take in Fisheries

The amendments replace the Interim Exemption for Commercial Fisheries (section 114) with a long-term regime for governing interactions between marine mammals and commercial fisheries (sections 117 and 118). The Interim Exemption provides a general exemption to the prohibition on incidental take due to commercial fishing in order to provide a temporary means for collecting reliable data about marine mammal interactions with commercial fisheries. Until section 118 is fully implemented, which must happen by September 1995, the Interim Exemption remains in effect. Following is a summary of how the amendments specify the new program will work.

#### Stock Assessments

The new law requires NMFS to complete a draft assessment for every population, or stock, of marine mammals in United States waters by August 1. The assessment has to include a wide variety of information about each stock, including its range, our estimate of its minimum population and its net productivity (population growth rate), estimates of human-caused deaths within the stock, a description of the commercial fisheries that are likely to have contact with a particular stock, and finally an estimate of what's called the potential biological removal (PBR) level for the stock, or the number of animals that can be removed from the stock without interfering with its ability to reach or maintain its optimum sustainable population.

The assessments identify "strategic stocks" as those stocks that have a level of human-caused mortality likely to reduce or keep the stock below its optimum sustainable population. Strategic stocks are also those stocks that are listed as endangered or threatened under the ESA, depleted, or that are declining and likely to be listed as threatened in the future. Alaska Natives may request a hearing before an Administrative Law Judge regarding draft stock assessments before NMFS publishes a final stock assessment report. Final stock assessments must be published 90 days after the close of the public comment period. Stock assessments for strategic stocks must be reviewed at least annually, other stocks, every three years.

#### Scientific Review Groups

Within 60 days of enactment, NMFS is required to establish three regional scientific review groups, representing Alaska, the Pacific Coast (including Hawaii) and the Atlantic Coast (including the Gulf of Mexico). The scientific review groups are to review draft stock assessments and advise NMFS concerning marine mammal population status, trends, stock identity, and dynamics; uncertainty and research needed on the marine mammal stocks and research needed to identify methods to reduce incidental mortality and injury; impacts of habitat degradation and appropriate measures to reduce impacts; and any other issue NMFS or the groups consider appropriate for pursuing the goals of the MMPA. The groups must consist of individuals with expertise in marine mammal biology and ecology, populations dynamics and modeling, commercial fishing technology and practices, or marine mammal stocks taken for subsistence by Alaska Natives, and must represent, to the extent feasible, a balance of viewpoints.

#### Registration and Authorization

Within 90 days of enactment of the amendments, NMFS is required to publish proposed revisions to the list of fisheries that interact with marine mammals, describing the marine mammal stocks involved and the number of vessels in each fishery. Each fishery will be categorized by whether its rate of incidental mortality or serious injury to marine mammals is frequent, occasional, or has only a remote likelihood of occurring (corresponding to a Category I, Category II or Category III fishery, respectively). Vessels engaged in commercial fisheries included in Categories I or II will register with NMFS, which will authorize the take of non-listed marine mammals in the course of fishing. Each registered vessel will receive a decal that must be displayed while the registration is current. In addition, the amendments allow NMFS to permit the taking of endangered and threatened marine mammals incidental to commercial fishing for three-year periods provided that, in addition to other restrictions, the taking will have a negligible impact on the stock, and that a recovery plan has been or is being developed for the species.

### Take Reduction Teams/Plans

NMFS must establish take reduction teams to develop take reduction plans to assist in the recovery or prevent the depletion of strategic stocks that interact with a Category I or Category II commercial fishery. Take reduction plans may also be developed for certain other marine mammal stocks that interact with commercial fisheries. Take reduction teams must be convened within 30 days of the issuance of final stock assessment reports. The take reduction teams must submit their plans within six months of their convening for strategic stocks and within 11 months for non-strategic stocks. (See definitions under Stock Assessments.)

### Monitoring of Incidental Takes

NMFS must establish a program to monitor marine mammal mortalities and serious injuries incidental to commercial fishing operations. The program will combine information from on-board observers and voluntary reporting by vessel owners of incidental takes. All owners or operators of commercial vessels in all fisheries must report incidental death or injury of marine mammals to NMFS on a postage-paid form (currently being developed) within 48 hours after the end of each fishing trip.

### Zero Mortality Rate Goal

Since it was first passed in 1972, the goal of the MMPA has been to reduce incidental death and serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching zero. The 1994 amendments reaffirmed this Zero Mortality Rate Goal (ZMRG), and specified that all fisheries must attain the goal within seven years. NMFS must review progress toward the ZMRG and report the results of the study to Congress by 1998.

### Ecosystem Activities

The 1994 amendments call for the initiation of several ecosystem-oriented studies, as authorized in sections 110 and 111. Following is a summary of these new programs.

#### Bering Sea Ecosystem Study

By October 1994, NMFS must develop a scientific research program to monitor the health and stability of the Bering Sea Ecosystem and consult with the Secretary of the Interior, Marine Mammal Commission, the State of Alaska and Alaska Native groups as part of the plan's formulation.

#### Gulf of Maine Ecosystem Workshop

No later than one year after enactment, NMFS must convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health of the ecosystem of which they are a part. A report of this workshop must be submitted to Congress by December 31, 1995.

#### Pinniped-Fishery Interactions in the Northwest

NMFS may conduct a study of the interaction between pinnipeds and anadromous fish in at least three areas of the Pacific Northwest (Washington, Oregon and northern California) where predation of pinnipeds on anadromous fish is high. Participants in the workshop will include representatives of state, federal and tribal agencies.

#### Interaction of California Sea Lions and Pacific Harbor Seals with Salmonid Stocks

NMFS must examine whether California sea lions and Pacific harbor seals are having a significant negative impact on 1) the recovery of salmonid fishery stocks listed as threatened or endangered under the ESA or are approaching endangered or threatened status, and 2) other fish and shellfish communities in the coastal/estuarine systems of Washington, Oregon and California. Additional funding is appropriated, assessments will be extended to include: 1) pinniped distribution and abundance, 2) food habits of the species in question, 3) where predation is occurring, 3) standardized measurements of scarring and predated fish species, and, 4) tracking fish and pinnipeds as needed. The report must be submitted to Congress by October 1, 1995.

## Overview of the 1994 MMPA Amendments (cont.)

### Scientific Research, Public Display and Enhancement Permits

The amendments make significant changes to sections 102 and 104 of the MMPA governing permits for public display, scientific research, and enhancement activities of marine mammal species and stocks such as management projects to increase stock sizes in the wild. Among other things, the amendments add new provisions and prohibitions for scientific research and enhancement; substantially reduce NMFS's jurisdiction over marine mammals held in captivity for public display; and establish a new permit category for photographing marine mammals.

#### General Authorization for Scientific Research

The amendments eliminate the requirement that research not be duplicative and allow NMFS to waive the 30-day comment period in certain "emergency" circumstances. Scientific research will now be divided into two categories: those activities for which a permit is required and those for which a General Authorization is issued. The amendments also provide new definitions of "harassment." Level A harassment is defined as "any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild." Level B harassment is defined as "any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

#### Permits for Export of Marine Mammal Parts

The amendments add a new prohibition on the export of marine mammals and marine mammal parts. Although exportation of marine mammals for purposes of public display was specifically provided for, no such concurrent provision was specified for scientific research or enhancement activities.

#### Public Display: Captive Care and Maintenance

Under the amendments, NMFS' authority to condition public display permits by specifying methods of supervision, care, and transport has been limited to marine mammals being captured from the wild or imported for the first time without benefit of a previously issued permit. The Animal and Plant Health Inspection Service, (APHIS), which previously had concurrent jurisdiction, now has sole responsibility over the care and maintenance of marine mammals held in public display.

#### Transfer of Marine Mammals Held for Public Display

A permit may be issued to take or import a marine mammal for public display to a person that:

- 1) offers a program for education or conservation based on professionally recognized standards of the public display community;
- 2) is registered or holds a license issued by APHIS under the Animal Welfare Act; and,
- 3) maintains facilities for the public display of marine mammals that is open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging an admission fee.

In general, the amendments allow persons holding marine mammals, without any additional permit or authorization, the right to take, sell, export, or otherwise transfer possession of a marine mammal, for public display, to any person who meets the above public-display criteria. A letter of notification is required 15 days in advance of any transportation, sale, purchase, or export of a marine mammal for public display, scientific research, or enhancement purposes.

#### Inventory of Marine Mammals in Captivity

The amendments require NMFS and the U.S. Fish and Wildlife Service to maintain a basic inventory of marine mammals held in captivity. The amendments change NMFS's present inventory by limiting it to the animal's name, sex, date of birth, source, acquisition, disposition, name of recipient and (if appropriate) its date of death

and cause of death when determined.

#### Photography Permits

The amendments add a new category of permits to allow marine mammals in the wild to be photographed for educational and commercial purposes. These permits are limited to Level B harassment and require that the photographic products be made available to the public. Provisions for this new category of permit will be included with implementing regulations to be published in January, 1995.

### Other Aspects of the Amendments

#### Deterrence Guidelines

The amendments allow persons to prevent marine mammals from damaging private or public property, or from endangering personal safety, as long as the animal is not killed or injured. NMFS must, after consultation with experts and after notice and opportunity for comment, develop guidelines for use in deterring marine mammals, and may prohibit certain forms of deterrence that may significantly harm marine mammals.

#### Small Incidental Take

The amendments allow NMFS to authorize annually, through a permit-like system, the harassment of small numbers of marine mammals incidental to activities other than commercial fishing. Other forms of small, incidental take (other than fishing) remain subject to the act's previous requirement for rulemaking.

#### Pinniped-Fishery Interaction Task Force

The amendments allow states to apply for permission to kill individually identified pinnipeds that are having a significant negative impact on the decline or recovery of certain salmonid fishery stocks, and give NMFS the authority to allow such killing. Once a state's application is received, NMFS must determine whether to establish a Pinniped-Fishery Interaction Task Force to recommend to the agency whether to approve or deny the application and to suggest non-lethal alternatives.

#### Gulf of Maine Task Force

NMFS must establish a Pinniped-Fishery Interaction Task Force to advise the agency on issues arising from pinnipeds acting in dangerous or damaging ways with aquaculture operators in the Gulf of Maine. NMFS must submit to Congress a report on interactions between pinnipeds and aquaculture activities in the Gulf of Maine by April, 1996.

#### Marine Mammal Cooperative Agreements in Alaska

The amendments provide for cooperative agreements between NMFS and Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives. The amendments specifically provide NMFS with the authority to provide grants to Alaska Native organizations to:

- 1) collect and analyze data on marine mammal populations;
- 2) monitor the harvest of marine mammals for subsistence use;
- 3) participate in marine mammal research;
- 4) develop co-management structures with Federal and state agencies.

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For a copy of the 1994 amendments to the Marine Mammal Protection Act, write or fax your request for *Public Law 103-238* to:

Senate Documents Room  
Hart Senate Office Building, Room B-04  
Washington, D.C. 20510  
FAX: (202) 228-2815

## **S. 1636, MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1994**

### **SEC 4. MORATORIUM AND EXCEPTIONS**

This section expands the exception to the moratorium in MMPA section 101, including by allowing the Secretary to issue permits for photography for educational purposes and for the import of polar bear parts taken in sport hunts in Canada; providing an exception for non-lethal deterrence to protect property and any taking in self-defense; and allowing the Secretary to authorize the lethal and non-lethal taking of threatened or endangered marine mammals incidental to commercial fishing operations.

#### Deterrence

A revised MMPA section 101(a)(4) allows measures to deter marine mammals from damaging fishing gear or catch, from damaging private or public property, or from endangering personal safety, so long as measure do not result in death or serious injury of the marine mammal. The Secretary must develop guidelines for use in safely deterring marine mammals, and may prohibit by regulation certain methods that have a significant adverse effect on marine mammals.

#### Small, incidental takes

MMPA section 101(a)(5) is expanded to allow the Secretary to annually authorize, through a permit-type system, the harassment of small numbers of marine mammals incidental to activities other than commercial fishing. Other forms of small, incidental take remain subject to the regulatory process under MMPA section 101(a)(5).

MMPA section 101(a)(5) is also expanded to allow the Secretary to permit the taking of endangered and threatened marine mammals incidental to commercial fishing operations for 3-year periods provided, among other things, that such taking will have a negligible impact on the stock, that a monitoring program is established, and that a take reduction plan has been or is being developed for the stock.

#### Importation of Marine Mammal Products

A new MMPA section 101(a)(6) authorizes the importation of marine mammal products by Alaska Natives or by Native inhabitants of Russia, Canada, or Greenland. The provision is apparently designed to authorize the limited importation of authentic native handicrafts as part of a cultural exchange.

## Actions Affecting Native Alaskans

The revisions to MMPA section 101(b) alter the standards for determinations the Secretary must make involving marine mammals in Alaska that are subject to subsistence harvest. The Secretary must demonstrate that such determinations are supported by "substantial evidence on the basis of the record as a whole."

## **SEC 5. PERMITS**

### Public Display

These provisions dramatically reduces the role of the Department of Commerce in regulating the care of captive marine mammals. Responsibility resides with the Department of Agriculture under the Animal Welfare Act.

### Scientific Research

The Secretary is required to issue a general authorization for low-level harassment of marine mammals for scientific research. Researchers must notify the Secretary of their intent to harass marine mammals during research activities, and the research would be included in the general authorization unless the Secretary notified the applicant otherwise within 30 days.

## **SEC 9. AUTHORIZATION OF APPROPRIATIONS**

The authorization for the Department of Commerce is \$20 million annually through 1999 to implement the stock assessment and commercial fishing interactions programs under MMPA sections 117 and 118, and \$12.6 million in 1995 through \$14.8 million in 1999 for all other responsibilities under the Act.

## **SEC 10. STOCK ASSESSMENTS**

A new (and second) MMPA section 117 requires that the Secretary prepare, and periodically revise, stocks assessment reports for all marine mammal stocks that occur in U.S. waters. The stock assessment reports must include geographic range of the stock, minimum population estimate and net productivity rates, estimates of human-caused mortality, a description of the commercial fisheries that interact with the stock, and an estimate of the potential biological removal level for the stock (i.e., the number of animals that may be removed from the stock while allowing the stock to reach or maintain its optimum sustainable population level). Stocks which have a level of human-caused mortality that is likely to cause the stock to be reduced or kept below its optimum sustainable population would be classified as "strategic stocks." If requested by an Alaskan

native, the Secretary must conduct a hearing before an Administrative Law Judge prior to publishing the final stock assessment report.

Three regional scientific review groups must be established representing Alaska, the Pacific Coast and the Atlantic Coast. These groups are to advise the Secretary on stock assessments, uncertainties and research needed on stocks, impacts to stocks, and methods to reduce incidental mortality in fishing operations.

#### **SEC 11. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS**

A new MMPA section 118 governs the taking of marine mammals incidental to commercial fishing operations, and reaffirms the goal to reduce incidental mortality to insignificant levels. This section does not apply to purse seine fishing for yellowfin tuna in the eastern tropical Pacific or to the taking of California sea otters. This section directs the Secretary to authorize taking of marine mammals incidental to commercial fishing, with restrictions where necessary to ensure that such mortality and serious injury would not prevent marine mammals stocks from recovering to, or being maintained within, optimum sustainable populations.

##### Zero Mortality Rate Goal

Commercial fisheries are required to reduce incidental mortality and serious injury of marine mammals to insignificant levels within 7 years. After 3 years, the Secretary is required to review progress toward this goal, and report to Congress.

##### Registration and Authorization

The Secretary is required to publish, and annually update, a list of fisheries with frequent (category I), occasional (category II) or remote likelihood (category III) of mortality and serious injury of marine mammals. Those operating in category I or II fisheries are required to register and the Secretary would grant, and reissue annually, an authorization to incidentally take marine mammals. Category I and II vessels are also required to carry an observer, if requested, and comply with any take reduction plan take plan and emergency regulations.

##### Monitoring of Incidental Takes

The Secretary is required to establish a monitoring program to obtain reliable estimates of incidental mortality and serious injury and to identify changes in fishing methods or technology that may decrease mortality. The priorities of the program



should focus on fisheries incidentally taking endangered or threatened marine mammals, strategic stocks, or stocks for which incidental take levels are uncertain.

### Reporting Requirement

Vessel operators in all commercial fisheries are required to report all incidental mortality or injury of marine mammals within 48 hours of the end of each fishing trip, on a standard, machine-readable, postage-paid form.

### Take Reduction Plans

The Secretary is required to develop and implement take reduction plans for each strategic stock that interacts with category I or II fisheries, and may develop plans for certain other stocks. The goals of the plan are to reduce the mortality and serious injury incidental to commercial fishing below the estimated potential biological removal level (and further to the extent practicable) within 6 months, and to insignificant levels within 5 years. Priority for developing these plans are to be given to stocks whose incidental mortality level exceed its potential biological removal level, those that have a small population size, and those declining most rapidly.

The Secretary is required to establish take reduction teams to draft the take reduction plans. The team will consist of members with expertise in marine mammal biology and fishing technology and practices, with a balance between resource-user interests and nonuser interests. Specific timeframes and processes for completing the draft and final plans are established. To implement the plan, the Secretary may establish regulations that restrict commercial fisheries by time or area, or that require the use of alternative commercial fishing gear or techniques.

### Emergency Regulations

If the Secretary finds that the incidental mortality and serious injury is likely to have a significant impact on a marine mammal stock, the Secretary is directed to issue emergency regulations, after consultation with appropriate regional fishery management councils and state agencies. The resulting emergency regulations are limited in duration to 180 days, with a 90-day extension if necessary. While emergency regulations are in effect, Take Reduction Teams will be convened or reconvened to prepare or revise a Take Reduction Plan.

## **SEC 17. HUMAN ACTIVITY WITHIN PROXIMITY OF WHALES**

This section allows approaches to humpback whales up to 100 years, and invalidate regulations that prohibit approaches closer than 300 yards in waters designated as humpback whale cow/calf waters in Hawaii.

## **SEC 19. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA**

A new MMPA section 119 authorizes the Secretary to enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide for co-management of subsistence use.

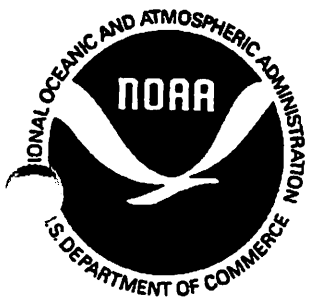
## **SEC 20. MARINE ECOSYSTEM PROTECTION**

This provision directs the Secretary to convene a workshop to assess, and report to Congress on, human-caused factors affecting the health and stability of the Gulf of Maine ecosystem. It also directs the Secretary to undertake a scientific research program to monitor the health and stability of the Bering Sea ecosystem, based on research recommendations on previous workshops that address this issue.

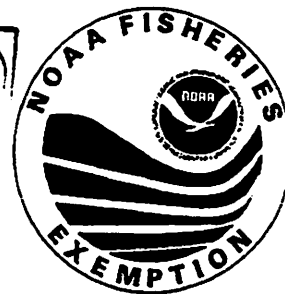
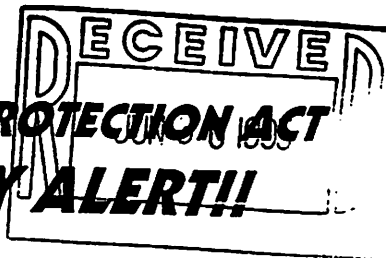
## **SEC 23. PACIFIC COAST TASK FORCE; GULF OF MAINE**

A new MMPA section 120 addresses conflicts between human activity and pinnipeds. The Secretary may authorize the intentional lethal removal of individual pinnipeds which are significantly adversely affecting salmonid stocks. Upon request from any State, the Secretary would establish and convene a task force to recommend whether to authorize the requested lethal removal or some other alternative.

This provision also directs the Secretary to study and report on whether California sea lions and Pacific harbor seals are having a significant impact on salmonid stocks or on the coastal ecosystems, and authorizes the Secretary to conduct region-wide pinniped fishery interaction studies. The Secretary is also directed to establish a Pinniped-Fishery Interaction Task Force to advise on issues resulting from seals interacting with aquaculture resources in the Gulf of Maine, and report to Congress on available alternative to mitigate such interactions.



# MARINE MAMMAL PROTECTION ACT REGULATORY ALERT!!



The National Marine Fisheries Service (NMFS) has recently published proposed regulations to govern interactions between marine mammals and commercial fishing operations (60 F.R. 31666, Friday, June 16, 1995). The proposed regulations would implement section 118 of the 1994 Amendments to the Marine Mammal Protection Act (MMPA), as mandated by Public Law 103-238. After a 45-day opportunity for public comment, final regulations will be published and will become effective September 1, 1995. Comments on the proposed list of fisheries will be accepted for 90 days, and the new fishery categorization system will become effective January 1, 1996.

### *Highlights of the proposed regulations include:*

**New Authorization Process:** Fishers participating in Category I or II fisheries would be required to register with NMFS and display a current decal. An annual registration fee may be charged for authorization issuance.

**New Fishery Classification Criteria and Proposed List of Fisheries:** Commercial fisheries would be classified according to their annual impact on marine mammal stocks, as defined by the number of serious injuries and mortalities relative to the stock's Potential Biological Removal, or PBR. The status of all marine mammal stocks in U.S. waters, and each stock's serious injury and mortality rate relative to PBR, has been reviewed by NMFS biologists and other marine mammal scientists. A proposed list of fisheries has been developed, classifying fisheries according to the following criteria:

**Category I:** A fishery that is responsible for the annual removal of greater than or equal to 50 percent of any marine mammal stock's PBR.

**Category II:** A fishery that, collectively with other fisheries, is responsible for more than 10 percent of any marine mammal stock's PBR, and is, by itself, responsible for the annual removal of between 1 and 50 percent of any marine mammal stock's PBR.

**Category III:** A fishery that, collectively with other fisheries, is responsible for less than or equal to 10 percent of any marine mammal stock's PBR; OR A fishery that, by itself, is responsible for less than or equal to 1 percent of that stock's PBR.

**New Fishery Reporting Requirements:** All fishers, regardless of Category, would be required to submit a report to NMFS within 48 hours after the end of the fishing trip if they have incidentally injured or killed a marine mammal in the course of commercial fishing operations. Intentional lethal taking of marine mammals is prohibited, except if imminently necessary in self defense or to save the life of another person in immediate danger. NMFS is developing easy-to-use, computer scannable reporting forms for use in reporting injuries and mortalities.

**Definition of Zero Mortality Rate Goal (ZMRG):** The 1994 amendments to the MMPA imposed a 7-year deadline (April 30, 2001) for all fisheries to "reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate". Under the proposed rule, the ZMRG would be met when the total fishery mortality (all fisheries combined) is less than 10% of the calculated PBR of any stock, or, when total fishery mortality exceeds 10%, any given fishery removes not more than 1% of any stock's PBR. Those fisheries that kill or seriously injure declining, depleted, threatened, or endangered stocks of marine mammals would have to be examined separately.

**Taking of Endangered and Threatened Marine Mammals:** In addition to the section 118 authorization certificate allowing fishers to lawfully incidentally take non-ESA listed marine mammals that would be issued under the proposed regulations, the 1994 MMPA amendments require fishers to obtain a separate authorization to lawfully take endangered or threatened marine mammals. NMFS can only grant such authorization for fisheries that have no more than a "negligible impact" on these stocks. Therefore, a list of fisheries that interact with threatened and endangered stocks of marine mammals is provided. NMFS is specifically requesting comments on those fisheries that have takes of species listed under the ESA and on the magnitude of the takes.

**Comments on the proposed regulations and interactions between commercial fisheries and ESA-listed species must be received by July 31, 1995. Comments on the proposed list of fisheries must be received by September 14, 1995.**

*If you would like to receive a copy of the proposed regulations, please call or write to us at any of the following NMFS offices:*

National Marine Fisheries Service  
Office of Protected Resources  
1315 East-West Highway  
Silver Spring, MD 20910-3226  
(301) 713-2322

National Marine Fisheries Service  
Northeast Region, F/NEO2  
One Blackburn Drive  
Gloucester, MA 01930-2237  
(508) 281-9254

National Marine Fisheries Service  
Southeast Region, F/SEO13  
9721 Executive Center Drive  
St. Petersburg, FL 33702-2432  
(813) 570-5312

National Marine Fisheries Service  
Southwest Region, F/SWO3  
501 West Ocean Boulevard  
Long Beach, CA 90802-4015  
(310) 980-4015

National Marine Fisheries Service  
Northwest Region, F/NWO2  
7600 Sand Point Way, NE  
Seattle, WA 98115-0070  
(206) 526-6154

National Marine Fisheries Service  
Alaska Region, F/AKO2  
Box 21668  
Juneau, AK 99802-1668  
(907) 586-7235

## Public Hearing Schedule...

NMFS will be conducting a number of hearings around the country to discuss the proposed regulations to implement section 118 of the MMPA. If you would like to hear a discussion of the proposed regulations and/or submit oral or written comments, you can attend one of the following NMFS public hearings.

<u>When</u>	<u>Where</u>
Wednesday, June 28, 1995 6:00 - 9:00 PM	King's Grant Inn, Route 128 at Trask Lane Danvers, MA 01923
Thursday, July 6, 1995 6:30 - 9:30 PM	U.S. Fish & Wildlife Service Forsythe Refuge Auditorium Gray Creek Road (off Route 9), Oceanville, NJ 08230
Monday, July 10, 1995 3:00 - 5:00 PM	NOAA Headquarters, 1325 East-West Highway, 2nd Floor Silver Spring, MD 20910
Wednesday, July 12, 1995 6:30 - 9:30 PM	Carousel Hotel and Resort, 118th Street and Coastal Highway Ocean City, MD 21842
Wednesday, July 12, 1995 1:00 - 4:00 PM	Renaissance Hotel, 111 East Ocean Boulevard Long Beach, CA 90802
Wednesday, July 12, 1995 7:30 - 10:00 PM	Holiday Inn, 3845 Veteran's Highway Ronkonkoma, NY 11779
Tuesday, July 18, 1995 9:00 AM - 12 noon	Federal Building, Tlingit Room (1st Floor), 222 West 7th Avenue Anchorage, AK 99513
Wednesday, July 19, 1995 7:00 - 10:00 PM	Duke University Marine Lab Auditorium Pivers Island Road, Beaufort, NC 28516
Wednesday, July 19, 1995 10:00 AM - 12 noon	NOAA Sand Point Facility, Building 9 Auditorium 7600 Sand Point Way, NE, Seattle, WA 98115

**National Marine Fisheries Service  
Office of Protected Resources  
1315 East-West Highway  
Silver Spring, MD 20910-3226**