

Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.”

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

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

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

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

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

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

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

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

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

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

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

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

1981—Subsec. (a)(2). Pub. L. 97-58, §2(1)(A), provided that the immediate goal of reducing to insignificant

levels approaching a zero mortality and serious injury rate the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be satisfied in the case of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.

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

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

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

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

EFFECTIVE DATE OF 1997 AMENDMENT

For effective date of amendment by Pub. L. 105-42, see section 8 of Pub. L. 105-42, set out as a note under section 1362 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENT

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

TERMINATION OF ADVISORY COMMITTEES

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

§ 1372. Prohibitions

(a) Taking

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

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

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

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

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

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

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

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

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection 1374(c) of this title; and

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

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

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

(1) pregnant at the time of taking;

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

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

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

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

(c) Importation of illegally taken mammals

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

(1) Any marine mammal which was—

(A) taken in violation of this subchapter; or

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

(2) Any marine mammal product if—

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

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

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a

manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Nonapplicability of prohibitions

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

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

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

(e) Retroactive effect

This chapter shall not apply with respect to any marine mammal taken before the effective date of this chapter, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) Commercial taking of whales

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

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

REFERENCES IN TEXT

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

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

AMENDMENTS

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

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

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

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

1992—Subsec. (a). Pub. L. 102-587 inserted “or subchapter V of this chapter” in introductory provisions. 1988—Subsec. (a). Pub. L. 100-711, §2(b), substituted “1383, and 1383a” for “and 1383”.

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1973 AMENDMENT

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

§ 1373. Regulations on taking of marine mammals

(a) Necessity and appropriateness

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

(b) Factors considered in prescribing regulations

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

- (1) existing and future levels of marine mammal species and population stocks;
- (2) existing international treaty and agreement obligations of the United States;
- (3) the marine ecosystem and related environmental considerations;
- (4) the conservation, development, and utilization of fishery resources; and
- (5) the economic and technological feasibility of implementation.

(c) Allowable restrictions

The regulations prescribed under subsection (a) of this section for any species or population

stock of marine mammal may include, but are not limited to, restrictions with respect to—

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

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

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

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

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

(d) Procedure

Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 1371(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements, imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section—

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

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

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

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

(e) Periodic review

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

(f) Report to Congress

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

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