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## CHAPTER 31—MARINE MAMMAL PROTECTION

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### SUBCHAPTER I—GENERALLY

#### § 1361. Congressional findings and declaration of policy

The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of

their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

(Pub. L. 92-522, §2, Oct. 21, 1972, 86 Stat. 1027; Pub. L. 97-58, §1(b)(1), Oct. 9, 1981, 95 Stat. 979; Pub. L. 103-238, §3, Apr. 30, 1994, 108 Stat. 532.)

#### AMENDMENTS

1994—Par. (2). Pub. L. 103-238, §3(1), inserted “essential habitats, including” after “made to protect”.

Par. (5). Pub. L. 103-238, §3(2), inserted “and their habitats” before “is therefore necessary” in concluding provisions.

1981—Par. (6). Pub. L. 97-58 substituted “carrying capacity” for “optimum carrying capacity”.

#### EFFECTIVE DATE

Pub. L. 92-522, §4, Oct. 21, 1972, 86 Stat. 1029, provided that: “The provisions of this Act [enacting this chapter] shall take effect upon the expiration of the sixty-day period following the date of its enactment [Oct. 21, 1972].”

#### SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109-479, title IX, §901, Jan. 12, 2007, 120 Stat. 3660, provided that: “This title [enacting subchapter VI of this chapter and amending section 1377 of this title] may be cited as the ‘United States-Russia Polar Bear Conservation and Management Act of 2006’.”

#### SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-555, §1, Dec. 21, 2000, 114 Stat. 2765, provided that: “This Act [enacting section 1421f-1 of this title, amending sections 1362, 1421g, 1421h, 1433, 1434, 5101 to 5103, 5106, 5107a to 5108, and 5156 of this title, enacting provisions set out as notes under this section and sections 917a, 1433, 5101, and 5107 of this title, and amending provisions set out as a note under section 1855 of this title] may be cited as the ‘Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000’.”

Pub. L. 106-555, title II, §201, Dec. 21, 2000, 114 Stat. 2767, provided that: “This title [enacting section 1421f-1 of this title, amending sections 1362, 1421g, 1421h, 1433, and 1434 of this title, enacting provisions set out as notes under sections 917a and 1433 of this title, and amending provisions set out as a note under section 1855 of this title] may be cited as the ‘Marine Mammal Rescue Assistance Act of 2000’.”

#### SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-42, §1(a), Aug. 15, 1997, 111 Stat. 1122, provided that: “This Act [enacting sections 962, 1412, 1413, 1414a to 1416 of this title, amending sections 952, 953, 1362, 1371, 1374, 1378, 1380, 1385, 1411, and 1417 of this title, repealing sections 1412 to 1416 and 1418 of this title, and enacting provisions set out as notes under this section and section 1362 of this title] may be cited as the ‘International Dolphin Conservation Program Act’.”

#### SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-238, §1, Apr. 30, 1994, 108 Stat. 532, provided that: “This Act [enacting sections 1386 to 1389 of this title, amending this section and sections 1362, 1371, 1372, 1374, 1375, 1379, 1380, 1382 to 1384, 1407, 1421 to 1421h, and 4107 of this title, repealing sections 1384 and 1407 of this title, and enacting provisions set out as notes under this section and sections 1362, 1374, 1538, and 1539 of this title] may be cited as the ‘Marine Mammal Protection Act Amendments of 1994’.”

#### SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102-587, title III, §3001, Nov. 4, 1992, 106 Stat. 5059, provided that: “This title [enacting subchapter V

of this chapter, amending sections 1362, 1372, 1379, and 1382 of this title and section 183c of Title 46, Appendix, Shipping, and enacting provisions set out as notes under sections 1421 and 1421a of this title] may be cited as the ‘Marine Mammal Health and Stranding Response Act’.”

Pub. L. 102-523, §1, Oct. 26, 1992, 106 Stat. 3425, provided that: “This Act [enacting subchapter IV of this chapter and amending sections 952, 953, 973r, and 1362 of this title] may be cited as the ‘International Dolphin Conservation Act of 1992’.”

#### SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-711, §1, Nov. 23, 1988, 102 Stat. 4755, provided: “That this Act [enacting sections 1383a and 1383b of this title, amending sections 1166, 1371, 1372, 1374, 1378 to 1380, 1384, 1402, and 1407 of this title and section 1978 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1384 of this title] may be cited as the ‘Marine Mammal Protection Act Amendments of 1988’.”

#### SHORT TITLE

Pub. L. 92-522, §1, Oct. 21, 1972, 86 Stat. 1027, provided in part that: “This Act [enacting this chapter] may be cited as the ‘Marine Mammal Protection Act of 1972’.”

#### REGULATIONS

Pub. L. 103-238, §15(b), Apr. 30, 1994, 108 Stat. 559, provided that: “Except as provided otherwise in this Act [see Short Title of 1994 Amendment note above], or the amendments to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) made by this Act, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall, after notice and opportunity for public comment, promulgate regulations to implement this Act and the amendments made by this Act by January 1, 1995.”

#### PURPOSES AND FINDINGS

Pub. L. 105-42, §2, Aug. 15, 1997, 111 Stat. 1122, provided that:

“(a) PURPOSES.—The purposes of this Act [see Short Title of 1997 Amendment note above] are—

“(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

“(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

“(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

“(b) FINDINGS.—The Congress finds that—

“(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

“(2) the provisions of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

“(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

“(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin

tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.”

RELATIONSHIP OF MARINE MAMMAL PROTECTION ACT  
AMENDMENTS OF 1994 TO OTHER LAW

Pub. L. 103-238, §2(b), Apr. 30, 1994, 108 Stat. 532, provided that: “Except as otherwise expressly provided, nothing in this Act [see Short Title of 1994 Amendment note above] is intended to amend, repeal, or otherwise affect any other provision of law.”

INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSISTENCE

Pub. L. 103-238, §14, Apr. 30, 1994, 108 Stat. 558, provided that: “Nothing in this Act [see Short Title of 1994 Amendment note above], including any amendments to the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] made by this Act—

“(1) alters or is intended to alter any treaty between the United States and one or more Indian tribes; or

“(2) affects or otherwise modifies the provisions of section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)), except as specifically provided in the amendment made by section 4(b) of this Act [amending section 1371 of this title].”

STUDY ON EFFECTS OF DOLPHIN FEEDING

Pub. L. 102-567, title III, §306, Oct. 29, 1992, 106 Stat. 4284, directed Secretary of Commerce to conduct a study in the eastern Gulf of Mexico on the effects of feeding of noncaptive dolphins by human beings, such study to be designed to detect any behavior or diet modification resulting from this feeding and to identify the effects, if any, of these modifications on the health and well-being of the dolphins, directed Secretary to consult with National Academy of Sciences and Marine Mammal Commission in design and conduct of the study, and directed Secretary, within 18 months after Oct. 29, 1992, to submit to Congress a report on results of the study.

STUDY ON MORTALITY OF ATLANTIC DOLPHIN

Pub. L. 100-711, §7, Nov. 23, 1988, 102 Stat. 4771, directed Secretary of Commerce to conduct a study regarding east coast epidemic during 1987 and 1988 which caused substantial mortality within North Atlantic coastal population of Atlantic bottle-nosed dolphin, such study to examine (1) cause or causes of epidemic, (2) effect of epidemic on coastal and offshore populations of Atlantic bottle-nosed dolphin, (3) extent to which pollution may have contributed to epidemic, (4) whether other species and populations of marine mammals were affected by those factors which contributed to epidemic, and (5) any other matters pertaining to causes and effects of epidemic, with Secretary to submit on or before Jan. 1, 1989, to Committee on Commerce, Science, and Transportation of the Senate and Committee on Merchant Marine and Fisheries of the House of Representatives a plan for conducting the study.

INTERNATIONAL DISCUSSION TO ADVANCE  
UNDERSTANDING OF CETACEAN LIFE

Pub. L. 95-426, title VI, §602, Oct. 7, 1978, 92 Stat. 985, provided that: “It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries—

“(1) to join in international discussions with other such countries in order to advance general understanding of cetacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

“(2) to participate in an exchange of information with the National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of—

“(A) the impact of cetaceans on ecologically related human foodstuffs, and

“(B) alternative methods of dealing with cetacean problems as they occur;

“(3) to cooperate in establishing an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

“(4) to adopt comprehensive marine mammal protection legislation.”

§ 1362. Definitions

For the purposes of this chapter—

(1) The term “depletion” or “depleted” means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 1379 of this title, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.].

(2) The terms “conservation” and “management” mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term “district court of the United States” includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term “humane” in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term “intermediary nation” means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 1371(a)(2)(B) of this title.

(6) The term “marine mammal” means any mammal which (A) is morphologically adapted