

marine mammals, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. The suggested regime shall include—

(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. The recommendations shall include—

(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

(B) a proposed schedule for implementing the suggested regime; and

(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

(m) Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this subchapter.

(n) Owner of fixed commercial fishing gear deemed owner of vessel engaged in fishery in which gear deployed

For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

(o) Definitions

As used in this section—

(1) the term “fishery” has the same meaning as it does in section 1802(8)² of this title.

(2) the term “Secretary” means the Secretary of Commerce.

(3) the term “vessel engaged in a fishery” means a fishing vessel as defined in section 2101(11a) of title 46 or a fish processing vessel as defined in section 2101(11b) of that title, which is engaged in fishery.

(4) the term “vessel of the United States” has the same meaning as it does in section 1802(27)² of this title.

(Pub. L. 92–522, title I, §114, as added Pub. L. 100–711, §2(a)(2), Nov. 23, 1988, 102 Stat. 4755; amended Pub. L. 103–86, Sept. 30, 1993, 107 Stat. 930; Pub. L. 103–228, Mar. 31, 1994, 108 Stat. 281; Pub. L. 103–238, §15(a), Apr. 30, 1994, 108 Stat. 559; Pub. L. 104–43, title IV, §404(a)(1), Nov. 3, 1995, 109 Stat. 390; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

REFERENCES IN TEXT

Section 1802 of this title, referred to in subsec. (o)(1), (4), was subsequently amended, and section 1802(8) and (27) no longer defines the terms “fishery” and “vessel of the United States”. However, such terms are defined elsewhere in that section.

AMENDMENTS

1996—Subsecs. (a)(1), (b)(2)(B)(ii), (o)(1), (4). Pub. L. 104–208 made technical amendment to references in original act which appear in text as references to sections 1802(8), (27) and 1824(b) of this title.

1995—Pub. L. 104–43 amended directory language of Pub. L. 103–238. See 1994 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103–238, as amended by Pub. L. 104–43, substituted “until superseded by regulations prescribed under section 1387 of this title, or until September 1, 1995, whichever is earlier,” for “ending May 1, 1994.”

Pub. L. 103–228 substituted “May 1, 1994.” for “April 1, 1994.”

1993—Subsec. (a)(1). Pub. L. 103–86 substituted “April 1, 1994” for “October 1, 1993”.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–43, title IV, §404(a)(2), Nov. 3, 1995, 109 Stat. 391, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective on and after April 30, 1994.”

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 1383b. Status review; conservation plans

(a) Determinations by rule; notice and hearing; findings; final rule on status of species or stock involved

(1) In any action by the Secretary to determine if a species or stock should be designated as depleted, or should no longer be designated as depleted, regardless of whether such action is taken on the initiative of the Secretary or in re-

² See References in Text note below.

sponse to a petition for a status review, the Secretary shall only make such a determination by issuance of a rule, after notice and opportunity for public comment and after a call for information in accordance with paragraph (2).

(2) The Secretary shall make any determination described in paragraph (1) solely on the basis of the best scientific information available. Prior to the issuance of a proposed rule concerning any such determination, the Secretary shall publish in the Federal Register a call to assist the Secretary in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent the Secretary determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

(3)(A) If the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the Federal Register that such a petition has been received and is available for public review.

(B) Within sixty days after receipt of the petition, the Secretary shall publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

(C) If the Secretary makes a positive finding under subparagraph (B), the Secretary shall include in the Federal Register notice, a finding that—

- (i) a review of the status of the species or stock will be commenced promptly; or
- (ii) a prompt review of the petition is precluded by other pending status determination petitions and that expeditious progress is being made to process pending status determination petitions under this subchapter.

In no case after making a finding under this subparagraph shall the Secretary delay commencing a review of the status of a species or stock for more than one hundred and twenty days after receipt of the petition.

(D) No later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the Federal Register a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Persons shall have at least sixty days to submit comments on such a proposed rule.

(E) Not later than ninety days after the close of the comment period on a proposed rule issued under subparagraph (D), the Secretary shall issue a final rule on the status of the species or stock involved, along with the reasons for the status determination. If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information.

(F) Notwithstanding subparagraphs (D) and (E) of this paragraph and section 553 of title 5, the Secretary may issue a final rule as to the status

of a species or stock any time sixty or more days after a positive finding under subparagraph (B) if the Secretary determines there is substantial information available to warrant such final status determination and further delay would pose a significant risk to the well-being of any species or stock. Along with the final rule, the Secretary shall publish in the Federal Register detailed reasons for the expedited determination.

(b) Conservation plans; preparation and implementation

(1) The Secretary shall prepare conservation plans—

(A) By¹ December 31, 1989, for North Pacific fur seals;

(B) by December 31, 1990, for Steller sea lions; and

(C) as soon as possible, for any species or stock designated as depleted under this subchapter, except that a conservation plan need not be prepared if the Secretary determines that it will not promote the conservation of the species or stock.

(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary shall model such plans on recovery plans required under section 1533(f) of this title.

(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 1373(f) of this title what measures have been taken to prepare and implement such plans.

(4) If the Secretary determines that a take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a strategic stock, or for species or stocks which interact with a commercial fishery for which the Secretary has made a determination under section 1387(f)(1) of this title, any conservation plan prepared under this subsection for such species or stock shall incorporate the take reduction plan required under section 1387 of this title for such species or stock.

(Pub. L. 92-522, title I, §115, as added Pub. L. 100-711, §3(a), Nov. 23, 1988, 102 Stat. 4763; amended Pub. L. 103-238, §8, Apr. 30, 1994, 108 Stat. 543.)

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103-238 added par. (4).

§ 1384. Authorization of appropriations

(a) Department of Commerce

(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this subchapter (other than sections 1386 and 1387 of this title) and subchapter V of this chapter, \$12,138,000 for fiscal year 1994, \$12,623,000 for fiscal year 1995, \$13,128,000 for fiscal year 1996, \$13,653,000 for fiscal year 1997, \$14,200,000 for fiscal year 1998, and \$14,768,000 for fiscal year 1999.

¹ So in original. Probably should not be capitalized.