

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.)

#### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (f), 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.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f) of this section relating to the Secretary reporting to Congress on the current status of marine mammal species and population stocks subject to this chapter, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money

and Finance, and pages 54 and 107 of House Document No. 103-7.

MARINE MAMMAL POPULATIONS REPORT

Pub. L. 101-627, title XI, §1101, Nov. 28, 1990, 104 Stat. 4468, directed Secretary of Commerce, in consultation with Secretary of the Interior, to provide to Congress within 12 months after Nov. 28, 1990, a report assessing population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions off the coast of the State of Washington; assessing the effectiveness of 16 U.S.C. 1371(a)(3)(A) and 1379(h); and specifying long range management plans for the species of marine mammals listed.

**§ 1374. Permits**

**(a) Issuance**

The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections<sup>1</sup> 1371(a)(5) or 1416 of this title, or subsection (h) of this section.

**(b) Requisite provisions**

Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 1373 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

**(c) Importation for scientific research, public display, or enhancing survival or recovery of species or stock**

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this chapter, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this chapter. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(i) or (iii) and is not reasonably

<sup>1</sup> So in original. Probably should be "section".