

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 sections¹ 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

¹ So in original. Probably should be "section".

likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with subsection (e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this chapter for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after April 30, 1994, the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

- (i) The species or stocks of marine mammals which may be harassed.
- (ii) The geographic location of the research.
- (iii) The period of time over which the research will be conducted.
- (iv) The purpose of the research, including a description of how the definition of bona fide research as established under this chapter would apply.
- (v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the

general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 1383b(b) of this title or any recovery plan developed under section 1533(f) of this title for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring

the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 1383(d) of this title.

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after April 30, 1994. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before February 18, 1997, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 1371 and 1372 of this title. This subparagraph shall not apply to polar bear parts that were imported before June 12, 1997.

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine

mammal which is in the possession of any person authorized to possess it under this chapter and which is determined under guidance under section 1421a(a) of this title not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before April 30, 1994, and held in captivity for the purpose of public display shall be treated as though born after April 30, 1994.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this chapter:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) Application procedures; notice; hearing; review

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this chapter and the applicable regulations established under section 1373 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) Modification, suspension, and revocation

(1) The Secretary may modify, suspend, or revoke in whole or in part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 1373 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Possession of permit by issuee or his agent

Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) Fees

The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) General permits

(1) Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 1416 of this title, subject to the regulations issued pursuant to section 1413 of this title.

(Pub. L. 92-522, title I, § 104, Oct. 21, 1972, 86 Stat. 1034; Pub. L. 98-364, title I, § 102, July 17, 1984, 98 Stat. 440; Pub. L. 100-711, §§ 4(d), 5(d), Nov. 23, 1988, 102 Stat. 4767, 4769; Pub. L. 103-238, § 5(b), Apr. 30, 1994, 108 Stat. 537; Pub. L. 105-18, title V, § 5004, June 12, 1997, 111 Stat. 187; Pub. L. 105-42, § 4(d), Aug. 15, 1997, 111 Stat. 1125; Pub. L. 105-277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-238; Pub. L. 106-31, title V, § 5004(1), May 21, 1999, 113 Stat. 110; Pub. L. 108-108, title I, § 149, Nov. 10, 2003, 117 Stat. 1281.)

REFERENCES IN TEXT

7 U.S.C. 2131 et seq., referred to in subsec. (c)(2)(A)(ii), is the classification for Pub. L. 89-544, Aug. 24, 1966, 80 Stat. 350, as amended, known as the Animal Welfare Act, which is classified generally to chapter 54 (§ 2131 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2131 of Title 7 and Tables.

AMENDMENTS

2003—Subsec. (c)(5)(D). Pub. L. 108-108, which directed the substitution of “February 18, 1997” for “April 30, 1994” in “Section 104 (16 U.S.C. 1374)” without indicating the act to be amended, was executed by amending this section, which is section 104 of the Marine Mammal Protection Act of 1972, to reflect the probable intent of Congress.

1999—Subsec. (c)(5)(B). Pub. L. 106-31 made technical correction to directory language of Pub. L. 105-277. See 1998 Amendment note below.

1998—Subsec. (c)(5)(B). Pub. L. 105-277, as amended by Pub. L. 106-31, inserted “until expended” after “Secretary” in second sentence.

1997—Subsec. (c)(5)(A). Pub. L. 105-18, § 5004(1), struck out “, including polar bears taken but not imported prior to April 30, 1994,” after “sport hunts in Canada”.

Subsec. (c)(5)(D). Pub. L. 105-18, § 5004(2), added subpar. (D).

Subsec. (h). Pub. L. 105-42 amended subsec. (h) generally. Prior to amendment, subsec. (h) related to general permits, extension of general permit to American Tunaboat Association, and monitoring of incidental taking of marine mammals.

1994—Subsec. (a). Pub. L. 103-238, § 5(b)(1), inserted at end “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 1371(a)(5) or 1416 of this title, or subsection (h) of this section.”

Subsec. (c)(1). Pub. L. 103-238, § 5(b)(2)(A), struck out “and after” after “must be observed pursuant to”.

Subsec. (c)(2). Pub. L. 103-238, § 5(b)(2)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A permit may be issued for public display purposes only to an applicant which offers a program for education or conservation purposes that, based on professionally recognized standards of the public display community, is acceptable to the Secretary and which submits with the permit application information indicating that the applicant’s facilities are open to the public on a regularly scheduled basis and that access to the facilities is not limited or restricted other than by the charging of an admission fee.”

Subsec. (c)(3). Pub. L. 103-238, § 5(b)(2)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “A permit may be issued for scientific research purposes only to an applicant which submits with its permit application information indicating that the

taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No permit issued for purposes of scientific research shall authorize the killing of a marine mammal unless the applicant demonstrates that a nonlethal method for carrying out the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.”

Subsec. (c)(5) to (10). Pub. L. 103-238, § 5(b)(2)(D), added pars. (5) to (10).

Subsec. (e)(1)(C). Pub. L. 103-238, § 5(b)(3), added subpar. (C).

1988—Subsec. (c). Pub. L. 100-711, § 5(d), designated existing provisions as par. (1) and substituted “scientific research, public display, or enhancing the survival or recovery of a species or stock” for “display or scientific research” in two places, and added pars. (2) to (4).

Subsec. (h)(2)(B). Pub. L. 100-711, § 4(d), added cls. (iv) to (ix).

1984—Subsec. (h). Pub. L. 98-364 designated existing provisions as par. (1), and added pars. (2) and (3).

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.

MODIFICATION OF PERMITS EXISTING PRIOR TO APRIL 30, 1994

Pub. L. 103-238, § 5(c), Apr. 30, 1994, 108 Stat. 541, provided that: “Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act [Apr. 30, 1994] is hereby modified to be consistent with that section as amended by this Act.”

§ 1375. Penalties

(a)(1) Any person who violates any provision of this subchapter or of any permit or regulation issued thereunder, except as provided in section 1387 of this title, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.

(b) Any person who knowingly violates any provision of this subchapter or of any permit or