

## Showing Current Law as Amended by H.R. 3133

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### Section 101 of the Marine Mammal Protection Act (16 U.S.C. 1371)

## §1371. Moratorium on taking and importing marine mammals and marine mammal products

### (a) Imposition; exceptions

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(5)(A)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment-

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or [section 1379\(f\) of this title](#) 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](#); and

(II) prescribes regulations setting forth-

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and  
(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of Public Law 107-314; [16 U.S.C. 703 note](#)), a determination of "least practicable adverse impact on such species or stock" under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; [16 U.S.C. 703 note](#)), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that-

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by [citizens of the United States] persons who engage in a specified activity (other than commercial fishing) [within a specific geographic region], the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment [of small numbers] of marine mammals of a species or population stock by such [citizens] persons while engaging in that activity [within that region] if the Secretary finds that such harassment during each period concerned-

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable-

(I) permissible methods of taking by harassment pursuant to such activity[, and other means of effecting the least practicable impact on such species or stock and its habitat], paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and

(III) [requirements pertaining to the monitoring and reporting of such taking by harassment, including] efficient and practical requirements pertaining to the monitoring of such taking by harassment while the activity is being conducted and the reporting of such taking, including, as the Secretary determines necessary, requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

Any condition imposed pursuant to subclause (I), (II), or (III) may not result in more than a minor change to the specified activity and may not alter the basic design, location, scope, duration, or timing of the specified activity.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after [receiving an application under this subparagraph] an application is accepted or required to be considered complete under subclause (I)(aa), (II)(aa), or (IV) of clause (viii), as applicable, and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public

comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), [a determination of "least practicable adverse impact on such species or stock" under clause (i)(I)] conditions imposed under subclause (I), (II), or (III) of clause (ii) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(viii)(I) The Secretary shall—

(aa) accept as complete a written request for authorization under this subparagraph for incidental taking described in clause (i), by not later than 45 days after the date of submission of the request; or

(bb) provide to the requester, by not later than 15 days after the date of submission of the request, a written notice describing any additional information required to complete the request.

(II) If the Secretary provides notice under subclause (I)(bb), the Secretary shall, by not later than 30 days after the date of submission of the additional information described in the notice—

(aa) accept the written request for authorization under this subparagraph for incidental taking described in clause (i); or

(bb) deny the request and provide the requester a written explanation of the reasons for the denial.

(III) The Secretary may not under this subparagraph make a second request for information, request that the requester withdraw and resubmit the request, or otherwise delay a decision on the request.

(IV) If the Secretary fails to respond to a request for authorization under this subparagraph in the manner provided in subclause (I) or (II), the request shall be considered to be complete.

(ix)(I) At least 90 days before the date of the expiration of any authorization issued under this subparagraph, the holder of such authorization may apply for a one-year extension of such authorization. The Secretary shall grant such extension within 14 days after the date of such request on the same terms and without further review if there has been no substantial change in the activity carried out under such authorization nor in the status of the marine mammal species or stock, as applicable, as reported in the final annual stock assessment reports for such species or stock.

(II) In subclause (I) the term "substantial change" means a change that prevents the Secretary from making the required findings to issue an authorization under clause (i) with respect to such species or stock.

(III) The Secretary shall notify the applicant of such substantial changes with specificity and in writing within 14 days after the applicant's submittal of the extension request.

(x) If the Secretary fails to make the required findings and, as appropriate, issue the authorization within 120 days after the application is accepted or required to be considered complete under subclause (I)(aa), (II)(aa), or (III) of clause (viii), as applicable, the authorization is deemed to have

been issued on the terms stated in the application and without further process or restrictions under this Act.

(xi) Any taking of a marine mammal in compliance with an authorization under this subparagraph is exempt from the prohibition on taking in section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1538). Any Federal agency authorizing, funding, or carrying out an action that results in such taking, and any agency action authorizing such taking, is exempt from the requirement to consult regarding potential impacts to marine mammal species or designated critical habitat under section 7(a)(2) of such Act (16 U.S.C. 1536(a)(2)).

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824(b) of this title, while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that-

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 1387 of this title, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; [16 U.S.C. 703 note](#)) shall not be subject to the following requirements:

(i) In subparagraph (A), "within a specified geographical region" and "within that region of small numbers".

(ii) In subparagraph (B), "within a specified geographical region" and "within one or more regions".

(iii) In subparagraph (D), "within a specific geographic region", "of small numbers", and "within that region".