

“(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

to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term “marine mammal product” means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term “moratorium” means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this chapter.

(9) The term “optimum sustainable population” means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term “person” includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term “population stock” or “stock” means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)(A) Except as provided in subparagraph (B), the term “Secretary” means—

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

(B) in<sup>1</sup> section 1387 of this title and subchapter V (other than section 1421f-1 of this title) the term “Secretary” means the Secretary of Commerce.

(13) The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term “waters under the jurisdiction of the United States” means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is

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

a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(17) The term “competent regional organization”—

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)(A) The term “harassment” means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) In the case of a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) or a scientific research activity conducted by or on behalf of the Federal Government consistent with section 1374(c)(3) of this title, the term “harassment” means—

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

(C) The term “Level A harassment” means harassment described in subparagraph (A)(i) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(i).

(D) The term “Level B harassment” means harassment described in subparagraph (A)(ii) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(ii).

(19) The term “strategic stock” means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.] within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this chapter.

(20) The term “potential biological removal level” means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term “Regional Fishery Management Council” means a Regional Fishery Management Council established under section 1852 of this title.

(22) The term “bona fide research” means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term “Alaska Native organization” means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term “take reduction plan” means a plan developed under section 1387 of this title.

(25) The term “take reduction team” means a team established under section 1387 of this title.

(26) The term “net productivity rate” means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term “minimum population estimate” means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the

precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28) The term “International Dolphin Conservation Program” means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

(29) The term “Declaration of Panama” means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

(Pub. L. 92-522, § 3, Oct. 21, 1972, 86 Stat. 1028; Pub. L. 93-205, § 13(e)(1), Dec. 28, 1973, 87 Stat. 903; Pub. L. 94-265, title IV, § 404(a), Apr. 13, 1976, 90 Stat. 360; Pub. L. 97-58, § 1(a), (b)(2), Oct. 9, 1981, 95 Stat. 979; Pub. L. 102-251, title III, § 304, Mar. 9, 1992, 106 Stat. 65; Pub. L. 102-523, § 2(c), Oct. 26, 1992, 106 Stat. 3432; Pub. L. 102-582, title IV, § 401(a), Nov. 2, 1992, 106 Stat. 4909; Pub. L. 102-587, title III, § 3004(b), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103-238, §§ 12, 16(a), 24(a)(2), Apr. 30, 1994, 108 Stat. 557, 559, 565; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-297, title IV, § 405(b)(2), (3), Oct. 11, 1996, 110 Stat. 3621; Pub. L. 105-42, § 3, Aug. 15, 1997, 111 Stat. 1123; Pub. L. 106-555, title II, § 202(b), Dec. 21, 2000, 114 Stat. 2768; Pub. L. 108-136, div. A, title III, § 319(a), Nov. 24, 2003, 117 Stat. 1433.)

### Editorial Notes

#### REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in pars. (1)(C) and (19)(B), (C), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified generally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

#### AMENDMENTS

2003—Par. (18)(B) to (D). Pub. L. 108-136 added subpars. (B) to (D) and struck out former subpars. (B) and (C) which read as follows:

“(B) The term ‘Level A harassment’ means harassment described in subparagraph (A)(i).

“(C) The term ‘Level B harassment’ means harassment described in subparagraph (A)(ii).”

2000—Par. (12)(B). Pub. L. 106-555 inserted “(other than section 1421f-1 of this title)” after “subchapter V”.

1997—Pars. (28), (29). Pub. L. 105-42 added pars. (28) and (29).

1996—Par. (15). Pub. L. 104-297, § 405(b)(2), repealed Pub. L. 102-251, § 304. See 1992 Amendment note below.

Pub. L. 104-297, § 404(b)(3), amended par. (15) generally. Prior to amendment, par. (15) read as follows: “The term ‘waters under the jurisdiction of the United States’ means—

“(A) the territorial sea of the United States, and

“(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”

Par. (21). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1852 of this title.

1994—Par. (12)(B). Pub. L. 103-238, § 24(a)(2), substituted “in section 1387 of this title and subchapter V” for “in subchapter V”.

Pars. (15) to (17). Pub. L. 103-238, § 16(a), redesignated par. (15) defining “fishery”, and par. (16), as pars. (16) and (17), respectively, and struck out former par. (17) which defined “intermediary nation”.

Pars. (18) to (27). Pub. L. 103-238, § 12, added pars. (18) to (27).

1992—Pars. (5) to (11). Pub. L. 102-582 added par. (5) and redesignated former pars. (5) to (10) as (6) to (11), respectively.

Par. (12). Pub. L. 102-587 substituted “(A) Except as provided in subparagraph (B), the term” for “The term”, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B). See Construction of Amendment by Pub. L. 102-587 note below.

Pub. L. 102-582 redesignated par. (11) as (12). Former par. (12) redesignated (13).

Pars. (13), (14). Pub. L. 102-582 redesignated pars. (12) and (13) as (13) and (14), respectively. Former par. (14) redesignated (15).

Par. (15). Pub. L. 102-582 redesignated par. (14), defining waters under the jurisdiction of the United States, as (15).

Pub. L. 102-523 added par. (15) defining fishery.

Pub. L. 102-251, § 304, which directed the general amendment of par. (15) by reenacting the introductory provisions and subpars. (A) and (B) without substantial change and adding subpar. (C) which read “the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.”, was repealed by Pub. L. 104-297, § 405(b)(2).

Pars. (16), (17). Pub. L. 102-523 added pars. (16) and (17).

1981—Par. (1). Pub. L. 97-58, § 1(b)(2)(A), substituted a single management standard, that is, the maintenance of species at their optimum sustainable population, for the former management standard which had included the decline of a species or population stock that had declined to a significant degree over a period of years, the decline of a species or population stock which, if continued or resumed, would place the species or stock within the provisions of the Endangered Species Act of 1973, and a species or population stock that was below the optimum carrying capacity for the species or stock within its environment.

Par. (2). Pub. L. 97-58, § 1(b)(2)(B), substituted “their optimum sustainable population” for “the optimum carrying capacity of their habitat”.

Par. (8). Pub. L. 97-58, § 1(a), (b)(2)(C), (D), redesignated par. (9) as (8) and substituted “carrying capacity” for “optimum carrying capacity”. Former par. (8), which defined “optimum carrying capacity” was struck out.

Pars. (9) to (12). Pub. L. 97-58, § 1(b)(2)(C), redesignated pars. (9) to (13) as (8) to (12), respectively.

Par. (13). Pub. L. 97-58, § 1(b)(2)(C), (E), redesignated par. (14) as (13) and substituted “the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands” for “the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands”. Former par. (13) redesignated (12).

Pars. (14), (15). Pub. L. 97-58, § 1(b)(2)(C), redesignated pars. (14) and (15) as (13) and (14), respectively.

1976—Par. (15)(B). Pub. L. 94-265 substituted “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured” for “the fisheries zone established pursuant to the Act of October 14, 1966”.

1973—Par. (1)(B). Pub. L. 93-205 substituted “Endangered Species Act of 1973” for “Endangered Species Conservation Act of 1969”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-42, §8, Aug. 15, 1997, 111 Stat. 1139, provided that:

“(a) AMENDMENTS TO TAKE EFFECT WHEN IDCP IN FORCE.—Sections 3 through 7 of 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, and repealing sections 1412 to 1416 and 1418 of this title] (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act [section 1414a of this title]) shall become effective upon—

“(1) certification by the Secretary of Commerce that—

“(A) sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972, as so added; and

“(B) the study has commenced; and

“(2) certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

“(b) SPECIAL EFFECTIVE DATE.—Notwithstanding subsection (a), the Secretary of Commerce may issue regulations under—

“(1) subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 5(b) of this Act;

“(2) section 303(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1413(a)), as added by section 6(c) of this Act,

at any time after the date of enactment of this Act [Aug. 15, 1997].”

[The Secretary of Commerce made the certification referred to in section 8(a)(1) of Pub. L. 105-42, set out above, on July 27, 1998, and the Secretary of State made the certification referred to in section 8(a)(2) of Pub. L. 105-42 on Mar. 3, 1999.]

##### 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 1994 AMENDMENT

Pub. L. 103-238, §24(e), Apr. 30, 1994, 108 Stat. 566, provided that: “The amendments made by subsection (a) [amending this section] shall be effective as if enacted as part of section 3004 of the Marine Mammal Health and Stranding Response Act (106 Stat. 5067) [Pub. L. 102-587].”

##### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

##### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-265, title IV, §404(b), Apr. 13, 1976, 90 Stat. 361, provided that the amendment made by section 404(a) of Pub. L. 94-265 to this section was to take effect Mar. 1, 1977, prior to the general amendment of title IV of Pub. L. 94-265 by Pub. L. 104-297.

##### 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.

##### EFFECTIVE DATE

Section effective upon the expiration of the sixty-day period following Oct. 21, 1972, see section 4 of Pub. L. 92-522, set out as a note under section 1361 of this title.

##### CONSTRUCTION OF AMENDMENT BY PUB. L. 102-587

Pub. L. 103-238, §24(a)(1), Apr. 30, 1994, 108 Stat. 565, provided that: “The amendments set forth in section 3004(b) of the Marine Mammal Health and Stranding Response Act (106 Stat. 5067) [Pub. L. 102-587, amending this section]—

“(A) are deemed to have been made by that section to section 3(12) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(12)); and

“(B) shall not be considered to have been made by that section to section 3(11) of that Act (16 U.S.C. 1362(11)).”

##### TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

##### TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

#### Executive Documents

##### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

##### TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

#### SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

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

#### (a) Imposition; exceptions

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases: