

**TITLE 16 - CONSERVATION****CHAPTER 31 - MARINE MAMMAL PROTECTION****SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS****§ 1387. Taking of marine mammals incidental to commercial fishing operations****(a) In general**

(1) Effective on April 30, 1994, and except as provided in section 1383a of this title and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations 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. In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate within 7 years after April 30, 1994.

(2) In the case of the incidental taking of marine mammals from species or stocks designated under this chapter as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 1371 (a)(5)(E) of this title shall apply.

(3) Sections<sup>1</sup> 1374(h) of this title and subchapter IV of this chapter, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(4) This section 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).

(5) Except as provided in section 1371 (c) of this title, the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.

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

**(b) Zero mortality rate goal**

(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after April 30, 1994.

(2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality and serious injury rates.

(3) Three years after April 30, 1994, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (f) of this section.

**(c) Registration and authorization**

(1) The Secretary shall, within 90 days after April 30, 1994—

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under

section 1383a (b)(1) of this title and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to commercial fisheries that have—

- (i) frequent incidental mortality and serious injury of marine mammals;
- (ii) occasional incidental mortality and serious injury of marine mammals; or
- (iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this chapter and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

- (2) (A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A)(i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

(B) No authorization may be granted under this section to the owner of a vessel unless such vessel—

- (i) is a vessel of the United States; or
- (ii) has a valid fishing permit issued by the Secretary in accordance with section 1824 (b) of this title.

(C) Except as provided in subsection (a) of this section, an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this chapter applies.

- (3) (A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A)(i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery—

- (i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section 1383a of this title are deemed to have registered for purposes of this subsection for the period during which such exemption is valid;

- (ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;

- (iii) report as required by subsection (e) of this section; and
    - (iv) comply with any applicable take reduction plan and emergency regulations issued under this section.
  - (B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A)(i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.
  - (C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A)(i) or (ii) who—
    - (i) fails to obtain from the Secretary an authorization for such vessel under this section;
    - (ii) fails to maintain a current and valid authorization for such vessel; or
    - (iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,
 and the master of any such vessel engaged in such fishery, shall be deemed to have violated this subchapter, and for violations of clauses (i) and (ii) shall be subject to the penalties of this subchapter, and for violations of clause (iii) shall be subject to a fine of not more than \$100 for each offense.
  - (D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement a take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.
  - (E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A)(i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e) of this section, instances of incidental mortality or injury of marine mammals in the course of that fishery.
- (4)
- (A) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (e) of this section and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 1383a of this title shall not bar authorization under this section for an owner who complies with the requirements of this section.
  - (B) The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with a take reduction plan or emergency regulations issued under this section.
  - (C) The owner and master of a vessel which fails to comply with a take reduction plan shall be subject to the penalties of sections 1375 and 1377 of this title, and may be subject to section 1376 of this title.
- (5)
- (A) The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.
  - (B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.

**(d) Monitoring of incidental takes**

(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. The purposes of the monitoring program shall be to—

- (A) obtain statistically reliable estimates of incidental mortality and serious injury;
- (B) determine the reliability of reports of incidental mortality and serious injury under subsection (e) of this section; and
- (C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(2) Pursuant to paragraph (1), the Secretary may place observers on board vessels as necessary, subject to the provisions of this section. Observers may, among other tasks—

- (A) record incidental mortality and injury, or by catch of other nontarget species;
- (B) record numbers of marine mammals sighted; and
- (C) perform other scientific investigations.

(3) In determining the distribution of observers among commercial fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:

- (A) The requirement to obtain statistically reliable information.
- (B) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery.
- (C) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage.
- (D) To the extent practicable, the need to minimize costs and avoid duplication.

(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

- (A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks.
- (C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

(5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

(6) The Secretary is not required to place an observer on a vessel in a fishery if the Secretary finds that—

- (A) in a situation in which harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

- (B) the facilities on a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or
  - (C) for reasons beyond the control of the Secretary, an observer is not available.
- (7) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not listed under subsection (c)(1)(A)(i) or (ii) of this section.
- (8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except—
- (A) to Federal employees whose duties require access to such information;
  - (B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;
  - (C) when required by court order; or
  - (D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.
- (9) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

**(e) Reporting requirement**

The owner or operator of a commercial fishing vessel subject to this chapter shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

- (1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.
- (2) The name and address of the vessel owner or operator.
- (3) The name and description of the fishery.
- (4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

**(f) Take reduction plans**

- (1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.
- (2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section 1386 of this title. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.

- (3)** If there is insufficient funding available to develop and implement a take reduction plan for all such stocks that interact with commercial fisheries listed under subsection (c)(1)(A)(i) or (ii) of this section, the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most rapidly.
- (4)** Each take reduction plan shall include—
- (A)** a review of the information in the final stock assessment published under section 1386 (b) of this title and any substantial new information;
  - (B)** an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, by fishery;
  - (C)** recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury;
  - (D)** recommended dates for achieving the specific objectives of the plan.
- (5)**
- (A)** For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the potential biological removal level established under section 1386 of this title, the plan shall include measures the Secretary expects will reduce, within 6 months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.
  - (B)** For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.
- (6)**
- (A)** At the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment under section 1386 (b) of this title for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) of this section for which the Secretary has made a determination under paragraph (1), the Secretary may—
    - (i)** establish a take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and
    - (ii)** publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.
  - (B)** The Secretary may request a take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.
  - (C)** Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian

tribal organizations, and others as the Secretary deems appropriate. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests.

**(D)** Take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings of take reduction teams shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

**(E)** Members of take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.

**(7)** Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section 1386 of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, the following procedures shall apply in the development of the take reduction plan for the stock:

**(A)** **(i)** Not later than 6 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

**(ii)** Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

**(B)** **(i)** The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

**(ii)** In the event that the take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

**(C)** Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

**(D)** The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

**(E)** The Secretary and the take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

**(F)** The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

**(8)** Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section 1386 of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, or for any marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section for which the Secretary has made a determination under

paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:

- (A) (i) Not later than 11 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.
  - (ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.
- (B) (i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.
  - (ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.
- (C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.
- (D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.
- (E) The Secretary and the take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.
- (F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.
- (9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—
  - (A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;
  - (B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;
  - (C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and
  - (D) monitor, in accordance with subsection (d) of this section, the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.
- (10) (A) Notwithstanding paragraph (6), in the case of any stock to which paragraph (1) applies for which a final stock assessment has not been published under section 1386 (b)(3) of this



title by April 1, 1995, due to a proceeding under section 1386 (b)(2) of this title, or any Federal court review of such proceeding, the Secretary shall establish a take reduction team under paragraph (6) for such stock as if a final stock assessment had been published.

**(B)** The draft stock assessment published for such stock under section 1386 (b)(1) of this title shall be deemed the final stock assessment for purposes of preparing and implementing a take reduction plan for such stock under this section.

**(C)** Upon publication of a final stock assessment for such stock under section 1386 (b)(3) of this title the Secretary shall immediately reconvene the take reduction team for such stock for the purpose of amending the take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (7)(F) or (8)(F), as appropriate.

**(D)** A draft stock assessment may only be used as the basis for a take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section 1386 (a)(5)(A) of this title and shall revoke any regulations to implement a take reduction plan for such stock.

**(E)** Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

**(11)** Take reduction plans developed under this section for a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act [16 U.S.C. 1533].

**(g) Emergency regulations**

**(1)** If the Secretary finds that the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:

**(A)** In the case of a stock or species for which a take reduction plan is in effect, the Secretary shall—

- (i)** prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and
- (ii)** approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

**(B)** In the case of a stock or species for which a take reduction plan is being developed, the Secretary shall—

- (i)** prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and
- (ii)** approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

**(C)** In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) of this section which the Secretary believes may be contributing to such adverse impact, the Secretary shall—

- (i)** prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;
- (ii)** immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) may, where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), place observers on vessels in a commercial fishery listed under subsection (c)(1)(A)(iii) of this section, if the Secretary has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(2) Prior to taking action under paragraph (1)(A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, State fishery managers, and the appropriate take reduction team (if established).

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for not more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for emergency regulations no longer exist.

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

#### (h) Penalties

Except as provided in subsection (c) of this section, any person who violates this section shall be subject to the provisions of sections 1375 and 1377 of this title, and may be subject to section 1376 of this title as the Secretary shall establish by regulations.

#### (i) Assistance

The Secretary shall provide assistance to Regional Fishery Management Councils, States, interstate fishery commissions, and Indian tribal organizations in meeting the goal of reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

#### (j) Contributions

For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

#### (k) 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.

#### (l) Definitions

As used in this section and section 1371 (a)(5)(E) of this title, each of the terms “fishery” and “vessel of the United States” has the same meaning it does in section 1802 of this title.

### Footnotes

<sup>1</sup> So in original. Probably should be “Section”.

(Pub. L. 92–522, title I, § 118, as added Pub. L. 103–238, § 11, Apr. 30, 1994, 108 Stat. 546; amended 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

The Endangered Species Act of 1973, referred to in subsecs. (a)(2), (d)(4)(A), (f)(11), and (g)(1)(C)(iii), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (§ 1531 et seq.) of this

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscp rint.html>).*

title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

Act of November 7, 1986, referred to in subsec. (a)(4), is Pub. L. 99–625, Nov. 7, 1986, 100 Stat. 3500, which amended section 718b of this title and provisions set out as a table of National Wildlife Refuges under section 668dd of this title and enacted provisions set out as a note under section 1536 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(6)(D), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

### **Amendments**

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

### **Effective Date of 1996 Amendment**

Section 101 (a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

### **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.