

Stock Assessments

16 U.S.C. 1386

Sec. 117. (a) IN GENERAL. — Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

- (1) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;
- (2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;
- (3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;
- (4) describe commercial fisheries that interact with the stock, including—
 - (A) the approximate number of vessels actively participating in each such fishery;
 - (B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;
 - (C) seasonal or area differences in such incidental mortality or serious injury; and
 - (D) the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate;
- (5) categorize the status of the stock as one that either—
 - (A) has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or
 - (B) is a strategic stock, with a description of the reasons therefor; and
- (6) estimate the potential biological removal level for the stock, describing the information used to calculate it, including the recovery factor.

(b) PUBLIC COMMENT. —

- (1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.
- (2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 101(b) applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 101(b).
- (3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d), and the

comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

(A) the close of the public comment period on a draft stock assessment or revision thereof; or

(B) final action on an agency proceeding pursuant to paragraph (2).

(c) REVIEW AND REVISION. —

(1) The Secretary shall review stock assessments in accordance with this subsection—

(A) at least annually for stocks which are specified as strategic stocks;

(B) at least annually for stocks for which significant new information is available; and

(C) at least once every 3 years for all other stocks.

(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b).

(d) REGIONAL SCIENTIFIC REVIEW GROUPS. —

(1) Not later than 60 days after the date of enactment of this section [June 29, 1994], the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups, establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico), consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b). The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific review group. The regional scientific review groups shall advise the Secretary on—

(A) population estimates and the population status and trends of such stocks;

(B) uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

(C) uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

(D) research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;

(E) the actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

(F) any other issue which the Secretary or the groups consider appropriate.

(2) The scientific review groups established under this subsection shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(3) Members of the scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their obligations.

(4) The Secretary may appoint or reappoint individuals to the regional scientific review groups under paragraph (1) as needed.

(e) EFFECT ON SECTION 101(b). — This section shall not affect or otherwise modify the provisions of section 101(b).

Taking of Marine Mammals Incidental to Commercial Fishing Operations

16 U.S.C. 1387

Sec. 118. (a) IN GENERAL. —

(1) Effective on the date of enactment of this section [April 30, 1994], and except as provided in section 114 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 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)). 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 the date of enactment of this section [April 30, 2001].

(2) In the case of the incidental taking of marine mammals from species or stocks designated under this Act 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 101(a)(5)(E) of this Act shall apply.

(3) Sections 104(h) and title III, 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 101(c), the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.

(6) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.