

H.R.5617

*One Hundred Second Congress of the United States of America***AT THE SECOND SESSION**

Begun and held at the City of Washington on Friday, the third day of January,

one thousand nine hundred and ninety-two

An Act

To provide Congressional approval of a Governing International Fishery Agreement,

and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE III--MARINE MAMMAL STRANDINGS**SEC. 3001. SHORT TITLE.**

This title may be cited as the 'Marine Mammal Health and Stranding Response Act'.

SEC. 3002. FINDINGS.

The Congress finds the following:

- (1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years.
- (2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events.
- (3) An accurate assessment of marine mammal health, health trends in marine mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live.
- (4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events and may serve as an indicator of the general health of our coastal and marine environments.
- (5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.
- (6) Standardized methods for the reporting of dying, dead, or otherwise incapacitated marine mammals in the wild would greatly assist in the determination of the causes of marine mammal unusual mortality events and enhance general knowledge of marine mammal species.
- (7) A formal system for collection, preparation, and archiving of, and providing access to, marine mammal tissues will enhance efforts to investigate the health of marine mammals and health trends of marine mammal populations, and to develop reference data.

(8) Information on marine mammals, including results of analyses of marine mammal tissues, should be broadly available to the scientific community, including stranding network participants, through a marine mammal data base.

SEC. 3003. MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM.

(a) IN GENERAL- The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following new title:

‘TITLE III--MARINE MAMMAL HEALTH AND STRANDING RESPONSE

‘SEC. 301. ESTABLISHMENT OF PROGRAM.

‘(a) ESTABLISHMENT- The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program to be known as the ‘Marine Mammal Health and Stranding Response Program’.

‘(b) PURPOSES- The purposes of the Program shall be to--

‘(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

‘(2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and

‘(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 304.

‘SEC. 302. DETERMINATION; DATA COLLECTION AND DISSEMINATION.

‘(a) DETERMINATION FOR RELEASE- The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

‘(b) COLLECTION- The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on--

‘(1) procedures and practices for--

‘(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

‘(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

‘(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

‘(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

`(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

`(c) AVAILABILITY- The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

`SEC. 303. STRANDING RESPONSE AGREEMENTS.

`(a) IN GENERAL- The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a stranding.

`(b) REQUIRED PROVISION- An agreement authorized by subsection (a) shall--

`(1) specify each person who is authorized to perform activities under the agreement; and

`(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

`(c) REVIEW- The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

`SEC. 304. UNUSUAL MORTALITY EVENT RESPONSE.

`(a) RESPONSE-

`(1) WORKING GROUP-

`(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for--

`(i) determining whether an unusual mortality event is occurring;

`(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

`(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

`(B) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

`(2) RESPONSE TIMING- The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable--

`(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

`(B) within 48 hours after receiving such notification--

`(i) make a determination as to whether an unusual mortality event is occurring;

`(ii) inform the stranding network participant of that determination; and

`(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

`(b) CONTINGENCY PLAN-

`(1) IN GENERAL- The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

`(2) CONTENTS- The contingency plan required under this subsection shall include--

`(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

`(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

`(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

`(D) such requirements as are necessary to--

`(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

`(ii) assist in identifying the cause or causes of an unusual mortality event;

`(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

`(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

`(c) ONSITE COORDINATORS-

`(1) DESIGNATION-

`(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

`(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

`(C) If, because of the wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

`(2) FUNCTIONS-

`(A) An Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons responding to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that--

`(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

`(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

`(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

`SEC. 305. UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

`(a) ESTABLISHMENT OF FUND- There is established in the Treasury a fund to be known as the 'Marine Mammal Unusual Mortality Event Fund', which shall consist of amounts deposited into the Fund under subsection (c).

`(b) USES-

`(1) IN GENERAL- Amounts in the Fund--

`(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior--

`(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 304(b) or under the direction of an Onsite Coordinator for an unusual mortality event; and

`(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

`(B) shall remain available until expended.

`(2) PENDING CLAIMS- If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

`(c) DEPOSITS INTO THE FUND- There shall be deposited into the Fund--

`(1) amounts appropriated to the Fund;

`(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

`(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

`(d) ACCEPTANCE OF DONATIONS- For purposes of carrying out this title, the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

`SEC. 306. LIABILITY.

`(a) IN GENERAL- A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are--

`(1) in accordance with the agreement; and

`(2) in the case of an unusual mortality event, in accordance with--

`(A) the contingency plan issued under section 304(b);

`(B) the instructions of an Onsite Coordinator designated under section 304(c); or

`(C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

`(b) LIMITATION- Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

`SEC. 307. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

`(a) TISSUE BANK-

`(1) IN GENERAL- The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the 'National Marine Mammal Tissue Bank'.

`(2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING- The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding--

`(A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

`(B) documentation of procedures used for collecting, preparing, and archiving those samples.

`(3) SOURCE OF TISSUE- In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources in the wild, including--

`(A) samples from marine mammals taken incidental to commercial fishing operations;

`(B) samples from marine mammals taken for subsistence purposes;

`(C) biopsy samples; and

`(D) any other samples properly collected.

`(b) TISSUE ANALYSIS- The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for analyzing tissue samples (by use of the most effective and advanced diagnostic technologies and tools practicable) as a means to monitor and measure overall health

trends in representative species or populations of marine mammals, including--

- `(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and
- `(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

`(c) DATA BASE-

`(1) IN GENERAL- The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

`(2) CONTENTS- The data base established under this subsection shall include--

`(A) reference data on the health of marine mammals and populations of marine mammals; and

`(B) data on species of marine mammals that are subject to unusual mortality events.

`(d) ACCESS- The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to--

`(1) marine mammal tissues in the Tissue Bank;

`(2) analyses conducted pursuant to subsection (b); and

`(3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

`SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

`There is authorized to be appropriated--

`(1) to the Secretary for carrying out this title (other than sections 305 and 307) \$250,000 for each of fiscal years 1993 and 1994;

`(2) to the Secretary for carrying out section 307, \$250,000 for each of fiscal years 1993 and 1994; and

`(3) to the Fund, \$500,000 for fiscal year 1993.

`SEC. 309. DEFINITIONS.

`In this title, the following definitions apply:

`(1) The term `Fund' means the Marine Mammal Unusual Mortality Event Fund established by section 305(a).

`(2) The term `Office' means the Office of Protected Resources, in the National Marine Fisheries Service.

`(3) The term `stranding' means an event in the wild in which--

`(A) a marine mammal is dead and is--

`(i) on a beach or shore of the United States; or

`(ii) in waters under the jurisdiction of the United States (including any navigable waters); or

`(B) a marine mammal is alive and is--

`(i) on a beach or shore of the United States and unable to return to the water;

`(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

`(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

`(4) The term `stranding network participant' means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

`(5) The term `Tissue Bank' means the National Marine Tissue Bank provided for under section 307(a).

`(6) The term `unusual mortality event' means a stranding that--

`(A) is unexpected;

`(B) involves a significant die-off of any marine mammal population; and

`(C) demands immediate response.'

(b) IMPLEMENTATION- The Secretary of Commerce shall--

(1) in accordance with section 302 (a) and (b) of the Marine Mammal Protection Act of 1972, as amended by this Act, and not later than 24 months after the date of enactment of this Act--

(A) develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild; and

(B) collect and make available information on marine mammal health and health trends; and

(2) in accordance with section 304(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, issue a detailed contingency plan for responding to any unusual mortality event--

(A) in proposed form by not later than 18 months after the date of enactment of this Act; and

(B) in final form by not later than 24 months after the date of enactment of this Act.

SEC. 3004. CONFORMING AMENDMENTS.

(a) CROSS REFERENCES- The Marine Mammal Protection Act of 1972 is amended--

(1) in section 102(a) (16 U.S.C. 1372(a)) by inserting `or title III' after `this title' the first place it appears;

(2) in section 109(h)(1) (16 U.S.C. 1379(h)(1)) by inserting `or title III' after `this title'; and

(3) in section 112(c) (16 U.S.C. 1382(c)) by inserting `or title III' after `this title'.

(b) DEFINITION OF SECRETARY- Section 3(11) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(11)) is amended--

- (1) by striking 'The term' and inserting '(A) Except as provided in subparagraph (B), the term';
- (2) by redesignating subparagraph (A) as clause (i);
- (3) by redesignating subparagraph (B) as clause (ii); and
- (4) by adding at the end the following new subparagraph:

'(B) in title III the term 'Secretary' means the Secretary of Commerce.'

(c) TABLE OF CONTENTS- The table of contents at the end of the first section of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following:

'Title III--Marine Mammal Health and Stranding Response

- 'Sec. 301. Establishment of program.
- 'Sec. 302. Determination; data collection and dissemination.
- 'Sec. 303. Stranding response agreements.
- 'Sec. 304. Unusual mortality event response.
- 'Sec. 305. Unusual mortality event activity funding.
- 'Sec. 306. Liability.
- 'Sec. 307. National Marine Mammal Tissue Bank and tissue analysis.
- 'Sec. 308. Authorization of appropriations.
- 'Sec. 309. Definitions.'

SEC. 3005. PROJECT STUDY.

The Secretary of the Army shall conduct studies for navigation projects for Provincetown Harbor, Massachusetts, and Aunt Lydia's Cove, Chatham, Massachusetts, and shall evaluate the benefits of the projects to commercial fishermen at full manufacturing wages. After completion of the studies, the Secretary of the Army shall carry out the projects under section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577).

SEC. 3006. TECHNICAL CLARIFICATION.

Section 4283B of the Revised Statutes (46 App. U.S.C. 183c) is amended in paragraph (2) by inserting 'any' before 'court'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.