

Marine Mammal Protection Act

Overview

Overview:

The Marine Mammal Protection Act of 1972 was enacted in response to increasing concerns among scientists and the public that significant declines in some species of marine mammals were caused by human activities. The Act established a national policy to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part. Nowhere else in the world had a government made the conservation of healthy and stable ecosystems as important as the conservation of individual species. The Department of Commerce through the National Marine



Fisheries Service is charged with protecting whales, dolphins, porpoises, seals, and seal lions. Walrus, manatees, otters, and polar bears are protected by the Department of the Interior through the U.S. Fish and Wildlife Service. The Animal and Plant Health Inspection Service, a part of the Department of Agriculture, is responsible for regulations managing marine mammals in captivity.

The primary objective of this management must be to maintain the health and stability of the marine ecosystem; this in theory indicates that animals must be managed for their benefit and not for the benefit of commercial exploitation. The effect of this set of requirements is to insist that the management of animal populations be carried out with the interest of the animals as the prime consideration.

—
House of Representatives, No. 707, 92nd Congress, 1st Session, 18, 22 [December 4, 1971]

Innovative Features:

In addition to shifting the focus of conservation from species to ecosystems, the Act contains many innovative features never before established in legislation. It:

- Presented a single comprehensive federal program to the place of former state-run programs;
- Included protection for population stocks in addition to species and subspecies. A population stock is “a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature;”
- Shifted the burden from resource managers to resource users to show that proposed taking of living marine resources would not adversely affect the resource or the ecosystem;
- Established the concept of “optimum sustainable populations” (OSP) to ensure healthy ecosystems. Prior to the Act, the management of marine species was aimed at producing a “maximum sustainable yield” (MSY) to ensure the species replenished itself for an adequate harvest in subsequent years; and
- Directed federal agencies to seek changes in international agreements, such as the Whaling Convention and the North Pacific Seal Convention corresponding to the Act.



Protection:

The MMPA established a moratorium on the taking of marine mammals in U.S. waters. It defines “take” to mean “to hunt harass, capture, or kill” any marine mammal or attempt to do so. The inclusion of harassment in the definition was a groundbreaking action by Congress. Harassment includes Any act of pursuit, torment, or annoyance which has the potential to injure or disturb a marine mammal causing disruption of behavioral patterns (migration breathing nursing mammal migration, breathing, nursing, feeding, sheltering).



Exceptions to the moratorium can be made through permitting actions for take incidental to commercial fishing and other nonfishing activities; for scientific research; and for public display at licensed institutions such as aquaria and science centers. The moratorium generally does not apply to Alaska natives who live on the Alaskan coast. The MMPA contains provisions allowing for take for subsistence use or to create and sell “authentic articles of handicrafts and clothing” without permits or authorizations. The taking must not be “accomplished in a wasteful manner,” and the Secretaries of Commerce and the Interior may regulate the taking of a depleted species or stock, regardless of the purpose for which it is taken.