

■ Marine Mammal Protection Act

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Genre: law

Summary Overview

The Marine Mammal Protection Act (MMPA), enacted in 1972, is a key piece of environmental and conservation legislation in the United States. It was signed into law during the Nixon administration and represents a strong commitment to protecting marine mammals such as whales, dolphins, sea lions, and seals.

In the 1960s, the slogan “Save the Whales” represented a cause within the larger environmental movement. Massive declines in major whale populations drew attention to the intentional, and unintentional, killing of whales. In addition, many came to know that one method for catching tuna was also killing many dolphins. For American politicians this became a fairly easy cause to adopt, because relatively few American jobs would be at stake with the development of stricter regulations regarding marine mammals. As a result, two bills were introduced into the 92nd Congress to protect marine mammals. The scope of the proposed legislation, concerning all marine mammals, was almost unprecedented. The slightly less strict version, introduced by Representatives Glenn Anderson (D-CA) and Thomas Pelly (R-WA), ultimately passed. Even given the exceptions allowed in this bill, the Marine Mammal Protection Act (MMPA) was a tremendous step forward in the preservation of marine mammal populations.

The MMPA reflects liberal principles of government intervention to protect vulnerable species and promote biodiversity conservation. It emphasizes scientific research and regulation to ensure the sustainable management of marine ecosystems, aligning with broader environmental protection goals advocated by liberal policymakers and environmental groups.

Defining Moment

After World War II, some of the technology developed for military purposes began to be used for different applications, including some in the whaling industry. Faster ships, explosive harpoons, and other innovations allowed hunting vessels to harvest more whales, more quickly. The increase in the number and types of whales killed led to a rapid decline in the whale populations. Other marine mammals, too, were losing their competition with humans for space and resources along the coast. The hunting of seal pups in eastern Canada, for example, captured the public’s attention in the same way that the “Save the Whales” campaign had. (Worldwide, fur seals had previously been killed in such numbers that regulations for the protection of

the remaining populations had been adopted by numerous countries during the late nineteenth and the twentieth centuries.)

Although what happened to the marine mammal population did not directly affect the lives of most Americans, it was viewed within the larger environmental movement as an indicator of the health of the planet. The desire to restore, or at least to maintain, the populations of marine mammals was believed to be needed to keep the oceanic ecosystem in balance. Only some in the fishing industry objected, as many marine mammals were competitors for certain fish and shellfish, and an increase in mammals could negatively impact those fish stocks (or cause them to be harder to locate). The tuna industry, for example, would have to adopt less efficient, more work-



One species of marine mammal: the Steller sea lion—this haul rests on rocks located on Amak Island. Photo via Wikimedia Commons. [Public domain.]

intensive methods of catching tuna in order to keep dolphins from getting caught in trawling nets. Despite these economic impacts, most Americans seemed to support taking steps to protect marine mammals. As a result, several members of Congress proposed legislation.

Anderson and Pelly, representatives from Pacific Coast states, were ready to work with President Nixon's White House staff to develop a marine mammal protection bill that could pass through Congress and be signed by the president. Nixon was not an environmental leader, but he was willing to work with environmentalists for laws like MMPA that satisfied a broad public interest. Similarly, neither of the representatives was a leader in the environmental movement, yet together they worked within the system to meet the desires of their constituents and the American people at large.

Author Biography

Glenn M. Anderson (1913-1994), a Democrat, represented California's 17th district, at the time of this bill. He served fourteen years in elected office in California, including the position of lieutenant governor, and twenty-two years in the House of Representatives.

Thomas Pelly (1902-1973), a Republican, represented Washington's 1st district for twenty years, announcing his retirement in 1972.

Russell E. Train (1920-2012) was the first Chair of the Council on Environmental Quality and was charged by President Nixon to work with Anderson and Pelly on this legislation.

The Ninety-Second Congress (1971-1973) was controlled by the Democrats, the Senate made up of 55 Democratic-held seats and 45 Republican-held seats, and the House made up of 255 Democrat-held seats and 180 Republican-held seats.



Historical Document

Marine Mammal Protection Act

Prohibitions

16 U.S.C. 1372

Sec. 102. (a) [TAKING.]—Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

(A) that is taken in violation of this Act; or

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection 104(c); and

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) [IMPORTATION OF PREGNANT OR NURSING ANIMALS; DEPLETED SPECIES OR STOCK; INHUMANE TAKING.]—Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

- (1) pregnant at the time of taking;
- (2) nursing at the time of taking, or less than eight months old, whichever occurs later;
- (3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or
- (4) taken in a manner deemed inhumane by the Secretary. Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.

(c) [IMPORTATION OF ILLEGALLY TAKEN MAMMALS.]—It is unlawful to import into the United States any of the following:

- (1) Any marine mammal which was—
 - (A) taken in violation of this title; or
 - (B) taken in another country in violation of the law of that country.
- (2) Any marine mammal product if—
 - (A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or
 - (B) the sale in commerce of such product in the country of origin of the product is illegal;
- (3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.
- (d) [NONAPPLICABILITY OF PROHIBITIONS.]—Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

(2) in the case of marine mammals or marine mammal products to which subsection

(c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) [RETROACTIVE EFFECT.]—This Act shall not apply with respect to any marine mammal taken before the effective date of this Act [December 21, 1972], or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) [COMMERCIAL TAKING OF WHALES.]—It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

Regulations on Taking of Marine Mammals

16 U.S.C. 1373

Sec. 103. (a) [NECESSITY AND APPROPRIATENESS.]—The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.

(b) [FACTORS CONSIDERED IN PRESCRIBING REGULATIONS.]—In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) [ALLOWABLE RESTRICTIONS.]—The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 104 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) [PROCEDURE.]—Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 101(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section—

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) [PERIODIC REVIEW.]—Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this Act.

(f) [REPORT TO CONGRESS.]—Within six months after the effective date of this Act [June 21, 1973] and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals.



Document Analysis

As populations of many marine mammal species decreased during the 1960s, the question of how to protect these species arose. The basic, and in many ways the most straightforward, answer would have been to impose a total prohibition on killing or capturing the animals, or allowing any products made from them to be brought into the United States. Although that approach was considered, the bill that was finally put forward allowed exceptions for scientific research and any actions that would not be harmful to the species, overall. Regulations for these exceptions were to be made by the Secretary of the Interior. With the burden of proof resting on those who petitioned for an exemption to the general prohibition, the goal of protecting marine mammals was, and is, normally upheld. The prohibition against importing fish caught in any way so as to harm marine mammals serves to expand the scope and effect of MMPA beyond the basic prohibition.

Despite its provision for granting exceptions, the law is still a very strong one. Most people do not object to allowing some scientific research. Any time such an exemption is granted, it becomes a matter of public record. The same applies to any other type of exemption. Thus, if an interior secretary decided to ignore or work around the intent of the law (in order to accommodate industry, for example), those actions would be made public. It was anticipated by the authors of the bill that public outcry over such exemptions would ensue. Exemptions do not need to be granted for actions that are covered by a previous international agreement, however. It is this provision, for example, that allows certain Native American tribes to hunt a limited number of marine mammals, including whales.

MMPA mandates the collection of data regarding the number and location of animals killed or captured on the basis of exemptions. Such information helps to keep the public informed about scientific research into the health of each species and how successful the law has been in protecting the animals.

Essential Themes

The environmental movement in the United States has been able to point to this law as an example of a

successful effort. Significant improvements in the health of many species have resulted from this law. Public concern over “inhumane” killing methods used on marine mammals helped make this law more powerful and far-reaching than it might otherwise have been. For example, paragraphs 102 (a) (5) and (c) (3) mandate a change in the nets used for catching tuna, the most popular fish in the diet of the average American (2.8 pounds per year from 2000 to 2010). In the decade prior to MMPA, the netting of tuna was the norm, causing the suffering and death of untold numbers of dolphins. Such inhumane treatment added to the push for the legislation. Now, because of MMPA, the fishing industry has developed nets that allow dolphins to escape. This has both helped dolphins to survive and demonstrated to the public that technology can often be developed to meet the provisions of updated laws without harming the livelihoods of those dependent on an industry.

Not all species or regional stocks have made a recovery following implementation of MMPA. In a 2013 study, it was reported that just over 40 percent of affected species are recovering while about 10 percent are still declining. Another study from about the same time reported that about 20 percent were still declining. Partially explaining this type of phenomenon is a USGS study from ten years earlier, which concluded that pre-1972 whaling decreased the normal food supply for orcas, so that they began eating other marine mammals in much greater numbers. Yet, even with the uneven results for the various species and regional populations, MMPA has provided a much better chance of survival to marine mammals than was previously was the case.

—Donald A. Watt, PhD

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