

## APPENDIX D

### STATEMENT OF THE MARINE MAMMAL COMMISSION

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Chairman, Marine Mammal Commission  
Submitted to the House Committee on Resources,  
Subcommittee on Fisheries Conservation, Wildlife, and Oceans  
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Thank you for providing the Marine Mammal Commission with the opportunity to advise the Committee on actions that have been taken to implement the 1994 amendments to the Marine Mammal Protection Act, problems that have arisen concerning implementation, and possible amendments. The Commission submitted a comprehensive statement concerning these subjects to the Committee on 29 June 1999 and provided additional testimony at a 6 April 2000 hearing that reviewed progress being made to implement the regime governing the taking of marine mammals incidental to commercial fishing operations. Rather than revisiting these matters, the Commission asks that its previous statements, which are appended, be made a part of the record of this hearing. This will enable us to provide an update, focusing on more recent developments, those places where action is still needed, and proposed amendments.

Since the earlier hearings, the Commission has worked extensively with other agencies and with representatives of Alaska Native organizations to identify all of the areas where the Act needs to be strengthened or clarified and to fashion a comprehensive legislative proposal to address those concerns. During the previous session of Congress, the Secretaries of Commerce and the Interior transmitted a proposed bill to this Committee and its Senate counterpart for their consideration. Over the course of the past few months, the National Marine Fisheries Service and the Fish and Wildlife Service, along with the Commission, have been reworking the bill and, pending review within the Administration, expect to be able to provide a revised proposal to Congress shortly. Of course, the Department of Justice will be involved in the development of any such proposal to ensure that it meets Constitutional scrutiny under the Commerce and other clauses.

#### **Taking Incidental to Commercial Fisheries, Sections 117 and 118**

As of the 6 April 2000 hearing on implementation of the incidental take regime for commercial fisheries, the National Marine Fisheries Service had established five take

reduction teams to help develop plans to reduce the mortality and serious injury of strategic marine mammal stocks to below the stock's potential biological removal level, and eventually to a level approaching a zero rate. As noted in our earlier testimony, the Atlantic Offshore Cetacean Take Reduction Team was disbanded after the Service closed the swordfish gillnet fishery and portions of other fisheries that were to be the focus of the plan. At that time, the Service indicated that it intended to reconstitute the team to address remaining issues. The team, however, has yet to be reconvened and the Service's plans in this regard remain uncertain.

Recently, the Service has initiated the process of establishing a bottlenose dolphin take reduction team to address the incidental taking of this species in a variety of fisheries along the Atlantic coast. Several general meetings were held to provide background information to potential team members, and a team, which includes the Commission's chairman and a Commission staff member, has now been selected. The first meeting of the team, originally scheduled for 12-13 September 2001, is expected to occur in the near future. Preparation of a take reduction plan for bottlenose dolphins sufficient to meet the mandates of the Act will be particularly challenging because of uncertainties concerning the stock structure of the species and incomplete information on the numbers of dolphins being killed or seriously injured incidental to fishing operations and on the locations and circumstances surrounding those takings. In this regard, the Commission encourages the Service to complete the analyses that will enable it to make better use of existing data and expand its observer programs for the suspected fisheries to obtain this essential information and to monitor the effectiveness of the take reduction measures that are eventually adopted.

Since the April 2000 hearing, it has become apparent that efforts to reduce the incidental mortality and serious injury of Gulf of Maine harbor porpoises have proven successful, and it is now believed that the level of such taking is below the stock's potential biological removal level. Although some of this reduction can be attributed to measures adopted under the take reduction plan, a large part

appears to be due to measures taken under the Magnuson-Stevens Fishery Conservation and Management Act to reduce fishing effort. While the statutory and regulatory basis for the actions leading to the reductions may not matter, it should be recognized that fishery management plans are subject to different procedural and substantive standards and that the measures taken to reduce fishing effort could change in the future, possibly affecting the incidental take of harbor porpoises. This being the case, the Commission has recommended that the take reduction plan and its implementing regulations be amended to consolidate the take reduction gains under the Marine Mammal Protection Act authority.

As the Committee is well aware, the process for convening take reduction teams, translating the team's recommendations into a final plan, and promulgating implementing regulations has not always gone smoothly. To help address these problems, the responsible agencies are reviewing the take reduction team process. Among the possible refinements currently under consideration are directing the Service to appoint an individual with commercial fishing expertise to serve as a technical liaison to each take reduction team and requiring the Service, once it has formulated proposed implementing regulations, to reconvene or otherwise consult with the involved take reduction team to explain and solicit advice concerning any deviations from the draft take reduction plan submitted by the team.

The Commission also believes that review of other aspects of section 118 may be warranted. As the Commission has advocated in the past, we think that this provision may need to specify that a take reduction plan need not be prepared for those strategic stocks for which mortality or serious injury related to fisheries is inconsequential. We also believe that consideration should be given to an amendment to clarify that it constitutes a violation of the Act to participate in any category I or category II fishery without having registered as required by section 118, regardless of whether incidental takes occur. Other possible changes that would strengthen this provision also need to be reviewed. Among the proposals meriting consideration are to specify that all participants in category I or category II fisheries, whether registered or not, are subject to the observer requirements of section 118 and that fishery-related mortalities and injuries of California sea otters should be factored into determinations with respect to listing fisheries and placing observers under section 118.

Another problem that has been identified is that coverage of the section 118 incidental take regime is limited to commercial fisheries. However, in some cases, recreational and other non-commercial fishermen are using identical or similar gear and fish for the same species in the same areas. Although these fisheries presumably present incidental take problems similar to their commercial counterparts, they are not included within the coverage of the Act's incidental taking authorization and have no responsibility to

register, carry observers, report marine mammal injuries and mortalities, or comply with the terms of take reduction plans. The responsible agencies are currently reviewing this issue.

The Commission's June 1999 testimony noted that available funding has not always been sufficient to place observers within all fisheries that need to be monitored or to place them at levels needed to provide statistically reliable results. We again call this issue to the Committee's attention, requesting that it explore possible solutions. One possible solution would be to require a contribution from the involved fisheries to help support a more comprehensive monitoring program.

As a housekeeping measure, we recommend that section 114 of the Act, which established the pre-existing, interim exemption for commercial fisheries, be struck, along with references to that section in other statutory provisions. Similarly, section 120(j), pertaining to the Gulf of Maine harbor porpoise, is no longer operative and should be deleted.

The Commission would also like to take this opportunity to update the Committee on the outstanding issues preventing full implementation of section 118. Section 118(b) mandates that commercial fisheries reduce the incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within seven years of enactment of the 1994 amendments – that is, by 30 April 2001. Further, the National Marine Fisheries Service was to review the progress toward meeting that goal on a fishery-by-fishery basis and submit a report of its findings to Congress by the end of April 1998. Although considerable work was done on the report, it has yet to be completed and transmitted to Congress.

In hindsight, the zero mortality and serious injury rate goal appears to have been overly ambitious. While this goal likely has been achieved for some fisheries, it remains a considerable challenge to bring mortality and serious injuries down to such a level across the board. Although the existing statutory deadlines have passed, the Commission believes that a comprehensive progress report on where we stand with respect to meeting the goal, as originally envisioned by Congress in the 1994 amendments, continues to be a worthwhile undertaking and should be pursued under a revised schedule. Likewise, we encourage the Committee to adopt a revised schedule for meeting the zero mortality and serious injury rate goal and provide sufficient resources to enable the agencies and fishermen to adhere to that schedule.

One of the problems that has been encountered with respect to determining if the zero mortality and serious injury rate goal has been met is the lack of clear guidance as to how it should be quantified. We encourage the Committee, in consultation with the responsible agencies and other interested parties, to provide such guidance during the reauthorization process. In this regard, the Commission has endorsed a two-tiered approach that equates the goal with reducing mortalities and serious injuries to some biologically

insignificant level (e.g., 10 percent of a stock's potential biological removal level) for most stocks, but that also establishes a numerical cap to ensure that the taking of large numbers of marine mammals from abundant stocks would not be deemed as meeting the goal.

Another related issue that has yet to be fully resolved is the delineation of when an injury to a marine mammal is to be considered serious. Under section 118, fishermen are required to report all injuries, but only mortalities and serious injuries are to be considered when classifying fisheries and developing take reduction plans and in determining if the zero mortality rate goal has been achieved. Although the National Marine Fisheries Service, in its implementing regulations, has defined "serious injury" as any injury that will likely result in mortality, it is not always apparent at the time a marine mammal is released from fishing gear whether its injuries are life-threatening. To address this issue, the Service held a workshop in 1997 to establish more definitive criteria for differentiating between serious and non-serious injuries. It was expected that the workshop would enable the Service to publish clear guidelines for determining when injuries are to be considered serious. However, such guidelines, which the Commission still believes would be useful, have yet to be issued.

#### **Taking of Endangered and Threatened Species Incidental to Commercial Fisheries, Section 101(a)(5)(E)**

Section 101(a)(5)(E) directs the National Marine Fisheries Service to authorize the incidental taking of marine mammals listed as endangered or threatened if it determines that 1) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on the species or stocks; 2) a recovery plan has been, or is being, developed for the species or stock under the Endangered Species Act; and 3) where required under section 118, a monitoring program has been established, the vessels are registered, and a take reduction plan has been, or is being, developed. The Service is to publish a list of the fisheries to which the authorization applies and, for vessels required to register under section 118, issue appropriate permits. Vessels participating in fisheries included on the list, but which are not required to register, are covered by the authorization, provided that they report any incidental mortality or serious injury.

The most recent authorizations under this provision were published by the Service in October 2000. They authorize the incidental taking of fin, humpback, and sperm whales and Steller sea lions in the California/Oregon drift gillnet fishery for thresher shark and swordfish.

#### **Pinniped-Fisheries Interactions, Section 120**

Section 120, added by the 1994 amendments, called on the Secretary of Commerce to study pinniped-fishery interactions and provided a mechanism for authorizing the lethal removal of individual pinnipeds that are adversely affecting certain salmonid stocks without obtaining a waiver of the Act's moratorium on taking. As discussed in the Commission's previous testimony before this Committee, the National Marine Fisheries Service provided a report to Congress in 1997 on the findings of a task force established to examine interaction problems between pinnipeds and aquaculture operations in the Gulf of Maine. In 1999, a report on the impacts of California sea lions and Pacific harbor seals on salmonid stocks and West Coast ecosystems was also provided to Congress. The Commission expects that this Congress will consider those reports as it fashions a reauthorization bill. We welcome the opportunity to work with the Committee on specific proposals if it determines that amendments to address these issues are needed.

#### **Non-Lethal Deterrence of Marine Mammals, Section 101(a)(4)**

Section 101(a)(4), as amended in 1994, authorizes fishermen to use non-lethal means to deter a marine mammal from damaging their gear or catch. This provision also authorizes owners of private property or their agents to use non-lethal means to deter marine mammals from damaging that property and government employees to deter marine mammals from damaging public property. Non-lethal deterrence of marine mammals to prevent endangerment of personal safety also is authorized under this provision. In each case, however, the deterrence measures used must not result in the death or serious injury of a marine mammal.

To implement this provision, the Secretaries of Commerce and the Interior, in consultation with appropriate experts, were required to publish guidelines setting forth the measures that may be taken to deter marine mammals safely and to prohibit, by regulation, any form of deterrence that is determined to have a significant adverse effect on marine mammals. For species listed as threatened or endangered under the Endangered Species Act, the Secretaries were to specify non-lethal deterrence measures that may be used.

The National Marine Fisheries Service issued proposed deterrence regulations in 1995, but has yet to publish final regulations. No measures for safely deterring endangered and threatened marine mammals have been proposed. In this regard, it should be noted that, even if the Service were to identify measures for safely deterring endangered and threatened species under the Marine Mammal Protection Act, employing such measures likely would constitute a violation of the Endangered Species Act, which contains no similar provision authorizing intentional taking. The Fish and Wildlife Service has yet to take any action to implement the deterrence provision.

### **Permits for Public Display, Scientific Research, and Other Purposes, Section 104**

The 1994 amendments included changes to most of the Act's permit provisions and added authority for the issuance of permits for commercial and educational photography and the importation of polar bear trophies from Canada. Some, but not all, of the actions needed to implement these provisions have been taken by the regulatory agencies.

The National Marine Fisheries Service, some time ago, revised its regulations concerning general permitting issues and scientific research permits. Also, as required by the 1994 amendments, the Service published an interim final rule in 1994 implementing the general authorization for scientific research involving only Level B harassment. We understand that the Service intends to replace the interim regulations with a permanent rule, but it has yet to do so. Recently, the Service published proposed revisions to its public display regulations to reflect the 1994 amendments. Those regulations are currently open for public comment. We have been advised that the Service also intends to issue specific regulations concerning permits for educational and commercial photography to supplement its existing general regulations.

The Fish and Wildlife Service has concentrated its efforts on implementing the 1994 amendment concerning the importation of polar bear trophies legally taken in Canada's sport hunts. Regulations authorizing imports from 5 of Canada's 12 management units were published in 1997. Affirmative findings with respect to two additional management units were published in 1999. A recent survey of the M'Clintock Channel polar bear population, one of the originally approved management units, indicated that it was less abundant than originally believed and that the population was heavily skewed toward females, suggesting that the number of males had been reduced by hunting. This prompted the Service, on 10 January 2001, to publish an emergency interim rule rescinding the previous finding for this population.

The 1994 amendments directed the Fish and Wildlife Service to undertake a scientific review of the impact of issuing import permits on the polar bear populations in Canada. No further import permits could be issued if the review indicated that allowing polar bears to be imported into the United States is having a significant adverse effect on Canadian polar bear stocks. The review originally was to have been completed by 30 April 1996. Inasmuch as regulations authorizing any imports had yet to be finalized by that date, however, the Service indicated in its 1997 final rule that it would delay the review for two years. We understand that the Service has been working on this review but, as of yet, it has not been completed.

The Fish and Wildlife Service has yet to amend its permit regulations to reflect any of the 1994 amendments to

section 104. As such, implementation of these provisions has largely been on an ad hoc basis. Among other things, the Service needs to promulgate regulations governing the general authorization for scientific research created under the 1994 amendments as specifically required by section 104(c)(3)(C) of the Act.

The Commission believes that several amendments related to the Act's permit provisions are warranted. First, we think that sections 101(a) and 104 should be amended to clarify that permits can be issued to authorize the export, as well as the taking and importation, of marine mammals.

The Commission notes that little purpose seems to be served by the publication and comment requirements of section 104 as they pertain to permits for the importation of polar bear trophies from Canada. The crucial question is whether to approve a population for import, a determination that would remain subject to public notice and comment. At the permitting stage, however, the only question is whether the bear to be imported was taken legally from an approved population. More than 400 polar bear trophy import permits that have been issued since 1997, and the Fish and Wildlife Service has received no substantive comments on any of them. Considerable costs could be avoided by eliminating the publication requirement for this class of permits. Nevertheless, it is important that the public continue to have access to information on the numbers of permits issued and on the ages, sexes, and taking locations of the bears authorized to be imported.

As detailed in prior Commission testimony, the return of captive marine mammals to the wild has the potential to pose significant risks to the animals unless it is well planned, the animals are thoroughly prepared, and there is adequate post-release monitoring. Moreover, the released animals may present a risk to humans they encounter and to wild marine mammal populations. The Commission continues to believe that this is an issue that merits review.

Also as previously discussed by the Commission, traveling marine mammal exhibits, by their very nature, present special problems for successful maintenance of the animals. We believe that, at least with respect to cetaceans, the risks to the animals in mobile or transient facilities are unacceptably high and that such displays should not be allowed. This view is shared by the National Marine Fisheries Service, which, until nullified by the shift in agency responsibilities under the 1994 amendments, had in place a policy not to authorize traveling cetacean exhibits. Such matters now are solely within the jurisdiction of the Animal and Plant Health Inspection Service, which has taken the position that it does not have authority under the Animal Welfare Act to prohibit such exhibits. While we disagree with this interpretation, and believe that this issue could be addressed by regulation, given the agency's view of its authority, we believe that a statutory clarification may be necessary.

More recently, serious questions have arisen concerning the level of care being provided to polar bears in a traveling exhibit currently touring Puerto Rico. The types of problems that have been encountered (e.g., maintaining temperatures within acceptable levels) seem to be related, at least in part, to the transitory nature of the display. This being the case, the Committee, as it considers this issue, might want to consider a ban on traveling exhibits that includes taxa other than cetaceans. We note, however, that polar bears, in general, are harder than cetaceans and that the problems associated with the polar bear exhibit might be more a function of the individual facility and the fact that a polar species is being housed outdoors in a tropical climate. With respect to this last point, the Commission has recommended that the Animal and Plant Health Inspection Service, in consultation with independent experts, review the appropriateness of allowing polar species to be maintained in outdoor tropical environments and, as warranted based on the results of that review, revise its care and maintenance standards accordingly. The Service has replied that such an evaluation would be worthwhile, but concluded that it is beyond the scope of its authority under the Animal Welfare Act to prohibit such a practice. Again, the Commission disagrees with the Service's conclusions concerning the breadth of the actions that can be taken under the Animal Welfare Act. In this regard, we note that, under the 1994 amendments to the Marine Mammal Protection Act, the Animal Welfare Act is left as the sole federal authority available to ensure the well-being and humane maintenance of captive marine mammals. While we are not advocating a return to the shared jurisdiction over captive marine mammals that existed prior to 1994, we recommend that the Committee review the scope of the Animal Welfare Act as it pertains to marine mammals and provide additional guidance, as appropriate, either through amendment or in report language.

#### **Prohibitions – Exports of Marine Mammals, Section 102(a)(4)**

The package of permit-related amendments enacted in 1994 also amended section 102(a)(4) of the Act to add a prohibition against exporting any marine mammal or marine mammal product taken in violation of the Act or for any purpose other than public display, scientific research, or species enhancement. The language of this provision is problematic in two ways. As noted in our 1999 testimony, the amendment resurrected an enforcement problem that previously had been fixed in 1981 by reinstating the requirement that, to bring an action for the otherwise illegal transport, purchase, sale, or export of a marine mammal product, the government must show that the underlying taking was also in violation of the Act. As noted in the legislative report accompanying the 1981 amendment, this confounds enforce-

ment actions by enabling marine mammals originally taken for legitimate purposes (e.g., Native subsistence) to be diverted to other ends. The Commission continues to believe that this is an issue warranting review.

The second problem noted in our earlier testimony is that the language of the 1994 amendment restricts exports to those made for purposes of public display, scientific research, or species enhancement. Exports for other purposes (e.g., for cultural exchanges, associated with personal foreign travel, or pursuant to a waiver of the Act's moratorium on taking and importing marine mammals) technically are not permissible. There also exists some question as to whether the export prohibition applies to handicrafts made and sold by Alaska Natives pursuant to section 101(b) of the Act. The Commission, along with the Fish and Wildlife Service and the National Marine Fisheries Service, has conducted a comprehensive review of the Act to help ensure that exports and other transactions involving marine mammals can continue to occur as Congress apparently intended prior to 1994. The Commission intends to pursue this issue as the Administration considers reauthorization proposals.

#### **Imports Associated with Personal Travel and Cultural Exchanges, Section 101(a)(6)**

In addition to highlighting the problems associated with exporting items allowed to be imported or exchanged under section 101(a)(6), the Commission's previous testimony recommended that the National Marine Fisheries Service and the Fish and Wildlife Service explore the appropriateness of developing a registration and tracking program to monitor compliance with this provision and consider whether the benefits of such a program would outweigh the costs. To date, neither agency has responded to this recommendation, and we are unaware of any analysis that has been done to assess the merit of such a program. Other than an amendment to overcome the export problem noted above, no changes are needed to this section.

#### **Definitions, Section 3**

The Commission's 1999 testimony noted that the definition of "harassment" added to section 3 in 1994 had created some practical difficulties related to interpretation and enforcement. We anticipate that any reauthorization bill forthcoming from the Administration will address this issue.

#### **Small-Take Provisions, Section 101(a)(5)**

The 1994 amendments added a new provision to section 101(a)(5) allowing the National Marine Fisheries Service and the Fish and Wildlife Service to use streamlined procedures (notice and comment) to authorize the taking of small numbers of marine mammals by harassment incidental

to otherwise lawful activities when such taking will have negligible impacts on marine mammal populations. Prior to enactment of those amendments, such taking could only be authorized by regulation. As noted in our 1999 testimony, the National Marine Fisheries Service has revised its small-take regulations to reflect the new provisions. However, the Fish and Wildlife Service has yet to update its regulations.

The Commission, in its 1999 testimony, noted one possible problem with the new authority. Incidental harassment authorizations are limited to one-year periods. As such, some applicants are segmenting long-term projects into one-year intervals and seeking a separate authorization for each such period. By doing so, it becomes difficult for the reviewing agencies to assess possible long-term and cumulative impacts that could have more than negligible impacts on marine mammal populations. The Commission reiterates its recommendation that Congress consider ways to address this problem, for example, by lengthening the period for which such authorizations may be issued.

### **Polar Bear Agreements, Section 113**

Amendments to section 113 enacted in 1994 called on the Secretary of the Interior to undertake two reviews with respect to the Agreement on the Conservation of Polar Bears. Section 113(b) required the Secretary, in consultation with the other four parties to the agreement, to review the effectiveness of the agreement and to establish a process for conducting future reviews. Although all parties have been consulted, preparation of a final report is awaiting an official response from one of the parties.

The Secretary, in consultation with the Secretary of State and the Marine Mammal Commission, was also directed to undertake a review of domestic implementation of the polar bear agreement, with special attention to be given to the agreement's habitat protection mandates. A report on the results of that review was to be submitted to Congress by 1 April 1995. Although the Fish and Wildlife Service convened a workshop in 1995 to review U.S. implementation of the agreement and circulated a draft report in 1996, the report it has yet to be finalized and transmitted to Congress.

The 1994 amendments also called on the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, to consult with appropriate Russian officials in an effort to develop and implement enhanced cooperative research and management programs for conserving the shared population of polar bears. A report on the consultations and periodic progress reports on research and management actions taken under this provision are to be provided to Congress. Pursuant to this directive, the United States has negotiated a bilateral agreement with the Russian Federation, which was signed by the two parties last October. The

advice and consent of the Senate is needed before the agreement enters into force. It is expected that the ratification documents, along with proposed implementing legislation, will be transmitted to Congress shortly.

### **Co-Management Agreements, Section 119**

Both the Fish and Wildlife Service and the National Marine Fisheries Service have entered into cooperative agreements with various Alaska Native organizations to promote the conservation and co-management of marine mammal stocks taken for subsistence. Since 1997, the Fish and Wildlife Service has entered into annual agreements with the Eskimo Walrus Commission, the Alaska Sea Otter and Steller Sea Lion Commission (for sea otters), and the Nanuuq Commission (for polar bears). The National Marine Fisheries Service has concluded agreements with the Alaska Native Harbor Seal Commission and with the Alaska Beluga Whale Commission. In addition, the Service has entered into a co-management agreement with the Cook Inlet Marine Mammal Council to authorize the limited taking of beluga whales from this depleted stock, which otherwise is prohibited by section 627 of Public Law 106-553, enacted last December. This year, the strike of a single Cook Inlet beluga whale was allocated to the Native Village of Tyonek, which successfully harvested the whale in July. The National Marine Fisheries Service is also working to conclude a cooperative agreement with the Alaska Sea Otter and Steller Sea Lion Commission for Steller sea lions and with tribal governments in the Pribilof Islands for fur seals and Steller sea lions.

Despite the success of the Services and Alaska Native groups in concluding agreements and carrying out actions of mutual interest under them, both the government agencies and the Native groups recognize that much more could be accomplished in appropriate instances if the Act provided a mechanism to make co-management agreements enforceable among and between the parties. For example, the overharvesting of the Cook Inlet beluga whales by a few hunters during the late 1990s, which reduced the population by half in only four years and which led to the stock's designation as depleted, likely could have been avoided had there been such an authority in the Act at that time.

At the April 2000 hearing of this Committee, the former chairman urged the responsible government agencies to work with the affected Native groups to develop a proposal for such legislation. Pursuant to that charge, the Fish and Wildlife Service, the National Marine Fisheries Service, and the Marine Mammal Commission held a two-day session with representatives of the Indigenous People's Council for Marine Mammals (IPCoMM). Over the course of subsequent weeks, a preliminary consensus concerning the details of the joint proposal was reached among the negotiating parties. The agreement was carefully crafted to achieve the joint

goals of marine mammal conservation and protection of Native subsistence practices. We will consider this agreement in our review of the Administration bill.

### **Authorization of Appropriations**

The Marine Mammal Protection Act contains several authorization provisions, including those for general appropriations under sections 116 and 207 pertaining to the activities of the Department of Commerce, the Department of the Interior, and the Marine Mammal Commission under the Act. The Commission recommends that appropriations be reauthorized for a five-year period. Also coverage could include section 405 to authorize the Secretary of Commerce to allocate appropriated funds toward responses to unusual mortality events. Currently, only donations and specifically earmarked monies can be placed in the response fund.

### **Other Issues Meriting Attention**

As the Commission noted in 1999, several provisions of the Act setting monetary limits have not been updated to reflect economic changes since they were enacted in 1972. These include the Act's penalty provisions, which establish upper limits on fines that are quite low as compared with other natural resources statutes. We recommend that the provisions of sections 105 and 106 be reviewed and that increases to the available penalties be considered. We also

recommend that Congress review section 206(4), which places a limit of \$100 per day on the amount the Commission can expend in procuring the services of outside experts and consultants, and consider ways to place the Commission on an equal footing with other agencies when seeking such services.

The Commission supports the freestanding provision enacted in 1999 and codified as part of the Marine Mammal Protection Act (16 U.S.C. § 1375a) that allows fines collected by the Fish and Wildlife Service for violations of the Act to be used for activities directed at the protection and recovery of manatees, polar bears, sea otters, and walrus. We believe that similar authority for the National Marine Fisheries Service, enabling it to use penalties collected under the Marine Mammal Protection Act for the conservation of species under its jurisdiction, would likewise benefit the agency's ability to carry out its mandates under the Act.

The Commission also believes that the Committee should consider ways for improving compliance with, and enforcement of, the Act. Such proposals might usefully include adding a prohibition against interfering with enforcement investigations, increasing penalties for violations that harm or threaten enforcement officials, and allowing seizure and forfeiture of a vessel's cargo for fishing in violation of the requirements of section 118.

Another provision that merits overhauling by the Committee is section 110, which identifies specific research projects to be carried out by the regulatory agencies. The time frames for completing the existing activities set forth in this section have elapsed. As such, those provisions that are no longer operative should be deleted. In their place, the Committee should consider a more generic directive to the agencies, enabling the agencies to pursue pressing, broad-scale projects. Among the studies that might be worthwhile are an investigation of ecosystem-wide shifts in the Bering and Chukchi Seas and an examination of possible changes in the coastal California marine ecosystem that may be contributing to the recent declines in the California sea otter population.