

118TH CONGRESS
1ST SESSION

H. R. 1383

To amend the Marine Mammal Protection Act of 1972 to direct the Secretary of Commerce to establish a climate impact management plan for the conservation of certain marine mammal species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2023

Ms. BROWNLEY introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Marine Mammal Protection Act of 1972 to direct the Secretary of Commerce to establish a climate impact management plan for the conservation of certain marine mammal species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marine Mammal Cli-
5 mate Change Protection Act”.

1 **SEC. 2. CONSERVATION OF MARINE MAMMALS ADVERSELY**
2 **AFFECTED BY CLIMATE CHANGE.**

3 (a) IN GENERAL.—The Marine Mammal Protection
4 Act of 1972 (16 U.S.C. 1361 et seq.) is amended by in-
5 serting after section 120 the following:

6 **“SEC. 121. CONSERVATION OF MARINE MAMMALS AD-**
7 **VERSELY AFFECTED BY CLIMATE CHANGE.**

8 **“(a) CLIMATE IMPACT MANAGEMENT PLANS.—**

9 **“(1) Within 24 months after the date of enact-**
10 **ment of this section, the Secretary, in consultation**
11 **with the Marine Mammal Commission, shall publish**
12 **in the Federal Register, after notice and opportunity**
13 **for public comment, a list of those marine mammal**
14 **species and population stocks in waters under the**
15 **jurisdiction of the United States for which climate**
16 **change, alone or in combination or interaction with**
17 **other factors, is more likely than not to result in a**
18 **decline in population abundance, of impeding popu-**
19 **lation recovery, or of reducing carrying capacity.**
20 **The list shall identify—**

21 **“(A) any species or population stock for**
22 **which such impacts are likely to occur within**
23 **20 years; and**

24 **“(B) any species or population stock listed**
25 **as a threatened species or endangered species**
26 **under the Endangered Species Act of 1973 (16**

1 U.S.C. 1531 et seq.) for which such impacts
2 have more than a remote possibility of occur-
3 ring within 100 years.

4 “(2)(A) The Secretary, in consultation with the
5 Marine Mammal Commission, shall review the list
6 adopted pursuant to paragraph (1) at least once
7 every 5 years, or more frequently if significant new
8 information becomes available, and, after notice and
9 opportunity for public comment, shall publish a re-
10 vised list in the Federal Register.

11 “(B) Within 12 months after receiving the peti-
12 tion of an interested person under section 553(e) of
13 title 5, United States Code, to add a marine mam-
14 mal species or population stock to the list published
15 under paragraph (1), the Secretary, in consultation
16 with the Marine Mammal Commission and after no-
17 tice and opportunity for public comment, shall pub-
18 lish in the Federal Register its finding of whether
19 the petitioned action is warranted. If the petitioned
20 action is deemed warranted, the Secretary shall pub-
21 lish at the same time the revision adding such spe-
22 cies or population stock.

23 “(3) The list published under paragraph (1),
24 and any revisions thereto made in accordance with
25 paragraph (2), shall include a determination of

1 whether a climate impact management plan will pro-
2 mote the conservation of species or stocks listed pur-
3 suant to paragraph (1).

4 “(4)(A)(i) The Secretary shall publish in the
5 Federal Register a draft climate impact management
6 plan for each marine mammal species or population
7 stock—

8 “(I) listed under paragraph (1)(A), within
9 18 months after the listing; and

10 “(II) listed under paragraph (1)(B), within
11 30 months after the listing.

12 “(ii) Each draft climate impact management
13 plan shall be developed in consultation with the Ma-
14 rine Mammal Commission and, as appropriate, other
15 Federal agencies, and shall be made available for
16 public review and comment for a period not to ex-
17 ceed 90 days.

18 “(iii) No later than 120 days after the close of
19 the comment period required under clause (ii), the
20 Secretary shall issue a final climate impact manage-
21 ment plan and implementing regulations that are
22 consistent with the other provisions of this section
23 and, to the full extent available under the Sec-
24 retary’s authorities under this Act and other stat-

1 utes, implement the conservation and management
2 measures identified in the plan.

3 “(B) Each climate impact management plan
4 under subparagraph (A) shall include a comprehen-
5 sive strategy for conserving and recovering of such
6 marine mammal stocks and species given the antici-
7 pated direct and indirect effects of climate change
8 and increasing resiliency in the species or population
9 stock, and shall identify conservation and manage-
10 ment measures to—

11 “(i) conserve and recover such species and
12 population stocks given the anticipated adverse
13 effects of climate change on such species and
14 population stocks and their prey;

15 “(ii) monitor, reduce, and prevent inter-
16 actions with fisheries and other human activi-
17 ties that may occur as a result of changes in
18 marine mammal distribution or other indirect
19 effects of climate change;

20 “(iii) increase resiliency by materially re-
21 ducing other human impacts on such species
22 and population stocks, including but not limited
23 to the reduction of incidental taking of marine
24 mammals and of the degradation of the habitat
25 of such species and population stocks, and by

1 managing prey species to improve the avail-
2 ability of prey to such species and population
3 stocks; and

4 “(iv) take any other action as may be nec-
5 essary to implement the strategy set forth in
6 the climate impact management plan.

7 “(C) Each climate impact management plan
8 under subparagraph (A) shall include objective,
9 measurable criteria for evaluating the effectiveness
10 and sufficiency of such measures to meet the pur-
11 poses of this Act.

12 “(D)(i) All other Federal agencies shall, in con-
13 sultation with and with the assistance of the Sec-
14 retary, utilize their authorities in furtherance of the
15 strategy and conservation and management meas-
16 ures set forth in climate impact management plans
17 developed under this subsection and ensure that
18 their actions do not conflict or interfere with the ob-
19 jectives of such climate impact management plans.
20 The Secretary shall consult with the Marine Mam-
21 mal Commission and, as may be warranted, other
22 agencies in the implementation of such climate im-
23 pact management plans.

24 “(ii) With respect to any Federal agency action
25 authorized, funded, or undertaken by such agency

1 that, in the view of the Secretary or of the agency,
2 may conflict or interfere with the objectives of such
3 climate impact management plans, such agency
4 shall, in consultation with the Secretary, ensure that
5 such action is consistent with the climate impact
6 management plan. To the extent that it is impossible
7 for such action to be consistent with the climate im-
8 pact management plan, the Secretary shall require
9 measures to minimize any such conflicts, in addition
10 to any other measures required by law, and the
11 agency shall adopt such measures required by the
12 Secretary.

13 “(E) When appropriate, the Secretary may, and
14 is encouraged to, integrate climate impact manage-
15 ment plans into conservation plans adopted under
16 section 115(b) or recovery plans adopted under sec-
17 tion 4(f) of the Endangered Species Act of 1973 (16
18 U.S.C. 1533(f)).

19 “(F) The Secretary shall review climate impact
20 management plans and implementing regulations at
21 least once every 5 years, and shall revise and amend
22 them as necessary to meet the goals and require-
23 ments of this section. Any changes shall be subject
24 to the procedures and requirements applicable to the

1 adoption of the initial climate impact management
2 plans and regulations.

3 “(5) The Secretary shall report to Congress 4
4 years after the date of enactment of this section,
5 and every 2 years thereafter, on—

6 “(A) actions taken to implement this sec-
7 tion;

8 “(B) any backlog in meeting the schedule
9 set forth in this subsection for adopting, review-
10 ing, and implementing climate impact manage-
11 ment plans, or additional resources necessary to
12 address any such backlog; and

13 “(C) the effectiveness of implementation
14 and sufficiency of the measures adopted in cli-
15 mate impact management plans, and any rec-
16 ommendations for improving the process or the
17 applicable legislation.

18 “(b) MONITORING OF CLIMATE IMPACTS.—The Sec-
19 retary shall establish a program within the National Oce-
20 anic and Atmospheric Administration to monitor the ad-
21 verse impacts of climate change on marine mammals. The
22 purposes of the monitoring program shall be to—

23 “(1) improve models of projected future
24 changes in marine mammal distribution and den-
25 sities resulting from climate change;

1 “(2) identify and monitor interactions with fish-
2 eries and other human activities that may occur as
3 a result of changes in marine mammal distribution
4 or other effects of climate change;

5 “(3) monitor the abundance of species and pop-
6 ulation stocks, to an extent sufficient to detect a 20
7 percent population decline over 20 years;

8 “(4) improve understanding of the impacts of
9 climate change on marine mammal species and pop-
10 ulation stocks; and

11 “(5) assess the direct and indirect contributions
12 of marine mammals to carbon reduction, including
13 through carbon sequestration and nutrient cycling.

14 “(c) PROMULGATION OF REGULATIONS FOR LISTING
15 MARINE MAMMALS ADVERSELY IMPACTED BY CLIMATE
16 CHANGE.—The Secretary shall, within 120 days after the
17 date of the enactment of this section—

18 “(1) publish in the Federal Register for public
19 comment, for a period of not less than 60 days, reg-
20 ulations for listing marine mammal species and pop-
21 ulation stocks adversely impacted by climate change,
22 alone or in combination or interaction with other
23 factors, as described in paragraphs (1) and (2) of
24 subsection (a), taking into account both quantitative
25 and qualitative indicators of adverse impacts of cli-

1 mate change and human activities on such species
2 and stocks, including—

3 “(A) direct and indirect mortality and seri-
4 ous injury;

5 “(B) loss or degradation of habitat;

6 “(C) changes in the distribution or avail-
7 ability of prey;

8 “(D) changes in the distribution of marine
9 mammal species and population stocks;

10 “(E) decreased genetic diversity or repro-
11 ductive success;

12 “(F) increased susceptibility to pathogens;
13 and

14 “(G) increased likelihood of interactions
15 with fisheries and other human activities; and

16 “(2) not later than 90 days after the close of
17 the period for such public comment, publish in the
18 Federal Register final regulations for listing marine
19 mammals as required by paragraphs (1) and (2) of
20 subsection (a), to be reviewed at least once every
21 three years.

22 “(d) LACK OF QUANTITATIVE INFORMATION.—The
23 lack of quantitative information shall not be a basis for
24 a determination that a species or population stock is not
25 adversely impacted by climate change, alone or in com-

1 bination or interaction with other factors, as described in
2 paragraphs (1) and (2) of subsection (a).

3 “(e) ESTIMATION OF POTENTIAL BIOLOGICAL RE-
4 MOVAL.—

5 “(1) The Secretary, in estimating the potential
6 biological removal level in stock assessments pre-
7 pared in accordance with section 117, shall consider
8 the adverse impacts of climate change in deter-
9 mining the recovery factor applied to each stock.

10 “(2) The Secretary, in preparing stock assess-
11 ments in accordance with section 117, shall reexam-
12 ine the stock definition and geographic range of ma-
13 rine mammal species and population stocks to iden-
14 tify climate-related changes in spatial distribution
15 and stock definition and to identify how such
16 changes may affect human impacts to the species.

17 “(f) AUTHORITY TO ENTER INTO AGREEMENTS.—
18 The Secretary shall—

19 “(1) periodically review the status of agree-
20 ments with foreign governments under section
21 108(a) concerning the management of transbound-
22 ary marine mammal species and population stocks,
23 and their prey species, that are or may be affected
24 by climate change; and

1 “(2) through the Secretary of State, initiate the
2 amendment of any such agreement, or negotiations
3 for the development of bilateral or multinational
4 agreements, consistent with the goals and policies of
5 this section.

6 “(g) CONSTRUCTION.—This section shall not be con-
7 strued to limit or restrict any other responsibility of the
8 Secretary or of any other person under this Act or any
9 other statute.

10 “(h) AUTHORIZATION OF APPROPRIATIONS.—

11 “(1) There is authorized to be appropriated to
12 the Administrator of the National Oceanic and At-
13 mospheric Administration to carry out this section
14 \$3,000,000 for each of fiscal years 2024 through
15 2028.

16 “(2) There is authorized to be appropriated to
17 the Secretary of the Interior to carry out this section
18 \$2,000,000 for each of fiscal years 2024 through
19 2028.

20 “(3) There is authorized to be appropriated to
21 the Marine Mammal Commission to carry out this
22 section \$1,000,000 for each of fiscal years 2024
23 through 2028.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in the first section of such Act is amended by inserting
3 after the item relating to section 120 the following:

“Sec. 121. Conservation of marine mammals adversely affected by climate
change.”.

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