

117TH CONGRESS
1ST SESSION

H. R. 3692

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

JUNE 4, 2021

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 1974 (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)(C).

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 management plan under subpara-
4 graph (A) shall include a comprehensive strategy for
5 conserving and recovering of such marine mammal
6 stocks and species given the anticipated direct and
7 indirect effects of climate change and increasing re-
8 siliency in the species or population stock, and shall
9 identify conservation and management measures
10 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 plan.

7 “(C) Each management plan under subpara-
8 graph (A) shall include objective, measurable criteria
9 for evaluating the effectiveness and sufficiency of
10 such measures to meet the purposes of this Act.

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

22 “(ii) With respect to any Federal agency action
23 authorized, funded, or undertaken by such agency
24 that, in the view of the Secretary or of the agency,
25 may conflict or interfere with the objectives of such

1 management plans, such agency shall, in consulta-
2 tion with the Secretary, ensure that such action is
3 consistent with the management plans. To the extent
4 that it is impossible for such action to be consistent
5 with the management plan, the Secretary shall re-
6 quire measures to minimize any such conflicts, in
7 addition to any other measures required by law, and
8 the agency shall adopt such measures required by
9 the Secretary.

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

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

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

1 “(A) actions taken to implement this sec-
2 tion;

3 “(B) any backlog in meeting the schedule
4 set forth in this subsection for adopting, review-
5 ing, and implementing climate impact manage-
6 ment plans, or additional resources necessary to
7 address any such backlog; and

8 “(C) the effectiveness of implementation
9 and sufficiency of the measures adopted in cli-
10 mate impact management plans, and any rec-
11 ommendations for improving the process or the
12 applicable legislation.

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

18 “(1) improve models of projected future
19 changes in marine mammal distribution and den-
20 sities resulting from climate change;

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

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

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

7 “(5) assess the direct and indirect contributions
8 of marine mammals to carbon reduction, including
9 through carbon sequestration and nutrient cycling.

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

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

24 “(A) direct and indirect mortality and seri-
25 ous injury;

1 “(B) loss or degradation of habitat;

2 “(C) changes in the distribution or avail-
3 ability of prey;

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

6 “(E) decreased genetic diversity or repro-
7 ductive success;

8 “(F) increased susceptibility to pathogens;
9 and

10 “(G) increased likelihood of interactions
11 with fisheries and other human activities; and

12 “(2) no later than 90 days after the close of the
13 period for such public comment, publish in the Fed-
14 eral Register final regulations for listing marine
15 mammals as required by paragraph (a), to be re-
16 viewed at least once every three years.

17 “(d) LACK OF QUANTITATIVE INFORMATION.—The
18 lack of quantitative information shall not be a basis for
19 a determination under subsection (c) that a species or pop-
20 ulation stock is not adversely impacted by climate change,
21 alone or in combination or interaction with other factors,
22 as described in paragraphs (1) and (2) of subsection (a).

23 “(e) ESTIMATION OF POTENTIAL BIOLOGICAL RE-
24 MOVAL.—

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

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

13 “(f) AUTHORITY TO ENTER INTO AGREEMENTS.—
14 The Secretary shall—

15 “(1) periodically review the status of agree-
16 ments with foreign governments under section
17 108(a) concerning the management of transbound-
18 ary marine mammal species and population stocks,
19 and their prey species, that are or may be affected
20 by climate change; and

21 “(2) through the Secretary of State, initiate the
22 amendment of any such agreement, or negotiations
23 for the development of bilateral or multinational
24 agreements, consistent with the goals and policies of
25 this section.

1 “(g) CONSTRUCTION.—This section shall not be con-
2 strued to limit or restrict any other responsibility of the
3 Secretary or of any other person under this Act or any
4 other statute.

5 “(h) AUTHORIZATION OF APPROPRIATIONS.—

6 “(1) There is authorized to be appropriated to
7 the Administrator carry out this section, \$3,000,000
8 for each of fiscal years 2022 through 2026.

9 “(2) There is authorized to be appropriated to
10 the Secretary of the Interior to carry out this sec-
11 tion, \$2,000,000 for each of fiscal years 2022
12 through 2026.

13 “(3) There is authorized to be appropriated to
14 the Marine Mammal Commission to carry out this
15 section, \$1,000,000 for each of fiscal years 2022
16 through 2026.”.

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

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

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