

Marine Mammal Protection Act

What is the Marine Mammal Protection Act?

The Marine Mammal Protection Act (MMPA) protects all marine mammals in U.S. waters, including whales, dolphins, seals and manatees.¹ It recognizes the importance of marine mammals to the oceans and seeks to restore or maintain populations at healthy and productive levels.²

In the 1960s, human activities were causing abrupt declines in populations of whales, dolphins and other marine mammals.³ Hundreds of thousands of dolphins were caught and killed each year in large nets⁴ by U.S. vessels fishing for tuna in the Eastern Pacific, stoking public concern.⁵ In response to public outcry on the plight of the dolphins and other marine mammals, Congress passed the MMPA in 1972 with strong bipartisan support, and President Richard Nixon signed it into law.⁶ In an early success for the law, the deaths of dolphins in tuna nets dropped dramatically in the following decade.⁷

How does the MMPA work?

The MMPA protects individual animals as well as entire populations. It does this by prohibiting activities that “harass, hunt, capture or kill” any marine mammal or attempt to do so.⁸ These activities are referred to as “takes.” Exceptions can be made through a permitting process for “takes” that are incidental to otherwise lawful activities, including commercial fishing, scientific research, and public displays at institutions such as aquariums.⁹

The MMPA also prohibits the import, export, transport, possession, sale or purchase of marine mammals and their products.¹⁰ The law applies to any person or vessel (or other conveyance) under U.S. jurisdiction, whether on U.S. waters or lands, or on the high seas.¹¹

Management of marine mammals in U.S. waters is shared by two federal agencies.¹² The National Marine Fisheries Service (NMFS) under the U.S. Department of Commerce has jurisdiction over whales, dolphins, porpoises, seals and sea lions,¹³ while the U.S. Fish and Wildlife Service (FWS) under the Department of the Interior has jurisdiction over manatees, polar bears, sea otters and walrus.¹⁴

In addition to establishing protections for individual animals and populations, the MMPA set up an independent advisory committee called the Marine Mammal Commission.¹⁵ The Commission reviews the status of marine mammal stocks and provides expert recommendations to federal agencies and Congress on how to minimize impacts to marine mammals and their environments with practical, cost-effective solutions.^{16,17,18}

Amendments to the MMPA in 1994 required regular assessments of marine mammal populations and set up a system for reducing marine mammal interactions with commercial fisheries.¹⁹ Multi-stakeholder groups called Take Reduction Teams (TRTs) develop consensus-based plans to reduce the serious injury or death of marine mammal stocks²⁰ in high-risk commercial fisheries.²¹ The TRTs develop Take Reduction Plans (TRPs) to guide NMFS in establishing regulations to prevent the depletion of vulnerable marine mammal stocks and aid in their recovery.²² There are currently seven active TRTs, composed of members from the fishing industry, fishery management councils, federal and state agencies, the scientific community and conservation organizations.²³

Why does the MMPA matter?

The MMPA recognizes the importance of marine mammals to the health of marine environments and seeks to protect individual animals and populations from human harm.²⁴ The law provides protections for all marine mammals affected by the actions of U.S. citizens or their vessels, regardless of where they are in the world, or whether their populations are healthy or declining.²⁵ As human uses of the ocean—shipping, fishing, energy development, defense, mining and tourism—continue and increase, the need to mitigate harmful impacts to marine mammals is even greater now than in 1972. Because the MMPA places constraints on some commercial and government activities that may harm marine mammals, it has been targeted by fishing, and oil and gas interests in the past.

The MMPA also requires action to rebuild populations that have been depleted. The law helps prevent marine mammal populations from decreasing to levels at which they would require protection under the Endangered Species Act (ESA). Once a species is considered in danger of extinction (or likely to become in danger of extinction in the future) throughout all or a significant portion of its range, then it should be listed under the ESA.²⁶ Thus, the MMPA works in tandem with the ESA and other domestic laws and international agreements, such as the Agreement on the International Dolphin Conservation Program.²⁷

MMPA Success Stories

Thanks to the MMPA, the death of millions of dolphins in tuna fishing nets decreased rapidly in the decade after the law was passed—from about 500,000 individuals per year to about 20,000 per year.²⁸ In recent years, fewer than 1,000 dolphins have been caught each year as a result of protections under the MMPA and international agreements covering foreign fleets. In addition, population levels of the two species that were most affected have now started to rise.²⁹

While there are many examples of success, the following demonstrate how adherence to the MMPA has prevented the listing of several species as endangered or threatened under the ESA:

- In the early 1990s, bycatch³⁰ of harbor porpoises in commercial gillnets in the Gulf of Maine was the largest known of any marine mammal in the United States.³¹ The population was in serious decline, which led NMFS to convene a Take Reduction Team to develop a Take Reduction Plan to address the high numbers of deaths and serious injuries.³² Before the plan was implemented in 1999, the average estimated mortality of harbor porpoises in the Northeast sink gillnet fishery was 1,163 animals per year.³³ In 2002, the harbor porpoise population was recovering,³⁴ and as of the most recent stock assessment report, the average annual mortality had decreased to 386 animals.³⁵
- Commercial harvesting of northern elephant seals for their blubber oil in the 1800s depleted populations to such a low level that the species was considered extinct in 1892.³⁶ Fortunately, a small breeding colony of approximately 20 individuals survived.³⁷ Around the time the MMPA passed in 1972 approximately 3,000 elephant seal pups were born in the United States annually.^{38,39} In 2014, the pup count had rebounded to around 40,000.⁴⁰
- Historic populations of gray seals spanned from Labrador to Cape Hatteras,⁴¹ but were depleted so significantly in the United States that by the early 1980s, the only U.S. sightings recorded were 30 gray seals off the coast of Maine.⁴² The MMPA provided protection for gray seals in U.S. waters, and in the following decades, the pup counts at Muskeget Island in Massachusetts grew from five individuals in 1988⁴³ to 3,037 in 2014.⁴⁴

- ¹ Marine mammals include: dolphins, porpoises, whales, seals, sea lions, walrus, polar bears, sea otters, manatees and dugong. NOAA (2017) Marine Mammals. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/species/mammals/>. Accessed April 4, 2017.
- ² GAO (2008) Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing. In: *NOAA Fisheries Service*. Available: <http://www.fisheries.noaa.gov/pr/pdfs/gao-09-78.pdf>.
- ³ NOAA (2016) Office of Protected Resources and the Marine Mammal Protection Act. In: *NOAA Fisheries Service*. Available: http://www.nmfs.noaa.gov/pr/pdfs/mmpa_factsheet.pdf.
- ⁴ NOAA (2014) A purse-seine net is a large wall of netting deployed around an entire area or school of fish. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/interactions/gear/purseseine.htm>. Accessed April 4, 2017.
- ⁵ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ⁶ NOAA (2016) Office of Protected Resources and the Marine Mammal Protection Act. In: *NOAA Fisheries Service*. Available: http://www.nmfs.noaa.gov/pr/pdfs/mmpa_factsheet.pdf.
- ⁷ NOAA (no date) Agreement on the International Dolphin Conservation Program (AIDCP). In: *NOAA Fisheries Service*. Available: http://www.nmfs.noaa.gov/ia/agreements/regional_agreements/pacific/aidcp.pdf.
- ⁸ 16 U.S.C. § 1362(13)
- ⁹ 16 U.S.C. § 1371(a)(1), (2)
- ¹⁰ 16 U.S.C. § 1372(a)(2), (3), (4)
- ¹¹ NOAA (no date) Seaward Limit of Laws: Marine Mammal Protection Act (MMPA). In: *Office of General Council*. Available: http://www.gc.noaa.gov/gcil_seaward.html#mmpa. Accessed April 6, 2017.
- ¹² 16 U.S.C. § 1362 (12)(A)(B)
- ¹³ NOAA (2016) Office of Protected Resources and the Marine Mammal Protection Act. In: *NOAA Fisheries Service*. Available: http://www.nmfs.noaa.gov/pr/pdfs/mmpa_factsheet.pdf.
- ¹⁴ FWS (2012) About Marine Mammals. In: *International Affairs*. Available: <https://www.fws.gov/International/pdf/marine-mammals.pdf>.
- ¹⁵ 16 USC §§ 1401-07
- ¹⁶ 16 U.S.C. § 1402
- ¹⁷ GAO (2008) Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing. In: *NOAA Fisheries Service*. Available: <http://www.fisheries.noaa.gov/pr/pdfs/gao-09-78.pdf>.
- ¹⁸ Marine Mammal Commission (2017) About the Commission. Available: <https://www.mmc.gov/about-the-commission/>. Accessed April 6, 2017.
- ¹⁹ 16 U.S.C. §§ 1386-87
- ²⁰ Take Reduction Teams are formed to reduce the take of “strategic” marine mammal stocks. Strategic stocks are those that are listed under the Endangered Species Act and those for which human-related mortality exceeds potential biological removal—the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock, while allowing that stock to recover to or be maintained within its optimal sustainable population (16 U.S.C. § 1362(19), (20)). Also, a stock may be considered strategic if there is evidence the population is declining and likely to be listed under the Endangered Species Act in the foreseeable future (16 U.S.C. § 1362(19)).
- ²¹ NOAA (no date) Marine Mammal Take Reduction Planning. In: *NOAA Fisheries Service*. Available: http://www.fisheries.noaa.gov/pr/pdfs/interactions/trp_factsheet.pdf; Specifically, Category I or II fisheries, in which there is frequent or occasional incidental mortality or serious injury of marine mammals, respectively (16 U.S.C. § 1387(c)(1)(A)(i)-(ii)).
- ²² NOAA (no date) Marine Mammal Take Reduction Planning. In: *NOAA Fisheries Service*. Available: http://www.fisheries.noaa.gov/pr/pdfs/interactions/trp_factsheet.pdf.
- ²³ NOAA (no date) Marine Mammal Take Reduction Planning. In: *NOAA Fisheries Service*. Available: http://www.fisheries.noaa.gov/pr/pdfs/interactions/trp_factsheet.pdf.
- ²⁴ GAO (2008) Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing. In: *NOAA Fisheries Service*. Available: <http://www.fisheries.noaa.gov/pr/pdfs/gao-09-78.pdf>.
- ²⁵ NOAA (2017) Marine Mammals. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/species/mammals/>. Accessed April 4, 2017.
- ²⁶ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ²⁷ NOAA (no date) Agreement on the International Dolphin Conservation Program. In: *NOAA Fisheries Service*. Available: http://www.nmfs.noaa.gov/ia/agreements/regional_agreements/pacific/aidcp.pdf.
- ²⁸ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ²⁹ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ³⁰ Bycatch is the incidental catch and resultant injury or mortality of non-target fish, protected marine species and seabirds in fisheries.
- ³¹ Read A, Drinker P, Northridge S (2006) Bycatch of Marine Mammals in U.S. and Global Fisheries. *Conservation Biology* 20:163-166. Available: <http://www.cetus.ucsd.edu/SIO133/PDF/Read%20et%20al.%20Conservation%20Biology%202006.pdf>.
- ³² NOAA (2014) Harbor Porpoise (*Phocoena phocoena*). In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/harborporpoise.htm>. Accessed April 4, 2017.
- ³³ NOAA (2001) Final review of the Biological Status of the Gulf of Maine/Bay of Fundy Harbor Porpoise (*Phocoena phocoena*) Pursuant to the Endangered Species Act. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/pdfs/statusreviews/harborporpoise.pdf>.
- ³⁴ It was no longer listed as a strategic stock in 2002. NOAA (2002) Harbor porpoise (*Phocoena phocoena*) Gulf of Maine/Bay of Fundy Stock. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2002poha-gmeb.pdf>.
- ³⁵ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ³⁶ Stewart B, Yochem P, Huber H, et al. (1994) History and Present Status of the Northern Elephant Seal Population. *Population Ecology*. 29-48p. Available: <http://mirounga.ucsc.edu/leboeuf/pdfs/Eseals.1994.Stewart.2.pdf>.

- ³⁷ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ³⁸ NOAA (2016) The Tuna-Dolphin Issue. In: *Southwest Fisheries Science Center*. Available: <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408>. Accessed April 4, 2017.
- ³⁹ Stewart B, Yochem P, Huber H, *et al.* (1994) History and Present Status of the Northern Elephant Seal Population. *Population Ecology*. 29-48p. Available: <http://mirounga.ucsc.edu/leboeuf/pdfs/Eseals.1994.Stewart.2.pdf>.
- ⁴⁰ NOAA (2015) Northern Elephant Seal (*Mirounga angustirostris*): California Breeding Stock. In: *NOAA Fisheries Services*. Available: http://www.nmfs.noaa.gov/pr/sars/pdf/stocks/pacific/2014/po2014_nelephant_seal-ca.pdf.
- ⁴¹ Roman J, Dunphy-Daly M, Johnston D, Read A (2015) Lifting baselines to address the consequences of conservation success. *Trends in Ecology & Evolution* 30:299-302p. Available: <http://www.joeroman.com/wordpress/wp-content/uploads/2015/10/roman-et-al-lifting-tree.pdf>.
- ⁴² NOAA (1995) Gray Seal (*Halichoerus grypus*): Western North Atlantic Stock. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao1995segr-wn.pdf>.
- ⁴³ NOAA (1995) Gray Seal (*Halichoerus grypus*): Western North Atlantic Stock. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao1995segr-wn.pdf>.
- ⁴⁴ NOAA (1995) Gray Seal (*Halichoerus grypus*): Western North Atlantic Stock. In: *NOAA Fisheries Service*. Available: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao1995segr-wn.pdf>.