



The Case for Amending the Marine Mammal Protection Act

Published by the Coastal Ecosystem Alliance (CEA). A grassroots advocacy group, CAMMPA represents parties with diverse interests that share a common environmental goal: effective and humane control and stewardship of the expanding gray seal population in the interests of a balanced ecosystem.

Initiative: To amend the Marine Mammal Protection Act of 1972 (MMPA) to provide for delisting recovered species and post-delisting ecosystem-based stewardship.

Goal: To better align the MMPA with the delisting and post-delisting stewardship provisions of the Endangered Species Act. The MMPA remains critically deficient as a national ecosystem policy without practical delisting provisions.

Background: It has been almost five decades since the MMPA was enacted. The Act was needed in 1972 when many marine mammal species were threatened and some were on the verge of extinction. Some still are, such as the North Atlantic right whale. Since 1972, and thanks in large part to the MMPA, some marine mammal populations have rebounded, in some cases to levels with potentially significant and damaging effects on the overall ecosystem. The coastal New England population of gray seals has increased dramatically, and the Northwest Atlantic population of gray seals is estimated at up to 500,000.

The issue: Gray seals are protected in perpetuity by the MMPA, regardless of their numbers and impact on the environment. With few natural controls over their population growth, weighing as much as 800 lbs. and consuming up to 5% of their body weight daily in fish and shellfish, their ever-expanding population threatens the safety of our inshore waters, the recovery of our declining fisheries, the balance of our marine ecosystem, and the well-being of the coastal communities whose economies depend on the tourism that is rooted in and closely associated with their beaches and inshore waters.

This situation raises several questions, including the following:

- Is perpetual protection of marine mammal species, regardless of their numbers and impact on the ecosystem, scientifically justified?
- When should we assess whether a species is recovered, and what is the methodology for making that assessment?
- When a species is determined to be “recovered,” what are the regulatory agencies’ responsibilities for stewarding that species within the larger ecosystem context?
- Why not just let nature take its course? Nature has three ways of controlling overpopulation: starvation, disease or predation. By protecting gray seals in perpetuity - and in the absence of delisting and post-recovery stewardship provisions - the Act’s permanent protection of gray seals compounds our reliance on those three harsh processes to control their ever-expanding population. Is reliance on starvation, disease and predators – white sharks, in particular – the most enlightened and humane wildlife population control policy?

The Rationale for Amending the MMPA

I. Without a delisting provision, the current Act protects marine mammals in perpetuity, regardless of stock status. This protection eliminates any incentive among regulators to properly assess stock status and/or declare a species recovered. The Act should be clarified to address the question of what happens when a species recovers, including a post-delisting monitoring/stewardship plan. The delisting provisions of the Endangered Species Act provide both a precedent and a model for such a delisting process.

II. Without a delisting provision, the law is inherently inconsistent. Its “Findings and Declaration of Policy” concludes that whenever consistent with the primary objective of maintaining the health and stability of the marine ecosystem, “it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.” It is inconsistent to protect a species in perpetuity, regardless of population size, when the goal is to obtain an optimum sustainable population.

III. Amending the law to provide for delisting should require NOAA to address the question of when to delist and, to that end, to assess marine mammal stock status in terms of *practical* metrics and goals. The metrics and goals cited in the Act, e.g., “optimum sustainable population” and “carrying capacity of the habitat” are, as a practical matter, all-but-impossible to determine.

Bottom line: Without a delisting provision, the Marine Mammal Protection Act has no end-game. Marine mammal species are permanently protected **irrespective of their potential and real impact on coexisting and competing species**. NOAA has little incentive to determine if a species has recovered because the Act does not address that eventuality. Congress should amend the law to provide for delisting recovered species. In addition, Congress should make explicit NOAA’s responsibility for developing a post-delisting stewardship plan which balances the legitimate interests of all affected species, including humans, within the overall objective of ensuring a balanced and healthy marine ecosystem.

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