

**Testimony of Jane P. Davenport  
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**Before the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard  
Committee on Commerce, Science, & Transportation  
U.S. Senate**

**Oversight Hearing on  
Enhancing the Marine Mammal Protection Act**

**March 22, 2018**

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify in support of the Marine Mammal Protection Act. My name is Jane Davenport and I'm a senior attorney at Defenders of Wildlife. For more than 70 years, Defenders has worked to protect and restore imperiled species and their habitats. We represent more than 1.8 million members and supporters.

Americans love marine mammals and want to protect them. For 45 years, the Act has played a central role in protecting and recovering some of our beloved and iconic marine mammal species: humpback and gray whales, sea otters and manatees, seals and sea lions, porpoises and dolphins.

Today, when we can stream nature documentaries on demand, public support for marine mammal conservation is stronger than ever. A poll last year showed that nearly three-quarters of Americans want to protect marine mammals and support the Act.

The conservation successes of the Act have had enormous economic benefits. People spend over a billion dollars a year in the U.S. on whale watching and related travel, pumping money into coastal communities that rely on ecotourism. In Massachusetts alone, a study published this month by Dr. Joe Roman and colleagues showed that in 2014, whalewatching revenues of \$111 million exceeded commercial finfish revenues of \$105 million. Even more significantly, marine stewardship and conservation activities contributed \$179 million to the State's economy. Many other coastal states, including Alaska, show similar growth in marine mammal tourism, contributing to strong state economies.

The Act continues to set the benchmark for global marine mammal conservation. Since its enactment, not a single marine mammal species has gone extinct in U.S. waters. Unfortunately, the same cannot be said for other countries. Marine mammal species in our waters are doing as well or better than species outside our waters. And through statutory mechanisms such as the Tuna-Dolphin and Fish Import provisions, we are requiring foreign nations that want access to our lucrative seafood markets to meet our protective standards while leveling the playing field for U.S. fishermen.

In my years of marine mammal advocacy, I have been repeatedly impressed by how forward-thinking the 92<sup>nd</sup> Congress was. For example, this Act was our first national law mandating an ecosystem approach to wildlife conservation. With current research on the crucial role that marine mammals play in ensuring the productivity of marine ecosystems, we can only be grateful that the 92<sup>nd</sup> Congress had the foresight to act, in their words, “conservatively” to protect marine mammals in the face of scientific uncertainty. Subsequent amendments have built on the 1972 Act’s strength and flexibility, while maintaining the statute’s conservation commitment.

Defenders and our conservation allies believe that there is no need to amend the statute. The Act and its implementing regulations already have functional mechanisms to protect marine mammals while resolving potential conflicts with commercial fisheries, military readiness, subsistence uses, and pinniped-salmon interactions.

The 1994 Amendments established science-based metrics and innovative planning procedures for ensuring that commercial fisheries do not kill unsustainable numbers of marine mammals, especially those that are already depleted or listed under the Endangered Species Act. One such innovation was the requirement to develop Take Reduction Plans, with the input of Take Reduction Teams. These teams are stakeholder groups of fishermen, state and federal fisheries agencies, Alaska Native or tribal representatives, scientists, and conservationists that develop consensus-based recommendations to inform Take Reduction Plan regulations.

In one example, the Harbor Porpoise Team recommended the use of acoustic pingers – developed collaboratively by fishermen and scientists – to deter these tiny porpoises from gillnets. As a result, harbor porpoise deaths in the gillnet fishery dropped dramatically – from more than 3000 to fewer than 400 annually. The population has grown substantially while the northeastern gillnet fleet continues to operate successfully. But to understand the problem and evaluate the effectiveness of proposed solutions, the Team needed the scientific research and data that the Act mandates be compiled for each stock, underscoring the need for adequate funding for marine mammal research.

With respect to military readiness, the Act was substantially amended in 2003 responding to the Department of Defense's concerns about obtaining permits for killing, injuring, and harassing marine mammals via sonar and explosives. Among other modifications to the Act's requirements, these amendments permit the Secretary of Defense to invoke at any time a two-year, renewable exemption from the Act for any action or category of actions if "necessary for national defense."

The Act has robust mechanisms for meeting the subsistence needs of Alaska Native communities. From its original enactment, the Act has exempted take of non-depleted stocks or species for subsistence and handicraft purposes from the general moratorium on take. Depleted species can still be taken for subsistence needs, but that take must be regulated to ensure it is sustainable and allows the species to recover. The Act reflects a deliberate balancing of subsistence needs and long-term conservation goals.

The 1994 Amendments also added a mechanism for addressing interactions between pinnipeds (seals and sea lions) and declining or imperiled salmon stocks in the Northwest. The States of Idaho, Oregon, and Washington have a permit authorizing lethal removal of up to 92 California sea lions a year in the Columbia River. These states have never come close to killing their allotted quota. Until states exercise the full authorization they already have, the Act should not be amended to allow more – or unlimited – sea lion removals, particularly since their removal cannot address the myriad and far greater manmade threats to salmon recovery.

Although the Act has been a conservation success, this is no time to rest on our laurels. We must not weaken the statute either passively through underfunding the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and Marine Mammal Commission, or actively by amendment. Marine mammals face significant new threats from increasing ocean industrialization. Noise pollution levels from ships and other activities impair marine mammals' ability to hear and be heard, find food and mates, and nurture their young, and thus, their very ability to survive.

We are extremely concerned about proposed seismic airgun blasting surveys for offshore oil and gas deposits. This blasting, imminent in the Atlantic, threatens to harass, injure, or even kill thousands of marine mammals. Longer-term, fossil fuel exploration and development in U.S. waters pose both catastrophic and chronic, cumulative risks to marine mammals.

One of the species most at risk from seismic blasting and oil and gas exploration and development in the Atlantic is the critically endangered North Atlantic right whale. This species will be functionally extinct in twenty years if we do not act immediately

to ensure its habitat is safe. In the last year, 18 dead right whales have been found. This calving season, not a single calf has been seen.

With all the threats facing right whales and other marine mammals, we strongly oppose any proposal that would weaken the Act's protections. In a changing world, we must maintain the Act's conservation commitment, not abandon it.

Thank you for the opportunity to speak in support of the Marine Mammal Protection Act.