

# ur Blue Planet

Celebrating 50 Years of the

Marine Mammal Protection Act

BY WENDEE NICOLE

When Apollo 8 astronauts snapped the famous “Earthrise” photo from space in 1968, the world began awakening to the importance of protecting our ocean planet. For the first time, humanity saw the Earth as a swirly, ocean-blue marble, a tiny planet spinning in the vast universe, bringing a sense of humility to our fragile existence. Two years later, millions marched on the first Earth Day—demanding politicians protect our planet from the pesticides, burning rivers, acid rain and oil spills caused by unchecked industrial activity—and Congress began enacting our strongest conservation laws. One of them was the Marine Mammal Protection Act (MMPA), which passed through Congress in 1972 with strong bipartisan support.



“Whales, porpoises, seals, sea otters, polar bears, manatees and others, have only rarely benefitted from our interest; they have been shot, blown up, clubbed to death, run down by boats, poisoned, and exposed to a multitude of other indignities, all in the interests of profit or recreation, with little or no consideration of the potential impact of these activities on the animal populations involved,” read the



NORTHERN ELEPHANT SEALS | ALAMY STOCK PHOTO

Marine mammal populations like California sea lions (above), California sea otters (right and previous spread), northern elephant seals and more have rebounded following the enactment of the Marine Mammal Protection Act.

report from the U.S. House Committee on Merchant Marine and Fisheries on the draft legislation. “Man’s impact upon marine mammals has ranged from what might be termed malign neglect to virtual genocide.”

This forward-thinking law was the first law in the world to take an ecosystem-based approach to marine species management. It placed an immediate moratorium on unauthorized activities that intentionally or unintentionally harm, harass or kill marine mammals. For example, the statute generally bans the unauthorized import, export or sale of marine mammal parts such as ivory, bone, skins and fur (although there are exceptions for products obtained as part of a cultural exchange with Indigenous peoples of the U.S., Canada, Russia and Greenland).

The statute also works to ensure that no marine mammal species drops below its optimum sustainable population, that the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service work to conserve any that do, that the agencies work to protect “essential habitats, including the rookeries, mating grounds and areas of similar significance” for each species, and that scientific research is undertaken to understand marine mammals in American waters and around the world.

The law also regulates capture of marine mammals for entertainment. Before the statute, anyone with a net and a boat could take dolphins from coastal waters to put in an aquarium or even a private swimming pool. Now, capturing or importing marine mammals for display requires a permit and adherence to stringent statutory and regulatory standards.

“The law also requires that the U.S. military needs permits to conduct exercises using explosives or sonar in the ocean to ensure they don’t have a damaging effect on marine mammal populations in the wrong place at the wrong time,” says Jane Davenport, a senior attorney at Defenders. “Or if a company wants to conduct seismic blasting to locate oil and gas deposits below the seabed, it needs an authorization to ensure that this activity won’t have undue impacts on marine mammals that are dependent on their hearing.”

Even if an activity does not kill animals outright, if it interferes with feeding, breeding, migrating or breathing, it is regulated under the MMPA’s harassment provision.

“A lot of marine mammal populations have rebounded, in part, because of the protections under the MMPA,” says Davenport. Examples include northern elephant seals, California sea lions, northern sea otters, humpback whales and harbor porpoises. “There really are a lot of success stories thanks to the MMPA,” she says. “But there’s still a long way to go.”

Following are some of the magnificent marine mammals that Defenders works to protect by using the MMPA as an essential tool and guidepost.

### California Sea Otters

The maritime fur trade of the 18th and 19th centuries wiped out many fur-bearing marine mammals. By the early 20th century, there were only about 50 California (or southern) sea otters left. “The hunters got almost all of them,” says Andrew Johnson, Defenders’ California representative.

While the 1966 Fur Seal Act prohibited slaughtering seals, sea lions and sea otters for their furs (with exceptions for certain Native American tribes), the MMPA provided a stronger foundation for protection of marine mammal species such as sea otters, which live very close to shore and may frequently come in conflict with people.

“Protecting marine mammals from human activity has been critical for a number of species, particularly whales and sea otters,” says Johnson. “All sea otters throughout their range in California and around the Pacific Rim to the tip of the Aleutian Islands are protected under the MMPA, but California sea otters

remain particularly vulnerable. This law allows them to keep restoring themselves along the coast.”

When the sea otter population plummeted, their prey—such as sea urchins—were left unchecked to devour the nearshore kelp forests that serve as nurseries, shelter and food for a wealth of marine species. Other prey like abalone and clams also burgeoned, sparking lucrative shellfish industries. As sea otters recovered, they ran into immediate conflict with these fisheries. “Some of the commercial fisheries argue they fulfill the ecological role of sea otters, but those fisheries wouldn’t exist if we hadn’t wiped out this sea otter population,” says Johnson. “As MMPA and Endangered Species Act [ESA] protections allowed sea otter populations to recover, the otters got a bad rap as a species that destroys shellfisheries. But we need to ask ourselves is it okay to wipe out an entire population of marine creatures so a small number of humans can sustain their fisheries?”



CALIFORNIA SEA OTTER | © JOSHUA ASEL

The California sea otter is protected under the ESA, which Defenders uses along with the MMPA to work for the continued restoration of these ecologically vital—and adorable-looking—creatures that nearly became extinct from fur trapping.



### North Atlantic Right Whales

Armed with the MMPA and the ESA, Defenders and its conservation allies won a lawsuit against NMFS last July by arguing that the agency has failed to protect critically endangered North Atlantic right whales from becoming entangled in lobster fishery lines. Since 2017, the whales have been experiencing an “unusual mortality event”—which is a designation under the MMPA—caused by vessel strikes and entanglement in fishing gear.

“Eighty-five percent of all right whales have been entangled at least once and have the scars on their bodies to prove it,” says Davenport. “NMFS estimates that U.S. fisheries will entangle 15% of the right whale population every year, both killing them and stressing them to the point they cannot reproduce. The population cannot sustain this continued level of impact.” Only about 340 right whales survive.

The species had been recovering slowly but steadily until climate change and warming waters off the Eastern Seaboard shifted the right whales’ zooplankton prey northward into

Named because they were the ‘right whale’ to kill because they floated when they were harpooned, the North Atlantic right whale is still facing an uncertain future. But that it has one at all is, in part, thanks to the MMPA.



NORTHERN ATLANTIC RIGHT WHALE | ALLISON HENRY/NOAA

waters heavily trafficked by shipping, commercial fishing and recreational boats. When the whales followed, they became even more at risk of entanglement and vessel strikes.

NMFS put regulations in place to try to reduce right whale mortality from entanglements, but the judge in the lawsuit agreed with conservationists that these would not lower mortality and serious injury to the required levels. “The MMPA doesn’t give NMFS flexibility to violate the law just because it’s trying to do a hard thing,” says Davenport. “The technologies exist to enable lobster fisheries to operate without entangling whales, and the agency cannot drag its feet any longer in moving the industry toward them.”

Defenders is building support for the Right Whale Coexistence Act of 2022, which would fund conservation and research projects and develop innovative technology to reduce human impacts on these majestic animals.

### Southern Resident Orcas

Iconic in the Pacific Northwest, southern resident orcas live throughout the Salish Sea, along the inland coasts of Washington and British Columbia, and also migrate up and down the Pacific Coast following their salmon prey. Protected as a distinct population segment under the ESA in 2005 and designated as depleted under the MMPA in 2003, the southern resident orca population is just over 70 individuals divided among three pods or social units. While other orca populations eat marine mammals, southern residents specialize



SOUTHERN RESIDENT ORCA | © MONIKA SHIELDS

in eating fish, particularly chinook salmon.

Unfortunately, salmon numbers have plummeted throughout the region—from habitat destruction, climate change, over-fishing and dams that block their migration and breeding routes—leaving the orcas to slowly starve. Recently, Washington Gov. Jay Inslee and U.S. Sen. Patty Murray released a promising report that supports the removal of the four lower Snake River dams that have significantly hindered salmon migration for decades, although they concluded that energy alternatives must be developed first.

“The whales are nutritionally deficient and this makes them vulnerable to other issues,” explains Kathleen Callaghy, a Defenders’ Pacific Northwest field representative. “There are a lot of toxic chemicals in the waters where they swim and they get into the fish that they eat.” They also face the challenge of human-generated noise, which disrupts the echolocation they use to navigate and find food, and it prevents them from communicating with each other. “With so few individuals left, the

population could also easily be wiped out by a single catastrophic event, such as an oil spill,” says Callaghy.

The MMPA designation helps provide badly needed resources to study and protect the population, including prohibiting ships from coming within 200 yards of southern residents and from anchoring within their path while in the inland waters of Washington state. Defenders is also working to restore salmon populations by calling for the removal of the lower Snake River dams and by supporting ongoing state efforts to restore salmon habitat.

From whales to sea otters and more, the MMPA has proved to be a game-changer in how we protect marine mammals. Fifty years after enactment it continues to be one of the best tools that watchdog conservation groups like Defenders can use to protect these fellow inhabitants of our tiny blue marble.

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The southern resident orca of the Salish Sea in the Pacific Northwest faces an uncertain future but the MMPA, along with the ESA, are two tools conservationists are using to ensure proactive measures are taken to keep the unique population from going extinct.

