

A BILL

To amend the Marine Mammal Protection Act of 1972, as amended, to authorize the Act for a period of five [5] years, and for other purposes.

1 *Be it enacted by the Senate and the House of Representatives of the United States of*
2 *America in Congress assembled, That*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marine Mammal Protection Act Amendments of 2005”.

5 **SEC. 2. AMENDMENT OF MARINE MAMMAL PROTECTION ACT OF 1972.**

6 (a) References.— Except as otherwise expressly provided, whenever in this Act an
7 amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other
8 provision, the reference shall be considered to be made to a section or other provision of the
9 Marine Mammal Protection Act of 1972, as amended (16 U.S.C. § 1361 et seq.).

10 (b) Relationship to Other Laws.— Except as otherwise expressly provided, nothing in this
11 Act is intended to amend, repeal, or otherwise affect any other provision of law.

12

13 **TITLE I: AUTHORIZATION OF APPROPRIATIONS**

14 **SEC. 101. DEPARTMENT OF COMMERCE.**

15 Section 116(a) (16 U.S.C. § 1384(a)) is amended to read as follows: “(a) Department of
16 Commerce .—

17 “(1) There are authorized to be appropriated to the Department of Commerce, for
18 purposes of carrying out its functions and responsibilities under this title (other than
19 sections 117 and 118) and title I, \$21,266,000 for fiscal year 2006, and such sums as may
20 be necessary for fiscal years 2007-10.

1 “(2) There are authorized to be appropriated to the Department of Commerce, for
2 purposes of carrying out sections 117 and 118, \$7,635,000 for fiscal year 2006, and such
3 sums as may be necessary for fiscal years 2007-10.”.

4 **SEC. 102. DEPARTMENT OF THE INTERIOR.**

5 Section 116(b) (16 U.S.C. § 1384(b)) is amended to read as follows: “(b) Department of the
6 Interior.– There are authorized to be appropriated to the Department of the Interior, for
7 purposes of carrying out its functions and responsibilities under this title, such sums as may be
8 necessary for fiscal years 2006-10.”.

9 **SEC. 103. MARINE MAMMAL COMMISSION.**

10 Section 207 (16 U.S.C. § 1407) is amended to read as follows: “There are authorized to
11 be appropriated to the Marine Mammal Commission, for purposes of carrying out this title,
12 \$1,925,000 for fiscal year 2006, and such sums as may be necessary for fiscal years 2007-10.”.

13
14 **TITLE II: ALASKA NATIVES HARVEST MANAGEMENT AGREEMENTS**

15 **SEC. 201. MARINE MAMMAL HARVEST MANAGEMENT AGREEMENTS IN**
16 **ALASKA.**

17 A new section is inserted after section 119 to read as follows:

18 “Section 119A. Marine Mammal Harvest Management Agreements in Alaska.

19 “(a) In General.- Notwithstanding the provisions of Section 101(b), the Secretary may
20 enter into harvest management agreements with Alaska Native Tribes or Tribally
21 Authorized Organizations to conserve and manage non-depleted stocks of marine
22 mammals through the regulation of subsistence use by Alaska Natives. Such agreements
23 may also apply to depleted stocks. Agreements shall include, at a minimum, a
24 management plan that-

1 “(1) identifies the signatories to, and the stock or species and areas
2 covered by the plan;

3 “(2) is based on biological information and traditional ecological knowledge;

4 “(3) provides for a sustainable harvest and is designed to prevent populations
5 from becoming depleted;

6 “(4) describes the Tribal authority and procedures to be used by the signatory
7 Alaska Native Tribes or Tribally Authorized Organizations to promulgate and
8 enforce regulations and ordinances that will implement any management
9 prescriptions; and

10 “(5) specifies the duration of the agreement and sets forth procedures for periodic
11 review and termination of the agreement.”

12 To be eligible for entry into a harvest management agreement under the provisions of this
13 section, a Tribally Authorized Organization must show that it has the authority, through
14 approved delegations of authority from Federally recognized Alaska Native Tribes, to
15 adopt and enforce ordinances, regulations, or other laws that govern the taking,
16 transporting, sale, or possession of marine mammals or marine mammal products for
17 subsistence purposes or for purposes of creating and selling authentic native articles of
18 handicrafts and clothing by members of those Tribes.

19 “(b) Procedural Requirements.– In formulating and implementing agreements under this
20 section, Alaska Native Tribes and Tribally Authorized Organizations shall comply with
21 the provisions of 25 U.S.C. § 1302; except that the penalties set forth in section 105 of
22 this Act (16 U.S.C. § 1375) shall be applicable to violations of Tribal regulations or
23 ordinances promulgated to enforce agreements entered into under this section.

1 “(c) Prohibition.- It is unlawful for any person, within the geographic area to which a
2 harvest management agreement adopted pursuant to this section applies, to take,
3 transport, sell, or possess a marine mammal in violation of any regulation or ordinance
4 adopted by an Alaska Native Tribe or Tribally Authorized Organization that is a
5 signatory to the agreement for that stock or for a specific portion of the geographic range
6 of that stock or species; provided, that any such regulation or ordinance shall be
7 consistent with the terms of the harvest management agreement and shall not apply to any
8 act other than the taking, transporting, sale, or possession of a marine mammal or marine
9 mammal product for subsistence purposes or for purposes of creating and selling
10 authentic native articles of handicrafts and clothing. For depleted stocks, any such
11 regulation or ordinance shall be consistent with regulations adopted by the Secretary
12 pursuant to Sections 101(b) and 103.

13 “(d) Grants.- Agreements entered into under this section may include grants to Alaska
14 Native Tribes or Tribally Authorized Organizations for, among other purposes-

15 “(1) collecting and analyzing data on marine mammal populations;

16 “(2) monitoring the harvest of marine mammals for subsistence and handicraft
17 uses;

18 “(3) participating in marine mammal research conducted by the Federal
19 Government, the State of Alaska, academic institutions, or private organizations;

20 and

21 “(4) developing, implementing, and enforcing marine mammal harvest
22 management agreements and plans.

23 “(e) Effect of a Depletion Finding.- In the event the Secretary determines that
24 regulation of Native harvest may be necessary in order to protect a depleted stock, the Secretary

1 shall solicit recommendations for such regulation from Alaska Native Tribes and Tribally
2 Authorized Organizations engaged in harvest management of the species or stock pursuant to
3 this section. The Secretary shall provide to such Alaska Native Tribes and Tribally Authorized
4 Organizations draft proposed regulations, an analysis of how the dual goals of being the least
5 restrictive measures upon subsistence use and the conservation goals of the Act would be
6 achieved, and an opportunity to comment prior to publication of any proposed regulations in the
7 *Federal Register*.

8 “(f) Public Notice and Review.— The Secretary shall, prior to approval and signature of a
9 harvest management agreement under this section, provide public notice and an
10 opportunity for public review and comment on the draft agreement.

11 “(g) Authorization of Appropriations.—

12 “(1) There are authorized to be appropriated to the Secretary of
13 Commerce, for the purposes of carrying out this section; \$1,850,000 for fiscal
14 year 2006; \$2,350,000 for fiscal year 2007; and such sums as may be necessary
15 for fiscal years 2008-10; and

16 “(2) There are authorized to be appropriated to the Secretary of the Interior, for
17 the purposes of carrying out this section: \$3,500,000 for fiscal year 2006;
18 \$4,000,000 for fiscal year 2007; and, such sums as may be necessary for fiscal
19 years 2008-10 ”.

20 **SEC. 202. CONSULTATION WITH TRIBES AND TRIBALLY AUTHORIZED**
21 **ORGANIZATIONS ON DEPLETION DETERMINATIONS.**

22 Section 3(1)(A) (16 U.S.C. § 1362(1)(A)) is amended to read as follows: “(A) the
23 Secretary, after consultation with the Marine Mammal Commission and the Committee of
24 Scientific Advisors on Marine Mammals established under Title II of this Act and, for any stock

1 subject to a harvest management agreement entered into under Section 119A, those Alaska
2 Native Tribes and Tribally Authorized Organizations that are signatories to such an agreement,
3 determines that a species or population stock is below its optimum sustainable population;”.

4 **SEC. 203. COOPERATIVE ENFORCEMENT AUTHORITY.**

5 Section 107(a) (16 U.S.C. § 1377(a)) is amended to read as follows: “Except as otherwise
6 provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may
7 utilize, by agreement, the personnel, services, and facilities of any other Federal agency or of
8 Alaska Native Tribes or Tribally Authorized Organizations for purposes of enforcing this title.”.

9 **SEC. 204. CONFORMING AMENDMENTS.**

10 (a) Section 101(b) (16 U.S.C. § 1371(b)) is amended by striking “section 109” and
11 inserting “sections 109 and 119A”.

12 (b) Section 119 (16 U.S.C. § 1388) is amended—

13 (1) in subsection (a) by deleting the phrase “Alaska Native organizations” and inserting
14 in its place the phrase “Alaska Native Tribes or Tribally Authorized Organizations”; and

15 (2) in subsection (b) by deleting the phrase “Alaska Native organizations” and inserting
16 in its place the phrase “Alaska Native Tribes or Tribally Authorized Organizations”.

17 **SEC. 205. AUTHORIZATIONS OF APPROPRIATIONS FOR COOPERATIVE**
18 **AGREEMENTS UNDER SECTION 119.**

19 Section 119 (16 U.S.C. § 1388) is amended -(1) in subsection (d)(1) to read
20 “\$1,500,000 to the Secretary of Commerce for each of the fiscal years 2006-10”; and

21 (2) in subsection (d)(2) to read “\$1,500,000 to the Secretary of the Interior for
22 each of the fiscal years 2006-10.”;

23 **SEC. 206. EFFECT ON SOVEREIGN AUTHORITIES; DISCLAIMER.**

24 (a) Nothing in this title establishes, expands, diminishes, or alters, or is intended to

1 establish, expand, diminish, or alter any sovereign authorities held by any Alaska Native village,
2 Alaska Native Tribe, Tribally Authorized Organization, or Alaska Native organization. Any
3 decision by the Secretary to enter into a harvest management agreement with one or more Alaska
4 Native Tribes or Tribally Authorized Organizations is not to be construed as a determination of
5 any claim or right of the participating Tribes or Tribally Authorized Organizations other than the
6 authority to regulate the taking, transporting, sale, or possession of marine mammals by their
7 members for subsistence or for clothing or handicraft purposes.

8 (b) Nothing in this title establishes, expands, diminishes, or alters, or is intended to
9 establish, expand, diminish, or alter, the authority of any Alaska Native village, Alaska Native
10 Tribe, Tribally Authorized Organization, or Alaska Native organization to regulate, arrest, or
11 take enforcement action against any person who is not a member of the participating Tribe or
12 village.

13 **SEC. 207. DEFINITION OF TRIBALLY AUTHORIZED ORGANIZATION**

14 Section 3 (16 U.S.C. § 1362) is amended by inserting a new subsection to read as
15 follows:

16 “(32) The term ‘Tribally Authorized Organization’ means an organization consisting of
17 representatives of federally recognized Alaska Native Tribes that is authorized by the
18 governments of such Tribes to formulate marine mammal cooperative agreements or marine
19 mammal harvest management agreements and to adopt ordinances, regulations, or other laws to
20 implement such harvest management agreements.”

21

22 **TITLE III: CULTURAL EXCHANGE AND EXPORT**

23 **SEC. 301. EXPORT PROHIBITION.**

24 Section 102(a)(4) (16 U.S.C. § 1372(a)(4)) is amended to read as follows: “(4) for any person to

1 transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or
2 marine mammal product;”.

3 **SEC. 302. PERMITS.**

4 (a) Section 101(a)(1) is amended–

5 (1) by replacing the phrase “taking, and importation” with the phrase “taking,
6 importation, or exportation”;

7 (2) by replacing the phrase “taking or importation”, each place it occurs, with the
8 phrase “taking, importation, or exportation”; and

9 (3) by revising the final sentence to read as follows:

10 “If the Secretary issues such a permit for importation or exportation, such importation or
11 exportation may be made upon presentation of the permit to the Customs Officer
12 concerned.”; and

13 (b) Section 104 (16 U.S.C. § 1374) is amended–

14 (1) in subsection (a) by replacing the first sentence with the following: “The
15 Secretary may issue permits which authorize the taking, importation, exportation, or
16 transport of any marine mammal. Permits issued under this section, except for
17 subsections (c)(5), (c)(6), or (h), may authorize the purchase or sale of marine
18 mammals.”; and

19 (2) in subsection (b) –

20 (A) by replacing in paragraph (2)(A) the term “animals” with the term “marine
21 mammals” and striking the phrase “which are authorized to be taken or imported”
22 and replacing it with the words “which are covered by the authorization”;

23 (B) by striking in paragraph (2)(B) the phrase “, or from which they may be

1 imported” and inserting in its place “or to or from which they may be exported or
2 imported,”;

3 (3) in subsection (c) –

4 (A) by amending the title to read: “Display, Research, Enhancing Survival or
5 Recovery, Polar Bear Parts, and Photography”;

6 (B) by amending the first two sentences of paragraph (1) to read as follows: “Any
7 permit issued by the Secretary for purposes of scientific research, public display,
8 or enhancing the survival or recovery of a species or stock shall specify, in
9 addition to the conditions required by subsection (b) of this section, the methods
10 of capture, supervision, care, and transportation which must be observed pursuant
11 to any taking, importation, or exportation. Any person issued a permit under this
12 subsection shall furnish to the Secretary a report on all activities carried out
13 pursuant to that authority.”;

14 (C) by striking from paragraph (2)(A) the phrase “to take or import a marine
15 mammal”;

16 (D) by deleting the word “A” in paragraph (2)(B) and inserting in its place the
17 following: “Except as limited by paragraph (9) of this subsection, a”;

18 (E) by inserting in the first sentence of paragraph (3)(A) the phrase “or other
19 proposed act” after the word “taking”;

20 (F) by inserting in paragraph (4)(A) the phrase “the taking or other proposed act”
21 after the words “determined that” and striking the phrase “taking or importation”
22 from clauses (i) and (ii);

23 (G) by inserting in the first sentence of paragraph (5)(A) the phrase “and
24 transport” after the word “importation”; and

1 (H) by striking in paragraph (8)(A) the term “taken or imported” and inserting in
2 its place the phrase “taken, imported, or exported”;

3 (4) in subsection (d) –

4 (A) by striking in paragraph (2) the phrase “taking or importation” and inserting
5 in its place the word “activities”; and

6 (B) by striking in paragraph (3) the phrase “taking or importation of any marine
7 mammal” and inserting in its place the words “activities proposed”;

8 (5) in subsection (f) –

9 (A) by amending paragraph (1) to read as follows: “the time of the taking or other
10 authorized act;”;

11 (B) by striking in paragraph (2) the phrase “such taking or importation;” and
12 inserting in its place “the taking or other authorized act;” and

13 (C) by amending paragraph (3) to read as follows: “any other time the marine
14 mammal is in the possession of such person or agent.”.

15 (c) Section 105(a)(1) is amended by deleting the phrase “taking or importation” in the
16 third sentence, and replacing it with the phrase “taking, importation, or exportation”. [Note: this
17 amendment is needed only if that proposed in section 503(a) is not adopted.]

18 **SEC. 303. CONFORMING AMENDMENT TO SECTION 103.**

19 Section 103 is amended by adding a new sentence to the end of subsection (a) to read as
20 follows: “Subject to the provisions of this section, such regulations may authorize the export,
21 transport, purchase, or sale of a marine mammal or marine mammal product.”.

1 **TITLE IV: FISHERIES INTERACTIONS**

2 **SEC. 401. TUNA-DOLPHIN PROVISIONS.**

3 (a) Section 101 (16 U.S.C. § 1371) is amended –

4 (1) in subsection (a)(2)(B)(iii) by–

5 (A) striking the word “limits” after the words “the total dolphin mortality”;

6 (B) striking the words “limits permitted for that nation’s vessels” and inserting in
7 their place the words “attributed to that nation’s vessels do not exceed the limits
8 established”; and

9 (C) striking the words “do not exceed the limits determined for 1997, or any year
10 thereafter” and inserting in their place “for any year”.

11 (2) by amending subsection (a)(2)(C)(i)(II) to read as follows: “for the purposes of
12 tracking and verifying the ‘dolphin-safe’ status of tuna products in accordance with
13 regulations promulgated pursuant to subsection (f) of the Dolphin Protection Consumer
14 Information Act (16 U.S.C. § 1385(f)); or”; and

15 (3) in subsection (a)(2)(F) by–

16 (A) striking, in existing clause (i), the phrase “except as provided in clause (ii),”,
17 inserting the word “large-scale” before “driftnet fishing”, inserting a period after
18 the word “driftnet” before the phrase “in the South Pacific Ocean”, and deleting
19 the remainder of the clause;

20 (B) striking clause (ii);

21 (C) striking the remainder of subparagraph (F) and redesignating clause (i)
22 as subparagraph (F); and

23 (D) inserting at the end of subparagraph (F), as revised by this paragraph,
24 the following: “For the purposes of subparagraph (F), the term ‘large-scale

1 driftnet fishing’ has the meaning given such term in section 3 of the
2 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C.
3 § 1802).”.

4 (b) The Dolphin Protection Consumer Information Act (16 U.S.C. § 1385) is amended—

5 (1) by revising subsection (c)(1) to read as follows: “the term ‘large-scale driftnet’ means
6 a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a
7 total length of two and one-half kilometers or more; ‘driftnet fishing’ means a method of
8 fishing in which a large-scale driftnet is placed in the water and allowed to drift with the
9 currents and winds for the purpose of entangling fish in the webbing;” and

10 (2) in subsection (c)(2) by striking the words “160 degrees west longitude” and inserting
11 in their place “150 degrees west longitude”;

12 (c) Section 303(a)(2)(B) (16 U.S.C. § 1413(a)(2)(B)) is amended—

13 (1) in clause (v) by striking the word “before” and inserting in its place the word “after”;

14 (2) in clause (x) by inserting the phrase “or that” after the phrase “serious injury”; and

15 (3) in clause (xi) by striking the word “internationally” and replacing it with the word
16 “intentionally”.

17 (d) Section 307(a)(2) (16 U.S.C. § 1417(a)(2)) is amended—

18 (1) by striking the phrase “section 101(d)” and inserting in its place the phrase “section
19 101(e)”.

20 **SEC. 402. FISHERY INTERACTION PROVISIONS.**

21 Section 118 (16 U.S.C. § 1387) is amended—

22 (a) by amending subsection (c)(3)(A) to read as follows:

23 “(3)(A) An owner of a vessel engaged in a fishery listed under paragraph (1)(A)(i)
24 or (ii), and the master or operator of any such vessel, shall, in order to engage

1 lawfully in that fishery–

2 “(i) have registered under paragraph (2) with the Secretary in order to obtain for
3 each such vessel owned and used in the fishery an authorization for the purpose of
4 incidentally taking marine mammals in accordance with this section;

5 “(ii) ensure that a decal or such other physical evidence of a current and valid
6 authorization as the Secretary may require is displayed on or is in the possession
7 of the master of each such vessel;

8 “(iii) report as required by subsection (e);

9 “(iv) comply with any applicable take reduction plan and emergency regulations
10 issued under this section; and

11 “(v) take on board an observer if requested to do so by the Secretary.”;

12 (b) by striking subparagraphs (B) and (C) of subsection (c)(3) and redesignating
13 subparagraphs (D) and (E) as subparagraphs (B) and (C), respectively;

14 (c) by amending subsection (f)(1) to read as follows: “The Secretary shall develop and
15 implement a take reduction plan designed to assist in the recovery or prevent the
16 depletion of each strategic stock which interacts with a fishery listed under subsection
17 (c)(1)(A)(i) or (ii), unless the Secretary determines, after notice and opportunity for
18 public comment, that the level of fishery–related mortality and serious injury is having a
19 negligible impact on that stock. The Secretary may develop and implement a take
20 reduction plan for any other marine mammal stocks which interact with a fishery listed
21 under subsection (c)(1)(A)(i) which the Secretary determines, after notice and
22 opportunity for public comment, has a high level of mortality and serious injury across a
23 number of such marine mammal stocks.”;

1 (d) by amending subsection (f)(6)(A)(i) by striking the word “and” at the end of the
2 clause;

3 (e) by amending subsection (f)(6)(A)(ii) by adding the word “and” at the end of the
4 clause after the words “from such stock;”;

5 (f) by amending subsection (f)(6)(A) by adding a new clause (iii) as follows: “(iii) assign
6 a technical liaison, with commercial fishing expertise, to the team to provide information
7 to team members regarding fishing practices and gear usage during the take reduction
8 plan development process.”; and

9 (g) by amending subsection (f)(7)(B) by redesignating clause (ii) as clause (iii) and
10 adding a new clause (ii) as follows: “(ii) The Secretary shall reconvene or otherwise
11 consult with the team to solicit comments on the proposed regulations and any proposed
12 changes to the draft plan during the period of public review and comment.”.

13 **SEC. 403. EXPANSION OF FISHERIES INCLUDED IN THE INCIDENTAL**
14 **TAKE PROGRAM.**

15 (a) Section 3 (16 U.S.C. § 1362) is amended by inserting a new subsection to read as
16 follows : “(30) The term ‘listed fishery’ means a fishery included on the list of fisheries
17 published pursuant to section 118(c)(1).”.

18 (b) Section 118 (16 U.S.C. § 1387) is amended–

19 (1) in subsection (a)(1) by replacing the phrase “commercial fishing operations” with the
20 phrase “engaging in a listed fishery”;

21 (2) in subsection (c)(1) by striking the phrase “, within 90 days after the date of
22 enactment of this section”;

23 (3) in subsection (c)(1)(A) by striking the word “commercial” after the phrase
24 “Secretary’s list of” and striking the phrase “commercial fisheries that have”;

1 (4) in subsection (c)(1)(A)(i) by adding the phrase “fisheries that have” before the words
2 “frequent incidental mortality”;

3 (5) in subsection (c)(1)(A)(ii) by adding the phrase “fisheries that have” before the words
4 “occasional incidental mortality”;

5 (6) in subsection (c)(1)(A)(iii) by adding the phrase “commercial fisheries that have”
6 before the words “a remote likelihood”;

7 (7) in subsection (c)(2)(A) by deleting the word “commercial”; and

8 (8) in subsection (e) by striking the word “commercial” each place it occurs and striking
9 the word “Act” and replacing it with the word “section”.

10 **SEC. 404. CONFORMING AMENDMENTS TO THE EXPANSION OF FISHERIES**
11 **INCLUDED IN THE INCIDENTAL TAKE PROGRAM.**

12 (a) Section 101 (16 U.S.C. § 1371) is amended—

13 (1) in subsection (a)(2) by striking the word “commercial” after the phrases “incidentally
14 in the course of” and “permitted in the course of”;

15 (2) in subsection (a)(5)(A) by replacing the phrase “commercial fishing” with the phrase
16 “engaging in a listed fishery”;

17 (3) in subsection (a)(5)(D)(i) by replacing the phrase “commercial fishing” with the
18 phrase “engaging in a listed fishery”;

19 (4) in subsection (a)(5)(E)(i) by replacing the phrase “commercial fishing operations”
20 with the phrase “a listed fishery”;

21 (5) in subsection (a)(5)(E)(i)(I) by replacing the phrase “commercial” with the phrase
22 “such”; and

23 (6) in subsection (a)(5)(E)(iii) by striking the word “commercial” each place it occurs and
24 inserting the word “those” after the phrase “serious injury from”.

1 (b) Section 102(a)(6) (16 U.S.C. § 1372(a)(6)), as redesignated by section 502(b) of this
2 Act, is amended by deleting the word “commercial”.

3 (c) Section 104(a) (16 U.S.C. § 1374(a)) is amended by deleting the word “commercial”.

4 (d) Section 109(b)(3)(B)(i) (16 U.S.C. § 1379(b)(3)(B)(i)) is amended by striking the
5 word “commercial” and replacing the term “(4)” with the phrase “or section 118”.

6 (e) Section 111 (16 U.S.C. § 1381) is amended-

7 (1) by amending the title of this section to read: “Fisheries Gear Development”;

8 (2) in subsection (a)(1), as set forth in section 516(a) of this Act, by striking the word
9 “commercial”; and

10 (3) in subsection (e), as redesignated by section 516(c) of this Act, by striking the word
11 “commercial” and replacing the phrase “documented under the laws of the United States”
12 with the phrase “engaging in a listed fishery”.

13 (f) Section 115 (16 U.S.C. § 1383b) is amended by revising subsection (b)(4) to read: “If
14 the Secretary determines that a take reduction plan is necessary to reduce the taking of marine
15 mammals incidental to engaging in a listed fishery from a strategic stock, or for species or stocks
16 which interact with a fishery for which the Secretary has made a determination under section
17 118(f)(1), any conservation plan prepared under this subsection for such species or stock shall
18 incorporate the take reduction plan required under section 118 for such species or stock.”

19 (g) Section 117 (16 U.S.C. § 1386) is amended by striking the word “commercial” each
20 place it occurs and in subsection (a)(4) replacing it with the word “listed”.

21 (h) Section 118 (16 U.S.C. § 1387) is amended-

22 (1) by amending the title of Section 118 to read: “Taking of Marine Mammals
23 Incidental To Fishing Operations”;

- 1 (2) in subsection (a)(5) by striking the word “commercial”;
- 2 (3) in subsection (c)(1)(B) by deleting the word “commercial”;
- 3 (4) in subsection (c)(1)(C) by deleting the word “commercial”;
- 4 (5) in subsection (c)(3)(C) as redesignated by section 402(b) of this Act, by
5 inserting the word “commercial” after the phrase “engaged in any”;
- 6 (6) in subsection (c)(5)(B) by striking the word “commercial”;
- 7 (7) in subsection (d)(1) by striking the phrase “commercial fishing operations”
8 and replacing it with the phrase “engaging in a listed fishery”;
- 9 (8) in subsection (d)(3) by striking the word “commercial” and replacing it with
10 the word “listed”;
- 11 (9) in subsection (d)(4) by striking the word “commercial” each place it occurs
12 and replacing it in each instance with the word “listed”;
- 13 (10) in subsection (d)(5) by striking the phrase “commercial fishing operations”
14 and replacing it with the phrase “engaging in a listed fishery”;
- 15 (11) in subsection (f)(2) by striking the phrase “commercial fishing operations”
16 each place it occurs and replacing it in each instance with the phrase “engaging in a listed
17 fishery”;
- 18 (12) in subsection (f)(3) by striking the word “commercial”;
- 19 (13) in subsection (f)(4)(B) by striking the phrase “commercial fishing
20 operations” and replacing it with the phrase “engaging in a listed fishery”;
- 21 (14) in subsection (f)(5)(A) by striking the word “commercial” and replacing it
22 with the word “listed”;
- 23 (15) in subsection (f)(5)(B) by striking the word “commercial” and replacing it
24 with the word “listed”;

1 (16) in subsection (f)(6)(A)(ii) by striking the word “commercial” and replacing it
2 with the word “listed”;

3 (17) in subsection (f)(7)(D) by striking the word “commercial”;

4 (18) in the first sentence of subsection (f)(8) by striking the word “commercial”;

5 (19) in subsection (f)(8)(D) by striking the word “commercial”;

6 (20) in subsection (f)(9)(A) by striking the word “commercial” each place it
7 occurs and replacing it in each instance with the word “listed”;

8 (21) in subsections (f)(9)(B) and (C) by striking the word “commercial” each
9 place it occurs;

10 (22) in subsection (f)(9)(D) by striking the phrase “commercial fishing
11 operations” and replacing it with the phrase “participation in a listed fishery”;

12 (23) in the first sentence of subsection (g)(1) by striking the word “commercial”
13 and replacing it with the word “listed”;

14 (24) in subsection (g)(3)(B) by striking the word “commercial”; and

15 (25) in subsection (g)(4) by striking the word “commercial” and replacing it with
16 the word “listed”.

17 (i) Section 407(a)(3)(A) (16 U.S.C. § 1421f(a)(3)(A)) is amended by striking the word
18 “commercial”.

19 **SEC. 405. STRIKING OF SECTION 114.**

20 Section 114 (16 U.S.C. § 1383a) is repealed.

21 **SEC. 406. CONFORMING AMENDMENTS TO THE STRIKING OF SECTION 114.**

22 (a) Section 102 (16 U.S.C. § 1372) is amended in subsection (a) by striking “114.”.

23 (b) Section 118 (16 U.S.C. § 1387) is amended—

24 (1) in subsection (a)(1) by striking “section 114 and in”; and

1 (2) in subsection (c) by–

2 (A) striking the phrase “under section 114(b)(1) and which is in existence on
3 March 31, 1994” in paragraph (1)(A) and inserting in its place the phrase “in the
4 *Federal Register* by the Secretary on August 25, 1994”;

5 (B) striking in subsection (c)(4)(A) “Previous failure to comply with the
6 requirements of section 114 shall not bar authorization under this section for an
7 owner who complies with the requirements of this section.”; and

8 (C) striking in subsection (c)(4)(A) the reference “(3)(B)” and replacing it with
9 “(3)(A)(v)”.

10 **SEC. 407. GULF OF MAINE HARBOR PORPOISE.**

11 Section 120 (16 U.S.C. § 1389) is amended by striking subsection (j).

12 **SEC. 408. CALIFORNIA SEA OTTER FISHERY INTERACTIONS.**

13 Section 118 (16 U.S.C. § 1387) is amended by inserting the following sentence at the end
14 of subsection (a)(4): “Notwithstanding this exclusion, the Secretary shall include information
15 concerning California sea otters in the list of fisheries published pursuant to subsection (c)(1) and
16 shall include this species in determinations regarding monitoring programs pursuant to
17 subsection (d).”.

18 **SEC. 409. ALTERNATIVE OBSERVER PROGRAM.**

19 (a) Section 118(d)(5) (16 U.S.C. § 1387(d)(5)) is amended by inserting the following
20 sentence at the end of that paragraph: “The Secretary is directed to explore the use of new
21 technologies for such alternative monitoring.”.

1 **TITLE V: OTHER AMENDMENTS**

2 **SEC. 501. POLAR BEAR PERMITS.**

3 Section 104 (16 U.S.C. § 1374) is amended—

4 (a) by revising the first sentence of subsection (c)(5)(D) to read: “The Secretary of the
5 Interior shall issue a permit for the importation of polar bear parts (other than internal organs)
6 from polar bears taken in sport hunts in Canada before the date of enactment of the Marine
7 Mammal Protection Act Amendments of 1994 to each applicant who submits, with the permit
8 application, proof that the polar bear was legally harvested in Canada by the applicant.”;

9 (b) by inserting the following at the end of the first sentence of subsection (d)(2):
10 “, except for an application for a permit to import polar bear parts taken from a population that
11 has been approved under subsection (c)(5) (A) of this section or to import polar bear parts taken
12 from all populations under subsection (c)(5)(D) of this section”;

13 (c) by inserting the following at the end of the concluding sentence of subsection (d)(5):
14 “if a notice of application was required to be published pursuant to paragraph (2) of this
15 subsection.”; and

16 (d) by adding a new subparagraph (E) in subsection (c)(5) to read as follows: “(E) The
17 Secretary shall make available to the public on a semi-annual basis information concerning the
18 permits issued or denied under this paragraph.”.

19 **SEC. 502. CAPTIVE RELEASE PROHIBITION.**

20 Section 102(a) (16 U.S.C. § 1372(a)) is amended—

21 (a) by adding a new paragraph (5) to read as follows—

22 “(5) for any person to release any marine mammal maintained in captivity
23 at a facility unless specifically authorized to do so under a permit issued pursuant
24 to section 104(c) or under 109(h) of this Act. This provision shall not apply to the

1 temporary release of any marine mammal by the Department of Defense for
2 military or research purposes provided that the marine mammal is–

3 “(A) maintained in captivity under Section 7524 of Title 10, United States
4 Code, or is the progeny of a marine mammal maintained under that
5 provision, or

6 “(B) the progeny of a marine mammal excluded from coverage under this
7 Act by section 102(e).”; and

8 (b) by redesignating former paragraph (5), as amended by section 404(b), as
9 paragraph(6).

10 **SEC. 503. PENALTIES.**

11 (a) Section 105 (16 U.S.C. § 1375) is amended–

12 (1) by revising subsection (a)(1) to read as follows: “(a)(1) Any person who violates any
13 provision of this title or of any permit or regulation issued thereunder, may be assessed a
14 civil penalty by the Secretary of not more than \$50,000 for each such violation, provided
15 that any person who violates section 118(c)(3)(A)(ii) of this Act shall be subject to a civil
16 penalty of not more than \$100 for each such violation. No penalty shall be assessed
17 unless such person is given notice and opportunity for a hearing with respect to such
18 violation. Each unlawful taking, importation, exportation, sale, purchase, or transport
19 and each day on which unlawful fishing is conducted in violation of section 118(c)(3)(A)
20 shall be a separate offense. Any such civil penalty may be remitted or mitigated by the
21 Secretary for good cause shown. Upon any failure to pay a penalty assessed under this
22 subsection, the Secretary may request the Attorney General to institute a civil action in a
23 district court of the United States for any district in which such person is found, resides,
24 or transacts business to collect the penalty and such court shall have jurisdiction to hear

1 and decide any such action.”; and

2 (2) in subsection (b) by striking the phrase “(except as provided in section 118)”, striking
3 the term “\$20,000” and inserting in its place “\$100,000”, and inserting the following
4 provision at the end of the subsection: “; except that if in the commission of any offense
5 described in section 102(d)(1-5) the person uses a dangerous weapon, engages in conduct
6 that causes bodily injury to any person authorized by the Secretary to enforce this title, or
7 places any such person in fear of imminent bodily injury, the offense is punishable by a
8 fine under Title 18, United States Code , or imprisonment for not more than 10 years, or
9 both”.

10 (b) Section 118(h) (16 U.S.C. § 1387(h)) is amended by striking the phrase “Except as
11 provided in subsection (c), any” and replacing it with the word “Any”.

12 **SEC. 504. VESSEL FINES AND CARGO FORFEITURE.**

13 Section 106 (16 U.S.C. § 1376) is amended—

14 (a) by adding in subsection (a) the phrase “or in fishing in violation of section
15 118(c)(3)(A)(i), (iii), (iv), or (v),” after “that is employed in any manner in the unlawful taking of
16 any marine mammal”;

17 (b) by adding in subsection (a) the phrase “or unlawful fishing” after “in connection with
18 the unlawful taking of a marine mammal”;

19 (c) by adding in subsection (b) the phrase “or in fishing in violation of section
20 118(c)(3)(A)(i), (iii), (iv), or (v),” after “that is employed in any manner in the unlawful taking of
21 any marine mammal”; and

22 (d) by striking in subsection (b) “\$25,000” and inserting “\$50,000”.

1 **SEC. 505. MARINE MAMMAL COMMISSION ADMINISTRATION.**

2 Section 206(4) (16 U.S.C. § 1406(4)) is amended by striking “(but at rates for individuals
3 not to exceed \$100 per diem)”.

4 **SEC. 506. ENFORCEMENT.**

5 Section 107 (16 U.S.C. § 1377) is amended by inserting the following sentence at the end
6 of subsection (b): “The Secretary is further directed to seek to enter into agreements pursuant to
7 section 112(c) with state law enforcement agencies to establish, implement, and provide funding
8 for cooperative enforcement of the provisions of this title.”.

9 **SEC. 507. INTERFERENCE WITH INVESTIGATIONS AND AUTHORIZED**
10 **ACTIVITIES.**

11 Section 102 (16 U.S.C. § 1372) is amended by—

12 (a) redesignating subsections (d), (e), and (f) as (e), (f), and (g) respectively; and

13 (b) adding a new subsection (d) to read as follows: “(d) Interference with Investigations
14 and Authorized Activities. – It is unlawful for any person to—

15 “(1) refuse to allow any person authorized by the Secretary to enforce this title to board
16 any vessel or other conveyance, except any public vessel as that term is defined in
17 Section 2101 of Title 46 of the United States Code, for purposes of conducting any search
18 or inspection in connection with enforcement of this title;

19 “(2) assault, resist, oppose, impede, intimidate, or interfere with any person authorized by
20 the Secretary to enforce this title, who is conducting any search or inspection in
21 connection with enforcement of this title;

22 “(3) resist a lawful arrest for any act prohibited under this title;

23 “(4) interfere with the apprehension or arrest of any person who has committed any act
24 prohibited by this title;

1 “(5) make or submit any false record, account or information relating to the provisions of
2 this title; or

3 “(6) engage in physical conduct that significantly hinders lawful activities authorized by
4 the Secretary under title IV.”.

5
6 **SEC. 508. AUTHORIZATIONS FOR MARINE MAMMAL HEALTH AND STRANDING**
7 **RESPONSE.**

8 Section 409 (16 U.S.C. § 1421g) is amended to read as follows: “There are
9 authorized to be appropriated to the Fund, \$1,000,000 for fiscal years 2006-07, and such sums as
10 may be necessary for fiscal years 2008-10.”.

11 **SEC. 509. STRANDING AND ENTANGLEMENT RESPONSE.**

12 (a) Section 402(b)(1)(A) (16 U.S.C. § 1421a(b)(1)(A)) is amended by inserting the words
13 “or entangled” after the word “stranded”.

14 (b) Section 403 (16 U.S.C. § 1421b) is amended by revising the title of the section to read
15 “Stranding or Entanglement Response Agreements” and in subsection (a) by inserting at the end
16 of the sentence “or entanglement.”.

17 (c) The introductory provision of section 406 (16 U.S.C. § 1421e) is amended in
18 subsection (a) to read as follows: “(a) IN GENERAL – A person who is authorized to respond to a
19 stranding or entanglement pursuant to an agreement entered into under section 112(c) is deemed
20 to be an employee of the government for purposes of chapter 171 of Title 28, United States
21 Code, with respect to actions that are—”.

22 **SEC. 510. ENTANGLEMENT DEFINITION.**

23 Section 410 (16 U.S.C. § 1421h) is amended by adding at the end a new subsection as
24 follows: “(7) The term ‘entanglement’ means an event in the wild in which a living or dead

1 marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and
2 is–

3 “(A) on a beach or shore of the United States; or

4 “(B) in waters under the jurisdiction of the United States (including any navigable
5 waters).”.

6 **SEC. 511. UNUSUAL MORTALITY EVENT FUNDING.**

7 Section 405(c)(2) (16 U.S.C. § 1421d(c)(2)) is amended by striking the phrase “for use
8 with respect to unusual mortality events” and replacing it with the phrase “under this Act”.

9 **SEC. 512. MARINE MAMMAL RESEARCH GRANTS.**

10 Section 110 (16 U.S.C. § 1380) is amended–

11 (a) by amending subsection (a) to read: “Authorization; Annual Report. – The Secretary
12 is authorized to make grants, or to provide financial assistance in such other form as he deems
13 appropriate, to any Federal or State agency, public or private institution, or other person for the
14 purpose of assisting such agency, institution, or person to undertake research in subjects which
15 are relevant to the protection and conservation of marine mammals, and the ecosystems upon
16 which they depend, including, but not limited to, the Bering/Chukchi Sea ecosystem, and the
17 California coastal marine ecosystem. The Secretary shall include a description of the annual
18 results of research carried out under this section in the report required under section 103(f).”; and

19 (b) by striking subsections (c) and (d).

20 **SEC. 513. TRAVELING EXHIBITS.**

21 Section 102 (16 U.S.C. § 1372) is amended by adding a new subsection (h) to read as
22 follows: “(h) Traveling Exhibits.– It is unlawful for any person subject to the jurisdiction of the
23 United States to import, export, possess, or transport any cetacean in connection with a traveling
24 exhibit, and no permit shall be issued for such purpose.”.

1 **SEC. 514. DEFINITION OF TRAVELING EXHIBITS.**

2 Section 3 (16 U.S.C. § 1362) is amended by inserting a new subsection to read as
3 follows: “(31) The term ‘traveling exhibit’ means any mobile or traveling housing facility or
4 exhibit of live marine mammals that moves such marine mammals to different locations on a
5 routine or frequent basis for purposes of public display or public education.”.

6 **SEC. 515. HARASSMENT DEFINITION.**

7 Section 3 (16 U.S.C. § 1362) is amended in subsection (18) to read as follows:

8 “(18) The term “harassment” means any act which–

9 “(A) [Level A] injures or has the significant potential to injure a marine mammal
10 or marine mammal stock in the wild; or

11 “(B) [Level B]

12 “(i) disturbs or is likely to disturb a marine mammal or marine mammal stock in
13 the wild by causing disruption of natural behavioral patterns, including, but not
14 limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a
15 point where such behavioral patterns are abandoned or significantly altered; or

16 “(ii) is directed toward a specific individual, group or stock of marine mammals in
17 the wild that is likely to disturb the individual, group, or stock of marine
18 mammals by disrupting behavior, including, but not limited to, migration,
19 surfacing, nursing, breeding, feeding, or sheltering.”.

20 **SEC. 516. FISHERIES GEAR DEVELOPMENT.**

21 Section 111 (16 U.S.C. § 1381) is amended by–

22 (a) revising subsection (a) to read as follows: “(a) Research and Development Program;
23 Authorization of Appropriations.—

24 “(1) The Secretary of Commerce is authorized and directed to undertake a program of

1 research and development for the purpose of devising improved fishing methods and gear
2 so as to reduce to the maximum extent practicable the incidental taking of marine
3 mammals in connection with fishing operations. The Secretary shall undertake every
4 practicable effort to develop, evaluate, and make available to owners and operators of
5 fishing vessels such gear and fishing method improvements as quickly as possible.

6 “(2) Subject to the availability of appropriations, the Secretary may establish a voluntary
7 fishing gear buy-back program, if such action is specifically provided for in a take
8 reduction plan adopted pursuant to section 118(f) or in regulations promulgated pursuant
9 to section 118(f) or (g).

10 “(3) The Secretary may coordinate with other nations to foster gear technology transfer
11 initiatives to reduce to the maximum extent practicable the incidental mortality and
12 serious injury of marine mammals throughout the full extent of their range.”;

13 (b) adding a new subsection (b) to read as follows: “(b) Gear Research Mini-Grant
14 Program. — Subject to the availability of appropriations, the Secretary may establish a grant
15 program to provide financial assistance for the development of fishing gear designed to eliminate
16 or reduce to the maximum extent practicable the incidental taking of marine mammals.

17 “(1) In carrying out this program, the Secretary may make grants, each not to exceed
18 \$20,000, for the purpose of developing, manufacturing, testing or designing new fishing
19 gear intended to eliminate or reduce to the maximum extent practicable the incidental
20 mortality and serious injury of marine mammals.

21 “(2) Of amounts available each fiscal year to carry out this subsection, the Secretary may
22 expend not more than \$40,000 to pay the administrative expenses necessary to carry out
23 this subsection.

1 “(3) To receive a grant under this section, an applicant must submit an application in such
2 form and manner as the Secretary may prescribe.

3 “(4) The Secretary shall consult with the Secretary of the Interior and the Marine
4 Mammal Commission regarding the development of criteria for the awarding of grants
5 under the program.”; and

6 (c) by redesignating existing subsections (b), (c), and (d) as (c), (d), and (e) respectively.

7 **SEC. 517. SHIP STRIKES OF WHALES.**

8 Section 112 (16 U.S.C. § 1382) is amended by adding a new subsection (f) as follows:

9 “(f) Ship Strikes of Whales. — The Secretary of Commerce may use the various authorities
10 conferred by this title to reduce the occurrence of the striking of whales by ships and shall
11 encourage continued investigations into methods for avoiding ship strikes.”.

12 **SEC. 518. USE OF FINES.**

13 16 U.S.C. § 1375a is amended by –

14 (a) revising the heading to read “Sec. 1375a. Use of Fines.”;

15 (b) by placing an “(a)” before the existing text of the Section and by inserting the words
16 “and penalties” after the word “fines” in the newly designated subsection (a); and,

17 (c) by adding a new subsection (b) as follows: “(b) Hereafter, all fines and penalties
18 collected for violations of the Marine Mammal Protection Act (16 U.S.C. §§ 1362-1421h) and
19 implementing regulations by the National Oceanic and Atmospheric Administration shall be
20 available to the Secretary of Commerce, subject to appropriation, to pay expenses incurred by the
21 Secretary in enforcing the Act, or in administering activities for the protection and recovery of
22 marine mammal species under its jurisdiction, and shall remain available until expended.”

1 **SEC. 519. CONFORMING AMENDMENTS TO THE TABLE OF CONTENTS.**

2 The table of contents in the first section of the Act is amended by—

3 (a) revising “Sec. 111. Commercial fisheries gear development.” to read “Sec. 111.
4 Fisheries gear development.”;

5 (b) striking “Sec. 114. Interim exemption for commercial fisheries.” and reserving this
6 section;

7 (c) revising “Sec. 118. Taking of marine mammals incidental to commercial fishing
8 operations.” to read “Sec. 118. Taking of marine mammals incidental to fishing operations.”;

9 (d) adding new item “Sec. 119A. Marine mammal co-management agreements in
10 Alaska.”; and

11 (e) revising “Sec. 403 Stranding response agreements.” to read “Stranding or
12 entanglement response agreements.”.

13 **SEC. 520. TECHNICAL CORRECTIONS.**

14 (a) Section 3(22)(A) (16 U.S.C. § 1362(22)(A)) is amended by deleting the word
15 “referred” and inserting in its place the word “refereed”.

16 (b) Section 107(e)(4)(B) (16 U.S.C. § 1377(e)(4)(B)) is amended by deleting the word
17 “with” and inserting in its place the word “within”.

18 (c) Section 109(d)(1) (16 U.S.C. § 1379(d)(1)) is amended by deleting the term
19 “3(14)(B)” and inserting in its place the term “3(15)(B)”.

20 (d) Section 112(d) (16 U.S.C. § 1382(d)) is amended in the second sentence by deleting
21 the phrase “purposes of policies” and inserting in its place the phrase “purposes and policies”.