

HR 2693 IH

108th CONGRESS
1st Session
H. R. 2693

To reauthorize the Marine Mammal Protection Act of 1972, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 10, 2003

Mr. GILCHREST (for himself and Mr. POMBO) introduced the following bill; which was referred to the Committee on Resources

A BILL

To reauthorize the Marine Mammal Protection Act of 1972, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Marine Mammal Protection Act Amendments of 2003'.

SEC. 2. AMENDMENT REFERENCES.

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

SEC. 3. TECHNICAL CORRECTIONS.

- (a) COMMITTEE REFERENCES- The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by striking 'Committee on Merchant Marine and Fisheries' each place it appears and inserting 'Committee on Resources'.
- (b) OBSOLETE REFERENCE TO REPLACED SECTION- Section 118(c)(3)(A)(i) (16 U.S.C. 1387(c)(3)(A)(i)) is amended by striking ', except that' and all that follows through 'is valid'.

SEC. 4. LIMITED AUTHORITY TO EXPORT MARINE MAMMAL PRODUCTS.

Section 101(a)(6) (16 U.S.C. 1371(a)(6)) is amended by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following:

`(B) A marine mammal product may be exported from the United States if the product--

`(i) is legally possessed, and exported by, a citizen of the United States in conjunction with travel outside the United States;

`(ii) is legally possessed and exported as part of a cultural exchange, by an Indian, Aleut, or Eskimo residing in Alaska; or

`(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is exported for noncommercial purposes--

`(I) in conjunction with, and upon the completion of, travel within the United States; or

`(II) as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.'

SEC. 5. MISCELLANEOUS AUTHORIZATIONS OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE- Section 116(a) (16 U.S.C. 1384(a)) is amended to read as follows:

`(a) DEPARTMENT OF COMMERCE- (1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV--

`(A) \$16,615,000 for 2004;

`(B) \$17,280,000 for 2005;

`(C) \$17,971,000 for 2006;

`(D) \$18,670,000 for 2007; and

`(E) \$19,418,000 for 2008.

`(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, \$20,000,000 for each of the fiscal years 2004 through 2008.'

(b) DEPARTMENT OF THE INTERIOR- Section 116(b) (16 U.S.C. 1384(b)) is amended to read as follows:

`(b) DEPARTMENT OF THE INTERIOR- There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title--

`(1) \$11,800,000 for 2004;

`(2) \$12,300,000 for 2005;

`(3) \$12,800,000 for 2006;

`(4) \$13,300,000 for 2007; and

`(5) \$13,800,000 for 2008.'

(c) COOPERATIVE AGREEMENTS IN ALASKA- Section 119(d) (16 U.S.C. 1388(d)) is amended by striking paragraphs (1) and (2) and inserting the following:

- `(1) \$2,000,000 to the Secretary of Commerce for each of fiscal years 2004 through 2008; and
- `(2) \$1,500,000 to the Secretary of the Interior for each of fiscal years 2004 through 2008.'.

SEC. 6. TAKE REDUCTION PLANS.

Section 118 (16 U.S.C. 1387) is amended as follows:

(1) In subsection (a) by striking `commercial' each place it appears in paragraphs (1) and (5).

(2) In subsection (c)(1) by striking so much as precedes subparagraph (B) and inserting the following:

`(c) REGISTRATION AND AUTHORIZATION- (1) The Secretary shall, within 90 days after the date of enactment of the Marine Mammal Protection Act Amendments of 2003--

`(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of fisheries published under section 114(b)(1) in the Federal Register on August 24, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to--

(i) fisheries that have frequent incidental mortality and serious injury of marine mammals;

(ii) fisheries that have occasional incidental mortality and serious injury of marine mammals; or

(iii) commercial fisheries that have a remote likelihood of or no known incidental mortality or serious injury of marine mammals;'

(3) In subsection (c)(1) in subparagraphs (B) and (C) by striking `commercial'.

(4) In subsection (c)(2)(A) by striking `commercial'.

(5) In subsection (c)(3)(A)--

(A) in the matter preceding clause (i) by striking `a commercial fishery' and inserting `that fishery'; and

(B) in clause (i) by striking `this section,' and all that follows through the semicolon and inserting `this section;'

(6) In subsection (c)(5)(B) by striking `commercial'.

(7) In subsection (d)(1) in the matter preceding subparagraph (A) by striking `commercial fishing operations' and inserting `fishing operations in a fishery listed under subsection (c)(1)(A)(i) or (ii)'.

(8) In subsection (d)(3) in the matter preceding subparagraph (A) by striking `commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii)'.

- (9) In subsection (d)(4) as follows:
- (A) In the matter preceding subparagraph (A) by striking `commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
 - (B) In subparagraph (A) by striking `commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
 - (C) In subparagraph (B) by striking `commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
- (10) In subsection (d)(5) by striking `commercial fishing operations' and inserting `fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
- (11) In subsection (e) in the matter preceding paragraph (1)--
- (A) by striking `commercial' each place it appears; and
 - (B) by striking `this Act' and inserting `this section'.
- (12) In subsection (f)(1) by striking `commercial' each place it appears.
- (13) In subsection (f)(2)--
- (A) by striking `6 months' and inserting `9 months'; and
 - (B) by striking `commercial fishing operations' each place it appears and inserting `fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
- (14) In subsection (f)(3) by striking `commercial'.
- (15) In subsection (f)(4)(B) by striking `commercial fishing operations' and inserting `fishing operations in fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
- (16) In subsection (f)(5)--
- (A) in subparagraph (A) by striking `6 months' and inserting `9 months'; and
 - (B) in subparagraphs (A) and (B) by striking `commercial' each place it appears.
- (17) In subsection (f)(6)(A)--
- (A) by striking `(not later than 30 days)'; and
 - (B) in clause (ii) by striking `commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
- (18) In subsection (f)(6)(C) in the second sentence, by inserting before the period the following: `, a representative of the office of General Counsel of the National Oceanic and Atmospheric Administration, a representative of the National Marine Fisheries Service having responsibilities related to fisheries science, a representative of the National Marine Fisheries Service having responsibilities related to law enforcement, and a representative of the appropriate National Marine Fisheries Service Regional Administrator'.
- (19) In subsection (f)(7)--
- (A) in subparagraph (A)(i) by striking `6 months' and inserting `9 months';
 - (B) in subparagraph (B)(i)--

- (i) by striking `not later than 60 days' and inserting `not later than 180 days'; and
- (ii) by adding at the end the following: `Before publishing any plan that is different than the draft plan proposed by a take reduction team, the Secretary shall reconvene the team and explain to the team the differences between the published plan and the draft plan proposed by the team.'; and
- (C) in subparagraph (B)(ii)--
 - (i) by striking `6 months' and inserting `9 months'; and
 - (ii) by striking `not later than 8 months' and inserting `not later than 11 months'.
- (20) In subsection (f)(7)(C) by striking `Not later than 60 days' and inserting `Not later than 180 days'.
- (21) In subsection (f)(7)(D) by striking `commercial'.
- (22) In subsection (f)(8)--
 - (A) in subparagraph (C) by striking `Not later than 60 days' and inserting `Not later than 180 days'; and
 - (B) by striking `commercial' each place it appears.
- (23) In subsection (f)(9) as follows:
 - (A) In subparagraph (A) by striking `commercial fisheries or restrict commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii) or restrict such fisheries'.
 - (B) In subparagraphs (B) and (C) by striking `commercial' each place it appears.
 - (C) In subparagraph (D) by striking `commercial fishing operations' and inserting `participation in a fishery listed under subsection (c)(1)(A)(i) or (ii)'.
- (24) In subsection (g)(1) by striking `commercial fisheries' and inserting `fisheries listed under subsection (c)(1)(A)(i) or (ii)'.
- (25) In subsection (g)(3)(B) by striking `commercial'.
- (26) In subsection (g)(4) by striking `commercial fishery' and inserting `fishery listed under subsection (c)(1)(A)(i) or (ii)'.
- (27) In subsection (j) by inserting `including observer, research, and education and outreach programs,' after `For purposes of carrying out this section,'.

SEC. 7. PINNIPED RESEARCH.

Section 120 (16 U.S.C. 1389) is amended by adding at the end the following:
 `(k) RESEARCH ON NONLETHAL REMOVAL AND CONTROL- (1) The Secretary shall conduct research on the nonlethal removal and control of nuisance pinnipeds. The research shall include a review of measures that have been taken to effect such removal and control, the effectiveness of these measures, and the development of new technologies to deter nuisance pinnipeds.

`(2) The Secretary shall include, among the individuals that develop the research program under this subsection, representatives of the commercial and recreational fishing industries.

`(3) The Secretary is encouraged, where appropriate, to use independent marine mammal research institutions in developing and in conducting the research program.

`(4) The Secretary shall, by December 31 of each year, submit an annual report on the results of research under this subsection to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.'

SEC. 8. MARINE MAMMAL COMMISSION.

(a) NUMBER OF EMPLOYEES- Section 206(5) (16 U.S.C. 1406(5)) is amended by striking `; except that no fewer than 11 employees must be employed under paragraph (1) at any time'.

(b) ADMINISTRATION- Section 206(4) (16 U.S.C. 1406(4)) is amended by striking `(but at rates for individuals not to exceed \$100 per diem)'.

(c) AUTHORIZATION OF APPROPRIATIONS- Section 207 (16 U.S.C. 1407) is amended to read as follows:

`SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

`There are authorized to be appropriated to the Marine Mammal Commission for purposes of carrying out this title--

- `(1) \$2,000,000 for fiscal year 2004;
- `(2) \$2,050,000 for fiscal year 2005;
- `(3) \$2,100,000 for fiscal year 2006;
- `(4) \$2,150,000 for fiscal year 2007; and
- `(5) \$2,200,000 for fiscal year 2008.'

SEC. 9. SCRIMSHAW EXEMPTION.

Any valid certificate of exemption referred to in section 18 of Public Law 103-238 (16 U.S.C. 1539 note) that was valid under that section on April 29, 1999, shall be valid during the 8-year period beginning October 31, 1999.

SEC. 10. POLAR BEAR PERMITS.

Section 104 (16 U.S.C. 1374) is amended--

(1) in subsection (c)(5)(D) by striking `the date of the enactment of the Marine Mammal Protection Act Amendments of 1994' and inserting `February 18, 1997';

(2) in subsection (d)(2) by inserting before the period at the end of the first sentence the following: `, except for an application for a permit to import polar bear parts under subsection (c)(5)';

(3) in subsection (d)(5) by inserting before the period at the end of the last sentence the following: `if a notice of application was published pursuant to paragraph (2) with respect to the permit'; and
(4) in subsection (c)(5) by adding at the end the following:
`(E) The Secretary shall make available to the public on a semiannual basis information concerning the permits issued or denied under this paragraph.'

SEC. 11. CAPTIVE RELEASE PROHIBITION.

Section 102(a) (16 U.S.C. 1372(a)) is amended--

(1) in paragraph (4) by striking `subsection 104(c); and' and inserting `section 104(c)';

(2) in paragraph (5) by striking the period and inserting `; and'; and

(3) by adding at the end the following:

`(6) for any person that is subject to the jurisdiction of the United States to release any captive marine mammal unless specifically authorized to do so under section 104(c)(3)(A), 104(c)(4)(A), or 109(h).'

SEC. 12. STRANDING AND ENTANGLEMENT RESPONSE.

(a) COLLECTION AND UPDATING OF INFORMATION- Section 402(b)(1)(A) (16 U.S.C. 1421a(b)(1)(A)) is amended by inserting `or entangled' after `stranding'.

(b) ENTANGLEMENT RESPONSE AGREEMENTS-

(1) IN GENERAL- Section 403 (16 U.S.C. 1421b) is amended--

(A) by amending the section heading to read as follows:

`SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE AGREEMENTS.'; and

(B) in subsection (a) by inserting `or entanglement' before the period.

(2) CLERICAL AMENDMENT- The table of contents at the end of the first section is amended by striking the item relating to section 403 and inserting the following:

`Sec. 403. Stranding or entanglement response agreements.'

(c) LIABILITY- Section 406(a) (16 U.S.C. 1421e(a)) is amended by inserting `or entanglement' after `stranding'.

(d) ENTANGLEMENT DEFINED-

(1) IN GENERAL- Section 410 (16 U.S.C. 1421h) is amended--

(A) by redesignating paragraphs (1) through (6) in order as paragraphs (2) through (7); and

(B) by inserting before paragraph (2) (as so redesignated) the following:

(1) The term 'entanglement' means an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and is--

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

(B) in waters under the jurisdiction of the United States.'

(2) CONFORMING AMENDMENT- Section 408(a)(2)(B)(i) (16 U.S.C. 1421f-1)(a)(2)(B)(i)) is amended by striking 'section 410(6)' and inserting 'section 410(7)'.

(e) AUTHORIZATIONS OF APPROPRIATIONS-

(1) GRANT PROGRAM- Section 408(h) (16 U.S.C. 1421f-1(h)) is amended by striking 'fiscal years 2001 through 2003' and inserting 'fiscal years 2004 through 2008'.

(2) FUND- Section 409(3) (16 U.S.C. 1421g(3)) is amended by striking '\$500,000 for fiscal year 1993' and inserting '\$125,000 for each of fiscal years 2004 through 2008'.

SEC. 13. DEFINITION OF HARASSMENT.

Section 3(18) is amended to read as follows:

(18)(A) The term 'harassment' means any act that--

(i) has the probability to injure a marine mammal or marine mammal stock in the wild;

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing biologically significant disruption of activities, including, but not limited to, migration, breeding, care of young, predator avoidance, defense, or feeding; or

(iii) is directed toward a specific individual, group, or stock of marine mammals in the wild and is likely to impact the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, migration, breeding, care of young, predator avoidance, defense, or feeding.

(B) The term 'Level A harassment' means harassment described in subparagraph (A)(i).

(C) The term 'Level B harassment' means harassment described in subparagraph (A) (ii) or (iii).'

SEC. 14. INCIDENTAL TAKINGS OF MARINE MAMMALS.

Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)) is amended--

(1) in subparagraph (A)--

(A) by striking 'within a specified geographical region'; and

(B) by striking 'within that region of small numbers';

(2) in subparagraph (B)--

(A) by striking 'within a specified geographical region'; and

- (B) by striking `within one or more regions';
- (3) in subparagraph (D)(i)--
 - (A) by striking `within a specific geographic region';
 - (B) by striking `of small numbers'; and
 - (C) by striking `within that region'; and
- (4) by adding at the end the following:
 - `(F)(i) Not later than 120 days after the date of the enactment of the Marine Mammal Protection Act Amendments of 2003, the Secretary shall issue a general authorization and implementing regulations allowing the incidental, but not the intentional, taking of marine mammals of a species or population stock in the course of an activity, that will have a negligible impact on such species or stock.
 - `(ii) Any person seeking to engage in a activity under the general authorization shall submit to the Secretary via certified mail, by not later than 60 days before the commencement of such activity, a letter of intent containing the following:
 - `(I) The species or stocks of marine mammals that may be incidentally taken.
 - `(II) The geographic location of the activity.
 - `(III) The period of time over which the activity will be conducted.
 - `(iii) Not later than 30 days after receipt of a letter of intent to conduct an activity under the general authorization, the Secretary shall--
 - `(I) determine that the general authorization applies with respect to the conduct of the activity by the person, unless the Secretary finds that the activity is likely to have an unmitigable impact on such species or stocks; or
 - `(II) determine that the general authorization does not apply with respect to the conduct of the activity by the person.
 - `(iv) The Secretary shall promptly send a letter to the person stating the determination of the Secretary under clause (iii).'

END