

108TH CONGRESS
1ST SESSION

H. R. 3316

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2003

Mr. PALLONE 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marine Mammal Pres-
5 ervation and Recovery Act of 2003”.

6 **SEC. 2. AMENDMENT REFERENCES.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or repeal of, a section or other provi-
10 sion, the reference shall be considered to be made to such

1 section or other provision of the Marine Mammal Protec-
2 tion Act of 1972 (16 U.S.C. 1361 et seq.).

3 **TITLE I—GENERAL PROVISIONS**

4 **SEC. 101. TECHNICAL CORRECTIONS.**

5 (a) COMMITTEE REFERENCES.—The Marine Mam-
6 mal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is
7 amended by striking “Committee on Merchant Marine and
8 Fisheries” each place it appears and inserting “Committee
9 on Resources”.

10 (b) OBSOLETE REFERENCE TO REPLACED SEC-
11 TION.—Section 118(c)(3)(A)(i) (16 U.S.C.
12 1387(c)(3)(A)(i)) is amended by striking “, except that”
13 and all that follows through “is valid”.

14 (c) OBSOLETE SECTIONS.—

15 (1) IN GENERAL.—The Marine Mammal Pro-
16 tection Act of 1972 (16 U.S.C. 1361 et seq.) is
17 amended by striking section 114 and subsections (f)
18 through (j) of section 120.

19 (2) CLERICAL AMENDMENT.—The table of con-
20 tents in the first section is amended by striking the
21 item relating to section 114.

22 (d) DEFINITION OF BONA FIDE RESEARCH.—Sec-
23 tion 3(22)(A) (16 U.S.C. 1362(22)(A)) is amended by
24 striking “referred” and inserting “refereed”.

1 (e) RETURN OF SEIZED MATTER.—Section
2 107(e)(4)(B) (16 U.S.C. 1377(e)(4)(B)) is amended by
3 striking “with” and inserting “within”.

4 (f) CROSS REFERENCE.—Section 109(d)(1) (16
5 U.S.C. 1379(d)(1)) is amended by striking “3(14)(B)”
6 and inserting “3(15)(B)”.

7 (g) ANNUAL REVIEW OF PROGRAMS.—Section
8 112(d) (16 U.S.C. 1382(d)) is amended in the second sen-
9 tence by striking “purposes of policies” and inserting
10 “purposes and policies”.

11 (h) CONFORMING AMENDMENTS RELATING TO RE-
12 PEAL OF SECTION 114.—

13 (1) Section 102(a) (16 U.S.C. 1372(a)) is
14 amended by striking “114,”.

15 (2) Section 118 (16 U.S.C. 1387) is amended—

16 (A) in subsection (a)(1) by striking “sec-
17 tion 114 and in”; and

18 (B) in subsection (c)—

19 (i) in paragraph (1)(A) by striking
20 “under section 114(b)(1) and which is in
21 existence on March 31, 1994” and insert-
22 ing “in the Federal Register by the Sec-
23 retary on August 25, 1994”; and

24 (ii) in paragraph (4)(A) by striking
25 “Previous failure to comply with the re-

1 requirements of section 114 shall not bar au-
2 thorization under this section for an owner
3 who complies with the requirements of this
4 section.”.

5 **SEC. 102. MISCELLANEOUS AUTHORIZATIONS OF APPRO-**
6 **PRIATIONS.**

7 (a) DEPARTMENT OF COMMERCE.—Section 116(a)
8 (16 U.S.C. 1384(a)) is amended to read as follows:

9 “(a) DEPARTMENT OF COMMERCE.—(1) There are
10 authorized to be appropriated to the Department of Com-
11 merce, for purposes of carrying out its functions and re-
12 sponsibilities under this title (other than sections 117 and
13 118) and title IV—

14 “(A) \$23,728,000 for 2004;

15 “(B) \$24,378,000 for 2005;

16 “(C) \$25,028,000 for 2006;

17 “(D) \$25,678,000 for 2007; and

18 “(E) \$26,328,000 for 2008.

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

23 (b) DEPARTMENT OF THE INTERIOR.—Section
24 116(b) (16 U.S.C. 1384(b)) is amended to read as follows:

1 “(b) DEPARTMENT OF THE INTERIOR.—There are
2 authorized to be appropriated to the Department of the
3 Interior, for purposes of carrying out its functions and re-
4 sponsibilities under this title—

5 “(1) \$11,800,000 for 2004;

6 “(2) \$12,300,000 for 2005;

7 “(3) \$12,800,000 for 2006;

8 “(4) \$13,300,000 for 2007; and

9 “(5) \$13,800,000 for 2008.”.

10 (c) COOPERATIVE AGREEMENTS IN ALASKA.—Sec-
11 tion 119(d) (16 U.S.C. 1388(d)) is amended by striking
12 all after “AUTHORIZATION OF APPROPRIATIONS.—” and
13 inserting the following:

14 “(1) There are authorized to be appropriated to
15 the Secretary of Commerce, for the purposes of car-
16 rying out this section—

17 “(A) \$3,000,000 for fiscal year 2004;

18 “(B) \$3,500,000 for fiscal year 2005;

19 “(C) \$4,000,000 for fiscal year 2006;

20 “(D) \$4,500,000 for fiscal year 2007; and

21 “(E) \$5,000,000 for fiscal year 2008.

22 “(2) There are authorized to be appropriated to
23 the Secretary of the Interior for the purposes of car-
24 rying out this section—

25 “(A) \$3,000,000 for fiscal year 2004;

1 “(B) \$3,500,000 for fiscal year 2005;
2 “(C) \$4,000,000 for fiscal year 2006;
3 “(D) \$4,500,000 for fiscal year 2007; and
4 “(E) \$5,000,000 for fiscal year 2008.”.

5 (d) MARINE MAMMAL COMMISSION.—

6 (1) AUTHORIZATION OF APPROPRIATIONS.—

7 Section 207 (16 U.S.C. 1407) is amended to read as
8 follows:

9 **“SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

10 “There are authorized to be appropriated to the Ma-
11 rine Mammal Commission, for the purposes of carrying
12 out this title—

13 “(1) \$3,400,000 for fiscal year 2004;
14 “(2) \$3,450,000 for fiscal year 2005;
15 “(3) \$3,500,000 for fiscal year 2006;
16 “(4) \$3,550,000 for fiscal year 2007; and
17 “(5) \$3,600,000 for fiscal year 2008.”.

18 (2) REPEAL OF LIMITATION ON PROCUREMENT
19 OF EXPERTS AND CONSULTANTS.—Section 206(4)
20 (16 U.S.C. 1406(4)) is amended by striking “(but at
21 rates for individuals not to exceed \$100 per diem)”.

22 **SEC. 103. DEFINITION OF HARASSMENT.**

23 Section 3(18) (16 U.S.C. 1362(18)) is amended to
24 read as follows:

1 “(18)(A) The term ‘harassment’ means any Act
2 that—

3 “(i) injures or has the potential to injure
4 a marine mammal or marine mammal stock in
5 the wild; or

6 “(ii) disturbs or has the potential to dis-
7 turb a marine mammal or marine mammal
8 stock in the wild by causing disruption of bio-
9 logically significant activities, including, but not
10 limited to, surfacing, communication, sheltering,
11 resting, migration, breeding, care of young,
12 predator avoidance or defense, feeding, or for-
13 aging.

14 “(B)(i) The term ‘Level A harassment’ means
15 harassment described in subparagraph (A)(i).

16 “(ii) The term ‘Level B harassment’ means
17 harassment described in subparagraph (A)(ii).

18 “(C) In this paragraph—

19 “(i) the term ‘potential’ means capability
20 or possibility; and

21 “(ii) the term ‘disruption’ means an inter-
22 ruption of the normal course, taking into ac-
23 count the cumulative effects that behavioral
24 changes may have on biologically significant ac-
25 tivities.”.

1 **TITLE II—CAPTIVE MARINE**
2 **MAMMALS**

3 **SEC. 201. CAPTIVE MARINE MAMMAL INVENTORY REVI-**
4 **SION.**

5 Section 104(c)(10) (16 U.S.C. 1374(c)(10)) is
6 amended to read as follows:

7 “(10) CAPTIVE MARINE MAMMAL INVENTORY.—

8 “(A) RESPONSIBILITIES.—The Secretary
9 shall establish and maintain an inventory of all
10 marine mammals possessed pursuant to permits
11 issued under paragraph (2)(A) by persons exer-
12 cising rights under paragraph (2)(C), and all
13 progeny of such marine mammals. The inven-
14 tory shall contain, for each marine mammal,
15 only the following information:

16 “(i) The name of the marine mammal
17 or other identification.

18 “(ii) The sex of the marine mammal.

19 “(iii) The estimated or actual birth
20 date of the marine mammal.

21 “(iv) The date of acquisition or dis-
22 position of the marine mammal by the per-
23 mit holder.

24 “(v) The source from which the ma-
25 rine mammal was acquired, including the

1 location of the take of the marine mammal
2 from the wild, if applicable.

3 “(vi) If the marine mammal is trans-
4 ferred, the name of the recipient.

5 “(vii) A statement of whether or not
6 the marine mammal was acquired as the
7 result of a stranding.

8 “(viii) The date of death of the ma-
9 rine mammal, and the cause of death if
10 otherwise determined.

11 “(B) PROVISION OF INFORMATION.—A
12 person that possesses a marine mammal re-
13 ferred to in subparagraph (A) shall, upon re-
14 quest by the Secretary, provide to the Secretary
15 the information referred to in subparagraph (A)
16 with respect to the marine mammal.

17 “(C) DATABASE.—The Secretary shall es-
18 tablish and maintain a publicly accessible, co-
19 ordinated, and up-to-date information sharing
20 system that—

21 “(i) allows the access to and exchange
22 of information among Federal agencies
23 and the public;

24 “(ii) utilizes, to the greatest extent
25 practicable, the Internet; and

1 “(iii) is consistent with other widely
2 used database formats.

3 “(D) AUTHORITY TO USE AGREEMENTS.—
4 To carry out data-gathering and develop and
5 maintain a comprehensive captive marine mam-
6 mal inventory responsibilities of the Secretary
7 under subparagraph (A), and to establish and
8 maintain a database under subparagraph (C),
9 the Secretary may in accordance with chapter
10 11 of title 40, United States Code, and to the
11 extent amounts are available to carry out this
12 paragraph, enter into contracts and other
13 agreements with qualified entities.”.

14 **SEC. 202. CAPTIVE MARINE MAMMAL CARE AND MAINTENANCE STANDARDS ADVISORY COMMITTEE.**
15

16 (a) IN GENERAL.—The Marine Mammal Commission
17 shall, in consultation with representatives of Federal agen-
18 cies and interested parties, establish an advisory com-
19 mittee on the promulgation of standards and other re-
20 quirements governing the humane handling, care, treat-
21 ment, and transportation of marine mammals by dealers,
22 research facilities, exhibitors, carriers, and other regulated
23 entities, as authorized under the Animal Welfare Act (7
24 U.S.C. 2131 et seq.).

1 (b) MEMBERSHIP.—Members of the advisory com-
2 mittee shall include—

3 (1) officers or employees of Federal agencies
4 who have expertise in the care of marine mammals
5 in captivity; and

6 (2) a broad representation of stakeholders, in-
7 cluding but not limited to public display associa-
8 tions, accredited veterinarians or veterinary associa-
9 tions, relevant animal welfare or environmental non-
10 governmental organizations (or both), marine mam-
11 mal scientists, and marine mammal trainers or ex-
12 hibitors.

13 (c) TOPICS.—The advisory committee may provide
14 advice under this section regarding, among other matters,
15 veterinary oversight, facility size and appropriateness,
16 maintenance and upkeep, levels of interaction with the
17 public, and, especially in the case of interactive feeding
18 programs, factors affecting visitor access, education, and
19 oversight.

20 (d) REPORT AND TERMINATION.—The Marine Mam-
21 mal Commission—

22 (1) shall submit to the Congress and the Sec-
23 retary of Agriculture a report that incorporates the
24 advice of the advisory committee, by not later than

1 2 years after the date of the enactment of this Act;
2 and

3 (2) shall disband the advisory committee upon
4 the submission of such report.

5 (e) FACA.—The Federal Advisory Committee Act (5
6 App. U.S.C.) shall not apply to the advisory committee
7 established under this subsection.

8 (f) DEFINITION.—In this section, the term “inter-
9 active feeding program” means an exhibit at a facility pro-
10 viding access to the public to be in proximity, without bar-
11 riers, to marine mammals to observe, feed, and touch
12 them.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Marine Mammal
15 Commission, for the purpose of carrying out this section,
16 \$750,000 for each of fiscal years 2004 and 2005.

17 **SEC. 203. CAPTIVE RELEASE PROHIBITION.**

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

19 (1) by striking “and” after the semicolon at the
20 end of paragraph (4);

21 (2) by striking the period at the end of para-
22 graph (5) and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(6) for any person subject to the jurisdiction
25 of the United States to release, in the waters of the

1 United States or in the high seas, any marine mam-
2 mal maintained in captivity at a facility unless spe-
3 cifically authorized to do so under a permit issued
4 pursuant to section 104(c) or under 109(h) of this
5 Act, except that this paragraph shall not apply to
6 the temporary release of any marine mammal by the
7 Department of Defense for military or research pur-
8 poses if the marine mammal is—

9 “(A) maintained in captivity under section
10 7524 of title 10, United States Code, or is the
11 progeny of a marine mammal maintained under
12 that section, or

13 “(B) the progeny of a marine mammal ex-
14 cluded from coverage under this Act by section
15 102(e).”.

16 **SEC. 204. TRAVELING EXHIBITS.**

17 Section 102 (16 U.S.C. 1372) is amended by adding
18 at the end the following:

19 “(g) TRAVELING EXHIBITS.—

20 “(1) PROHIBITION.—It is unlawful for any per-
21 son subject to the jurisdiction of the United States
22 to import, export, possess, or transport any marine
23 mammal in connection with a traveling exhibit. No
24 permit shall be issued under this Act for such pur-
25 pose.

1 “(ii) is owned by a Native inhabitant
2 of Russia, Canada, or Greenland and is ex-
3 ported for noncommercial purposes—

4 “(I) in conjunction with, and
5 upon the completion of, travel within
6 the United States; or

7 “(II) as part of a cultural ex-
8 change with an Indian, Aleut, or Es-
9 kimo residing in Alaska.”.

10 (b) EXEMPTIONS FOR ALASKA NATIVES.—Section
11 101(b) (16 U.S.C. 1371(b)) is amended—

12 (1) in the matter preceding paragraph (1) by
13 inserting “or transporting” after “with respect to
14 the taking”; and

15 (2) in paragraph (2) by striking “Provided,
16 That” and all that follows through “commerce:” and
17 inserting “*Provided*, That only authentic native arti-
18 cles of handicrafts and clothing may be purchased,
19 sold, or transported in interstate or foreign com-
20 merce or exported or imported for purposes other
21 than cultural exchange, as that term is defined in
22 subsection (a)(6)(B)(ii):”.

23 **SEC. 302. EXPORT PROHIBITION.**

24 Section 102(a)(4) (16 U.S.C. 1372(a)(4)) is amended
25 to read as follows:

1 tion, the Secretary may enter into grants, cooperative
2 agreements, contracts, or other agreements.

3 “(3)(A) The Secretary shall provide support to the
4 program under this section by providing financial assist-
5 ance awards to eligible stranding network participants to
6 carry out the activities referred to in paragraph (1).

7 “(B) The Secretary shall ensure that, to the greatest
8 extent practicable, funds provided as financial assistance
9 under this subsection are distributed equitably among the
10 stranding regions designated as of the date of the enact-
11 ment of the Marine Mammal Rescue Assistance Act of
12 2000, and in distributing such funds shall give preference
13 to those facilities that have established records for res-
14 cuing or rehabilitating sick and stranded marine mammals
15 in each of the respective regions, or subregions.

16 “(C) In determining the priorities among such re-
17 gions, the Secretary may consider—

18 “(i) any episodic stranding or any mortality
19 event other than an event described in section
20 410(6), that occurred in any region in the preceding
21 year;

22 “(ii) data regarding average annual strandings
23 and mortality events per region; and

1 “(iii) the size of the marine mammal popu-
2 lations inhabiting a geographic area within such a
3 region.

4 “(4)(A) Except as provided in subparagraph (B), the
5 Secretary may provide assistance under paragraph (1)(D)
6 only with respect to stranding events that—

7 “(i) are unexpected;

8 “(ii) are not an unusual mortality event as de-
9 fined in section 409(6); and

10 “(iii) lead to an immediate increase in required
11 costs to stranding response, recovery, or rehabilita-
12 tion above regularly scheduled costs.

13 “(B) Notwithstanding subparagraph (A), the Sec-
14 retary may provide assistance under paragraph (1)(D)
15 with respect to stranding events that—

16 “(i) are cyclical or endemic; or

17 “(ii) involve out-of-habitat animals.”.

18 (2) Subsection (b) is amended by striking “a
19 grant” and inserting “financial assistance”.

20 (3) Subsection (c) is amended—

21 (A) by striking “grant” and inserting “fi-
22 nancial assistance”; and

23 (B) by striking “grants” and inserting
24 “funds”.

1 (4) Subsection (e) is amended by striking “a
2 grant” each place it appears and inserting “funds”.

3 (5) Subsection (h) is amended—

4 (A) by striking “2001 through 2003” and
5 inserting “2004 through 2008”;

6 (B) by redesignating paragraph (1) as sub-
7 paragraph (A) and paragraph (2) as subpara-
8 graph (B);

9 (C) by inserting “(1)” before “There are
10 authorized”; and

11 (D) by adding at the end the following:

12 “(2) In addition to the amounts authorized by para-
13 graph (1), there are authorized to be appropriated to the
14 Secretary to carry out subsection (a)(1)(D) \$2,000,000
15 for each of fiscal years 2004 through 2008. The Secretary
16 may allocate amounts appropriated under this paragraph
17 at the Secretary’s discretion, and may use such amounts
18 to provide assistance under this section without regard to
19 the limitations of subsections (d) and (e), to reimburse
20 persons who respond to stranding events that qualify for
21 emergency assistance under subsection (a)(4).”.

22 (6) At the end of the section add the following:

23 “(i) DELEGATION OF AUTHORITY.—The Secretary
24 may delegate to another Federal instrumentality, other
25 than the Marine Mammal Commission, the authority of

1 the Secretary under this section, other than the authority
2 to approve applications for grants and make grants.”.

3 **SEC. 304. STRANDING AND ENTANGLEMENT RESPONSE.**

4 (a) COLLECTION OF INFORMATION.—Section
5 402(b)(1)(A) (16 U.S.C. 1421a(b)(1)(A)) is amended by
6 inserting the words “or entangled” after the word
7 “stranded”.

8 (b) RESPONSE AGREEMENTS.—

9 (1) IN GENERAL.—Section 403 (16 U.S.C.
10 1421b) is amended—

11 (A) in the section heading by inserting
12 **“OR ENTANGLEMENT”** after
13 **“STRANDING”**; and

14 (B) in subsection (a) by inserting “or en-
15 tanglement” before the period at the end.

16 (2) CLERICAL AMENDMENT.—The table of con-
17 tents in the first section is amended by striking the
18 item relating to section 403 and inserting the fol-
19 lowing:

“Sec. 403. Stranding and entanglement response agreements.”.

20 (c) LIABILITY.—Section 406(a) (16 U.S.C. 1421e(a))
21 is amended by striking so much as precedes paragraph
22 (1) and inserting the following:

23 “(a) IN GENERAL.—A person who is authorized to
24 respond to a stranding or entanglement pursuant to an
25 agreement entered into under section 112(c) is deemed to

1 be an employee of the Government for purposes of chapter
2 171 of title 28, United States Code, with respect to actions
3 that are—”.

4 **SEC. 305. ENTANGLEMENT DEFINITION.**

5 Section 410 (16 U.S.C. 1421h) is amended by adding
6 at the end the following:

7 “(7) The term ‘entanglement’ means an event
8 in the wild in which a living or dead marine mammal
9 has gear, rope, line, net, or other material wrapped
10 around or attached to it and is—

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

13 “(B) in waters under the jurisdiction of
14 the United States (including any navigable wa-
15 ters).”.

16 **SEC. 306. UNUSUAL MORTALITY EVENT FUNDING.**

17 Section 405(c)(2) (16 U.S.C. 1421d(e)(2)) is amend-
18 ed by striking “for use with respect to unusual mortality
19 events” and inserting “under this Act”.

20 **SEC. 307. MARINE MAMMAL RESEARCH GRANTS.**

21 Section 110 (16 U.S.C. 1380) is amended—

22 (1) by amending subsection (a) to read as fol-
23 lows:

24 “(a) AUTHORIZATION; ANNUAL REPORT.—The Sec-
25 retary is authorized to make grants, or to provide financial

1 assistance in such other form as the Secretary considers
2 appropriate, to any Federal or State agency, public or pri-
3 vate institution, or other person for the purpose of assist-
4 ing such agency, institution, or person to undertake re-
5 search in subjects that are relevant to the protection and
6 conservation of marine mammals, and the ecosystems
7 upon which they depend, including, but not limited to, the
8 Bering/Chukchi Sea ecosystem, and the California coastal
9 marine ecosystem. The Secretary shall include a descrip-
10 tion of the annual results of research carried out with as-
11 sistance under this section in the report required under
12 section 103(f).”; and

13 (2) by striking subsections (c) and (d).

14 **SEC. 308. PENALTIES.**

15 Section 105 (16 U.S.C. 1375) is amended—

16 (1) by striking so much as precedes subsection
17 (a)(2) and inserting the following:

18 “(a)(1) Any person who violates any provision of this
19 title, or of any permit or regulation issued under this title,
20 may be assessed a civil penalty by the Secretary of not
21 more than \$50,000 for each such violation, except as pro-
22 vided in section 118. No penalty shall be assessed unless
23 such person is given notice and opportunity for a hearing
24 with respect to such violation. Each unlawful taking, im-
25 portation, exportation, sale, purchase, or transport and

1 each day on which unlawful fishing is conducted in viola-
2 tion of section 118(c)(3)(B) shall be a separate offense.
3 Any such civil penalty may be remitted or mitigated by
4 the Secretary for good cause shown. Upon any failure to
5 pay a penalty assessed under this subsection, the Sec-
6 retary may request the Attorney General to institute a
7 civil action in a district court of the United States for any
8 district in which such person is found, resides, or transacts
9 business to collect the penalty and such court shall have
10 jurisdiction to hear and decide any such action.”; and

11 (2) in subsection (b)—

12 (A) by striking “\$20,000” and inserting
13 “\$100,000”; and

14 (B) by adding at the end the following: “,
15 except that if in the commission of any offense
16 described in section 102(g) the person uses a
17 dangerous weapon, engages in conduct that
18 causes bodily injury to any person authorized
19 by the Secretary to enforce this title, or places
20 any such person in fear of imminent bodily in-
21 jury, the offense is punishable by a fine under
22 title 18, United States Code, or imprisonment
23 for not more than 10 years, or both”.

1 **SEC. 309. USE OF FINES AND PENALTIES.**

2 (a) FINES AND PENALTIES COLLECTED BY UNITED
3 STATES FISH AND WILDLIFE SERVICE.—Title I of the
4 Department of the Interior Appropriations Act, 2000 (16
5 U.S.C. 1375a; 113 Stat. 1501A–139) is amended under
6 the heading “UNITED STATES FISH AND WILDLIFE
7 SERVICE—RESOURCE MANAGEMENT”, by inserting “and
8 penalties” after “fines”.

9 (b) FINES AND PENALTIES COLLECTED BY NOAA.—
10 Section 105 (16 U.S.C. 1375) is amended by adding at
11 the end the following:

12 “(c) USE OF FINES AND PENALTIES.—

13 “(1) DEPOSIT.—All fines and penalties col-
14 lected by the Secretary of the department in which
15 the National Oceanic and Atmospheric Administra-
16 tion is operating for violations of this Act or regula-
17 tions issued under this Act shall be deposited into a
18 separate account in the Treasury.

19 “(2) USE.—Amounts deposited under para-
20 graph (1)—

21 “(A) may be used by the Secretary of
22 Commerce, subject to appropriations, for ex-
23 penses incurred by the Secretary of Com-
24 merce—

25 “(i) in enforcing the Act; or

1 “(ii) in administering activities for the
2 protection and recovery of marine mammal
3 species under the administrative jurisdic-
4 tion of the Secretary of Commerce; and
5 “(B) shall remain available until ex-
6 pended.”.

7 **SEC. 310. VESSEL FINES AND CARGO FORFEITURE.**

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

9 (1) in subsection (a) by inserting “or in fishing
10 in violation of section 118(c)(3)(A)(i), (iii), (iv), or
11 (v),” after “that is employed in any manner in the
12 unlawful taking of any marine mammal”;

13 (2) in subsection (a) by inserting “or unlawful
14 fishing” after “in connection with the unlawful tak-
15 ing of a marine mammal”;

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

20 (4) in subsection (b) by striking “\$25,000” and
21 inserting “\$50,000”.

22 **SEC. 311. ENFORCEMENT.**

23 Section 107(b) (16 U.S.C. 1377(b)) is amended by
24 adding at the end the following: “The Secretary shall seek
25 to enter into agreements pursuant to section 112(c) with

1 State law enforcement agencies to establish, implement,
2 and provide funding for cooperative enforcement of this
3 title.”.

4 **SEC. 312. OBSTRUCTIONS WITH INVESTIGATIONS AND AU-**
5 **THORIZED ACTIVITIES.**

6 Section 102 (16 U.S.C. 1372) is amended by adding
7 at the end the following:

8 “(h) OBSTRUCTIONS OF INVESTIGATIONS AND AU-
9 THORIZED ACTIVITIES.—It is unlawful for any person
10 to—

11 “(1) refuse to allow any person authorized by
12 the Secretary to enforce this title to board any vessel
13 or other conveyance for purposes of conducting any
14 search or inspection in connection with enforcement
15 of this title;

16 “(2) assault, resist, oppose, impede, intimidate,
17 sexually harass, bribe, or interfere with, or attempt
18 to assault, resist, oppose, impede, intimidate, sexu-
19 ally harass, bribe, or interfere with—

20 “(A) any person authorized by the Sec-
21 retary to enforce this title, who is conducting
22 any search or inspection in connection with en-
23 forcement of this title; or

24 “(B) any observer on a vessel under this
25 Act, or any data collector employed by the Sec-

1 retary or under any contract to any person to
2 carry out responsibilities under this Act;

3 “(3) resist a lawful arrest for any act prohib-
4 ited under this title;

5 “(4) interfere with, delay, or prevent, by any
6 means, the apprehension or arrest of any person,
7 knowing such person has committed any act prohib-
8 ited by this title; or

9 “(5) knowingly and willfully submit false infor-
10 mation to any person authorized by the Secretary to
11 implement or enforce the provisions of this title.”.

12 **SEC. 313. CALIFORNIA SEA OTTER FISHERY INTERACTIONS.**

13 Section 118(a)(4) (16 U.S.C. 1387(a)(4)) is amended
14 by adding at the end the following: “Notwithstanding the
15 preceding sentence, the Secretary shall include informa-
16 tion concerning California sea otters in the list of fisheries
17 published pursuant to subsection (c)(1) and shall include
18 that species in determinations regarding monitoring pro-
19 grams pursuant to subsection (d).”.

20 **SEC. 314. PINNIPED RESEARCH.**

21 Section 120 (16 U.S.C. 1389) is further amended by
22 adding at the end the following:

23 “(f) RESEARCH ON NONLETHAL REMOVAL AND CON-
24 TROL.—

1 “(1) RESEARCH PLAN.—The Secretary shall de-
2 velop a research plan and conduct research on the
3 nonlethal removal, deterrence, and control of nui-
4 sance pinnipeds. The research plan shall include a
5 review of measures that have been taken to effect
6 such removal and the effectiveness of those meas-
7 ures, and shall propose research to test new tech-
8 nologies that deter nuisance pinnipeds while mini-
9 mizing the potential for impacts on other marine
10 mammal species and on the marine environment.
11 The development and testing of safe, nonlethal re-
12 moval, deterrence and control methods may include
13 the humane take of marine mammals by Level B
14 harassment.

15 “(2) PARTICIPANTS.—The Secretary shall con-
16 sult with the Marine Mammal Commission in selec-
17 tion of the individuals that develop the research plan
18 under this subsection, and shall include among the
19 individuals selected representatives of academic and
20 scientific organizations, environmental groups, com-
21 mercial and recreational fisheries groups, gear tech-
22 nologists, and others as the Secretary considers ap-
23 propriately qualified.

24 “(3) USE OF INDEPENDENT INSTITUTIONS.—In
25 developing and conducting the research program, the

1 Secretary is encouraged, where appropriate, to use
2 research institutions that are independent of the
3 Federal Government.

4 “(4) ANNUAL REPORT.—The Secretary shall,
5 by March 31 of each year, submit an annual report
6 on the results of research and recommendations for
7 future research priorities under this subsection to
8 the Committee on Resources of the House of Rep-
9 resentatives and the Committee on Commerce,
10 Science, and Transportation of the Senate.

11 “(5) PUBLIC REVIEW AND COMMENT.—The
12 Secretary shall make the report and recommenda-
13 tions submitted under paragraph (4) available to the
14 public for review and comment for a period of 90
15 days before submission under paragraph (4).

16 “(6) DONATIONS.—For the purposes of car-
17 rying out this section, the Secretary may accept, so-
18 licit, receive, hold, administer, and use gifts, devices,
19 in-kind contributions, and bequests.

20 “(7) AUTHORIZATION OF APPROPRIATIONS.—
21 There is authorized to be appropriated to the Sec-
22 retary \$2,000,000 for each fiscal year to carry out
23 this subsection.

24 “(g) NONLETHAL CONTROL GRANT PROGRAM.—

1 “(1) IN GENERAL.—The Secretary may, to the
2 extent amounts are available to carry out this sec-
3 tion, provide a grant to any eligible applicant to
4 carry out a qualified nonlethal control project in ac-
5 cordance with this subsection.

6 “(2) FUNCTIONS OF THE SECRETARY.—

7 “(A) IN GENERAL.—The Secretary shall—

8 “(i) publish guidelines for and solicit
9 applications for grants under this sub-
10 section not later than 6 months after the
11 date of enactment of this subsection; and

12 “(ii) receive, review, evaluate, and ap-
13 prove applications for grants under this
14 subsection.

15 “(B) ADVICE.—To obtain advice regarding
16 proposed grants under this subsection, includ-
17 ing advice on the scientific merit, technical
18 merit, and feasibility of a proposed grant, the
19 Secretary shall consult with the individuals that
20 develop the research plan under subsection (f).

21 “(C) DELEGATION OF AUTHORITY.—The
22 Secretary may delegate to another Federal in-
23 strumentality the authority of the Secretary
24 under this subsection, other than the authority

1 to approve applications for grants and make
2 grants.

3 “(3) ELIGIBLE APPLICANT.—To be an eligible
4 applicant for purposes of paragraph (1), an appli-
5 cant shall—

6 “(A) be a State, local government, or
7 interstate or regional agency; and

8 “(B) have adequate personnel, funding,
9 and authority to carry out and monitor or
10 maintain a non-lethal control of nuisance
11 pinnipeds project.

12 “(4) QUALIFIED CONTROL PROJECT.—To be a
13 qualified control project under this subsection, a
14 project shall—

15 “(A) by humane and nonlethal means, re-
16 move, deter, and control nuisance pinnipeds in
17 areas where they are a recurrent and persistent
18 threat to public health and safety; and

19 “(B) encourage public notice, education,
20 and outreach on project activities in the af-
21 fected community.

22 “(5) GRANT DURATION.—Each grant under
23 this subsection shall be to provide funding for the
24 Federal share of the cost of a project carried out
25 with the grant for up to 2 fiscal years.

1 “(6) REPORTING BY GRANTEE.—

2 “(A) IN GENERAL.—A grantee carrying
3 out a control project with a grant under this
4 subsection shall report to the Secretary at the
5 expiration of the grant.

6 “(B) REPORT CONTENTS.—Each report
7 under this subsection shall include specific in-
8 formation on the methods and techniques used
9 to control nuisance pinniped species in the
10 project area, and on the ensuing results.

11 “(7) COST SHARING FOR PROJECTS.—

12 “(A) FEDERAL SHARE.—Except as pro-
13 vided in paragraphs (2) and (3), the Federal
14 share of the cost of a project carried out with
15 a grant under this subsection shall not exceed
16 75 percent of such cost.

17 “(B) APPLICATION OF IN-KIND CONTRIBU-
18 TIONS.—The Secretary may apply to the non-
19 Federal share of costs of a control project car-
20 ried out with a grant under this subsection the
21 fair market value of services or any other form
22 of in-kind contribution to the project made by
23 non-Federal interests that the Secretary deter-
24 mines to be an appropriate contribution equiva-

1 lent to the monetary amount required for the
2 non-Federal share of the activity.

3 “(C) DERIVATION OF NON-FEDERAL
4 SHARE.—The non-Federal share of the cost of
5 a control project carried out with a grant under
6 this subsection may not be derived from a Fed-
7 eral grant program or other Federal funds.

8 “(8) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated to the Sec-
10 retary \$1,500,000 annually to carry out the provi-
11 sions of this subsection.

12 “(h) CLARIFICATION.—Nothing in this section shall
13 be interpreted as suspending or waiving requirements
14 under title I.”.

15 **SEC. 315. DETERRENCE OF MARINE MAMMALS.**

16 (a) REGULATIONS.—Section 101(a)(4)(B) (16
17 U.S.C. 1371(a)(4)(B)) is amended—

18 (1) by striking “a list of guidelines for use in”
19 and inserting “final regulations to implement this
20 paragraph. Such regulations shall include permis-
21 sible measures for”;

22 (2) by striking “safely deterring marine mam-
23 mals” and inserting “safely and non-lethally deter-
24 ring marine mammals while minimizing the potential

1 for impacts on other marine mammals and on the
2 marine environment”;

3 (3) by striking “the Secretary shall rec-
4 ommend” and inserting “the final regulations shall
5 prescribe”;

6 (4) by striking “specific measures which may be
7 used to nonlethally deter” and inserting “specific
8 nonlethal measures that may be used to deter such”;
9 and

10 (5) by striking the last sentence.

11 (b) PROHIBITION.—Section 101(a)(4)(C) (16 U.S.C.
12 1371(a)(4)(C)) is amended to read as follows:

13 “(C) After the effective date of the final
14 regulations issued under subparagraph (B), it
15 shall be a violation of this Act for any person
16 to use a measure to deter marine mammals
17 pursuant to subparagraph (A) that is not au-
18 thorized in such regulations.”.

19 (c) PETITION TO ADD MEASURE TO LIST.—Section
20 101(a)(4) (16 U.S.C. 1371(a)(4)) is amended by adding
21 at the end the following:

22 “(E) Any person may petition the Sec-
23 retary pursuant to section 552 of title 5, United
24 States Code, to add a nonlethal marine mam-
25 mal deterrence measure to those listed in the

1 final regulations issued under subparagraph
2 (B). The burden of proof shall be on the peti-
3 tioner to demonstrate that the proposed meas-
4 ure is safe and effective. If the Secretary finds,
5 based on the best available scientific informa-
6 tion, and after notice and opportunity for public
7 comment, that the proposed measure is a safe
8 and effective means of non-lethal deterrence of
9 marine mammals, the Secretary shall amend
10 the final regulations issued under subparagraph
11 (B) to add such measure to the list of permis-
12 sible measures and shall promptly publish no-
13 tice of such action in the Federal Register.”.

14 **SEC. 316. CUMULATIVE TAKES.**

15 Section 101(a)(5)(D)(i)(I) (16 U.S.C.
16 1371(a)(5)(D)(i)(I)) is amended to read as follows:

17 “(I) will have a negligible impact on such spe-
18 cies or stock, with consideration given to all reason-
19 ably foreseeable activities, including such activities
20 that may occur beyond the 1-year authorization pe-
21 riod, and that may cumulatively result in more than
22 a negligible impact;”.

1 **SEC. 317. REPORT ON EMERGING THREATS TO MARINE**
2 **MAMMALS.**

3 (a) IN GENERAL.—The Chairman of the Marine
4 Mammal Commission shall, after consultation with inter-
5 ested parties and by not later than January 1, 2005,
6 transmit to the Secretary of Commerce and the Secretary
7 of the Interior, the Committee on Resources of the House
8 of Representatives, and the Committee on Commerce,
9 Science, and Transportation of the Senate, and make
10 available to the public, a report on emerging threats to
11 marine mammals. The report shall be developed by the
12 Commission and its Committee of Scientific Advisers on
13 Marine Mammals in consultation with individuals with
14 knowledge and experience in marine science, atmospheric
15 science, chemical and physical oceanography, organic and
16 inorganic chemistry, and marine conservation.

17 (b) SUBJECTS.—The report shall—

18 (1) identify and assess the magnitude of emerg-
19 ing and existing threats to marine mammal stocks;

20 (2) evaluate the health of marine mammal
21 stocks in the wild, and correlate that information
22 with data on physical, chemical, and biological envi-
23 ronmental parameters;

24 (3) identify data gaps and provide a research
25 plan to fill such gaps; and

1 (4) provide recommendations for regulations or
2 statutory changes to the Marine Mammal Protection
3 Act of 1972 to mitigate such threats.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to the Marine Mammal
6 Commission to carry out this section \$1,500,000 for fiscal
7 year 2004.

8 **SEC. 318. SHIP STRIKE REDUCTION PLAN.**

9 (a) IN GENERAL.—The Secretary of Commerce shall
10 publish in the Federal Register, within 1 year after the
11 date of the enactment of this Act, and implement a ship
12 strike reduction plan with a goal to reduce, within 5 years
13 after the first date of the implementation of the plan, the
14 mortality and serious injury of North Atlantic right whales
15 caused by ship strikes to levels approaching zero.

16 (b) CONTENTS.—The ship strike reduction plan shall
17 include—

18 (1) a review of the information in the most re-
19 cent stock assessment for North Atlantic right
20 whales published under section 117(b) of the Marine
21 Mammal Protection Act of 1972 (16 U.S.C.
22 1386(b)), and any substantial new information;

23 (2) an estimate of the total number and, if pos-
24 sible, ages and genders, of North Atlantic right

1 whales that are being lethally taken or seriously in-
2 jured each year by ship strikes;

3 (3) regulatory or other measures that the Sec-
4 retary will take to reduce mortality and serious in-
5 jury caused by ship strikes;

6 (4) dates for achieving the specific objectives,
7 and enactment of the regulatory measures, included
8 in the plan; and

9 (5) recommendations for any additional author-
10 ity needed by the Secretary to implement a plan de-
11 scribed in this section.

12 **SEC. 319. STOCK ASSESSMENT PRIORITIES AND GENERAL**
13 **RE-EVALUATION.**

14 (a) **IN GENERAL.**—Not later than 60 days after the
15 date of the enactment of this section, the Secretary of
16 Commerce shall reconvene the regional scientific review
17 groups authorized under section 117(d) of the Marine
18 Mammal Protection Act of 1973 (16 U.S.C. 1386(d)).

19 (b) **SUBJECTS.**—In addition to the subjects listed in
20 section 117(d) (1) of such Act, the regional scientific re-
21 view groups shall advise the Secretary on—

22 (1) which stock assessments are obsolete and in
23 need of revision;

24 (2) priorities among stock assessment reviews;
25 and

1 (3) any necessary changes to the revised list of
2 fisheries published under section 118(c)(1) of that
3 Act (16 U.S.C. 1387(c)(1).

4 (c) REPORT TO CONGRESS.— Not later than 2 years
5 after the date of the enactment of this section, the Sec-
6 retary shall compile recommendations from the regional
7 scientific review groups into a final strategy to update and
8 complete all stock assessments and report such compila-
9 tion to the Congress.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—To carry
11 out this section there is appropriated to the Secretary of
12 Commerce \$1,000,000 for each of fiscal years 2004 and
13 2005.

14 **TITLE IV—FISHERIES** 15 **INTERACTIONS**

16 **SEC. 401. FISHERY INTERACTION.**

17 (a) IN GENERAL.—Section 118 (16 U.S.C. 1387) is
18 amended—

19 (1) in subsection (c)(3) by amending so much
20 as precedes subparagraph (B) to read as follows:

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

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

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

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

11 “(iv) comply with any applicable take reduction
12 plan and emergency regulations issued under this
13 section; and

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

16 (2) in subsection (c)(3) by striking subpara-
17 graph (B) and redesignating subparagraphs (C),
18 (D), and (E) as subparagraphs (B), (C), and (D),
19 respectively;

20 (3) in subsection (c)(3)(B), as so redesignated,
21 by striking “or” after the semicolon at the end of
22 clause (ii), by striking the comma at the end of
23 clause (iii) and inserting “; or”, and by inserting
24 after clause (iii) the following:

1 “(iv) fails to take an observer when requested
2 to do so by the Secretary,”;

3 (4) in subsection (c)(3)(B), as so redesignated
4 and amended, in the matter after clause (iv) by
5 striking “clauses (i) and (ii)” and all that follows
6 and inserting “clauses (i), (ii), and (iv) shall be sub-
7 ject to the penalties, fines, and forfeiture under sec-
8 tions 105 and 106, and for violations of clause (iii)
9 shall be subject to a fine of not more than \$1,000
10 for each offense.”;

11 (5) in subsection (d) by adding at the end the
12 following:

13 “(10) The Secretary may establish a system of fees
14 to pay for the costs of implementing an observer program
15 established under this section.”;

16 (6) in subsection (f) by striking so much as pre-
17 cedes paragraph (2) and inserting the following:

18 “(f) TAKE REDUCTION PLANS.—(1)(A) The Sec-
19 retary shall develop and implement a take reduction plan
20 designed to assist in the recovery or prevent the depletion
21 of each strategic stock that interacts with a fishery listed
22 under subsection (c)(1)(A)(i) or (ii), unless the Secretary
23 determines, after notice and opportunity for public com-
24 ment, that the level of fishery-related mortality and seri-
25 ous injury is having a negligible impact on that stock.

1 “(B) The Secretary may develop and implement a
2 take reduction plan designed to assist in the recovery or
3 prevent the depletion of any other marine mammals stocks
4 that interact with a fishery listed under subsection
5 (c)(1)(A)(i) that the Secretary determines, after notice
6 and opportunity for public comment, has a high level of
7 mortality and serious injury across a number of such ma-
8 rine mammal stocks.

9 “(C) Wherever possible, in coordination with an exist-
10 ing take reduction plan or team, the Secretary may de-
11 velop and implement a plan designed to assist in the recov-
12 ery or prevent the depletion of any other marine mammal
13 stock for which the Secretary determines, after notice and
14 opportunity for public comment, that competition between
15 a commercial fishery and the stock of marine mammals
16 for a fish species that constitute the marine mammal
17 stock’s prey is having or is likely to have an adverse im-
18 pact on the marine mammal stock.”;

19 (7) in subsection (f)(6)(A) by striking “and”
20 after the semicolon at the end of clause (i), by strik-
21 ing the period at the end of clause (ii) and inserting
22 “; and”, and by adding at the end the following:

23 “(iii) assign a technical liaison, with commercial
24 fishing expertise, to the team to provide information
25 to team members regarding fishing practices and

1 gear usage during the take reduction plan develop-
2 ment process.”;

3 (8) in subsection (f)(7)(B) by adding at the end
4 the following:

5 “(iii) The Secretary shall reconvene or other-
6 wise consult with the team to solicit comments on
7 the proposed regulations and any proposed changes
8 to the draft plan during the period of public review
9 and comment.”;

10 (9) in subsection (j) by inserting “including ob-
11 server programs, research, and education and out-
12 reach programs,” after “For purposes of carrying
13 out this section,”;

14 (10) in subsection (f)(6)(A)—

15 (A) by inserting “or (c)(1)(A)(ii)” after
16 “that interact with a fishery listed under sub-
17 section (c)(1)(A)(i)”;

18 (B) by inserting “or (1)(B)” after “para-
19 graph (1)(A)”;

20 (11) in subsection (f)(8) by inserting “or
21 (c)(1)(A)(ii)” after “that interact with a fishery list-
22 ed under subsection (c)(1)(A)(i)”.

23 (b) CONFORMING AMENDMENT.—Section 118(4)(A)
24 is amended by striking “(3)(B)” and inserting
25 “(3)(A)(v)”.

1 **SEC. 402. FISHERIES GEAR DEVELOPMENT.**

2 Section 111 (16 U.S.C. 1381) is amended as follows:

3 (1) Subsection (a) is amended to read as fol-
4 lows:

5 “(a) RESEARCH AND DEVELOPMENT PROGRAM.—

6 “(1) IN GENERAL.—The Secretary of Com-
7 merce (in this section referred to as the ‘Secretary’)
8 shall—

9 “(A) carry out a program of research and
10 development for the purpose of devising im-
11 proved fishing methods and gear so as to re-
12 duce to the maximum extent practicable the in-
13 cidental taking of marine mammals in connec-
14 tion with fishing operations; and

15 “(B) make every practicable effort to de-
16 velop, evaluate, and make available to owners
17 and operators of fishing vessels such gear and
18 fishing method improvements as quickly as pos-
19 sible.

20 “(2) FISHING GEAR BUY-BACK PROGRAM.—

21 Subject to the availability of appropriations, the Sec-
22 retary may establish a voluntary fishing gear buy-
23 back program, if such action is specifically provided
24 for in a take reduction plan adopted pursuant to
25 section 118(f) or in regulations promulgated pursu-
26 ant to section 118 (f) or (g).

1 “(3) COORDINATION WITH OTHER COUN-
2 TRIES.—The Secretary may coordinate with other
3 countries to foster gear technology transfer initia-
4 tives to reduce to the maximum extent practicable
5 the incidental mortality and serious injury of marine
6 mammals throughout the full extent of their range.”.

7 (2) By adding at the end the following:

8 “(e) GEAR RESEARCH MINI-GRANT PROGRAM.—

9 “(1) IN GENERAL.—Subject to the availability
10 of appropriations, the Secretary may establish a
11 grant program to provide financial assistance for de-
12 veloping, manufacturing, testing, or designing new
13 types of fishing gear designed to eliminate or reduce
14 to the maximum extent practicable the incidental
15 taking (including incidental mortality and serious in-
16 jury) of marine mammals.

17 “(2) GRANT AMOUNT AND PURPOSES.—The
18 amount of a grant under this subsection may not ex-
19 ceed \$20,000.

20 “(3) GRANT APPLICATIONS.—To receive a
21 grant under this section, an applicant must submit
22 an application in such form and manner as the Sec-
23 retary may prescribe.

24 “(4) CONSULTATION REGARDING CRITERIA.—
25 The Secretary shall consult with the Secretary of the

1 Interior and the Marine Mammal Commission re-
2 garding the development of criteria for the awarding
3 of grants under this subsection.

4 “(5) ADMINISTRATIVE COSTS.—Of amounts
5 available each fiscal year to carry out this sub-
6 section, the Secretary may expend not more than
7 \$40,000 to pay the administrative expenses nec-
8 essary to carry out this subsection.”.

9 **SEC. 403. CLARIFICATION OF FISHERIES INCLUDED IN THE**
10 **INCIDENTAL TAKE PROGRAM.**

11 (a) LISTED FISHERY DEFINED.—Section 3 (16
12 U.S.C. 1362) is further amended by adding at the end
13 the following:

14 “(33) The term ‘listed fishery’ means a fishery
15 included on the list of fisheries published pursuant
16 to section 118(c)(1).”.

17 (b) OTHER CLARIFICATIONS.—Section 118 (16
18 U.S.C. 1387) is amended—

19 (1) in subsection (a)(1) by striking “commercial
20 fishing operations” and inserting “engaging in a list-
21 ed fishery”;

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

24 (3) in subsection (c)(1)(A)—

1 (A) by striking “commercial” the first
2 place it appears; and

3 (B) by striking “commercial fisheries that
4 have”;

5 (4) in subsection (c)(1)(A)(i) by inserting “fish-
6 eries that have” before “frequent incidental mor-
7 tality”;

8 (5) in subsection (c)(1)(A)(ii) by inserting
9 “fisheries that have” before “occasional incidental
10 mortality”;

11 (6) in subsection (c)(1)(A)(iii) by inserting
12 “commercial fisheries that have” before “a remote
13 likelihood”;

14 (7) in subsection (c)(2)(A) by striking “com-
15 mercial”; and

16 (8) in subsection (e)—

17 (A) by striking “commercial” each place it
18 appears; and

19 (B) by striking “Act” and inserting “sec-
20 tion”.

21 **SEC. 404. CONFORMING AMENDMENTS TO THE CLARIFICA-**
22 **TION OF FISHERIES INCLUDED IN THE INCI-**
23 **DENTAL TAKE PROGRAM.**

24 (a) MORATORIUM EXCEPTIONS.—Section 101 (16
25 U.S.C. 1371) is amended—

1 (1) in subsection (a)(2) by striking “commer-
2 cial” after “permitted in the course of”;

3 (2) in subsection (a)(5)(A) by striking “com-
4 mercial fishing” and inserting “engaging in a listed
5 fishery”;

6 (3) in subsection (a)(5)(D)(i) by striking “com-
7 mercial fishing” and inserting “engaging in a listed
8 fishery”;

9 (4) in subsection (a)(5)(E)(i) by striking “com-
10 mercial fishing operations” and inserting “a listed
11 fishery”;

12 (5) in subsection (a)(5)(E)(i)(I) by striking
13 “commercial” and inserting “such”; and

14 (6) in subsection (a)(5)(E)(iii)—

15 (A) by striking the word “commercial”
16 each place it appears; and

17 (B) by inserting “those” after “serious in-
18 jury from”.

19 (b) PROHIBITIONS.—Section 102(a)(5) (16 U.S.C.
20 1372(a)(5)) is amended by striking “commercial”.

21 (c) PERMITS.—Section 104(a) (16 U.S.C. 1374(a))
22 is amended by striking “commercial”.

23 (d) FEDERAL COOPERATION WITH STATES.—Sec-
24 tion 109(b)(3)(B)(i) (16 U.S.C. 1379(b)(3)(B)(i)) is
25 amended—

1 (1) by striking “commercial”; and

2 (2) by striking “(4)” and inserting “or section
3 118”.

4 (e) GEAR DEVELOPMENT.—Section 111 (16 U.S.C.
5 1381) is further amended—

6 (1) by striking the section heading and insert-
7 ing the following:

8 “FISHERIES GEAR DEVELOPMENT”;

9 and

10 (2) in subsection (d)—

11 (A) by striking “commercial”; and

12 (B) by striking “documented under the
13 laws of the United States” and inserting “en-
14 gaged in a listed fishery”.

15 (f) TAKE REDUCTION PLANS.—Section 115(b)(4)
16 (16 U.S.C. 1383b(b)(4)) is amended to read as follows:

17 “(4) If the Secretary determines that a take reduc-
18 tion plan is necessary to reduce the taking of marine mam-
19 mals incidental to engaging in a listed fishery from a stra-
20 tegic stock, or for species or stocks that interact with a
21 fishery for which the Secretary has made a determination
22 under section 118(f)(1), any conservation plan prepared
23 under this subsection for such species or stock shall incor-
24 porate the take reduction plan required under section 118
25 for such species or stock.”.

1 (g) STOCK ASSESSMENTS.—Section 117 (16 U.S.C.
2 1386) is amended—

3 (1) by striking “commercial” each place it ap-
4 pears (subject to paragraph (2)); and

5 (2) in subsection (a)(4) by striking “commer-
6 cial” and inserting “listed”.

7 (h) TAKINGS INCIDENTAL TO FISHING OPER-
8 ATIONS.—Section 118 (16 U.S.C. 1387) is amended—

9 (1) by amending the section heading to read as
10 follows:

11 **“SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO**
12 **FISHING OPERATIONS.”;**

13 (2) in subsection (a)(5) by striking “commer-
14 cial”;

15 (3) in subsection (c)(1)(B) by striking “com-
16 mercial”;

17 (4) in subsection (c)(1)(C) by striking “com-
18 mercial”;

19 (5) in subsection (c)(3)(B) as redesignated by
20 section 401(2) of this Act, by inserting “commer-
21 cial” after “engaged in any”;

22 (6) in subsection (c)(5)(B) by striking “com-
23 mercial”;

1 (7) in subsection (d)(1) by striking “commercial
2 fishing operations” and inserting “engaging in a list-
3 ed fishery”;

4 (8) in subsection (d)(3) by striking “commer-
5 cial” and inserting “listed”;

6 (9) in subsection (d)(4) by striking “commer-
7 cial” each place it appears and inserting “listed”;

8 (10) in subsection (d)(5) by striking “commer-
9 cial fishing operations” and inserting “engaging in
10 a listed fishery”;

11 (11) in subsection (f)(2) by striking “commer-
12 cial fishing operations” each place it appears and in-
13 serting “engaging in a listed fishery”;

14 (12) in subsection (f)(3) by striking “commer-
15 cial”;

16 (13) in subsection (f)(4)(B) by striking “com-
17 mercial fishing operations” and inserting “engaging
18 in a listed fishery”;

19 (14) in subsection (f)(5)(A) by striking “com-
20 mercial” and inserting “listed”;

21 (15) in subsection (f)(5)(B) by striking “com-
22 mercial” and inserting “listed”;

23 (16) in subsection (f)(6)(A)(ii) by striking
24 “commercial” and inserting “listed”;

1 (17) in subsection (f)(7)(D) by striking “com-
2 mercial”;

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

5 (19) in subsection (f)(8)(D) by striking “com-
6 mercial”;

7 (20) in subsections (f)(9)(A) by striking “com-
8 mercial” each place it appears and inserting “list-
9 ed”;

10 (21) in subsections (f)(9)(B) and (C) by strik-
11 ing “commercial” each place it appears;

12 (22) in subsection (f)(9)(D) by striking “com-
13 mercial fishing operations” and inserting “engaging
14 in a listed fishery”;

15 (23) in the first sentence of subsection (g)(1)
16 by striking “commercial” and inserting “listed”;

17 (24) in subsection (g)(3)(B) by striking “com-
18 mercial”; and

19 (25) in subsection (g)(4) by striking “commer-
20 cial” and inserting “listed”.

21 (i) TISSUE BANK.—Section 407(a)(3)(A) (16 U.S.C.
22 1421f(a)(3)(A)) is amended by striking “commercial”.

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