

Union Calendar No. 481108TH CONGRESS
2D SESSION**H. R. 5104****[Report No. 108-787]**

To amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2004

Mr. GILCHREST introduced the following bill; which was referred to the Committee on Resources

NOVEMBER 19, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Prescott Marine Mam-
3 mal Stranding Program Amendments of 2004”.

4 **SEC. 2. AMENDMENT REFERENCES.**

5 Except as otherwise expressly provided, whenever in
6 this Act an amendment or repeal is expressed in terms
7 of an amendment to, or repeal of, a section or other provi-
8 sion, the reference shall be considered to be made to such
9 section or other provision of the Marine Mammal Protec-
10 tion Act of 1972 (16 U.S.C. 1361 et seq.).

11 **SEC. 3. AUTHORIZATIONS OF APPROPRIATIONS FOR JOHN**

12 **H. PRESCOTT MARINE MAMMAL RESCUE AS-**
13 **SISTANCE GRANT PROGRAM.**

14 (a) GRANT PROGRAM.—Section 408(h) (16 U.S.C.
15 1421f–1(h)) is amended by striking “fiscal years 2001
16 through 2003” and inserting “fiscal years 2005 through
17 2009”.

18 (b) MARINE MAMMAL UNUSUAL MORTALITY EVENT
19 FUND.—Section 409(3) (16 U.S.C. 1421g(3)) is amended
20 by striking “\$500,000 for fiscal year 1993” and inserting
21 “\$125,000 for each of fiscal years 2005 through 2009”.

22 (c) ADMINISTRATIVE COSTS AND EXPENSES.—Sec-
23 tion 408 (16 U.S.C. 1421f–1) is amended—

24 (1) by adding at the end of subsection (a)(1)
25 the following: “All funds available to implement this
26 section shall be distributed to eligible stranding net-

1 work participants for the purposes set forth in this
2 paragraph, except as provided in subsection (f).”;
3 and

4 (2) by amending subsection (f) to read as fol-
5 lows:

6 “(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of
7 the amounts available each fiscal year to carry out this
8 section, the Secretary may expend not more than 6 per-
9 cent or \$80,000, whichever is greater, to pay the adminis-
10 trative costs and administrative expenses to implement the
11 grant program under subsection (a). Any such funds re-
12 tained by the Secretary for a fiscal year for such costs
13 and expenses that are not used for such costs and ex-
14 penses before the end of the fiscal year shall be provided
15 as grants under subsection (a).”.

16 (d) CONTRIBUTIONS.—Section 408 (16 U.S.C.
17 1421f–1) is further amended by adding at the end the fol-
18 lowing:

19 “(i) CONTRIBUTIONS.—For purposes of carrying out
20 this section, the Secretary may solicit, accept, receive,
21 hold, administer, and use gifts, devises, and bequests.”.

22 **SEC. 4. TECHNICAL CORRECTIONS.**

23 (a) COMMITTEE REFERENCES.—The Marine Mam-
24 mal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is
25 amended by striking “Committee on Merchant Marine and

1 Fisheries” each place it appears and inserting “Committee
2 on Resources”.

3 (b) OBSOLETE REFERENCE TO SECTION.—Section
4 118(c)(3)(A)(i) (16 U.S.C. 1387(c)(3)(A)(i)) is amended
5 by striking “, except that” and all that follows through
6 “is valid”.

7 **SEC. 5. LIMITED AUTHORITY TO EXPORT MARINE MAMMAL**
8 **PRODUCTS.**

9 (a) IN GENERAL.—Section 101(a)(6) (16 U.S.C.
10 1371(a)(6)) is amended by redesignating subparagraph
11 (B) as subparagraph (C), and by inserting after subpara-
12 graph (A) the following:

13 “(B) A marine mammal product may be ex-
14 ported from the United States if the product—

15 “(i) is legally possessed, and exported by,
16 a citizen of the United States for noncommer-
17 cial purposes in conjunction with travel outside
18 the United States and the product is imported
19 into the United States by the same person upon
20 the termination of travel;

21 “(ii) is legally possessed, and exported by,
22 a person that is not a citizen of the United
23 States for noncommercial purposes;

1 “(iii) is legally possessed and exported as
 2 part of a cultural exchange, by an Indian,
 3 Aleut, or Eskimo residing in Alaska; or

4 “(iv) is owned by a Native inhabitant of
 5 Russia, Canada, or Greenland and is exported
 6 for noncommercial purposes—

7 “(I) in conjunction with, and upon the
 8 completion of, travel within the United
 9 States; or

10 “(II) as part of a cultural exchange
 11 with an Indian, Aleut, or Eskimo residing
 12 in Alaska.”.

13 (b) CONFORMING AMENDMENT.—Section
 14 101(a)(6)(A)(i) (16 U.S.C. 1371(a)(6)(A)(i)) is amended
 15 by inserting “for noncommercial purposes” after “United
 16 States” the first place it appears.

17 **SEC. 6. TAKE REDUCTION PLANS.**

18 (a) IN GENERAL.—Section 118 (16 U.S.C. 1387) is
 19 amended as follows:

20 (1) In subsection (a) by striking “commercial”
 21 each place it appears in paragraphs (1) and (5).

22 (2) In subsection (c)(1) by striking so much as
 23 precedes subparagraph (B) and inserting the fol-
 24 lowing:

1 “(c) REGISTRATION AND AUTHORIZATION.—(1) The
2 Secretary shall, within 90 days after the date of enactment
3 of the Marine Mammal Protection Act Amendments of
4 2004—

5 “(A) publish in the Federal Register for public
6 comment, for a period of not less than 90 days, any
7 necessary changes to the Secretary’s list of fisheries
8 published under section 114(b)(1) in the Federal
9 Register on August 24, 1994 (along with an expla-
10 nation of such changes and a statement describing
11 the marine mammal stocks interacting with, and the
12 approximate number of vessels or persons actively
13 involved in, each such fishery), with respect to—

14 “(i) commercial and recreational fisheries
15 that have frequent incidental mortality and seri-
16 ous injury of marine mammals;

17 “(ii) commercial and recreational fisheries
18 that have occasional incidental mortality and
19 serious injury of marine mammals; or

20 “(iii) commercial fisheries that have a re-
21 mote likelihood of or no known incidental mor-
22 tality or serious injury of marine mammals;”.

23 (3) In subsection (c)(1) in subparagraphs (B)
24 and (C) by striking “commercial”.

1 (4) In subsection (c)(2)(A) by striking “com-
2 mercial”.

3 (5) In subsection (c)(3)(A) in the matter pre-
4 ceding clause (i) by striking “a commercial fishery”
5 and inserting “that fishery”.

6 (6) In subsection (c)(3)(E) by inserting “com-
7 mercial” after “any”.

8 (7) In subsection (c)(5)(B) by striking “com-
9 mercial”.

10 (8) In subsection (d)(1) in the matter preceding
11 subparagraph (A) by striking “commercial fishing
12 operations” and inserting “fishing operations in a
13 fishery listed under subsection (c)(1)(A)(i) or (ii)”.

14 (9) In subsection (d)(3) in the matter preceding
15 subparagraph (A) by striking “commercial fisheries”
16 and inserting “fisheries listed under subsection
17 (c)(1)(A)(i) or (ii)”.

18 (10) In subsection (d)(4) as follows:

19 (A) In the matter preceding subparagraph
20 (A) by striking “commercial fisheries” and in-
21 serting “fisheries listed under subsection
22 (c)(1)(A)(i) or (ii)”.

23 (B) In subparagraph (A) by striking “com-
24 mercial fisheries” and inserting “fisheries listed
25 under subsection (c)(1)(A)(i) or (ii)”.

1 (C) In subparagraph (B) by striking “com-
2 mercial fisheries” and inserting “fisheries listed
3 under subsection (c)(1)(A)(i) or (ii)”.

4 (D) In subparagraph (C) by striking “com-
5 mercial fisheries” and inserting “fisheries listed
6 under subsection (c)(1)(A)(i) or (ii)”.

7 (11) In subsection (d)(5) by striking “commer-
8 cial fishing operations” and inserting “fishing oper-
9 ations in fisheries listed under subsection
10 (c)(1)(A)(i) or (ii)”.

11 (12) In subsection (e) in the matter preceding
12 paragraph (1)—

13 (A) by striking “commercial” each place it
14 appears; and

15 (B) by striking “this Act” and inserting
16 “this section”.

17 (13) In subsection (f) by striking so much as
18 precedes paragraph (2) and inserting the following:

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

ous injury is having a negligible impact on that stock. The Secretary may develop and implement a take reduction plan for any other marine mammal stocks which interact with a fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.”.

(14) 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)”.

(15) In subsection (f)(3) by striking “commercial”.

(16) 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)”.

(17) 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.

1 (18) In subsection (f)(6)(A)—

2 (A) by striking “(not later than 30 days)”;

3 and

4 (B) in clause (ii) by striking “commercial
5 fisheries” and inserting “fisheries listed under
6 subsection (c)(1)(A)(i) or (ii)”.

7 (19) In subsection (f)(6)(C) in the second sen-
8 tence, by inserting before “, and others” the fol-
9 lowing: “, where appropriate a representative of the
10 office of General Counsel of the National Oceanic
11 and Atmospheric Administration, a representative of
12 the National Marine Fisheries Service having re-
13 sponsibilities related to fisheries science, a represent-
14 ative of the National Marine Fisheries Service hav-
15 ing responsibilities related to law enforcement, and
16 a representative of the appropriate National Marine
17 Fisheries Service Regional Administrator”.

18 (20) In subsection (f)(7)—

19 (A) in subparagraph (A)(i) by striking “6
20 months” and inserting “9 months”;

21 (B) in subparagraph (B)(i)—

22 (i) by striking “not later than 60
23 days” and inserting “not later than 120
24 days”; and

1 (ii) by adding at the end the fol-
2 lowing: “Before publishing any plan that is
3 different than the draft plan proposed by
4 a take reduction team, the Secretary shall
5 reconvene the team and explain to the
6 team the differences between the published
7 plan and the draft plan proposed by the
8 team.”; and

9 (C) in subparagraph (B)(ii)—

10 (i) by striking “6 months” and insert-
11 ing “9 months”; and

12 (ii) by striking “not later than 8
13 months” and inserting “not later than 11
14 months”.

15 (21) In subsection (f)(7)(C) by striking “Not
16 later than 60 days” and inserting “Not later than
17 90 days”.

18 (22) In subsection (f)(7)(D) by striking “com-
19 mercial”.

20 (23) In subsection (f)(8)—

21 (A) in subparagraph (C) by striking “Not
22 later than 60 days” and inserting “Not later
23 than 180 days”; and

24 (B) by striking “commercial” each place it
25 appears.

1 (24) In subsection (f)(9) as follows:

2 (A) In subparagraph (A) by striking “com-
3 mercial fisheries or restrict commercial fish-
4 eries” and inserting “fisheries listed under sub-
5 section (c)(1)(A)(i) or (ii) or restrict such fish-
6 eries”.

7 (B) In subparagraphs (B) and (C) by
8 striking “commercial” each place it appears.

9 (C) In subparagraph (D) by striking “com-
10 mercial fishing operations” and inserting “par-
11 ticipation in a fishery listed under subsection
12 (c)(1)(A)(i) or (ii)”.

13 (25) In subsection (g)(1) by striking “commer-
14 cial fisheries” and inserting “fisheries listed under
15 subsection (c)(1)(A)(i) or (ii)”.

16 (26) In subsection (g)(3)(B) by striking “com-
17 mercial”.

18 (27) In subsection (g)(4) by striking “commer-
19 cial fishery” and inserting “fishery listed under sub-
20 section (c)(1)(A)(i) or (ii)”.

21 (28) In subsection (j) by inserting “including
22 observer, research, and education and outreach pro-
23 grams,” after “For purposes of carrying out this
24 section,”.

1 (29) By amending subsection (d)(1)(C) to read
2 as follows:

3 “(C) identify current fishery regulations and
4 changes in fishing methods or technology that may
5 increase or decrease incidental mortality and serious
6 injury.”.

7 (30) In subsection (f)(2) in the last sentence by
8 inserting “conservation benefits of” before “State or
9 regional fishery management plans.”.

10 (31) By amending subsection (f)(4)(A) to read
11 as follows:

12 “(A) a review of the information in the final
13 stock assessment published under section 117(b),
14 any substantial new information, a review of the
15 conservation benefits from current State and re-
16 gional fishery management regulations;”.

17 (b) STOCK ASSESSMENTS.—Section 117(a)(4) is
18 amended—

19 (1) by striking “and” at the end of subpara-
20 graph (C);

21 (2) by inserting “and” at the end of subpara-
22 graph (D); and

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

1 “(E) potential conservation benefits pro-
2 vided by State and regional fishery manage-
3 ment regulations;”.

4 (c) ZERO MORTALITY RATE GOAL AMENDMENTS.—
5 Section 118 (16 U.S.C. 1387) is amended in subsections
6 (a)(1) and (b)(1) by striking “within 7 years after the date
7 of enactment of this section” each place it appears.

8 (d) CONFORMING AMENDMENT.—Section
9 101(a)(5)(E) (16 U.S.C. 1371(a)(5)(E)) is amended by
10 inserting “or recreational” after “commercial” each place
11 it appears.

12 **SEC. 7. PINNIPED RESEARCH.**

13 Section 120 (16 U.S.C. 1389) is amended by adding
14 at the end the following:

15 “(k) RESEARCH ON NONLETHAL REMOVAL AND
16 CONTROL.—(1) The Secretary shall conduct research on
17 the nonlethal removal and control of nuisance pinnipeds.
18 The research shall include a review of measures that have
19 been taken to effect such removal and control, the effec-
20 tiveness of these measures, and the development of new
21 technologies to deter nuisance pinnipeds.

22 “(2) The Secretary shall include, among the individ-
23 uals that develop the research program under this sub-
24 section, representatives of the commercial and recreational
25 fishing industries.

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

4 “(4) The Secretary shall, by December 31 of each
5 year, submit an annual report on the results of research
6 under this subsection to the Committee on Resources of
7 the House of Representatives and the Committee on Com-
8 merce, Science, and Transportation of the Senate.

9 “(1) QUALIFIED NONLETHAL CONTROL PROJECTS.—

10 “(1) IN GENERAL.—The Secretary may, to the
11 extent amounts are available to carry out this sub-
12 section, provide a grant to any eligible applicant to
13 carry out a qualified nonlethal control project in ac-
14 cordance with this subsection.

15 “(2) APPLICATIONS.—The Secretary shall—

16 “(A) publish guidelines for and solicit ap-
17 plications for grants under this subsection not
18 later than 6 months after the date of enactment
19 of this subsection; and

20 “(B) receive, review, evaluate, and approve
21 applications for grants under this subsection.

22 “(3) ELIGIBLE APPLICANT.—To be an eligible
23 applicant for purposes of paragraph (1), an appli-
24 cant must—

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

3 “(B) have adequate personnel, funding,
4 and authority to carry out and monitor or
5 maintain a nonlethal control of nuisance
6 pinnipeds project.

7 “(4) QUALIFIED CONTROL PROJECT.—To be a
8 qualified control project under this subsection, a
9 project must—

10 “(A) by humane and nonlethal means, re-
11 move, deter, and control nuisance pinnipeds in
12 areas where they are a recurrent and persistent
13 threat to public health and safety; and

14 “(B) encourage public notice, education,
15 and outreach on project activities in the af-
16 fected community.

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

21 “(6) REPORTING BY GRANTEE.—

22 “(A) IN GENERAL.—A grantee carrying
23 out a control project with a grant under this
24 subsection shall report to the Secretary at the
25 expiration of the grant.

1 “(B) REPORT CONTENTS.—Each report
2 under this subsection shall include specific in-
3 formation on the methods and techniques used
4 to control nuisance pinniped species in the
5 project area, and on the ensuing results.

6 “(7) COST SHARING.—

7 “(A) FEDERAL SHARE.—Except as pro-
8 vided in paragraphs (2) and (3), the Federal
9 share of the cost of a project carried out with
10 a grant under this subsection shall not exceed
11 75 percent of such cost.

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

22 “(C) DERIVATION OF NON-FEDERAL
23 SHARE.—The non-Federal share of the cost of
24 a control project carried out with a grant under

1 this subsection may not be derived from a Fed-
2 eral grant program or other Federal funds.

3 “(8) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to the Sec-
5 retary \$1,500,000 for each of fiscal years 2005
6 through 2009.

7 “(9) CLARIFICATION.—Nothing in this sub-
8 section shall be interpreted as suspending or waiving
9 any requirement under any other provision of this
10 Act.”.

11 **SEC. 8. MARINE MAMMAL COMMISSION.**

12 (a) NUMBER OF EMPLOYEES.—Section 206(5) (16
13 U.S.C. 1406(5)) is amended by striking “; except that no
14 fewer than 11 employees must be employed under para-
15 graph (1) at any time”.

16 (b) ADMINISTRATION.—Section 206 (16 U.S.C.
17 1406) is amended—

18 (1) in paragraph (4) by striking “(but at rates
19 for individuals not to exceed \$100 per diem)”; and

20 (2) in paragraph (5) by striking “Financial”
21 and all that follows through the end of that sen-
22 tence.

23 **SEC. 9. SCRIMSHAW EXEMPTION.**

24 Any valid certificate of exemption referred to in sec-
25 tion 18 of Public Law 103–238 (16 U.S.C. 1539 note)

1 that was valid under that section on April 29, 1999, shall
2 be valid during the 10-year period beginning October 31,
3 1999.

4 **SEC. 10. CAPTIVE RELEASE PROHIBITION.**

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

6 (1) in paragraph (4) by striking “subsection
7 104(c); and” and inserting “section 104(c);”;

8 (2) in paragraph (5) by striking the period and
9 inserting “; and”; and

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

11 “(6) for any person that is subject to the juris-
12 diction of the United States to release any captive
13 marine mammal unless specifically authorized to do
14 so under section 104(c)(3)(A), 104(c)(4)(A), or
15 109(h), except that this paragraph shall not apply to
16 the temporary release of any marine mammal that
17 is—

18 “(A) maintained in captivity under section
19 7524 of title 10, United States Code (including
20 any progeny of a marine mammal maintained
21 under that section); or

22 “(B) the progeny of a marine mammal ex-
23 cluded from coverage under this Act by section
24 102(e).”.

1 **SEC. 11. TROPICAL TREATY CONFORMING AMENDMENT.**

2 Subsection (c) of the Dolphin Protection Consumer
3 Information Act (16 U.S.C. 1385) is amended in para-
4 graph (2) by striking “160 degrees west longitude” and
5 inserting “150 degrees west longitude”.

6 **SEC. 12. PERMIT CLARIFICATIONS.**

7 (a) CLARIFICATIONS.—Section 104 (16 U.S.C. 1374)
8 is amended as follows:

9 (1) Subsection (c)(7) is amended by inserting
10 “notwithstanding any other provision of law” after
11 “requesting the permit”.

12 (2) Subsection (c)(9) is amended to read as fol-
13 lows:

14 “(9)(A) No marine mammal may be exported—

15 “(i) for the purpose of public display,
16 unless the Secretary of Agriculture evalu-
17 ates and verifies, and thereafter notifies
18 the Secretary, that the receiving facility
19 meets standards that are comparable to
20 the requirements that a person must meet
21 to receive a permit under this subsection
22 for that purpose; or

23 “(ii) for the purpose of scientific re-
24 search or enhancing the survival or recov-
25 ery of a species or stock, unless the receiv-
26 ing facility meets standards that are com-

1 parable to the requirements that a person
2 must meet to receive a permit under this
3 subsection for that purpose.

4 “(B) The Secretary may not require or request,
5 through comity or any other means, that any marine
6 mammal or its progeny remain subject to the juris-
7 diction of the United States when located in waters
8 or on lands that are subject to the jurisdiction of an-
9 other country.”.

10 (3) Subsection (c)(10) is amended—

11 (A) in the first sentence by inserting “held
12 within the lands and waters of the United
13 States” after “marine mammals” each place it
14 appears;

15 (B) by inserting after the first sentence
16 the following: “The Secretary shall update the
17 inventory on an annual basis.”; and

18 (C) in subparagraph (D) by inserting
19 “ownership, or other” after “date of”.

20 (b) REVIEW AND REPORT REGARDING INVEN-
21 TORY.—

22 (1) REVIEW.—The Secretaries of Commerce
23 and the Interior shall, by not later than 12 months
24 after date of the enactment of this Act, jointly con-
25 duct a review of the inventory maintained under sec-

tion 104(c)(10) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(10)), the use of the information in the inventory, and the costs, benefits, and issues associated with the development of an on-line inventory.

(2) CONSULTATION.—In conducting the review, the Secretary shall consult and solicit input from persons who are required to provide information for the inventory.

(3) REPORT.—The Secretary shall submit a report to Committee on Resources of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate on the findings of the review under this subsection. The report shall include the following:

(A) Recommendations on whether the inventory should be maintained by the Secretary or by another person under contract.

(B) How the Secretary would oversee maintenance of the inventory carried out under contract.

(C) How public access and access by Federal agencies to the inventory can be maintained if the inventory is maintained under contract.

1 (D) How the Secretary can minimize dupli-
 2 cation on the information the Secretary receives
 3 from public display facilities and reduce the
 4 paper work burden on those facilities.

5 (E) An estimate of the cost of maintaining
 6 the inventory.

7 (F) A description of how the Secretary will
 8 ensure the secure maintenance of the data in
 9 the inventory.

10 (G) An analysis of the potential that online
 11 availability of the information in the inventory
 12 could adversely affect the safety of the animals.

13 **SEC. 13. FISHERIES GEAR DEVELOPMENT.**

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

15 (1) Subsection (a) is amended to read as fol-
 16 lows:

17 “(a) RESEARCH AND DEVELOPMENT PROGRAM.—

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

21 “(A) carry out a program of research and
 22 development for the purpose of devising im-
 23 proved fishing methods and gear so as to re-
 24 duce to the maximum extent practicable the in-

1 cidental taking of marine mammals in connec-
2 tion with fishing operations; and

3 “(B) make every practicable effort to de-
4 velop, evaluate, and make available to owners
5 and operators of fishing vessels such gear and
6 fishing method improvements as quickly as pos-
7 sible.

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

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

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

16 “(1) IN GENERAL.—Subject to the availability
17 of appropriations, the Secretary may establish a
18 grant program to provide financial assistance for de-
19 veloping, manufacturing, testing, or designing new
20 types of fishing gear designed to reduce to the max-
21 imum extent practicable the incidental taking (in-
22 cluding incidental mortality and serious injury) of
23 marine mammals.

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

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

8 “(4) CONSULTATION REGARDING CRITERIA.—
9 The Secretary shall consult with the Secretary of the
10 Interior and the Marine Mammal Commission re-
11 garding the development of criteria for the awarding
12 of grants under this subsection.

13 “(5) ADMINISTRATIVE COSTS.—Of amounts
14 available each fiscal year to carry out this sub-
15 section, the Secretary may expend not more than
16 \$40,000 to pay the administrative expenses nec-
17 essary to carry out this subsection.

18 “(6) CONTRIBUTIONS.—For purposes of car-
19 rying out this section, the Secretary may accept, so-
20 licit, receive, hold, administer, and use gifts, devises,
21 and bequests.

22 “(f) AUTHORIZATION OF APPROPRIATIONS.—To
23 carry out this section there is authorized to be appro-
24 priated to the Secretary \$1,500,000 for each of fiscal
25 years 2005 through 2009.”.

1 **SEC. 14. MARINE MAMMAL RESEARCH GRANTS.**

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

3 (1) by amending subsection (a) to read as fol-
4 lows:

5 “(a) AUTHORIZATION OF ASSISTANCE; ANNUAL RE-
6 PORT.—

7 “(1) AUTHORIZATION OF ASSISTANCE.—The
8 Secretary may make grants, or provide financial as-
9 sistance in such other form as the Secretary con-
10 siders appropriate, to any Federal or State agency,
11 public or private institution, or other person for the
12 purpose of assisting such agency, institution, or per-
13 son to undertake research in subjects that are rel-
14 evant to the protection and conservation of marine
15 mammals, and the ecosystems upon which they de-
16 pend, including, but not limited to, the Bering/
17 Chukchi Sea ecosystem and the California coastal
18 marine ecosystem.

19 “(2) INCLUSION OF INFORMATION IN RE-
20 PORTS.—The Secretary shall include a description of
21 the annual results of research carried out with as-
22 sistance under this section in the report required
23 under section 103(f).

24 “(3) CONTRIBUTIONS.—For purposes of car-
25 rying out this section, the Secretary may accept, so-

1 licit, receive, hold, administer, and use gifts, devises,
2 and bequests.”; and

3 (2) by striking subsections (c) and (d) and in-
4 serting the following:

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—To
6 carry out this section there is authorized to be appro-
7 priated to the Secretary \$1,500,000 for each of fiscal
8 years 2005 through 2009.”.

9 **SEC. 15. FINES AND PENALTIES.**

10 (a) FINES AND PENALTIES, GENERALLY.—Section
11 105 (16 U.S.C. 1375) is amended—

12 (1) in subsection (a)(1) by striking “\$10,000”
13 and inserting “\$20,000”; and

14 (2) in subsection (b) by striking “\$20,000” and
15 inserting “\$30,000”.

16 (b) VESSEL PENALTY.—Section 106(b) (16 U.S.C.
17 1376(b)) is amended by striking “\$25,000” and inserting
18 “\$35,000”.

19 **SEC. 16. COOPERATIVE AGREEMENTS IN ALASKA.**

20 (a) DEFINITION OF DEPLETION AND DEPLETED.—
21 Section 3(1)(A) (16 U.S.C. 1362(1)(A)) is amended by
22 striking “of this Act,” and inserting “and, for any stock
23 subject to a cooperative management agreement with a
24 harvest management plan entered into under section 119,

1 those Alaska Native organizations that are signatories to
 2 such an agreement,”.

3 (b) EXEMPTION OF TAKINGS FOR SUBSISTENCE OR
 4 AUTHENTIC NATIVE ARTICLES.—Section 101(b) (16
 5 U.S.C. 1371) is amended by striking “section 109” and
 6 inserting “sections 109 and 119(c) and (d)”.

7 (c) USE OF ALASKA NATIVE ORGANIZATIONS FOR
 8 ENFORCEMENT.—Section 107(a) (16 U.S.C. 1377(a)) is
 9 amended by inserting “, or of an Alaska Native organiza-
 10 tion for purposes of enforcing this title pursuant to a har-
 11 vest management plan with the organization under section
 12 119” after “Federal agency”.

13 (d) MARINE MAMMAL COMANAGEMENT AGREE-
 14 MENTS IN ALASKA.—Section 119 (16 U.S.C. 1388) is
 15 amended—

16 (1) by striking subsections (a), (b), and (d);

17 (2) by redesignating subsection (c) as sub-
 18 section (j); and

19 (3) by inserting before subsection (j) (as so re-
 20 designated) the following:

21 “(a) IN GENERAL.—The Secretary may enter into co-
 22 operative management agreements with Alaska Native or-
 23 ganizations to conserve and manage any stock of marine
 24 mammals and provide comanagement of subsistence use
 25 by Alaska Natives. Such agreements may include a har-

1 vest management plan governing Alaska Native subsist-
2 ence use for those stocks or species covered by the cooper-
3 ative management agreement.

4 “(b) MANAGEMENT PLAN REQUIREMENTS.—A har-
5 vest management plan under this section with an Alaska
6 Native organization shall—

7 “(1) apply only to Alaska Natives, as defined in
8 section 101(b);

9 “(2) identify the signatories to the plan, and
10 the stock or species and geographic area covered by
11 the plan;

12 “(3) be based on biological information and tra-
13 ditional ecological knowledge;

14 “(4) provide for a sustainable harvest of each
15 stock or species covered by the plan, and is designed
16 to prevent populations of such stocks and species
17 from becoming depleted;

18 “(5) have a clearly defined process and author-
19 ity for enforcement and implementation of any man-
20 agement prescriptions under the plan; and

21 “(6) specify the duration of the plan and set
22 forth procedures for periodic review and termination
23 of the plan.

24 “(c) IMPLEMENTING REGULATIONS AND ORDI-
25 NANCES.—

1 “(1) IN GENERAL.—An Alaska Native organiza-
2 tion may adopt regulations and ordinances that
3 apply to Alaska Natives exclusively and that are con-
4 sistent with, and necessary to implement and en-
5 force, a harvest management plan entered into by
6 the organization under this section.

7 “(2) DEPLETED STOCKS.—A regulation or ordi-
8 nance adopted pursuant to this subsection for a de-
9 pleted stock shall apply only to the extent the regu-
10 lation or ordinance is consistent with regulations
11 issued by the Secretary under sections 101(b) and
12 103 that apply to such stock.

13 “(d) PROHIBITION.—It is unlawful for any Alaska
14 Native within the geographic area to which a harvest man-
15 agement plan under this section applies, to take, trans-
16 port, sell, or possess a marine mammal in violation of any
17 regulation or ordinance adopted by an Alaska Native orga-
18 nization to implement and enforce a harvest management
19 plan.

20 “(e) GRANTS.—Agreements entered into under this
21 section may include a grant to Alaska Native organiza-
22 tions for, among other purposes—

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

1 “(2) monitoring the harvest of marine mam-
2 mals for subsistence and handicraft uses;

3 “(3) participating in marine mammal research
4 conducted by the Federal Government, the State of
5 Alaska, academic institutions, and private organiza-
6 tions; and

7 “(4) developing marine mammal comanagement
8 structures with Federal and State agencies, and im-
9 plementing, and enforcing any harvest management
10 plan included in the agreement.

11 “(f) OPPORTUNITY FOR ADVANCE NOTICE AND COM-
12 MENT REGARDING PROPOSED REGULATIONS.—Before
13 proposing any regulation under section 101(b) relating to
14 the taking of a stock of marine mammals that is the sub-
15 ject of a harvest management plan under this section, the
16 Secretary shall—

17 “(1) solicit recommendations for such proposed
18 regulation from each Alaska Native organization en-
19 gaged in harvest management of the species or stock
20 pursuant to this section; and

21 “(2) provide to each such organization—

22 “(A) each draft of the proposed regulation;

23 “(B) an analysis of how the proposed regu-
24 lation would achieve the goal of being the least

1 restrictive measures upon subsistence use of the
2 stock and the conservation goals of the Act; and

3 “(C) an opportunity to comment on the
4 proposed regulation prior to publication of any
5 proposed regulations in the Federal Register.

6 “(g) PUBLIC NOTICE.—The Secretary shall publish
7 each harvest management plan entered into under this
8 section.

9 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated for the purposes of car-
11 rying out this section—

12 “(1) to the Secretary of the Interior,
13 \$3,000,000 for each of fiscal years 2005 through
14 2009; and

15 “(2) to the Secretary of Commerce, \$3,000,000
16 for each of fiscal years 2005 through 2009.

17 “(i) FACA EXEMPTION.—The Federal Advisory
18 Committee Act (5 App. U.S.C.) shall not apply with re-
19 spect to the provision of any advice or recommendations
20 to the Secretary by any Alaska Native organization (in-
21 cluding any scientific review group associated with such
22 an organization), or the obtaining of any advice or rec-
23 ommendations by the Secretary from such an organiza-
24 tion, for the purpose of formulation or implementation of
25 a cooperative management agreement under this section.”.

1 **SEC. 17. ANNUAL REPORT REQUIREMENT.**

2 Section 103 (16 U.S.C. 1373(f)) is amended—

3 (1) in subsection (f) in the first sentence, by in-
4 serting “and notwithstanding Public Law 104–66,”
5 after “thereafter”; and

6 (2) by adding at the end the following:

7 “(g) The head of each Federal agency that conducts
8 and provides funds for research on marine mammals shall
9 report annually to the Committee on Resources of the
10 House of Representatives and the Committee on Com-
11 merce, Science, and Transportation of the Senate on fund-
12 ing provided and research conducted regarding marine
13 mammals during the preceding year.”.

Union Calendar No. 481

108TH CONGRESS
2D SESSION

H. R. 5104

[Report No. 108-787]

A BILL

To amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

NOVEMBER 19, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed