

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2013

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## AN ACT

To amend the Marine Mammal Protection Act of 1972 to implement the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population.

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 “United States-Russia  
5        Polar Bear Conservation and Management Act of 2005”.

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

3 (a) IN GENERAL.—The Marine Mammal Protection  
4 Act of 1972 (16 U.S.C. 1361 et seq.) is amended by add-  
5 ing at the end thereof the following:

6 **“TITLE V—ALASKA-CHUKOTKA**  
7 **POLAR BEARS**

8 **“SEC. 501. DEFINITIONS.**

9 “In this title:

10 “(1) AGREEMENT.—The term ‘Agreement’  
11 means the Agreement Between the Government of  
12 the United States of America and the Government  
13 of the Russian Federation on the Conservation and  
14 Management of the Alaska-Chukotka Polar Bear  
15 Population, signed at Washington, D.C., on October  
16 16, 2000.

17 “(2) ALASKA NANUUQ COMMISSION.—The term  
18 ‘Alaska Nanuuq Commission’ means the Alaska Na-  
19 tive entity, in existence on the date of enactment of  
20 this Act, that represents all villages in the State of  
21 Alaska that engage in the annual subsistence taking  
22 of polar bears from the Alaska-Chukotka population  
23 and any successor entity.

24 “(3) IMPORT.—The term ‘import’ means to  
25 land on, bring into, or introduce into, or attempt to  
26 land on, bring into, or introduce into, any place sub-

1       ject to the jurisdiction of the United States, without  
2       regard to whether the landing, bringing, or introduc-  
3       tion constitutes an importation within the meaning  
4       of the customs laws of the United States.

5           “(4) NATIVE PEOPLE.—The term ‘Native peo-  
6       ple’ has the meaning given the term in the Agree-  
7       ment.

8           “(5) POLAR BEAR PART OR PRODUCT.—The  
9       term ‘part or product of a polar bear’ means any  
10      polar bear part or product, including the gall bile  
11      and gall bladder.

12          “(6) SECRETARY.—The term ‘Secretary’ means  
13      the Secretary of the Interior.

14          “(7) TAKING.—The term ‘taking’ means hunt-  
15      ing, capturing, or killing a polar bear.

16          “(8) UNITED STATES-RUSSIA POLAR BEAR COM-  
17      MISSION.—The term ‘United States-Russia Polar  
18      Bear Commission’ means the binational commission  
19      established under article 8 of the Agreement.

20          “(9) UNITED STATES SECTION.—The term  
21      ‘United States Section’ means the commissioners ap-  
22      pointed by the President under section 505 of this  
23      title.

24   **“SEC. 502. PROHIBITIONS.**

25          “(a) IN GENERAL.—It is unlawful for any person—

1           “(1) to take any polar bear in violation of the  
2 Agreement;

3           “(2) to take any polar bear in violation of any  
4 annual taking limit or other restriction on the taking  
5 of polar bears that is adopted by the United States-  
6 Russia Polar Bear Commission pursuant to the  
7 Agreement;

8           “(3) to import, export, possess, transport, sell,  
9 receive, acquire, purchase, exchange, barter, or offer  
10 to sell, exchange, or barter any polar bear, or any  
11 part or product of a polar bear, that is taken in vio-  
12 lation of the Agreement or any limit or restriction  
13 on taking that is adopted by the United States-Rus-  
14 sia Polar Bear Commission;

15           “(4) to import, export, possess, transport, sell,  
16 receive, acquire, purchase, exchange, or barter, offer  
17 to sell, exchange, or barter, polar bear gall bile or  
18 a polar bear gall bladder;

19           “(5) to attempt to commit, solicit another per-  
20 son to commit, or cause to be committed, any of-  
21 fense under this subsection; or

22           “(6) to violate any regulation promulgated by  
23 the Secretary to implement any of the prohibitions  
24 established in this subsection.

1       “(b) EXCEPTIONS.—For the purpose of forensic test-  
2 ing or any other law enforcement purpose, a government  
3 official may import a polar bear or any part or product  
4 of a polar bear.

5       **“SEC. 503. ADMINISTRATION AND ENFORCEMENT.**

6       “(a) IN GENERAL.—The Secretary, acting through  
7 the United States Fish and Wildlife Service, shall do all  
8 things necessary and appropriate, including the promulga-  
9 tion of regulations, to implement, enforce, and administer  
10 the provisions of the Agreement on behalf of the United  
11 States. The Secretary shall consult with the Secretary of  
12 State, the Marine Mammal Commission, and the Alaska  
13 Nanuuq Commission on matters involving the implementa-  
14 tion of the Agreement. The Secretary may utilize by agree-  
15 ment, with or without reimbursement, the personnel, serv-  
16 ices, and facilities of any other Federal agency, any State  
17 agency, or the Alaska Nanuuq Commission for purposes  
18 of carrying out this title or the Agreement. Any person  
19 authorized by the Secretary under this subsection to en-  
20 force this title or the Agreement shall have the powers and  
21 authorities that are enumerated in section 6(b) of the  
22 Lacey Act Amendments of 1981 (16 U.S.C. 3375(b)).

23       “(b) FORFEITURE.—

24               “(1) REQUIREMENT.—

1           “(A) IN GENERAL.—A polar bear, or any  
2 part or product of a polar bear, that is (or at-  
3 tempted to be) imported, exported, taken, pos-  
4 sessed, transported, sold, received, acquired,  
5 purchased, exchanged, or bartered or offered  
6 for sale, exchange, or barter, or purchase, in  
7 violation of this title, shall be subject to seizure  
8 and forfeiture to the United States without any  
9 showing that may be required for assessment of  
10 a civil penalty or for criminal prosecution.

11           “(B) EQUIPMENT.—Each gun, trap, net,  
12 or other equipment used, and any vessel, vehi-  
13 cle, aircraft, or other means of transportation  
14 used, to aid in the violation or attempted viola-  
15 tion of this title shall be subject to forfeiture to  
16 the United States upon conviction of a criminal  
17 violation in accordance with subsection (e).

18           “(2) INSPECTION.—

19           “(A) IN GENERAL.—Any person authorized  
20 by the Secretary, the Secretary of the Treasury,  
21 the Secretary of Homeland Security, or the Sec-  
22 retary of Commerce to enforce this title may—

23           “(i) detain and inspect any container,  
24           including the contents of the container,

1 and all accompanying documents, upon im-  
2 portation or exportation of the container;

3 “(ii) search and, if the container is  
4 found to contain a polar bear or part or  
5 product of a polar bear, seize the package,  
6 crate, or container, and any documentation  
7 associated with it, with or without a war-  
8 rant.

9 “(B) TREATMENT OF SEIZED MATE-  
10 RIALS.—

11 “(i) IN GENERAL.—Except as pro-  
12 vided in clause (ii), any polar bear, or any  
13 part or product of a polar bear, seized  
14 under this section shall be held by any per-  
15 son authorized by the Secretary, the Sec-  
16 retary of the Treasury, the Secretary of  
17 Homeland Security, or the Secretary of  
18 Commerce pending disposition of civil or  
19 criminal proceedings, or the institution of  
20 an action in rem for forfeiture of the polar  
21 bear, part, or product, in accordance with  
22 this subsection.

23 “(ii) BOND.—Subject to clause (iii),  
24 in lieu of holding a polar bear or any part  
25 or product of a polar bear described in

1 clause (i), the Secretary may permit the  
2 owner to post a bond or other surety satis-  
3 factory to the Secretary.

4 “(iii) DISPOSAL.—Upon forfeiture of  
5 any property to the United States under  
6 this subsection, or the abandonment or  
7 waiver of any claim to any such property,  
8 the property shall be disposed of by the  
9 Secretary in such a manner, consistent  
10 with the purposes of this title, as the Sec-  
11 retary shall by regulation prescribe.

12 “(3) APPLICABLE LAW.—

13 “(A) IN GENERAL.—Subject to subpara-  
14 graph (B), the following provisions of law de-  
15 scribed in subparagraph (B) shall apply to all  
16 seizures and forfeitures carried out under this  
17 title:

18 “(i) All provisions of law relating to  
19 the seizure, forfeiture, and condemnation  
20 of property for violation of the customs  
21 laws.

22 “(ii) All provisions of law relating to  
23 the disposition of seized or forfeited prop-  
24 erty or the proceeds from the sale of that  
25 property.



1                   “(iii) All provisions of law relating to  
2                   the remission or mitigation of that for-  
3                   feiture.

4                   “(iv) Section 981 of title 18, United  
5                   States Code.

6                   “(B) EXCEPTION.—All powers, rights, and  
7                   duties conferred or imposed by the customs  
8                   laws upon any officer or employee of the De-  
9                   partment of Treasury shall, for the purpose of  
10                  this title, be exercised or performed by—

11                  “(i) the Secretary or the Secretary’s  
12                  designee; or

13                  “(ii) such persons as the Secretary  
14                  may designate.

15                  “(c) CIVIL PENALTIES.—

16                  “(1) PENALTIES.—

17                  “(A) IN GENERAL.—Any person who  
18                  knowingly engages in conduct prohibited by sec-  
19                  tion 502, or who in the exercise of due care  
20                  should know that the person is engaging in con-  
21                  duct prohibited by section 502, may be assessed  
22                  a civil penalty by the Secretary of not more  
23                  than \$50,000 for each violation.

24                  “(B) NOTICE AND OPPORTUNITY FOR  
25                  HEARING.—No penalty may be assessed against

1 a person under this paragraph unless the per-  
2 son is given notice and opportunity for a hear-  
3 ing with respect to the violation for which the  
4 penalty is assessed.

5 “(C) SEPARATE OFFENSES.—Each viola-  
6 tion shall be a separate offense.

7 “(D) REMISSION AND MITIGATION.—A  
8 civil penalty assessed under this paragraph may  
9 be remitted or mitigated by the Secretary.

10 “(E) CIVIL ACTION.—Upon any failure by  
11 a person to pay a civil penalty assessed under  
12 this paragraph—

13 “(i) the Secretary may request the At-  
14 torney General to bring a civil action in  
15 the United States district court for any  
16 district in which the person is found, re-  
17 sides, or transacts business to collect the  
18 penalty; and

19 “(ii) the court shall have jurisdiction  
20 to hear and decide any such action.

21 “(F) STANDARD.—A court shall hear and  
22 sustain a civil action by the Secretary under  
23 subparagraph (E) if the civil action is sup-  
24 ported by substantial evidence on the record  
25 considered as a whole.

1           “(2) PROCEDURE.—

2                   “(A) IN GENERAL.—A hearing held during  
3 proceedings for the assessment of a civil penalty  
4 under paragraph (1) shall be conducted in ac-  
5 cordance with section 554 of title 5, United  
6 States Code.

7                   “(B) SUBPOENAS.—The Secretary may  
8 issue subpoenas for the attendance and testi-  
9 mony of witnesses and the production of rel-  
10 evant papers, books, and documents, and ad-  
11 minister oaths.

12                   “(C) REIMBURSEMENT OF WITNESSES.—A  
13 witness summoned to appear in a proceeding  
14 under this paragraph shall be paid the same  
15 fees and mileage that are paid to witnesses in  
16 the courts of the United States.

17                   “(D) CONTUMACY.—In case of contumacy  
18 or refusal to obey a subpoena served upon any  
19 person under this paragraph—

20                           “(i) the United States district court  
21 for any district in which the person is  
22 found, resides, or transacts business, upon  
23 application by the United States and after  
24 notice to the person, shall have jurisdiction  
25 to issue an order requiring the person to

1 appear and give testimony before the Sec-  
2 retary, to appear and produce documents  
3 before the Secretary, or both; and

4 “(ii) any failure to obey such an order  
5 of the court may be punished by the court  
6 as a contempt of the court.

7 “(d) CRIMINAL PENALTIES.—A person who know-  
8 ingly violates section 502 shall be fined not more than  
9 \$100,000 for each such violation, imprisoned not more  
10 than 1 year, or both.

11 “(e) DISTRICT COURT JURISDICTION.—

12 “(1) IN GENERAL.—The United States district  
13 courts, including the courts specified in section 460  
14 of title 28, United States Code, shall have jurisdic-  
15 tion over any action arising under this title.

16 “(2) ALASKAN CASES.—Notwithstanding para-  
17 graph (1), the United States District Court for the  
18 district of Alaska shall have exclusive original juris-  
19 diction of any action arising under this title for any  
20 violation committed, or alleged to have been com-  
21 mitted, in Alaska.

22 “(f) OTHER ENFORCEMENT.—The importation or ex-  
23 portation of a polar bear, or any part or product of a polar  
24 bear, that is taken, possessed, transported, sold, received,  
25 acquired, purchased, exchanged, or bartered or offered for

1 sale, exchange, or barter, or purchase, in violation of the  
2 Agreement or any limitation or restriction of the United  
3 States-Russia Polar Bear Commission shall be considered  
4 to be transportation of wildlife for the purpose of section  
5 3(a) of the Lacey Act Amendments of 1981 (16 U.S.C.  
6 3372(a)).

7 “(g) REGULATIONS.—

8 “(1) IN GENERAL.—The Secretary shall pro-  
9 mulgate such regulations as are necessary to carry  
10 out this title and the Agreement.

11 “(2) ORDINANCES AND REGULATIONS.—If nec-  
12 essary to carry out this title and the Agreement, and  
13 to improve compliance with the annual taking limit  
14 or other restriction on taking adopted by the United  
15 States-Russia Polar Bear Commission and imple-  
16 mented by the Secretary in accordance with this  
17 title, the Secretary may promulgate regulations that  
18 adopt any ordinance or regulation that restricts the  
19 taking of polar bears for subsistence purposes if the  
20 ordinance or regulation has been promulgated by the  
21 Alaska Nanuuq Commission.

22 “(h) USE OF PENALTY AMOUNTS.—Amounts re-  
23 ceived as penalties, fines, or forfeiture of property under  
24 this section shall be used in accordance with section 6(d)

1 of the Lacey Act Amendments of 1981 (16 U.S.C.  
2 3375(d)).

3 “(i) SEVERABILITY.—If any provision of this title is,  
4 for any reason, found to be invalid by a court of competent  
5 jurisdiction, the judgment of the court—

6 “(1) shall not affect, impair, or invalidate the  
7 remaining provisions of this title; and

8 “(2) shall instead be confined in its operation  
9 to provision of the Act directly involved in the con-  
10 troversy in which the judgment is rendered.

11 **“SEC. 504. DESIGNATION AND APPOINTMENT OF MEMBERS**  
12 **OF THE UNITED STATES SECTION OF THE**  
13 **COMMISSION; COMPENSATION, TRAVEL EX-**  
14 **PENSES, AND CLAIMS.**

15 “(a) DESIGNATION AND APPOINTMENT.—

16 “(1) IN GENERAL.—The United States shall be  
17 represented on the United States-Russia Polar Bear  
18 Commission by 2 United States commissioners.

19 “(2) APPOINTMENT.—The United States com-  
20 missioners shall be appointed by the President, after  
21 taking into consideration the recommendations of—

22 “(A) the Secretary;

23 “(B) the Secretary of State;

1           “(C) the Speaker of the House of Rep-  
2           representatives and the President pro tempore of  
3           the Senate; and

4           “(D) the Alaska Nanuuq Commission.

5           “(3) QUALIFICATIONS.—With respect to the  
6           United States commissioners appointed under this  
7           subsection, in accordance with paragraph 2 of article  
8           8 of the Agreement—

9           “(A) 1 United States commissioner shall  
10          be an official of the Federal Government;

11          “(B) 1 United States commissioner shall  
12          be a representative of the Native people of Alas-  
13          ka, and, in particular, the Native people for  
14          whom polar bears are an integral part of their  
15          culture; and

16          “(C) both commissioners shall be knowl-  
17          edgeable of, or have expertise in, polar bears.

18          “(4) SERVICE AND TERM.—Each United States  
19          commissioner shall serve—

20          “(A) at the pleasure of the President; and

21          “(B) for an initial 4-year term and such  
22          additional terms as the President shall deter-  
23          mine.

24          “(5) VACANCIES.—

1           “(A) IN GENERAL.—Any individual ap-  
2           pointed to fill a vacancy occurring before the  
3           expiration of any term of office of a United  
4           States commissioner shall be appointed for the  
5           remainder of that term.

6           “(B) MANNER.—Any vacancy on the  
7           United States-Russia Polar Bear Commission  
8           shall be filled in the same manner as the origi-  
9           nal appointment.

10          “(b) ALTERNATE COMMISSIONERS.—

11           “(1) IN GENERAL.—The Secretary, in consulta-  
12           tion with the Secretary of State, the Speaker of the  
13           House of Representatives, the President pro tempore  
14           of the Senate, and the Alaska Nanuuq Commission,  
15           shall designate an alternate commissioner for each  
16           member of the United States Section.

17           “(2) DUTIES.—In the absence of a commis-  
18           sioner, an alternate commissioner may exercise all  
19           functions of the commissioner at any meetings of the  
20           United States-Russia Polar Bear Commission or of  
21           the United States Section.

22           “(3) REAPPOINTMENT.—An alternate  
23           commissioner—

24           “(A) shall be eligible for reappointment by  
25           the President; and



1           “(B) may attend all meetings of the  
2           United States Section.

3           “(c) DUTIES.—The members of the United States  
4 Section may carry out the functions and responsibilities  
5 described in article 8 of the Agreement in accordance with  
6 this title and the Agreement.

7           “(d) COMPENSATION AND EXPENSES.—

8           “(1) COMPENSATION.—A member of the United  
9 States Section shall serve without compensation.

10           “(2) TRAVEL EXPENSES.—A member of the  
11 United States Section shall be allowed travel ex-  
12 penses, including per diem in lieu of subsistence, at  
13 rates authorized for an employee of an agency under  
14 subchapter I of chapter 57 of title 5, United States  
15 Code, while away from the home or regular place of  
16 business of the member in the performance of the  
17 duties of the United States-Russia Polar Bear Com-  
18 mission.

19           “(e) AGENCY DESIGNATION.—The United States  
20 Section shall, for the purpose of title 28, United States  
21 Code, relating to claims against the United States and tort  
22 claims procedure, be considered to be a Federal agency.

1 **“SEC. 505. VOTES TAKEN BY THE UNITED STATES SECTION**  
2 **ON MATTERS BEFORE THE COMMISSION.**

3 In accordance with paragraph 3 of article 8 of the  
4 Agreement, the United States Section shall vote on any  
5 issue before the United States-Russia Polar Bear Commis-  
6 sion only if there is no disagreement between the 2 United  
7 States commissioners regarding the vote.

8 **“SEC. 506. IMPLEMENTATION OF ACTIONS TAKEN BY THE**  
9 **COMMISSION.**

10 “(a) IN GENERAL.—The Secretary shall take all nec-  
11 essary and appropriate actions to implement the decisions  
12 and determinations of the United States-Russia Polar  
13 Bear Commission under paragraph 7 of article 8 of the  
14 Agreement.

15 “(b) TAKING LIMITATION.—Not later than 60 days  
16 after the date on which the Secretary receives notice of  
17 the determination of the United States-Russia Polar Bear  
18 Commission of an annual taking limit, or of the adoption  
19 by the United States-Russia Polar Bear Commission of  
20 other restriction on the taking of polar bears for subsist-  
21 ence purposes, the Secretary shall publish a notice in the  
22 Federal Register announcing the determination or restric-  
23 tion.

1 **“SEC. 507. COOPERATIVE MANAGEMENT AGREEMENT; AU-**  
2 **THORITY TO DELEGATE ENFORCEMENT AU-**  
3 **THORITY.**

4 “(a) IN GENERAL.—The Secretary, acting through  
5 the United States Fish and Wildlife Service, may share  
6 authority under this title for the management of the tak-  
7 ing of polar bears for subsistence purposes with the Alaska  
8 Nanuuq Commission.

9 “(b) DELEGATION.—To be eligible for the cooperative  
10 management authority described in subsection (a), the  
11 Alaska Nanuuq Commission—

12 “(1) shall have an active cooperative agreement  
13 with the Secretary under section 119 of this title for  
14 the conservation of polar bears;

15 “(2) shall meaningfully monitor compliance  
16 with this title and the Agreement by Alaska Natives;  
17 and

18 “(3) shall administer its co-management pro-  
19 gram for polar bears in accordance with—

20 “(A) this title;

21 “(B) the Agreement; and

22 “(C) the Agreement on the Conservation of  
23 Polar Bears, done at Oslo, November 15, 1973  
24 (27 UST 3918; TIAS 8409).

1 **“SEC. 508. APPLICATION WITH OTHER TITLES OF ACT.**

2 “(a) IN GENERAL.—The authority of the Secretary  
3 under this title is in addition to, and shall not affect the  
4 authority of the Secretary under, the other titles of this  
5 Act or the Lacey Act Amendments of 1981 (16 U.S.C.  
6 3371 et seq.) or the exemption for Alaskan natives under  
7 section 101(b) of this Act.

8 “(b) CERTAIN PROVISIONS INAPPLICABLE.—The  
9 provisions of titles I through IV of this Act do not apply  
10 with respect to the implementation, enforcement, or ad-  
11 ministration of this title.”.

12 **“SEC. 509. AUTHORIZATION OF APPROPRIATIONS.**

13 “(a) IN GENERAL.—There are authorized to be ap-  
14 propriated to the Secretary to carry out the functions and  
15 responsibilities of the Secretary under this title and the  
16 Agreement \$1,000,000 for each of fiscal years 2006  
17 through 2010.

18 “(b) COMMISSION.—There are authorized to be ap-  
19 propriated to the Secretary to carry out functions and re-  
20 sponsibilities of the United States Section \$150,000 for  
21 each of fiscal years 2006 through 2010.

22 “(c) ALASKAN COOPERATIVE MANAGEMENT PRO-  
23 GRAM.—There are authorized to be appropriated to the  
24 Secretary to carry out this title and the Agreement in  
25 Alaska \$150,000 for each of fiscal years 2006 through  
26 2010.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
 2 in the first section of the Marine Mammal Protection Act  
 3 of 1972 (16 U.S.C. 1361 et seq.) is amended by adding  
 4 at the end the following:

TITLE V—ALASKA-CHUKOTKA POLAR BEARS

“Sec. 501. Definitions.

“Sec. 502. Prohibitions.

“Sec. 503. Administration and enforcement.

“Sec. 504. Designation and appointment of members of the United States Section of the Commission; compensation, travel expenses, and claims.

“Sec. 505. Votes taken by the United States Section on matters before the Commission.

“Sec. 506. Implementation of actions taken by the Commission.

“Sec. 507. Cooperative management agreement; authority to delegate enforcement authority.

“Sec. 508. Application with other titles of Act.

“Sec. 509. Authorization of appropriations.”.

Passed the Senate June 6, 2006.

Attest:

*Secretary.*

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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**AN ACT**

To amend the Marine Mammal Protection Act of 1972 to implement the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population.