

Calendar No. 365109TH CONGRESS
2^D SESSION**S. 2013****[Report No. 109-217]**

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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2005

Mr. STEVENS (for himself, Mr. INOUE, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

FEBRUARY 27, 2006

Reported by Mr. STEVENS, without amendment

A BILL

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 jurisdic-
19 tion 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 resentatives 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 commis-
23 sioner—

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 \$3,000,000 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 \$500,000 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 \$500,000 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.”.

Calendar No. 365

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