

THE ALBATROSS AND PETREL CONSERVATION ACT OF 2009

To implement the Agreement on the Conservation of Albatrosses and Petrels, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Albatross and Petrel Conservation Act of 2009”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

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SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Albatrosses and petrels are resources of great international significance, and it is the sense of the Congress that they should be conserved;

(2) Albatrosses and petrels are an integral part of marine ecosystems and represent one of the most imperiled groups of birds in the world; a majority of petrel species and almost all albatrosses currently face a high risk of extinction in the wild;

(3) Habitat disturbance, nesting habitat degradation and loss, changes in food supply, pollution and marine debris, invasive species, incidental bycatch in fisheries, and other threats have had substantial adverse impacts on albatrosses and petrels worldwide;

(4) The impacts of manmade threats are exacerbated by the natural-history traits of many albatrosses and petrels, including restricted breeding ranges, delayed onset of reproduction and low reproductive rates, as well as their wide marine distribution;

(5) The U.S. fishing industry has proven itself to be a leader in albatross and petrel conservation and has already achieved significant reductions in the bycatch of albatrosses and petrels interacting with fisheries, consistent with the 1999 International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries adopted by the Food and Agriculture Organization of the United Nations and the 2001 United States National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries;

(6) While much of the albatross and petrel breeding habitat in the United States is currently afforded some measure of protection at the federal or State level, invasive and non-native species, marine debris and other threats continue to adversely affect many albatrosses and petrels;

(7) The Agreement on the Conservation of Albatrosses and Petrels has brought significant international attention to the need to conserve albatrosses and petrels; and

(8) The long-term conservation of albatrosses and petrels distributed in the Northern Hemisphere is of particular importance to the United States, in part due to the natural, cultural, and historical significance of these seabirds to native Hawaiians and Alaskans.

(b) PURPOSES. The purposes of this Act are—

(1) to achieve and maintain a favorable conservation status for albatrosses and petrels by adopting and implementing conservation and management measures and by utilizing the best available scientific information, technologies, techniques, and other cost-effective innovations as they are developed and are shown to be effective;

(2) to work cooperatively with other nations, the Food and Agriculture Organization of the United Nations, regional fisheries management organizations, and other relevant international organizations to ensure that albatrosses and petrels are conserved throughout their ranges; and

(3) where threats of serious or irreversible adverse impacts or damage are posed to the conservation status of albatrosses or petrels, to ensure that Federal agencies apply a precautionary and adaptive management approach to conservation by not postponing conservation measures due to a lack of full scientific certainty, as to the threat, its effects, or the effects of such measures being contemplated.

SEC. 3. DEFINITIONS. In this Act—

(1) The term “Action Plan” means the Action Plan that appears in Annex 2 to the Agreement.

(2) The term “Advisory Committee” means the Advisory Committee established by Article IX of the Agreement.

(3) The term “Agreement on the Conservation of Albatrosses and Petrels,” or “Agreement,” means the Agreement on the Conservation of Albatrosses and Petrels, done at Cape Town, South Africa, on February 2, 2001.

(4) The terms “albatrosses” and “petrels” mean any species, subspecies, population, or individual, as the case may be, within the taxonomic Order Procellariiformes and subject to the provisions of this Act, whether dead or alive, including any part, egg, derivative, or product thereof.

(5) The term “Antarctica” means the area south of 60 degrees south latitude.

(6) The term “Authority” or “Authorities” means the federal agency or entity designated by the Secretary or the Secretary of Commerce to monitor activities that may have an impact on the conservation status of those albatrosses and petrels for which the United States is a range state.

(7) The term “breeding site” means a location in the wild at which albatross or petrel eggs, tended by the parent birds, have successfully hatched at any time in the previous five years, or a location where re-establishment of breeding albatrosses or petrels is underway.

(8) The term “conservation status” means the sum of the influences acting on albatrosses and petrels that may affect their long-term distribution and abundance.

(9) The term “conservation measure” means actions taken for the purpose of achieving or maintaining the favorable conservation status of albatrosses and petrels.

(10) The term “disturbance” means any act that causes disruption of natural behavioral patterns, including but not limited to, migration, brooding, nesting, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

(11) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(12) The term “habitat” means any area, within the range of the species, that contains suitable living conditions for albatrosses and petrels, including appropriate nesting and foraging areas.

(13) The term “marine habitat” or “marine areas” means ocean and coastal waters, and does not include those habitats that are managed as part of the National Wildlife Refuge System, National Parks or National Seashores, or any other areas under the management jurisdiction of the Secretary.

(14) The term “Party” or “Parties” means any country, including the United States, and any foreign country or regional economic integration organization that has ratified or acceded to the Agreement.

(15) The term “person” means an individual, corporation, partnership, trust, association, or any other private entity; a Federal agency, State, municipality, or political subdivision of a State, or any foreign government, and their officers and employees; or any other entity.

(16) The term “population” means a distinct group of coexisting, conspecific albatrosses and petrels, whose breeding-site fidelity, migration routes, and wintering areas are temporally and spatially stable, sufficiently distinct geographically (at some time of the year), and adequately described so that the population can be effectively monitored to discern changes in its conservation status.

(17) The term “range” means all the areas of land or water that any albatrosses or petrels inhabit, stay in temporarily, cross, or over-fly, at any time during migration, breeding, feeding, or aggregating, or areas that the Secretary or the Secretary of Commerce determines have been used for these purposes.

(18) The term “range state” means any nation—

(A) that exercises jurisdiction over any part of the range of albatrosses or petrels,
or

(B) the flagged vessels of which are engaged outside of its national jurisdictional limits in take or in an activity that has the potential to take albatrosses or petrels.

(19) The term “Regional Fishery Management Council” means any body established by 16 U.S.C. § 1852 (a)(1).

(20) The term “Secretariat” means the Secretariat established by the Parties to the Agreement pursuant to Article VIII, paragraph 11, of the Agreement.

(21) The term “Secretary” means the Secretary of the Interior.

(22) The term “significant adverse effect on a population” means an effect that could diminish the capacity of a population to sustain itself at a biologically viable level. A population is “biologically viable” when it is able to maintain its genetic diversity, to reproduce, and to function effectively in its native ecosystem. This effect may be characterized by increased risk to the population from actions that cause direct mortality or a reduction in fecundity. Assessment of impacts should take into account yearly variations and migratory movements of the affected species.

(23) The term “take” means to harass, harmfully interfere with, disturb, pursue, hunt, shoot, wound, kill, trap, capture, destroy, or collect, or to attempt to engage in any such act.

(24) The term “trade” means the purchase, sale, import, export, or offer to purchase, sell, import, or export any albatross or petrel, alive or dead, or part, product, or derivative thereof in intrastate, interstate, or foreign commerce.

(25) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(26) The term “waters subject to the jurisdiction of the United States” means—

(A) the territorial sea of the United States as described in Presidential Proclamation 5928, dated December 27, 1988;

(B) the Exclusive Economic Zone of the United States, as described in Presidential Proclamation 5030 of March 10, 1983; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

TITLE I – SCOPE AND APPLICABILITY

SEC. 101. SCOPE.

(a) IN GENERAL.—Except as otherwise provided in this section, this Act shall apply to all albatrosses and petrels listed in Annex 1 to the Agreement.

(b) ADDITIONAL DESIGNATIONS AND PROCESS.—The Secretary, in consultation with the Secretary of Commerce, may:

(1) designate any albatross or petrel species, subspecies, or population that is not listed in Annex 1 to the Agreement and that the Secretary determines would benefit from being subject to the provisions of this Act; and

(2) establish a process for making such a determination.

SEC. 102. APPLICABILITY.

(a) IN GENERAL.—This Act shall apply to—

(1) any person subject to the jurisdiction of the United States at the time that such person engages in conduct referred to in this Act whether the conduct occurs within or without the United States;

(2) any vessel of the United States whether the conduct referred to in this Act occurs within or without the United States; and

(3) any vessel within waters subject to the jurisdiction of the United States at the time that such vessel engages in conduct referred to in this Act.

(b) SOVEREIGN IMMUNITY.—

(1) This Act shall not apply to vessels and aircraft entitled to sovereign immunity under international law.

(2) The head of the relevant Federal agency shall ensure that United States vessels or aircraft entitled to sovereign immunity under international law act in a manner consistent with the Agreement so far as is reasonable and practicable by adopting appropriate measures that do not impair their operation or operational capabilities.

(3) The head of a Federal agency may determine that some or all of the requirements under this Act shall apply to one or more classes of United States vessels or aircraft entitled to sovereign immunity under international law owned or operated under the authority of such department or agency.

(c) INTERNATIONAL LAW.— Any action taken under this Act shall be taken in accordance with treaties to which the United States is a party and other international obligations of the United States.

TITLE II – CONSERVATION MEASURES

SEC. 201. RE-ESTABLISHMENT OF SPECIES.—The Secretary, in consultation with the Secretary of Commerce, is authorized to carry out activities, based on the best available scientific information, to re-establish albatrosses and petrels within their ranges.

SEC. 202. MANAGEMENT OF NON-NATIVE SPECIES.—

(a) The Secretary or the Secretary of Commerce, as appropriate, in consultation with each other and other relevant Federal agencies, and consistent with the provisions of this Act and other applicable law, is authorized to carry out activities to prevent the introduction of, to eradicate, or

to control invasive and non-native species that are having or may have an adverse effect on albatrosses or petrels.

(b) Such activities may include, but are not limited to—

- (1) implementation of management plans for such invasive or non-native species;
- (2) research on and development of practical and effective techniques for eradicating or controlling invasive or non-native species;
- (3) development of regional assessments on established and newly discovered populations of invasive or non-native species;
- (4) development of decision-support tools for the prevention of invasive or non-native species introduction and establishment;
- (5) development of rapid response approaches and techniques;
- (6) documentation of such invasive or non-native species that may also coexist with humans, and delineation of areas where eradication or control of these species will be the most effective and cost-efficient;
- (7) eradication or control of both established populations or individuals of such invasive or non-native species; and
- (8) outreach and education related to the impacts of invasive or non-native species on albatrosses and petrels, and the techniques to eradicate or control such species.

SEC. 203. HABITAT CONSERVATION AND RESTORATION.—

(a) IN GENERAL.—(1) The Secretary is authorized to use all authorities to conserve, protect and restore breeding sites of albatrosses and petrels, including, but not limited to—

(A) the Fish and Wildlife Act of 1956 (16 U.S.C. 742a, *et seq.*), the Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-667), the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715), and any other cooperative or land-acquisition authority vested in the Secretary, as appropriate; and

(B) funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4), for the purpose of acquiring lands, waters, or interests therein under this subsection.

(2) The Secretary, in consultation with the Secretary of Commerce, where appropriate, is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interests therein that have been identified as habitat important to the conservation and protection

of albatrosses or petrels, and such authority shall be in addition to any existing land-acquisition authority vested in the Secretary prior to enactment of this Act.

(3) The Secretary, in consultation with the Secretary of Commerce, where appropriate, is authorized to develop and implement management plans and undertake measures for the conservation and protection of albatross and petrel habitat.

(4) The Secretary of Commerce, in consultation with the Secretary, is authorized to acquire by purchase, donation, or otherwise, waters or interests therein in marine areas that have been identified as habitat important to the conservation and protection of albatrosses and petrels.

(b) ADDITIONAL CONSERVATION MEASURES.—The Secretary of Commerce, in consultation with the Secretary, is authorized—

(1) to develop and implement management plans and to undertake conservation measures in marine habitats in order to—

(A) ensure the sustainability of living marine resources that provide food for such albatrosses and petrels;

(B) conserve marine areas deemed critical; and

(2) to use all authorities to conserve and protect marine habitat important to the conservation of albatrosses and petrels including the National Marine Sanctuaries Act, as amended (16 U.S.C. 1431 et seq.) and the Magnuson Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 et seq.).

SEC. 204. MANAGEMENT OF HUMAN ACTIVITIES.—

(a) POLLUTANTS AND MARINE DEBRIS.—

(1)(A) The Secretary, in consultation with the Secretary of Commerce, where appropriate, is authorized to determine, using the best available scientific information, whether the discharge of a pollutant may have an adverse effect on albatrosses or petrels or their habitat.

(B) The Secretary shall notify the Administrator of the Environmental Protection Agency of such determination.

(2) After the receipt of notification under paragraph (1)(B), the Administrator of the Environmental Protection Agency is authorized to minimize the discharge of such pollutants from land-based sources and from vessels subject to the regulatory jurisdiction of the United States under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) giving particular attention to those discharges under paragraph 1(A).

(3) The Secretary, Secretary of Commerce, the Secretary of the Department in which the Coast Guard is operating and the Administrator of the Environmental Protection Agency are authorized to undertake scientific research to assess the effects of pollutants and marine debris on albatrosses and petrels.

(4) The Secretary and Secretary of Commerce are authorized to develop and implement conservation measures to minimize the effects of, or threats posed by, marine debris on albatrosses or petrels.

(b) DISTURBANCE.—Consistent with permits and exemptions authorized under Title III of this Act –

(1) the Secretary and the Secretary of Commerce, in consultation with each other, are authorized to minimize disturbance of albatrosses and petrels, including, but not limited to, the following actions —

(A) regulating the proximity of human approach to albatrosses and petrels; or

(B) establishing areas important to the conservation of albatrosses and petrels and regulating human activities in such areas to maintain them free from disturbance in U.S. territory and in waters subject to the jurisdiction of the United States.

(2) The Secretary and the Secretary of Commerce, in consultation with each other, are authorized beyond waters subject to the jurisdiction of the United States to minimize disturbance of albatrosses and petrels by vessels and nationals of the United States.

(3) The Secretary and the Secretary of Commerce shall notify the Secretary of the Department in which the Coast Guard is operating of any actions taken under this subsection to ensure a coordinated effort to managing human approach to areas addressed under this subsection, and if needed, request such additional action relative to closure of such areas to human activities as may be needed to prevent or minimize disturbance to albatrosses or petrels.

(c) MEASURES TO ADDRESS BYCATCH OF ALBATROSSES AND PETRELS IN FISHERIES.— (1) The Secretary of Commerce or the Regional Fishery Management Councils, as appropriate, in consultation with the Secretary, are authorized to develop and undertake measures to minimize the bycatch of albatrosses and petrels.

(2) The Secretary of Commerce, in coordination with the Secretary and the relevant Regional Fishery Management Councils, is authorized to engage in bycatch monitoring and data collection, including—

(A) Regional assessments of albatross and petrel interactions with fishing gear to determine the extent and nature of such interactions;

(B) Bycatch data, through onboard-observer programs where appropriate, to determine the nature and extent of albatross and petrel interactions with U.S. fisheries and to evaluate the effectiveness of any prescribed mitigation measures; and

(C) Research on bycatch-mitigation measures to develop the most practical and effective deterrent measures that reduce albatross and petrel bycatch.

(3) In carrying out this subsection, the Secretary of Commerce is authorized to disclose, as necessary and appropriate, information collected under this Act to the Food and Agriculture Organization of the United Nations, regional fishery-management organizations, or arrangements made pursuant to an international fishery-management agreement, provided that such organizations or arrangements have policies and procedures to safeguard such information from unintended or unauthorized disclosure. Such disclosure shall not be subject to the provisions of 16 U.S.C. § 1881a(b). For purposes of this subsection, the term “international fishery management agreement” has the same meaning as such term is defined in 16 U.S.C. § 1802(24).

(d) OTHER ACTIVITIES.— (1) The Secretary of Defense, the Administrator of the U.S. Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating are authorized to develop and implement measures recommended by the Secretary in consultation with the Secretary of Commerce, including the issuance of any necessary regulations, to prevent, minimize, or mitigate the adverse effects of activities under their respective jurisdictions deemed to be detrimental to the conservation status of albatrosses or petrels.

(2) The Secretary and the Secretary of Commerce, in consultation with each other, are authorized to develop and implement measures, including the issuance of any necessary regulations, to prevent, minimize, or mitigate the adverse effects of activities under their respective jurisdictions deemed to be detrimental to the conservation status of albatrosses or petrels and not otherwise addressed by this Act.

SEC. 205. RESEARCH AND MONITORING.—

The Secretary and the Secretary of Commerce, as appropriate and in cooperation with each other, may undertake research and monitoring and facilitate the development of improved research and monitoring techniques to enhance the understanding of threats to the conservation status of albatrosses and petrels.

SEC. 206. EDUCATION AND PUBLIC AWARENESS. —The Secretary and the Secretary of Commerce, in consultation with relevant Regional Fishery Management Councils and others, as appropriate, are authorized to –

(a) make information on the conservation status of albatrosses and petrels, the threats facing them and any activities taken under the Agreement available to the scientific,

fishing and seabird communities, as well as to the public, relevant local authorities, other decision-makers, Parties, and other neighboring nations;

(b) cooperate with other Parties, the Secretariat, and other persons to develop training programs and general information products, and exchange resource materials; and

(c) provide training programs to ensure that personnel responsible for the implementation of this Act have adequate knowledge to implement it effectively.

TITLE III – PROHIBITED ACTS, PERMITS, AND EXEMPTIONS

SEC. 301. PROHIBITED ACTS.—It is unlawful for any person to—

(a) violate any provision of this Act or any regulation or permit issued thereunder;

(b) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by this Act or any regulation or permit issued thereunder;

(c) take albatrosses or petrels, or their breeding sites, unless authorized under this Act;

(d) ship, transport, trade, or have custody, control, or possession of any albatross or petrel, unless authorized under this Act;

(e) refuse to permit any authorized officer to board, search, or inspect any vessel, aircraft, vehicle, or shoreside facility that is subject to the person's control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act or any regulation or permit issued under this Act;

(f) forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search, investigation, or inspection described in subsection (e);

(g) resist a lawful arrest or detention for any act prohibited by this section; or

(h) interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section.

SEC. 302. AUTHORIZATION OF DELIBERATE TAKE, POSSESSION, OR TRADE.

(a) PERMITS.—

(1) The Secretary may, consistent with other applicable law and upon a finding that there is no other satisfactory course of action, authorize by permit or regulation the deliberate take, possession, or trade in albatrosses or petrels —

(A) to enhance the propagation, re-establishment, or survival of such albatrosses or petrels;

(B) on a selective basis and to a limited extent, for scientific, educational, or similar purposes;

(C) to accommodate the traditional needs and practices of indigenous people; or

(D) in other exceptional circumstances, in which case, unless an exceptional circumstance is in the nature of a short-term emergency, an analysis of impacts on albatrosses and petrels shall be carried out and notice of availability of the analysis published in the Federal Register.

(2) Any permit or regulatory authorization granted pursuant to this subsection shall be precise and limited in space and time, shall be consistent with any other applicable law, and shall not operate to the detriment of the conservation status of albatrosses or petrels, nor shall it permit or authorize any activity otherwise banned by any other statute or regulation.

(3) Any permit granted that authorizes access to breeding sites of albatrosses or petrels, including for purposes of scientific research, shall contain terms and conditions requiring the permit holder to minimize unnecessary disturbance to albatrosses or petrels, and to minimize the impact on their habitats, particularly if the species at issue does not have a favorable conservation status.

(4) Information regarding any permit or exemption granted, including information on the time and location of the exempted activities, shall be provided to the Congress and to the other Parties to the Agreement in accordance with the reporting requirements contained in section 503.

(5) Such a permit may be suspended or revoked if the Secretary determines that the continuation of such permit is detrimental to the conservation status of albatrosses or petrels.

(b) ASSISTANCE AND SALVAGE.—The take of albatrosses or petrels for the purposes of assistance and salvage is hereby authorized—

(1) if such take is necessary to avoid imminent suffering, serious injury, additional injury, or death to an albatross or petrel hooked or entangled in fishing gear or debris, reasonable care is taken to ensure the safe and expeditious release of such albatross or petrel, and such take is reported to the Secretary in a timely manner; or

(2) if such take is by any employee, agent, or designee of the U.S. Fish and Wildlife Service, any other Federal land management agency, the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, or a State conservation agency, acting in the course of his official duties and designated by his agency for the purposes of—

(A) aiding a sick, injured, or orphaned albatross or petrel;

(B) disposal or salvage of a dead albatross or petrel; or

(C) conducting a law-enforcement investigation.

SEC. 303. OTHER TAKE AUTHORIZATIONS.—

(a) ARMED FORCES AND FEDERAL EMERGENCY ACTIVITIES.—

(1) **Military Activities.**—(A) Except as otherwise provided in this section, it shall not be a violation of this Act for the personnel of the Department of Defense or the United States Coast Guard to take albatrosses and petrels subject to this Act incidental to military activities.

(B) If the head of a Component of the Department of Defense or the Commandant of the United States Coast Guard determines that ongoing or proposed military activities may result in a significant adverse effect on a population of albatrosses or petrels subject to this Act, then the head of the Component of the Department of Defense involved in the activities, or the Commandant of the Coast Guard, as the case may be, shall confer and cooperate with the Secretary, who shall also consult with the Secretaries of Commerce and State, to develop and implement appropriate conservation measures to minimize or mitigate impacts of such activities on the birds.

(C) If the Secretary determines, after the conference required in paragraph (2) and consultation with the Secretaries of Commerce and State, that incidental take of albatrosses or petrels during a military activity would likely result in a significant adverse effect on a population of albatrosses or petrels, then the Secretary shall suspend authorization of the take associated with that activity after providing written notice to the Secretary of Defense or the Secretary of the Department in which the Coast Guard is operating, which shall include –

(i) the basis for the Secretary’s determination; and

(ii) identification of any conservation or other measures that would, if implemented by the Department of Defense or the Coast Guard, as the case may be, permit the Secretary to cancel the proposed withdrawal of authorization.

(D) The Secretary may cancel a suspension of authorization upon the delivery of a written notice of such a cancellation to the Secretary of Defense or the Secretary of the Department in which the Coast Guard is operating after the provision of new information showing that the proposed activity would not likely result in a significant adverse effect on a population of albatrosses or petrels.

(E) Until such measures are taken to the satisfaction of the Secretary, after consultation with the Secretaries of Commerce and State, suspension of the authorization shall remain in effect.

(2) **Coast Guard Activities.**—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of Title 14, United States Code.

(3) **Emergency Response.**—It shall not be a violation of this Act for the United States Coast Guard to take any albatrosses or petrels incidental to an otherwise lawful activity if such take –

(A) was caused during –

(i) an emergency that poses an unacceptable threat to human health or safety or to the marine environment;

(ii) an emergency that poses a threat to national security; or

(iii) an activity necessary for law enforcement, search and rescue, or aids to maritime navigation; and

(B) admitted of no other feasible solution.

(b) **BYCATCH OF ALBATROSSES AND PETRELS IN FISHERIES.**—It shall not be a violation of this Act for any person to take albatrosses and petrels as bycatch incidental to otherwise lawful fishing activities.

(c) **OTHER INCIDENTAL TAKE.**—The Secretary may authorize the take of albatrosses or petrels not otherwise herein provided for and incidental to otherwise lawful activities pursuant to the terms of a permit issued under this subsection.

SEC. 304. PRE-ACT EXEMPTION.—The prohibitions in section 301(d) of this Act shall not apply with respect to any albatross or petrel lawfully taken before the effective date of this Act, except that the prohibition on trade shall apply regardless of when the albatross or petrel was taken.

TITLE IV – PENALTIES AND ENFORCEMENT

SEC. 401. CIVIL PENALTIES.—

(a) CIVIL ADMINISTRATIVE PENALTIES.—

(1) Any person who is found by the Secretary or the Secretary of Commerce, after notice and opportunity for a hearing in accordance with paragraph (3), to have committed any act prohibited by section 301 of this Act shall be liable to the United States for a civil

penalty, the amount of which shall not exceed \$250,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this subsection. The amount of any civil penalty shall be assessed by the Secretary or the Secretary of Commerce by written notice. In determining the amount of such penalty, the Secretary or the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the person committing the violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require, to the extent that such information is reasonably available to the Secretary or the Secretary of Commerce.

(2) The Secretary or the Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or has been imposed under this section.

(3) A United States district court shall have jurisdiction to entertain a civil action under this Act against a person other than a Federal agency may be brought in the United States district court for any district in which:

(A) the defendant is located, resides, or is doing business, in the case of an action against a person;

(B) the violation of this Act occurred; or

(C) in any other district as authorized by law.

Where any part of the violation of this Act occurred not within the territory covered by any United States district court, such action may be brought in either the United States district court for the district court closest to the location where the violation occurred, or in the United States District Court of the District of Columbia.

(4) Hearings for the assessment of civil penalties under paragraph (1) shall be conducted in accordance with 5 U.S.C. § 554. For the purposes of conducting any investigation or hearing under this Act or any other law, the Secretary or the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General of the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person, other than a Federal agency, to appear and give testimony before the Secretary or the Secretary of Commerce or to appear and produce documents before the Secretary or the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Any person, other than a Federal agency, against whom a civil penalty is assessed under paragraph (1) of this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary or the Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States. The Secretary or Secretary of Commerce shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in 28 U.S.C. § 2112. The court shall set aside the findings and order of the Secretary or the Secretary of Commerce if the findings and order are found to be unsupported by substantial evidence, as provided in 5 U.S.C. § 706(2)(E).

(6) The Attorney General of the United States may seek to recover in any appropriate district court of the United States—

(A) any civil penalty imposed under this section, other than a civil penalty assessed against a Federal agency, that has become a final order and has been referred to the Attorney General by the Secretary or the Secretary of Commerce; or

(B) any final judgment rendered under this section in favor of the United States by an appropriate Court.

(b) CIVIL JUDICIAL PENALTIES.—Any person who violates any provision of this Act, or any regulation or permit issued thereunder, shall be subject to a civil penalty not to exceed \$250,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary or the Secretary of Commerce, may commence a civil action against a person other than a Federal agency in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require, including temporary or permanent injunctions. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require.

SEC. 402. CRIMINAL OFFENSES.—

(a) Any person, other than a foreign government, any entity of such government, or a Federal agency, who knowingly violates subsections (e), (f), (g), or (h) of section 301 shall upon conviction be imprisoned for not more than five years and shall be fined not more than \$500,000 for individuals or \$1,000,000 for an organization; except that if in the commission of any such offense the individual uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this chapter, or places any such officer in fear of imminent bodily injury, the maximum term of imprisonment is not more than ten years.

(b) Any person, other than a foreign government, any entity of such government, or a Federal agency, who knowingly violates any other provision of section 301 shall be fined under title 18 or imprisoned not more than five years or both.

(c) Any person, other than a foreign government, any entity of such government, or a Federal agency who knowingly engages in conduct prohibited by section 301 and in the exercise of due care should know that he was committing the acts that would constitute such a violation, shall be fined not more than \$100,000 or imprisoned for not more than one year, or both.

(d) Penalties pursuant to this section for acts prohibited in subsections (a), (b), (c), or (d) of section 301 committed in the Exclusive Economic Zone by a vessel other than a vessel of the United States shall be imposed on a natural person in accordance with the international legal obligations accepted by the United States, including the treaties, conventions, and other international agreements to which the United States is a party.

SEC. 403 ENFORCEMENT.—

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary, the Secretary of Commerce, and the Secretary of the Department in which the Coast Guard is operating. Subject to 18 U.S.C. 1385, such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including components of the Department of Defense, and of any State agency in the performance of such duties.

(b) POWERS OF AUTHORIZED OFFICERS AND EMPLOYEES.—Any officer or employee of the United States who is authorized, by the Secretary, the Secretary of Commerce, the Secretary of the Department in which the Coast Guard is operating, or the head of any Federal agency that has entered into an agreement with either the Secretary or the Secretary of Commerce under subsection (a) to enforce the provisions of this Act and of any regulation promulgated under this Act, may, in enforcing such provisions—

(1) secure, execute, and serve any order, warrant, subpoena, or other process that is issued under the authority of the United States;

(2) search without warrant any person, place of business, vehicle, or aircraft subject to the jurisdiction of the United States if there is probable cause to believe that the person has committed or is attempting to commit an act prohibited by section 301;

(3) with or without a warrant, board and search or inspect any vessel of the United States or vessel subject to the jurisdiction of the United States;

(4) seize without warrant—

(A) any evidentiary item where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 301;

(B) any albatross or petrel, or part or product thereof, with respect to which such an act is committed;

(C) any vessel of the United States, including its gear, furniture, appurtenances, stores, and cargo; any vessel subject to the jurisdiction of the United States, including its gear, furniture, appurtenances, stores, and cargo; and any vehicle, aircraft, or other means of transportation subject to the jurisdiction of the United States used in connection with such an act; and

(D) any guns, traps, nets, or equipment used in connection with such an act;

(5) offer and pay rewards for services or information that may lead to the apprehension of persons violating such provisions;

(6) make inquiries, and administer to or take from any person an oath, affirmation, or affidavit, concerning any matter that is related to the enforcement of such provisions;

(7) in coordination with the Secretary of the Treasury, detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States;

(8) make an arrest with or without a warrant with respect to any act prohibited by paragraph (e), (f), (g), or (h) of section 301 if such officer or employee has reasonable grounds to believe that the person to be arrested is committing such act in his or her presence or view or has committed such act; and

(9) exercise any other authority that such officer or employee is permitted by law to exercise.

(c) SEIZURE.—Subject to the succeeding provisions of this subsection, any property or item seized pursuant to subsection (b) shall be held by any officer or employee of the United States who is authorized by the Secretary, the Secretary of Commerce, or Secretary of the Department in which the Coast Guard is operating, pending the disposition of civil or criminal proceedings concerning the violation relating to the property or item, or the institution of an action in rem for the forfeiture of such property or item. Such authorized officer or employee may, upon the order of a court of competent jurisdiction, either release such seized property or item to the wild or destroy such property or item, when the cost of maintenance of the property or item pending the disposition of the case is greater than the legitimate market value of the property or item. Such authorized officer or employee and all officers or employees acting by or under his or her direction shall be indemnified from any penalties or actions for damages for so releasing or destroying such property or item. Such authorized officer or employee may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

(d) FORFEITURE.—

(1) A person who is found guilty of an offense described in this Act, or who is convicted of a criminal violation of any Act to which this section applies shall forfeit to the United States—

(A) any property, real or personal, constituting or traceable to the gross proceeds obtained, or retained, as a result of the offense including, without limitation, any fish or fish products (or the fair market value thereof) taken or retained in connection with or as a result of the offense; and

(B) any property, real or personal, used or intended to be used to commit or to facilitate the commission of the offense, including, without limitation, any shoreside facility, vessel, aircraft, or vehicle, including its structure, equipment, furniture, appurtenances, stores, and cargo.

(2) Pursuant to 28 U.S.C. § 2461(c), the provisions of section 413 of the Controlled Substances Act (21 U.S.C. § 853), other than subsection (d), shall apply to criminal forfeitures under this section.

(3) Upon the forfeiture to the United States of any property or item described in paragraph (1), or upon the abandonment or waiver of any claim to any such property or item, it shall be disposed of by the Secretary, the Secretary of Commerce, or the Secretary of the Department in which the Coast Guard is operating, as the case may be, in such a manner as is consistent with the purposes of this Act.

(e) APPLICATION OF CUSTOMS LAWS.—(1) All provisions of law relating to the seizure, forfeiture, and condemnation of property (including vessels) for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, and the compromise of claims, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

(2) All powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the U.S. Customs and Border Protection may, for the purposes of this Act, also be exercised or performed by the Secretary, the Secretary of Commerce, or the Secretary of the Department in which the Coast Guard is operating, or by such officers or employees of the United States as each Secretary may designate, except that nothing herein is intended to supersede or diminish the powers of the Secretary of Homeland Security with regard to seizures and forfeitures effected by the customs laws.

SEC. 404. DISTRICT COURT JURISDICTION.—Except as otherwise provided in this Act, the several district courts of the United States shall have jurisdiction over any actions brought by the United States arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been

committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of said albatross or petrel, or in any other district as authorized by law. For criminal offenses, any offenses not committed in any district are subject to the venue provisions of 18 U.S.C. § 3238.

SEC. 405. DISPOSITION OF FINES.—

(a) ESTABLISHMENT OF FUND.— Notwithstanding the provisions of 31 U.S.C. 3302 (the Miscellaneous Receipts Act), there is established in the Treasury a separate account, which shall be known as the “Albatross and Petrel Conservation Fund” and that shall consist of all amounts recovered under this Act and received by the United States, after reimbursement of enforcement expenses, in the form of penalties or fines, and shall remain available until expended.

(b) EXPENDITURES FROM FUND.— On an end-of-the-fiscal year basis beginning with the end of fiscal year 2009, the Secretary of the Treasury shall proportionately distribute the total amounts in the Fund to the Secretary and the Secretary of Commerce based on the amounts recovered by the two Departments in fines and penalties under this Act. These amounts shall be used to—

- (1) pay the reasonable and necessary costs incurred by either the Secretary or the Secretary of Commerce to provide temporary storage, care, maintenance, and disposal of any albatross or petrel or other property seized in connection with a violation of this Act or any regulation or permit issued under this Act;
- (2) initiate, manage, and improve albatross and petrel conservation projects;
- (3) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this Act or any regulation or permit issued under this Act;
- (4) pay for any expenses related to enforcement of this Act, including any necessary expenses for equipment, training, travel, witnesses, and contracting services;
- (5) reimburse any Federal or State agency for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary or the Secretary of Commerce entered into pursuant to section 403(a), or any agreement for non-enforcement activities related to this act as authorized by law; and
- (6) pay for any other measures necessary to carry out obligations under the Agreement.

(c) ADMINISTRATION.—Amounts made available under subsection (b) shall –

- (1) be made available, without further appropriation, in accordance with this section;
- (2) remain available until expended; and

(3) be in addition to any amounts appropriated under any other provision of law.

TITLE V – AGREEMENT AUTHORITY, EMERGENCY MEASURES, COOPERATION AND GRANTS

SEC. 501. AGREEMENT AUTHORITY.—

(a) IN GENERAL.—The Secretary and the Secretary of Commerce shall each designate an office or program from the U.S. Fish and Wildlife Service and from the National Marine Fisheries Service, respectively, that shall jointly function as the United States’ Authority in accordance with Article VII of the Agreement, to undertake, monitor, and control all activities carried out in the implementation and enforcement of the Agreement within their respective jurisdictions, and shall jointly designate a United States Representative in accordance with Article IX of the Agreement.

(b) ROLE OF UNITED STATES AUTHORITY.—The United States Authority authorized by this section shall, among other things, monitor all activities that may have an impact on the conservation status of those albatrosses and petrels for which the United States is a range state and shall each designate a Contact Point for communication with the Secretariat.

SEC. 502. EMERGENCY MEASURES.—

(a) IN GENERAL.—Consistent with the authorities provided to each in Titles II and VIII of this Act and other applicable law, the Secretary and the Secretary of Commerce, in consultation with each other, are authorized to adopt immediate conservation measures if, on the basis of the best scientific information available, either of them deem such measures necessary to prevent a significant threat to, or to avoid deterioration of, the conservation status of albatrosses or petrels

(b) NOTIFICATION.—If such a determination is made and immediate conservation measures are adopted, the designated office or program in the Department adopting the conservation measures shall—

(1) inform the other Parties and the Secretariat of the measures taken or of the reasons why the recommendation could not be implemented; and

(2) prescribe emergency regulations to avoid deterioration of the conservation status of the albatrosses or petrels concerned.

(c) MULTI-PARTY EMERGENCIES.—If the emergency involves another Party or Parties, the Secretary or the Secretary of Commerce, in consultation with each other and in cooperation with the Secretary of State, is authorized to develop and implement such measures in cooperation with such Party or Parties.

(d) PUBLICATION AND TERM OF MEASURES.—Emergency regulations prescribed under this section—

(1) shall be published in the Federal Register, together with an explanation thereof, and are exempt from the requirements in 5 U.S.C. 553;

(2) shall remain in effect for the lesser of one year or until it is determined that they are no longer required to address the threat to, or to avoid deterioration of, the conservation status of the albatrosses or petrels concerned; and

(3) may be extended through rulemaking consistent with requirements of 5 U.S.C. 553 by the proposal and adoption of regulations in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.), or be terminated by publication in the Federal Register of a notice of termination, together with an explanation of why the emergency no longer exists. Termination notices are exempt from the requirements of 5 U.S.C. 553.

SEC. 503. REPORTING.—

(a) REPORT TO CONGRESS.—The Secretary, in cooperation with the Secretary of Commerce, the Secretary of State, and any other Federal agency, as appropriate, shall within twelve months after the effective date of this Act and every 4 years thereafter report to the Congress—

(1) the list of all albatrosses and petrels subject to the provisions of this Act;

(2) the current status of all albatrosses and petrels which occur in the United States and within the waters subject to the jurisdiction of the United States;

(3) actions taken and those conservation measures believed necessary to achieve and maintain a favorable conservation status for albatrosses and petrels; and

(4) information regarding any permit or exemption granted, including information on the time and location of the exempted activities.

(b) REPORT TO THE PARTIES.—The Secretary and the Secretary of Commerce may jointly provide to the Advisory Committee through the Secretariat a synthesized report on the United States' implementation of the Agreement, with particular reference to conservation measures undertaken, to be provided to the Meeting of Parties as prescribed in the Agreement.

SEC. 504. GENERAL COORDINATION. – In carrying out appropriate sections of this Act, the Secretary and the Secretary of Commerce –

(1) are authorized to work together and may request other Federal agencies to take certain actions to achieve or maintain a favorable conservation status for albatrosses or petrels;

(2) shall consult with the heads of other Federal agencies when taking actions on lands or waters owned by the United States and under the jurisdiction of such Federal agency.

SEC. 505. AGREEMENTS AND GRANTS. - The Secretary and the Secretary of Commerce, in consultation with each other, may enter into cooperative agreements, contracts, or other agreements with, or make grants, transfer funds to, or receive funds from, States, local governments, , Indian Tribal governments, educational institutions, or other persons to carry out the purposes and policies of this Act.

TITLE VI – INTERNATIONAL COOPERATION AND ASSISTANCE

SEC. 601. COOPERATION AMONG NATIONS.—

(a) IN GENERAL.—The Secretary, the Secretary of Commerce, and the Secretary of State are authorized to cooperate with other nations to achieve and maintain a favorable conservation status of albatrosses and petrels, including—

- (1) development of systems for collecting and analyzing data, and exchanging information;
- (2) exchange of information regarding adoption and enforcement of legislative and other management approaches to conservation of albatrosses and petrels;
- (3) implementation of education and awareness programs for users of areas where albatrosses and petrels may be encountered;
- (4) design and implementation of comprehensive programs for public information in relation to the conservation of albatrosses and petrels;
- (5) development and implementation of training programs on conservation techniques and measures to mitigate threats affecting albatrosses and petrels;
- (6) undertaking the exchange of expertise, techniques, and knowledge; and
- (7) concluding cooperative arrangements, including, as appropriate, international agreements.

(b) ASSISTANCE.— (1) The Secretary and the Secretary of Commerce, in cooperation with the Secretary of State, are authorized to provide training, technical, and financial support to the Secretariat, and other international and intergovernmental organizations as well as other nations and range states to assist them in implementing the objectives of the Agreement.

SEC. 602. COOPERATION WITH INTERNATIONAL BODIES.— The Secretary of State, in cooperation with the Secretary and the Secretary of Commerce, as appropriate, may promote the objectives of the Agreement and develop and maintain coordinated and complementary working relationships with relevant international, regional, and sub-regional bodies, including those concerned with the conservation and management of albatrosses and petrels and their habitats and other living marine resources.

TITLE VII – BYCATCH AND EQUIVALENT CONSERVATION

SEC. 701. BYCATCH.—Section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) is amended by inserting, at the end of paragraph (2), “The term also includes any seabirds incidentally taken in a fishery.”

SEC. 702. PROTECTED LIVING MARINE RESOURCES—Section 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k) is amended by—

(1) striking in paragraph (e) “(e) Protected living marine resource defined” and all that follows through “. . . Fauna; but”; and

(2) inserting in its place: “(e) **PROTECTED LIVING MARINE RESOURCE DEFINED.**—

“In this section the term ‘protected living marine resource’—

“(A) means non-target fish, sea turtles, seabirds, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, the Convention on International Trade in Endangered Species of Wild Flora and Fauna, and the Albatross and Petrel Conservation Act of 2009; but. . .”

TITLE VIII – MISCELLANEOUS PROVISIONS

SEC. 801. REGULATORY AUTHORITY.—

(a) IN GENERAL.—(1) Except as otherwise provided in this subsection, the Secretary is authorized to develop and issue regulations for the implementation of this Act.

(2) The Secretary of Commerce is authorized to develop and issue regulations to implement this Act with respect to sections 203(a)(4); 203(b); 204(c); 303(b); 701; and 702.

(3) The Secretary and the Secretary of Commerce are authorized to jointly develop and issue regulations to implement this Act with respect to sections 202; 204(a)(4); 204(b)(2); 204(d); 205; 206; 405; 501; 502; 504; 505; 601; and 602.

(4) The Secretary and the Secretary of Commerce are each authorized to issue regulations necessary to implement this Act with respect to sections 204(b)(1); 301; 401; and 403.

(b) CONSULTATION.—In developing regulations pursuant to this Act, the Secretary and the Secretary of Commerce shall consult with one another.

(c) **CONCURRENCE.**—In developing regulations pursuant to this Act, the Secretary and the Secretary of Commerce shall consult with the Director of the National Science Foundation, or his designee, on implementation matters related to Antarctica.

SEC. 802. SAVINGS PROVISION.—

(a) **IN GENERAL.**—Except as specified in sections 701 and 702, nothing in this Act shall be construed as repealing, superseding, overriding, or modifying any provision of Federal law, including, in particular those laws providing —

(1) the Secretary with authority to conserve and manage resources, including regulating access, on lands and in waters under the management jurisdiction of the Department of the Interior; and conserve and manage migratory birds; and

(2) the Secretary of Commerce with authority to conserve and manage marine resources in waters under the management jurisdiction of the Department of Commerce; conserve and manage marine fisheries; and minimize bycatch.

(b) **EFFECT ON LANDS AND WATERS.**—

(1) No provision of this Act shall be construed as authorizing the Secretary or the Secretary of Commerce to carry out any activities under this Act on lands or in waters under the area-based management jurisdiction of the other, unless both Secretaries concur.

(2) In areas where the Secretary and the Secretary of Commerce share area-based management jurisdiction, they shall carry out the provisions of this Act consistent with existing laws, Presidential Proclamations, Executive Orders, memoranda, or other agreements in place for that purpose.

(3) In those areas where neither the Secretary nor the Secretary of Commerce has explicit area-based management jurisdiction, they shall carry out the provisions of this Act in consultation with each other.

SEC. 803. SEVERABILITY PROVISION.—If any provision of this Act, or the application of any provision of this act to any person or circumstance, is held invalid by a court of competent jurisdiction, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby.

SEC. 804. EFFECTIVE DATE.—The provisions of this Act shall take effect 180 days after its enactment.

SEC. 805. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary and the Secretary of Commerce such sums as are necessary for each of fiscal years 2009 through 2014 to carry out the provisions of this Act.