SEC. ___. EXEMPTING MILITARY READINESS ACTIVITIES FROM THE FIVE-YEAR LIMITATION IN THE MARINE MAMMAL PROTECTION ACT OF 1972.

Clause (i) of section 101(a)(5)(F) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)(F)) is amended—

(1) by striking "and" and inserting ", 'during periods of not more than five consecutive years each'," ; and

(2) by inserting ", and 'during each five-year (or less) period concerned'" before the period.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Currently under section 101(a)(5)(A)(i) of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1371(a)(5)(A)(i)) incidental takings of marine mammals during military readiness activities are only authorized for periods up to five years. This is inconsistent with other environmental statutes which address the incidental taking of marine mammals which do not temporally limit the authorization. For example, the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) requires each Federal agency to insure, in consultation with the respective Secretary, that any agency action, irrespective of the time period of the agency action, not jeopardize the continued existence of any endangered or threatened species. The Secretary is likewise authorized under section 7(b)(4) of the ESA (16 U.S.C. 1536(b)(4)) to issue a written statement exempting the agency action, again, irrespective of any time period for the agency action, from the prohibitions of section 9 of the ESA (16 U.S.C. 1538). The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) contains no temporal limitation for agency actions. Although neither the ESA nor NEPA specify that the agency action must be limited to a specific time period, the implementing regulations for both statutes detail that in the event of significant changes to the action or effects of the action, that the Federal agency must reinitiate consultation under section 7 of the ESA or issue a supplemental environmental analysis in accordance with the procedural requirements of NEPA.

This five-year limitation on MMPA authorization results in environmental planning inefficiencies. The Department of the Navy is required to seek MMPA take authorization for at-sea testing and training military readiness activities which may take marine mammals. Because issuance of the take authorization is considered a major Federal action, subject to NEPA, environmental planning documents must be prepared, oftentimes an environmental impact

statement, regardless of whether the ESA or NEPA regulatory threshold for reinitiation or supplementation have been reached. The administrative cost for the Navy's At-Sea environmental analysis for the years 2005 through 2017 was $362.5 million. The Navy would benefit from this legislation as this change will bring certainty to the Navy's ability to conduct mission essential testing, training and research activities, while eliminating what has become an inefficient, effectively continuous MMPA permitting process for military readiness activities, the effects of which have changed very little over time. This creates potential for cost and manpower savings in the long-term. At the same time, the protections to the species would not diminish, as the requirements to update NEPA planning documentation and re-submit or amend requests for MMPA incidental take authorization due to changed circumstances (e.g., a substantial change in the nature of the activity, or a significant increase in the amount of estimated incidental take) would remain. Exempting military readiness activities from the five-year requirement aligns the MMPA with the ESA and NEPA.

The Department of Defense would still be required to consult with the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service, as appropriate, if it is determined that a military readiness activity may affect a listed species under section 7(a)(2) of the ESA or a species proposed for listing under section 7(a)(4) of the ESA.

Budget Implications: This proposal does not have budget implications for the Department of Defense. The table below details Department of Defense resource requirements associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	$0.00	$0.00	$0.00	$0.00	$0.00	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to 16 U.S.C. 1371(a)(5)(A)(i):

SECTION 1371. MORATORIUM ON TAKING AND IMPORTING MARINE MAMMALS AND MARINE MAMMAL PRODUCTS.

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(a)(5)(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

(i) In subparagraph (A), "within a specified geographical region" ~~and~~, "during periods of not more than five consecutive years each", "within that region of small numbers", and "during each five-year (or less) period concerned".

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