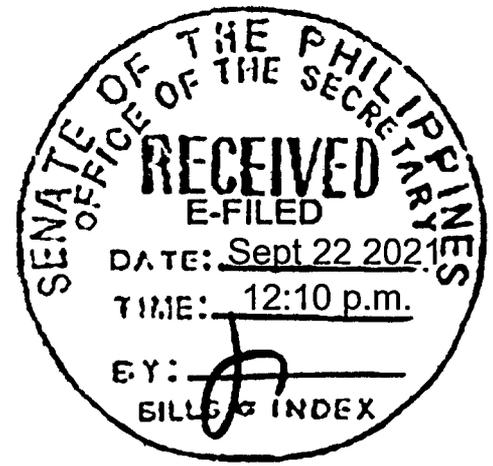


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

SENATE
S.B. No. 2412



INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT
RECOGNIZING THE SENTIENCE, SAPIENCE, AND INHERENT RIGHTS OF
MARINE MAMMALS AND PROVIDING MECHANISMS FOR THE PROTECTION
AND ENFORCEMENT THEREOF**

EXPLANATORY NOTE

Sentience has been defined as the ability to feel or perceive the world around you and as a result have subjective experiences. There is now a wide body of scientific evidence to support sentience in a wide range of species and this evidence comes from a broad range of scientific disciplines from animal behavior to neurophysiology.

Beyond sentience there is also now an impressive body of evidence on consciousness in a wide range of species. In the Protocol on Animal Welfare included in the European Union's Treaty of Amsterdam, the sentience of animals is expressly recognized:

Desiring to ensure improved protection and respect for the welfare of animals as sentient beings, have agreed upon the following provision, which shall be annexed to the Treaty establishing the European Community, in formulating and implementing the Community's agricultural, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

One step further along the continuum from sentience is the concept of sapience, which refers to specific attributes of intelligence, such as the ability to "act with appropriate judgement."

On July 7, 2012, a prominent international group of cognitive neuroscientists, neuro-pharmacologists, neuro-physiologists, neuroanatomists, and computational scientists gathered at the University of Cambridge to reassess the neurobiological basis of conscious experience and related behaviors in humans and what we commonly consider animals.

They found that non-human animals have the neuro-anatomical, neurochemical, and neurophysiological structures and systems underlying consciousness along with the capacity to exhibit intentional behaviors.

Thus, the weight of evidence indicates that consciousness is not unique to humans and that animals - including all mammals, birds, and many other creatures such as octopuses – are also capable of conscious thought.

Beyond anatomy and brain chemistry, there is further evidence to support the contention that whales, dolphins, and other marine mammals are sentient and sapient. Many of these species live in complex social groups, exhibiting complex behaviors such as cooperation and tool use.

Some whales and dolphins clearly even have their own cultures.

Science has also shown that whales and dolphins are capable of experiencing complex emotions such as grief and empathy, and that some live in complex, cultural societies. This realization requires us to do more than simply protect the conservation status of species or populations or protect individual welfare by recognizing their inherent rights as sentient, sapient species.

In the Philippines, the Supreme Court allowed a petition to be filed on behalf of "Resident Marine Mammals" such as toothed whales, dolphins, porpoises, and other cetacean species inhabiting the waters in and around the Tañon Strait.

Beyond the legal and philosophical issues involved, marine mammal populations are distributed throughout the world's oceans. Their protection and conservation therefore requires concerted global action.

As predators at the top of the food chain, marine mammals play an important role in ensuring the health and balance of the ocean ecosystems. Globally, marine mammals face threats from human activities including by-catch from large-scale fishing activities, collision with vessels, depletion of food stocks, hunting and illegal trade, oceanic pollution, habitat destruction, and climate change.

As a signatory to the Convention on the Conservation of Migratory Species of Wild Animals (hereinafter, referred to as the "CMS" or the "Bonn Convention"), and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (hereinafter, referred to as the "CITES"), it is the Philippines' treaty obligation to protect marine mammals within, outside, and transiting its territory.

According to the *Red List Status of Marine Mammals in the Philippines*, a publication produced by the country's top marine mammal scientists, the status of the populations of most marine mammals in the country is "data deficient." This means that the different marine mammal populations in the Philippines cannot be evaluated due to insufficient information about their status in the wild. It is therefore of utmost importance, with the aim of conserving local populations, for the Philippine government to support scientific studies that assess the current marine mammal populations in the country. In this regard, there are several laws and regulations which seek to protect marine mammals/wildlife in the country, to wit:

- (a) Fisheries Administrative Order 185, Series of 1992 (hereinafter, referred to as "FAO 185"), and Fisheries Administrative Order 185-1, Series of 1997 (hereinafter, referred to as "FAO 185-1"), which makes the taking or catching of dolphins, whales, and porpoises in Philippine waters, or the selling, purchasing, possession, transport, or export of the same, whether dead or alive, in any state or form, unlawful;
- (b) Republic Act No. 8485, otherwise known as the Animal Welfare Act of 1998 (hereinafter, referred to as "RA 8485" or the "Animal Welfare Act"), as amended by Republic Act No. 10631, which penalize the abuse,

maltreatment, or neglect of animals and the killing, except in certain instances provided by law, of animals other than cattle, pigs, goats, sheep, poultry, rabbits, carabaos, and horses; and

- (c) Republic Act No. 9147, otherwise known as the "Wildlife Resources Conservation and Protection Act" (hereinafter, referred to as "RA 9147" or the "Wildlife Act"), makes it state policy to conserve the country's wildlife resources and their habitats by, among others, pursuing the country's commitment to relevant international treaties and conventions.

Despite the foregoing, however, the direct taking of dolphins from Philippine waters, as well as the importation and exportation of wild dolphins from inhumane and unsustainable sources, in violation of existing laws, regulations, and international conventions, have been documented, including:

- (a) Local dolphins are captured for display and human interaction in Misamis Occidental without appropriate permits in violation of the FAO 185 & 185-1, and the Animal Welfare Act;
- (b) In January 2001, five false killer whales caught in Japan were imported into the country. A sixth one died before it arrived in the Philippines. Today, none of these animals remain alive;
- (c) In 2004, 4 bottlenose dolphins caught in Japan were imported into the country. In the same year, one of the bottlenosed dolphins died. In 2009, another 4 bottlenose dolphins came into the country from Japan; and
- (d) In December 2008, January 2009, and January 2011, the Philippines imported a total of 25 bottlenose dolphins caught in the wild from the Solomon Islands.

The animals from Japan were caught from what is known as the drive hunts. In these hunts, pods of dolphins are driven to shallow waters. After marine parks have selected animals for use in the dolphin-show industry, the rest are brutally and indiscriminately killed, a practice that has received widespread condemnation for its cruel and inhumane nature. The 2010 Oscar-winning documentary, "The Cove", clearly documents the conduct of these hunts.

The World Association of Zoos and Aquariums has issued a policy statement condemning the Japanese dolphin hunts as inhumane. A similar policy statement has been made by the Alliance of Marine Mammal Parks and Aquariums.

From December 2008 to January 2011, the Philippines imported dolphins from the Solomon Islands despite the scientific opinion of the International Union for the Conservation of Nature that the export of dolphins from the Solomon Islands does not have a credible Non-Detriment Finding or "NDF".

A Non-Detriment Finding is a determination by a credible Scientific Authority of the exporting state that the export will not be detrimental to the survival of that species in the wild. Given the lack of a NDF, the CITES Scientific Authorities in the Philippines, such as Silliman University and the National Museum, support a ban on the import of dolphins until such time that a credible NDF from the exporting state is forwarded.

Despite the lack of a credible NDF, the country imported a total of 25 dolphins, and subsequently re-exported them to Singapore in 2012, causing the death of one dolphin, which died in transit.

This issue is the subject of an on-going case for a violation of the Wildlife Act filed by a number of animal welfare and environmental groups, led by the Earth Island Institute-Philippines, the Philippine Animal Welfare Society, and Compassion and Responsibility for Animals.

The recognition of the sentience and sapience of cetaceans, such as dolphins or whales make it clear why they should be protected: it is a moral obligation on the part of the human species - the dominant species on this planet - to recognize and safeguard the inherent rights of another sentient species.

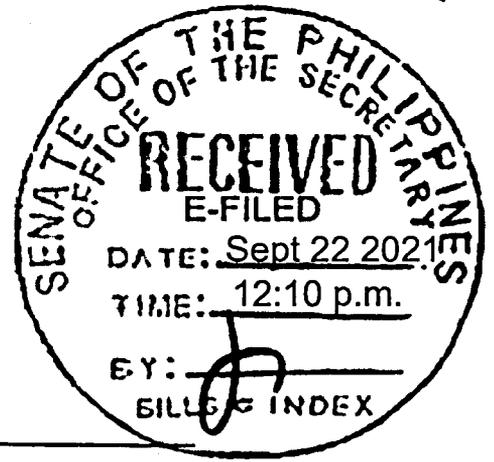
Given the legal, humane, and sustainability issues raised, there is a need to enact legislation articulating state policy regarding the protection of marine mammals in Philippine waters, and reiterating this country's international treaty commitments to the global conservation and protection of marine mammals.

As such, the immediate passage of this bill is earnestly sought.


RISA HONTIVEROS
Senator

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1 **SECTION 1. *Short Title.*** This Act shall be known as the "Marine Mammal Act of 2021."

2 **SECTION 2. *Policy.*** It is hereby declared the policy of the State to recognize that marine
3 mammals including, but not limited to, dolphins, whales, and other cetaceans, are
4 sentient, sapient, and cultural. Thus, the State shall likewise recognize, safeguard, and
5 uphold, the inherent, fundamental, and alienable rights possessed by these fellow
6 sentient species.

7 The State shall partner with academic and scientific institutions in studying and
8 assessing marine mammal populations and societies within the territorial jurisdiction of
9 the Philippines in order to better understand how these populations and societies can
10 best be protected from harmful human activity.

11 **SECTION 3. *Inherent and Fundamental Rights of Marine Mammals.*** The State hereby
12 recognizes the following inherent, fundamental, and inalienable rights of marine
13 mammals:

- 14 (a) The right to exist, free from disturbance, molestation, and exploitation
15 caused by human activity;
- 16 (b) The right to the maintenance of their natural habitat, as well as the vital
17 cycles, functions and processes that ensure their continued sustainability
18 and well-being; and
- 19 (c) The right to adequate and effective representation *vis-à-vis* the protection
20 and enforcement of these rights.

21 These rights shall be in addition to, and shall not impair or limit, any other right or
22 remedy available under existing law, administrative regulation or jurisprudence. A
23 violation of any existing environmental or conservation law or regulation shall be deemed
24 a *prima facie* violation of these rights.

25 **SECTION 4. *Coverage.*** All species belonging to the Taxonomic Orders *Carnivora*,
26 *Cetartiodactyla*, and *Sirenia* are expressly covered by this Act.

27 **SECTION 5. *Definition of Terms.***

- 28 (a) "State" shall mean the Philippine government, or any department, agency,
29 bureau, or subdivision thereof;
- 30 (b) "Animal" shall mean the marine mammals;

- 1 (c) "Live" shall mean an animal that is living and in apparent good health;
- 2 (d) "Marine Mammals" shall mean any mammalian species that lives in salt
3 water or derives its food from a saltwater environment, representing three
4 different mammalian groups: those belonging to the Order *Carnivora* (polar
5 bears, sea otters, seals, sea lions, and walruses), Order *Cetartiodactyla*
6 (cetaceans), and Order *Sirenia* (manatees and dugongs);
- 7 (e) "Marine Protected Areas & Networks" shall mean a clearly defined
8 geographical space, recognized, dedicated and managed, through legal or
9 other effective means, to achieve the long-term conservation of nature with
10 associated ecosystem services and cultural values;
- 11 (f) "Marine Corridor" shall mean a geographical feature used by mobile species
12 for migration between feeding and mating areas;
- 13 (g) "Wild" shall mean any animal that was born, and is living or growing in the
14 natural environment or any animal that is not domesticated, cultivated, or
15 captive-bred;
- 16 (h) "Captive Bred or F2 Generation" shall mean animals that are the offspring
17 of animals which were themselves born in captivity. If either of the
18 individual's parents was wild or caught in the wild, the offspring is regarded
19 as captive-reared, rather than captive-bred;
- 20 (i) "Captive breeding" is the process of breeding animals in human controlled
21 environments with restricted settings, such as wildlife reserves, zoos and
22 other conservation facilities.
- 23 (j) "Take or catch" shall include the killing, capturing, trapping, snaring, and
24 netting of marine mammals;
- 25 (k) "Sell" shall mean barter, exchange, or offering or exposing for sale;
- 26 (l) "Purchase" shall mean to buy, and includes agreeing or offering to buy;
- 27 (m) "Possess" shall mean to have actual or constructive possession or control
28 of a marine mammal;
- 29 (n) "Transport" shall mean to carry or move or cause to be carried or moved;
- 30 (o) "Import" shall mean to send, ship, or otherwise transport into the country;
- 31 (p) "Export" shall mean to send, ship, or otherwise transport out of the country
- 32 (q) "Trade" shall mean to barter, exchange, or sell in any commercial, profit-
33 oriented activity;
- 34 (r) "Commercial Purposes" shall mean to use in any profit-oriented activity,
35 commerce, or trade;
- 36 (s) "Rescue" shall mean to take any marine mammal immediately out of
37 danger;
- 38 (t) "Rehabilitation" shall mean the process of removing animals from the wild
39 to provide professional care to sick, injured, and orphaned animals using
40 methods to prepare them for their ultimate return to their natural habitat;
- 41 (u) "Release" shall mean to return a marine mammal to its natural habitat;

- 1 (v) "CITES" shall mean the Convention on the International Trade in
2 Endangered Species of Wild Fauna and Flora;
- 3 (w) "Stranding" shall mean incidents involving marine mammals swimming or
4 floating to shore and becoming "beached" or stuck in shallow water; and
- 5 (x) "CITES Scientific Authorities" shall include the Silliman University, UP Marine
6 Science Institute, and other local or international scientific non-government
7 organizations.

8 **SECTION 6. *Marine Protected Areas & Networks, and Marine Corridors.*** The State shall
9 designate Marine Protected Areas and Networks, and Marine Corridors on known marine
10 mammal migration routes, feeding and mating habitats for the purpose of protecting wild
11 marine mammal populations from industries and human activity that are, or are
12 reasonably likely to be, detrimental to their health and well-being including, but not
13 limited to, offshore drilling, seismic tests, and other similar activities.

14 **SECTION 7. *Marine Mammal Tours and Watching.*** The State shall promote responsible
15 whale and dolphin-watching tours in the wild that contribute to public education and
16 enhance the local economy.

17 Whale and dolphin-watching tours shall be conducted in accordance with protocols
18 embodied in rules and regulations to be drafted for this purpose by the Department of
19 Agriculture, Department of Environment and Natural Resources, Biodiversity Management
20 Bureau, and Department of Tourism (hereinafter, referred to as the "DA", "DENR", "BMB",
21 and "DOT", respectively) in conformity with the policies stated in this Act. Such protocols,
22 rules, and regulations shall be updated periodically in accordance with the latest scientific
23 information.

24 **SECTION 8. *Habitat Preservation.*** The State shall promote the welfare of all marine
25 mammals by protecting all known habitats and ensuring that marine mammal populations
26 in the Philippines are not subjected to any distress, injury or death arising from human
27 activities. The State shall likewise promote the welfare of all marine mammals by ensuring
28 that they are allowed to live in their natural habitat, and conform to their natural
29 behaviors.

30 **SECTION 9. *Prohibitions*** - It shall be unlawful to:

- 31 (a) Take or catch marine mammals in Philippine waters, or to sell, purchase,
32 possess, transport, import or export, and trade the same whether dead or
33 alive, in any state or form whether raw or processed;
- 34 (b) Deploy purse-seine nets on, or to encircle, marine mammals in fishing
35 operations, or to intentionally wound and kill any marine mammals in the
36 course of catching other species of fish;
- 37 (c) Import and export live, wild, marine mammals, including rescued or
38 rehabilitated animals. The import/export of parts or tissues of deceased
39 animals may be allowed for research purposes, upon application by
40 reputable universities, and scientific institutions. All applications to import
41 or export such marine mammal parts or tissues for research purposes shall
42 be reviewed and evaluated by the BMB, DENR, and DA, as well as by the
43 CITES Scientific Authorities; and
- 44 (d) Take any stranded or rescued live marine mammal for trade or other
45 commercial purposes, including for display or exhibition, while being
46 rehabilitated. All rehabilitated marine mammals shall be immediately
47 released into the wild.

1 **SECTION 10. *Captive Breeding.*** Captive breeding for marine mammals should be
2 established in a manner not detrimental to the survival of the species in the wild and
3 must be maintained without addition of animals from the wild. Captive breeding facilities
4 must be managed in a manner that has been demonstrated to be capable of reliably
5 producing second-generation, or F2, offspring in a controlled environment.

6 Only live, captive-bred, marine mammals of the second or F2 generation sourced
7 from reputable aquariums shall be imported and/or exported into our out of the country,
8 subject to compliance with existing laws as well as all applicable rules and regulations,
9 including, but not limited to, Republic Act No. 9147, otherwise known as the "Wildlife
10 Resources Conservation and Protection Act" (hereinafter, referred to as "RA 9147" or the
11 "Wildlife Act"), Republic Act No. 8485, otherwise known as the Animal Welfare Act of
12 1998 (hereinafter, referred to as "RA 8485" or the "Animal Welfare Act").

13 The export and import of marine mammals shall likewise require the approval of
14 the BMB, DENR, DA, and CITES Scientific Authorities, after assessment and evaluation of
15 all pertinent facts and circumstances.

16 **SECTION 11. *Rescue*** - All rescue efforts in response to strandings and other instances
17 of marine mammals in distress, shall ensure that the well-being of all animals involved is
18 prioritized, and should not, as far as practicable, cause further stress, pain, or discomfort
19 to the animal. All rescue efforts must have the objective of releasing marine mammals
20 back into the wild as viable components of the wild marine mammal population.

21 All stranded marine mammals shall be released immediately to the wild if healthy
22 and alive. The disposition of sick or injured marine mammals shall be the responsibility
23 of the BMB, DENR, and DA in consultation with CITES Scientific Authorities. All dead
24 marine mammals shall be surrendered to the nearest BMB, DENR, DA office for proper
25 disposition.

26 The BMB, DENR, and DA shall draft, in accordance with the policies stated in this
27 Act, rules and regulations embodying protocols for the proper rescue, rehabilitation, and
28 release of marine mammals.

29 **SECTION 12. *Rehabilitation*** - Rehabilitation of marine mammals shall only be
30 undertaken if there is a high probability that the animal can be restored to health and
31 released back into the wild. Rehabilitation shall be subject to:

- 32 (a) Availability of facilities and/or equipment for the species and number of
33 animals involved;
- 34 (b) Safe and expeditious transport of all animals involved, which animals should
35 be in a manageable state and pose no serious risks to others or to facility
36 staff; and
- 37 (c) Sufficient resources and trained personnel to provide adequate care to the
38 animal for a reasonable period of time.

39 It shall be unlawful to take any stranded or rescued live marine mammal for trade
40 or other commercial purposes, including for display or exhibition, while being
41 rehabilitated. All rehabilitated marine mammals shall be immediately released to the wild.

42 The disposition of any rehabilitated animal that is not suitable for release into the
43 wild shall be in accordance with recommendations made by the authorized CITES
44 scientific authorities, including the Silliman University, UP Marine Science Institute, and
45 other local or international scientific non-government organizations.

1 If the required facilities and equipment are available on-site, stranded and severely
2 injured animals that are beyond rehabilitation maybe euthanized by licensed veterinarians
3 authorized to perform the necessary procedure or procedures therefore.

4 **SECTION 13. *Marine Mammal Protection and Conservation Committee.*** A Marine
5 Mammal Protection and Conservation Committee to be composed of the BMB, DENR, DA,
6 the Bureau of Fisheries and Aquatic Resources, reputable scientists and marine mammal
7 experts, CITES Scientific Authorities, and representatives from concerned non-
8 government organizations, shall be created.

9 The Marine Mammal Protection and Conservation Committee shall:

- 10 (a) Develop and coordinate research programs for marine mammals in the
11 Philippines;
- 12 (b) Develop manuals and protocols for the rescue of stranded animals;
- 13 (c) Develop manuals and guidelines for dolphin and whale watching tours; and
- 14 (d) Undertake and technical assessments of rescued, stranded or rehabilitated
15 marine mammals.

16 **SECTION 14. *Penalties*** – Any violation of this Act shall subject the offender to a fine of
17 at least Two Hundred Fifty Thousand Pesos (P250,000.00) but not more than more than
18 Five Hundred Thousand (P500,000.00) Pesos, and imprisonment of six (6) months to two
19 (2) years, at the discretion of the Court.

20 **SECTION 15. *Representation & Standing.*** Any Philippine resident may file an action to
21 enforce the rights or obligations recognized under this Act on behalf of an individual,
22 population, or society belonging to the marine mammal species protected by this Act,
23 which shall be the real party-in-interest. Upon the filing of any such action, the Court
24 shall issue an order which shall contain a brief description of the cause of action and the
25 reliefs prayed for, requiring all interested parties to manifest their interest to intervene in
26 the case within a reasonable amount of time from notice thereof.

27 **SECTION 16. *Strategic Lawsuits against Public Participation.*** A Strategic Lawsuit against
28 Public Participation (SLAPP) is any action filed to harass, vex or exert undue pressure
29 against any person or legal entity that has taken legal action or made a public
30 communication of any kind in connection with the enforcement or protection of the rights
31 recognized herein or any other environmental law or regulation. The defendant in a SLAPP
32 may file a special motion to dismiss at any point of the proceedings alleging that the case
33 is a SLAPP. This special motion to dismiss shall be resolved within thirty (30) days after
34 it is heard. If the court dismisses the SLAPP, it shall award damages, attorney's fees and
35 costs of suit. The dismissal shall be with prejudice.

36 **SECTION 17. *Construction.*** This Act shall be liberally construed for the purpose of
37 promoting, enhancing and protecting the rights of marine mammals recognized herein.

38 **SECTION 18. *Implementing Rules and Regulations.*** — Within twelve (12) months
39 following the effectivity of this Act, the Secretaries of the Department of Environment and
40 Natural Resources and the Department of Agriculture, CITES Scientific and Management
41 Authorities, in coordination with the Committees on Environment and Ecology of the
42 Senate and the House of Representatives, respectively, shall promulgate rules and
43 regulations for the effective implementation of this Act. Whenever appropriate,
44 coordination in the preparation and implementation of rules and regulations on joint and
45 inseparable issues shall be done by both Departments. The commitments of the State to

1 international agreements and protocols shall likewise be a consideration in the
2 implementation of this Act.

3 **SECTION 19. *Separability Clause.*** If any provision of this Act is declared unconstitutional
4 or invalid by a court of competent jurisdiction, the remaining provisions not affected
5 thereby shall continue to be in full force and effect.

6 **SECTION 20. *Repealing Clause.*** All laws, decrees, executive orders, department or
7 memorandum orders and other administrative issuances or parts thereof which are
8 inconsistent with the provisions of this Act are hereby modified, superseded or repealed
9 accordingly.

10 **SECTION 21. *Effectivity.*** This Act shall take effect fifteen (15) days after publication in
11 the Official Gazette or in at least two (2) newspapers of general circulation.

12 Approved,