

Calendar No. 154

111TH CONGRESS }
1st Session }

SENATE

{ REPORT
111-70

MARINE MAMMAL RESCUE ASSISTANCE
AMENDMENTS ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 859



AUGUST 6, 2009.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

79-010

WASHINGTON : 2009

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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MARINE MAMMAL RESCUE ASSISTANCE AMENDMENTS ACT OF 2009

AUGUST 6, 2009.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 859]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 859) to amend the provisions of law relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 859, the Marine Mammal Rescue Assistance Amendments Act of 2009, as reported, is to amend provisions of the Marine Mammal Protection Act of 1972 (MMPA, 16 U.S.C. 1361 et. seq.) relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program. The bill would add authorization for entanglement response agreements to existing provisions relating to stranding response agreements. The bill would define the terms “entanglement” and “emergency assistance.” S. 859 would require the Secretary of Commerce to update existing practices and procedures for rescuing and rehabilitating entangled marine mammals. The bill amends provisions relating to the Unusual Mortality Event Funding to authorize advance payments under contracts or other mechanisms to support property, services, supplies, salaries and travel costs in support of responding to an entangled or stranded marine mammal. Further, S. 859 would establish in the Treasury an interest bearing fund entitled the “John H. Prescott Marine Mammal Rescue and Rapid Response Fund” and allow the Secretary to solicit, accept, receive, hold, administer, and use gifts, de-

vises, and bequests for marine mammal stranding and entanglement responses.

BACKGROUND AND NEEDS

The MMPA was enacted in 1972 to protect and conserve marine mammals and established a moratorium on taking or importing marine mammals and marine mammal products, except for certain regulated or permitted activities. The MMPA defines “take” as “to harass, hunt, capture, or kill or attempt to harass, hunt capture, or kill any marine mammal.” In 1992, Congress enacted the Marine Mammal Health and Stranding Response Act (P.L. 102–587) as Title IV of the MMPA. The Marine Mammal Health and Stranding Response Act statutorily recognized the marine mammal stranding network, established procedures for responding to unusual marine mammal mortality events, and established the National Marine Mammal Tissue Bank.

Most marine mammal strandings are not associated with unusual mortality events. Strandings often involve the recovery of a dead marine mammal or the rescue of an animal that can be rehabilitated and released back into the wild. In 2000, the John H. Prescott Marine Mammal Rescue Assistance Grant Program was enacted into law (P.L. 106–555), to help defray the high cost of recovery and rehabilitation of marine mammals that fall outside the existing MMPA Title IV program. The Prescott stranding assistance program allows eligible Marine Mammal Stranding Network participants to use funds for: (1) recovery and treatment of marine mammals; (2) collection of scientific data from live and dead animals; and (3) improvement of the operation of rescue and rehabilitation centers. Prior to the establishment of this Federal grant program, assistance for strandings and rescues were provided by small, underfunded members of the Marine Mammal Stranding Network, who took on the financial burden to rescue and rehabilitate stranded marine mammals. It is the intention of the Committee that the funds authorized in this bill may also be used for the disposal of marine mammal carcasses.

The Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA), provides approximately 40 awards per year to Marine Mammal Stranding Network participants. To enhance the funding available for normal and emergency response activities, S. 859 would allow the Secretary to solicit, accept, receive, hold, administer, and use gifts, devises, and bequests for marine mammal stranding and entanglement responses. This provision would allow individuals and organizations a means to provide additional funding for response activities and emergencies, and thereby, leverage appropriated amounts to increase the capacity of the Marine Mammal Stranding Network. The establishment of the John H. Prescott Marine Mammal Rescue and Rapid Response Fund would allow NOAA more flexibility to provide funding for emergency responses in a timely manner to Marine Mammal Stranding Network participants. S. 859 would also allow the Secretary of Commerce to provide up to \$200,000 for individual grants. The Committee expects that the Secretary would continue to fund the maximum number of projects possible that meet the program’s criteria as well as make sure the program continues national coverage for stranding and entanglement activities.

Section 405 of the MMPA currently limits the Marine Mammal Unusual Mortality Event Fund to reimbursements for costs already incurred by the stranding network. This requires Marine Mammal Stranding Network organizations to pay for expenses upfront and then seek reimbursement for costs association with unusual mortality events (UMEs). Many stranding network organizations are non-profit organizations with limited capital resources. Since UMEs and disentanglement response and investigation activities often require the purchasing of substantial goods and services to examine, retrieve, and analyze carcasses or assist live animals in distress, most Marine Mammal Stranding Network participants find it difficult to front the necessary expenses. S. 859 would amend Section 405 to allow the Secretary of Commerce to authorize payments under contracts or other mechanisms to support property, services, supplies, salaries, and travel costs in response to a UME at the time of the response rather than requiring a Marine Mammal Stranding Network participant to seek reimbursement.

LEGISLATIVE HISTORY

The Marine Mammal Rescue Assistance Amendments Act of 2009 was introduced by Senator Cantwell on April 22, 2009, with Senators Rockefeller, Snowe, Kerry, and Nelson, and S. 859 was referred to the Senate Committee on Commerce, Science, and Transportation. On May 20, 2009, the Committee considered the bill in an open executive session. No amendments were offered to the bill as introduced, and the Committee, without objection, ordered S. 859 reported without amendment.

Staff assigned to this legislation are Kris Sarri, Democratic Professional Staff, and Todd Bertosen, Republican Senior Counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

AUGUST 5, 2009.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 859, the Marine Mammal Rescue Assistance Amendments of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 859—Marine Mammal Rescue Assistance Amendments of 2009

Summary: S. 859 would amend the Marine Mammal Protection Act of 1972 and would reauthorize funding for programs to protect and rescue marine mammals such as whales that become stranded or entangled. Assuming appropriation of the authorized amounts,

CBO estimates that implementing S. 859 would increase discretionary spending by \$43 million over the 2010–2014 period.

Enacting S. 859 also contains several provisions that could increase direct spending, but CBO estimates that any increases would be minimal.

S. 859 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 859 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2014–2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a						
Authorization Level	9	9	9	9	9	45
Estimated Outlays	7	8	9	9	9	43

^a Enacting S. 859 also would result in changes in direct spending, but CBO estimates that the net budgetary effect of such changes would be less than \$500,000 a year.

Basis of estimate: For this estimate, CBO assumes that S. 859 will be enacted near the end of fiscal year 2009 and that the authorized amounts will be provided as specified in the bill. Estimated outlays are based on historical spending patterns for these and similar programs.

Spending subject to appropriation

S. 859 would authorize appropriations totaling of \$9 million for each of fiscal years 2010 through 2014, including:

- \$7 million for the John H. Prescott Marine Mammal Rescue Assistance Program, of which National Oceanic and Atmospheric Administration (NOAA) would receive \$6 million and the U.S. Fish and Wildlife Service (USFWS) would receive \$1 million,
- \$0.5 million for the Marine Mammal Unusual Mortality Event Fund (administered by NOAA),
- \$0.5 million to carry out other activities under the 1972 act, and
- \$1 million for a new John H. Prescott Marine Mammal Rescue and Rapid Response Fund (rapid response fund), consisting of \$500,000 a year authorized to be appropriated directly to the fund as well as up to \$500,000 that NOAA could deposit to it from other appropriations. (The new fund also could receive private donations and interest credited to the fund on its unspent balances, both of which would be available without further appropriation.)

Assuming appropriation of the authorized amounts, CBO estimates that NOAA and the USFWS would spend a total of \$43 million over the 2010–2014 period, primarily for grants to nonfederal groups that rescue marine mammals.

Direct spending

Several provisions of S. 859 could increase direct spending, but CBO estimates that the net budgetary effect of those provisions

would be minimal. Provisions that may affect direct spending are discussed below.

Rapid Response Fund. The bill would allow NOAA to collect and spend private donations and earn interest on balances in the rapid response fund. Collecting and spending private donations would increase offsetting receipts and associated direct spending; the net effect of such transactions would be minimal in most years. Spending any interest credited to the funds would result in additional direct spending, but we estimate that such spending also would be negligible.

Unusual Mortality Event Funding. S. 859 would authorize NOAA to make advance, partial, or progress payments under contracts executed under this program. The agency's use of this authority could cause it to obligate funds in advance of appropriations, resulting in new direct spending. Because the number of unusual mortality events and the likely level of federal funding for them are small, CBO estimates that any outlays under such contracts would be less than \$500,000 annually.

Federal Tort Claims Act. The bill would provide that individuals who rescue marine mammals from entanglements (from fishing nets, for example) would be considered federal employees if their actions result in claims for damages under the Federal Tort Claims Act. Because such claims could be paid from the permanent, indefinite Judgment Fund, awards against the federal government could increase direct spending. Based on information provided by NOAA on the likely number of cases, however, CBO estimates that any increase in spending would be minimal.

Intergovernmental and private-sector impact: S. 859 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Deborah Reis; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 859, as reported, would authorize appropriations to continue and expand existing National Oceanic and Atmospheric Administration (NOAA) programs and would make a number of changes to current law. This bill would have little, if any, regulatory impact.

ECONOMIC IMPACT

This bill, as reported, is expected to have no impact on the nation's economy.

PRIVACY

The reported bill would have no impact on the personal privacy of U.S. citizens.

PAPERWORK

The reported bill may slightly increase the paperwork requirements for NOAA when updating the stranding response agreements.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

The first section would title this Act as the “Marine Mammal Rescue Assistance Amendments Act of 2009.”

Section 2. Stranding and Entanglement Response.

This section would amend section 403 of the MMPA (16 U.S.C. 1421b) to include the term “entanglement” and add authorization for entanglement response agreements to existing provisions relating to stranding response agreements. This section would require the Secretary of Commerce to update existing practices and procedures for rescuing and rehabilitating entangled marine mammals. This section would define the term “entanglement” as an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attach to it and is on a beach or shore of the United States or in waters under the jurisdiction of the United States.

Subsection (f) would reauthorize the John J. Prescott Marine Mammal Rescue Assistance Grant Program and provide the Secretary with the ability to solicit and accept gifts and other donations to increase the impact of the program. It would authorize \$7 million for each of fiscal years 2010 through 2014 to the program. The section also establishes within the Treasury an interest bearing fund called the “John H. Prescott Marine Mammal Rescue and Rapid Response Fund.”

This section would also authorize \$500,000 for each of fiscal years 2010 through 2014 for the Marine Mammal Unusual Mortality Fund and for the John H. Prescott Marine Mammal Rescue and Rapid Response Fund. Further, it would authorize the Secretary to deposit up to \$500,000 per fiscal year into the Funds from other MMPA funding. In addition, this section would also define the term “emergency assistance” as a response to an event that is not an unusual mortality event; that leads to an immediate increase in required costs for response, recovery, or rehabilitation; that may involve out-of-habitat animals; and may be cyclical or endemic.

Further, this section would amend provisions relating to the Unusual Mortality Event Funding to authorize advance payments under contracts or other mechanisms to support property, services, supplies, salaries and travel costs in support of responding to an entangled or stranded marine mammal.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 402. DETERMINATION; DATA COLLECTION AND DISSEMINATION.

[16 U.S.C. 1421a]

(a) DETERMINATION FOR RELEASE.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

(b) COLLECTION.—The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on—

(1) procedures and practices for—

(A) rescuing and rehabilitating stranded *or entangled* marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

(c) AVAILABILITY.—The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

[SEC. 403. STRANDING RESPONSE AGREEMENTS.]**SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE AGREEMENTS.**

[16 U.S.C. 1421b]

(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a [stranding.] *stranding or entanglement*.

(b) REQUIRED PROVISION.—An agreement authorized by subsection (a) shall—

(1) specify each person who is authorized to perform activities under the agreement; and

(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

(c) REVIEW.—The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

SEC. 405. UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

[16 U.S.C. 1421d]

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury an interest bearing fund to be known as the “Marine Mammal Unusual Mortality Event Fund”, which shall consist of amounts deposited into the Fund under subsection (c).

(b) USES.—

(1) IN GENERAL.—Amounts in the Fund—

(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

(i) [to compensate persons for special costs] *to make advance, partial, or progress payments under contracts or other funding mechanisms for property, supplies, salaries, services, and travel costs* incurred in acting in accordance with the contingency plan issued under section 404(b) or under the direction of an Onsite Coordinator for an unusual mortality event;

(ii) for reimbursing any stranding network participant for costs incurred in [preparing and transporting] *the preparation, analysis, and transportation of tissues* collected with respect to an unusual mortality [event for] *event, including such transportation for the Tissue Bank; and*

(iii) for care and maintenance of marine mammal seized under section 104(c)(2)(D); and

(B) shall remain available until expended.

(2) PENDING CLAIMS.—If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

(c) DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

(1) amounts appropriated to the Fund;

(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; [and]

(3) amounts received by the United States in the form of gifts, devises, and bequests under [subsection (d).] *subsection (d); and*

(4) *up to \$500,000 per fiscal year (as determined by the Secretary) from amounts appropriated to the Secretary for carrying out this title and the other titles of this Act.*

(d) ACCEPTANCE OF DONATIONS.—For purposes of carrying out this title and section 104(c)(2)(D), the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

SEC. 406. LIABILITY.

[16 U.S.C. 1421e]

(a) **IN GENERAL.**—A person who is authorized to respond to a stranding or entanglement pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

- (1) in accordance with the agreement; and
- (2) in the case of an unusual mortality event, in accordance with—

- (A) the contingency plan issued under section 404(b);
- (B) the instructions of an Onsite Coordinator designated under section 404(c); or
- (C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

(b) **LIMITATION.**—Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

[SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT PROGRAM.]**SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE AND RESPONSE FUNDING PROGRAM.**

[16 U.S.C. 1421f-1]

[(a) IN GENERAL.—(1) Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue Assistance Grant Program, to provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes.]

(a) IN GENERAL.—(1) Subject to the availability of appropriations, the Secretary shall conduct a program to be known as the John H. Prescott Marine Mammal Rescue and Response Funding Program, to provide for the recovery or treatment of marine mammals, the collection of data from living or dead stranded or entangled marine mammals for scientific research regarding marine mammal health, facility operation costs that are directly related to those purposes, and stranding or entangling events requiring emergency assistance. All funds available to implement this section shall be distributed to eligible stranding network participants for the purposes set forth in this paragraph and paragraph (2), except as provided in subsection (f).

(2) CONTRACT AUTHORITY.—To carry out the activities set out in paragraph (1), the Secretary may enter into grants, cooperative agreements, contracts, or such other agreements or arrangements as the Secretary deems appropriate.

(3) PRESCOTT RAPID RESPONSE FUND.—There is established in the Treasury an interest bearing fund to be known as the ‘John H. Prescott Marine Mammal Rescue and Rapid Response Fund’, which shall consist of a portion of amounts deposited into the Fund under subsection (h) or received as contributions under subsection (i), and which shall remain available until expended without regard to any statutory or regulatory provision related to the negotiation, award,

or administration of any grants, cooperative agreements, and contracts.

[(2)] (4)(A) The Secretary shall ensure that, to the greatest extent practicable, funds provided as grants under this subsection are distributed equitably among the stranding regions [designated as of the date of the enactment of the Marine Mammal Rescue Assistance Act of 2000, and in making such grants] *as defined in subsection (g)(3)*. The Secretary shall give preference to those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals in each of the respective regions, or [subregions.] *subregions where such facilities exist*.

(B) In determining priorities among such regions, the Secretary may consider—

- (i) any episodic stranding or any mortality event other than an event described in [section 410(6),] *section 410(7)*, that occurred in any region in the preceding year;
- (ii) data regarding average annual strandings and mortality events per region; and
- (iii) the size of the marine mammal populations inhabiting a geographic area within such a region.

(b) APPLICATION.—To receive a grant under this section, a stranding network participant shall submit an application in such form and manner as the Secretary may prescribe.

(c) CONSULTATION.—The Secretary shall consult with the Marine Mammal Commission, a representative from each of the designated stranding regions, and other individuals who represent public and private organizations that are actively involved in rescue, rehabilitation, release, scientific research, marine conservation, and forensic science regarding stranded marine mammals, regarding the development of criteria for the implementation of the grant program and the awarding of grants under the program.

[(d)] LIMITATION.—The amount of a grant under this section shall not exceed \$100,000.

[(e)] MATCHING REQUIREMENT.—

[(1)] IN GENERAL.—The non-Federal share of the costs of an activity conducted with a grant under this section shall be 25 percent of such costs.

[(2)] IN-KIND CONTRIBUTIONS.—The Secretary may apply to the non-Federal share of an activity conducted with a grant under this section the amount of funds, and the fair market value of property and services, provided by non-Federal sources and used for the activity.]

[(f)] ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this section, the Secretary may expend not more than 6 percent or \$80,000, whichever is greater, to pay the administrative expenses necessary to carry out this section.]

(d) LIMITATION.—

(1) IN GENERAL.—Support for an individual project under this section may not exceed \$200,000 for any 12-month period.

(2) UNEXPENDED FUNDS.—Amounts provided as support for an individual project under this section that are unexpended or unobligated at the end of such period—

(A) shall remain available until expended; and

(B) shall not be taken into account in any other 12-month period for purposes of paragraph (1).

(e) *MATCHING REQUIREMENT.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), the non-Federal share of the costs of an activity conducted with funds under this section shall be 25 percent of such Federal costs.*

(2) *WAIVER.*—*The Secretary shall waive the requirements of paragraph (1) with respect to an activity conducted with emergency funds disbursed from the Fund established by subsection (a)(3).*

(3) *IN-KIND CONTRIBUTIONS.*—*The Secretary may apply to the non-Federal share of an activity conducted with a grant under this section the amount of funds, and the fair market value of property and services, provided by non-Federal sources and used for the activity.*

(f) *ADMINISTRATIVE COSTS AND EXPENSES.*—*Of the amounts available each fiscal year to carry out this section, the Secretary may expend not more than 6 percent or \$80,000, whichever is greater, to pay the administrative costs and administrative expenses to implement the program under subsection (a). Any such funds retained by the Secretary for a fiscal year for such costs and expenses that are not used for such costs and expenses before the end of the fiscal year shall be provided under subsection (a).*

(g) *DEFINITIONS.*—*In this section:*

(1) *DESIGNATED STRANDING REGION.*—*The term “designated stranding region” means a geographic region designated by the Secretary for purposes of administration of this title.*

(2) *SECRETARY.*—*The term “Secretary” has the meaning given that term in section 3(12)(A).*

[(h) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2001 through 2003, to remain available until expended, of which—*

(1) *\$4,000,000 may be available to the Secretary of Commerce; and*

(2) *EMERGENCY ASSISTANCE.*—*The term ‘emergency assistance’ means assistance provided for a stranding or entangling event—*

(A) *that—*

(i) *is not an unusual mortality event as defined in section 409(7);*

(ii) *leads to an immediate increase in required costs for stranding or entangling response, recovery, or rehabilitation in excess of regularly scheduled costs;*

(iii) *may be cyclical or endemic; and*

(iv) *may involve out-of-habitat animals; or*

(B) *is found by the Secretary to qualify for emergency assistance.*

[(2)] (3) *\$1,000,000 may be available to the Secretary of the Interior.]*

(h) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—*There are authorized to be appropriated to carry out this section, other than subsection (a)(3), \$7,000,000 for each of fiscal years 2010 through 2014, to remain available until expended, of which—*

(A) \$6,000,000 may be available to the Secretary of Commerce; and

(B) \$1,000,000 may be available to the Secretary of the Interior.

(2) *RAPID RESPONSE FUND.*—There are authorized to be appropriated to the John H. Prescott Marine Mammal Rescue and Rapid Response Fund established by subsection (a)(3), \$500,000 for each of fiscal years 2010 through 2014.

(3) *ADDITIONAL RAPID RESPONSE FUNDS.*—There shall be deposited into the Fund established by subsection (a)(3) up to \$500,000 per fiscal year (as determined by the Secretary) from amounts appropriated to the Secretary for carrying out this title and the other titles of this Act.

(i) *CONTRIBUTIONS.*—For purposes of carrying out this section, the Secretary may solicit, accept, receive, hold, administer, and use gifts, devises, and bequests without any further approval or administrative action.

SEC. 409. AUTHORIZATION OF APPROPRIATIONS.

[16 U.S.C. 1421g]

There is authorized to be appropriated—

(1) to the Secretary for carrying out this title (other than sections 405 and 407) \$250,000 for each of fiscal years [1993 and 1994;] 2010 through 2014;

(2) to the Secretary for carrying out section 407, \$250,000 for each of fiscal years [1993 and 1994;] 2010 through 2014; and

(3) to the Fund, \$500,000 for [fiscal year 1993.] each of fiscal years 2010 through 2014.

SEC. 410. DEFINITIONS.

[16 U.S.C. 1421h]

In this title, the following definitions apply:

(1) *The term ‘entanglement’ means an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and is—*

(A) *on a beach or shore of the United States; or*

(B) *in waters under the jurisdiction of the United States.*

[(1)] (2) The term “Fund” means the Marine Mammal Unusual Mortality Event Fund established by section 405(a).

[(2)] (3) The term “Office” means the Office of Protected Resources, in the National Marine Fisheries Service.

[(3)] (4) The term “stranding” means an event in the wild in which—

(A) a marine mammal is dead and is—

(i) on a beach or shore of the United States; or

(ii) in waters under the jurisdiction of the United States (including any navigable waters); or

(B) a marine mammal is alive and is—

(i) on a beach or shore of the United States and unable to return to the water;

(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is

unable to return to its natural habitat under its own power or without assistance.

[(4)] (5) The term “stranding network participant” means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

[(5)] (6) The term “Tissue Bank” means the National Marine Tissue Bank provided for under section 407(a).

[(6)] (7) The term “unusual mortality event” means a stranding that—

(A) is unexpected;

(B) involves a significant die-off of any marine mammal population; and

(C) demands immediate response.

