

Calendar No. 690

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-386 }

MARINE MAMMAL RESEARCH AND
RESPONSE ACT OF 2016

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3059



NOVEMBER 28, 2016.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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MARINE MAMMAL RESEARCH AND RESPONSE ACT OF 2016

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

R E P O R T

[To accompany S. 3059]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3059) to reauthorize and amend the John H. Prescott Marine Mammal Rescue and Response Grant Program and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 3059 is to reauthorize and amend the John H. Prescott Marine Mammal Rescue and Response Grant Program. It would authorize the John H. Prescott Marine Mammal Rescue and Rapid Response Fund and establish the Marine Mammal Health Map, which would be incorporated into the National Integrated Coastal and Ocean Observation System. Lastly, it would require reporting to Congress on data collection and gaps by the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

BACKGROUND AND NEEDS

The Marine Mammal Protection Act of 1972 (MMPA) was enacted in large part due to the overwhelming public outcry regarding the high levels of dolphin mortalities in the Pacific tuna fishery, which were estimated at more than 400,000 mortalities per year.¹ A signature piece of the MMPA was the establishment of a moratorium on the “taking” of marine mammals in U.S. waters. The bill authorized the Secretaries of Commerce and the Interior

¹ Congressional Research Service Report RL30120, *The Marine Mammal Protection Act: Reauthorization Issues*, by Eugene H. Buck.

to issue permits for the “taking” of marine mammals for certain purposes.² The MMPA shifted all marine mammal management authority to the Federal Government, dividing the species among NOAA and the Fish and Wildlife Service (FWS).³

Permits for the “taking” of marine mammals may be provided for scientific research, public display, and activities related to commercial fishing or offshore oil and gas exploration. The survival and recovery of the species or stock, and whether or not the stock is depleted, is taken into consideration when issuing a permit.⁴

Authorization of appropriations expired at the end of fiscal year (FY) 1999 after the last reauthorization of the MMPA in 1994. The last reauthorization addressed a 1988 commercial fishing exemption that expired at the end of FY 1993 by indefinitely authorizing the taking of marine mammals incidental to commercial fishing operations, while providing a number of plans to help reduce the incidental takes.⁵

In 2000, the MMPA was amended by the Marine Mammal Rescue Assistance Act of 2000,⁶ establishing the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Grant Program). The Prescott Grant Program is currently administered through the Marine Mammal Health and Stranding Response Program of the National Marine Fisheries Service. Funding levels for the grant have varied since its inception in 2001 with a high of \$5.5 million. From 2001 to 2010, the Prescott Grant Program has awarded over \$34.6 million through 392 grants to eligible members of the stranding network.⁷ In addition, a portion of funds have been used for emergency assistance during catastrophic stranding events, which amounts have varied up to \$4 million depending on the incidents of mass strandings in a particular year.⁸

Marine mammal strandings

Marine mammal strandings can be small scale events involving single animals or larger-scale events involving dozens of animals. Strandings occur for a variety of reasons.⁹ In some cases the cause of the stranding is unknown, but some identified causes include entanglements, ship strikes, illness or disease, injuries caused by natural predators, or unusual weather or oceanographic events.¹⁰ Stranding events provide a tremendous amount of information to researchers and managers.¹¹ The information collected can provide insight into distributions, population health, contaminant levels, and diseases. Animals that are rescued by the stranding network are rehabilitated with the ultimate goal of being released back into the wild. Those that do not survive are used by researchers and scientists to better understand marine mammal populations.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ 16 U.S.C. 1421f-1

⁷ National Oceanic and Atmospheric Administration, “The John H. Prescott Marine Mammal Rescue Assistance Grant Program,” 2010, at http://www.nmfs.noaa.gov/pr/health/prescott/prescott_report_01-10_final.pdf.

⁸ Ibid.

⁹ National Oceanic and Atmospheric Administration, NOAA Fisheries, “Marine Mammal Stranding Response Fact Sheet,” at http://www.nmfs.noaa.gov/pr/pdfs/health/stranding_fact_sheet.pdf.

¹⁰ Ibid.

¹¹ Ibid.

SUMMARY OF PROVISIONS

If enacted, S. 3059 would do the following:

- Reauthorize the Prescott Grant Program at \$7,000,000 (\$6,000,000 for Department of Commerce and \$1,000,000 for Department of the Interior) for each of FYs 2017 through 2022.
- Authorize the John H. Prescott Marine Mammal Rescue and Rapid Response Fund at \$500,000 for each of FYs 2016 through 2021.
- Establish the Marine Mammal Health Map, which would be incorporated into the National Integrated Coastal and Ocean Observation System.
- Require reporting to Congress on data collection and gaps by the Administrator of NOAA.

S. 3059 would not reauthorize the bulk of the MMPA, rather it would reauthorize and amend one part of the MMPA, which is the John H. Prescott Marine Mammal Rescue and Response Grant Program.

LEGISLATIVE HISTORY

S. 3059 was introduced on June 15, 2016, by Senator Cantwell and is cosponsored by Senators Sullivan, Murkowski, and Schatz.

On June 29, 2016, the Committee met in open Executive Session and, by voice vote, ordered S. 3059 to be reported favorably with an amendment (in the nature of a substitute). Amendments were offered by Senators Booker and Wicker—all were accepted.

The first amendment offered by Senator Booker (Booker 1) would clarify who may enter into certain agreements related to the John H. Prescott Marine Mammal Rescue and Response Program from “any person” to “any eligible stranding network participant or stranding network collaborator.” The second amendment as modified by Senator Booker (Booker 2, modified) would modify the preferences given to awarding funds under the John H. Prescott Marine Mammal Rescue and Response Grant Program. The third amendment as modified by Senator Wicker (Wicker 1, modified) would make small changes to improve the bill. The fourth amendment as modified by Senator Wicker (Wicker 2, modified) would permit certain public displays of non-releasable marine mammals.

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:

S. 3059—Marine Mammal Research and Response Act of 2016

Summary: S. 3059 would reauthorize and amend the Marine Mammal Protection Act of 1972. The bill would authorize the appropriation of \$10 million annually over the 2017–2021 period for the National Oceanic and Atmospheric Administration (NOAA) to carry out activities to improve marine mammal research and improve responses to emergency events involving marine mammals.

CBO estimates that implementing S. 3059 would cost \$37 million over the 2017–2021 period, assuming appropriation of the authorized amounts. Enacting S. 3059 could affect direct spending; there-

fore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on the budget would be negligible. Enacting S. 3059 would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 3059 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 effect of S. 3059 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—					2017– 2021
	2017	2018	2019	2020	2021	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	10	10	10	10	10	50
Estimated Outlays	6	7	8	8	8	37

Basis of estimate: For this estimate, CBO assumes S. 3059 will be enacted near the start of 2017 and that the authorized amounts will be appropriated for each fiscal year.

S. 3059 would authorize the appropriation of \$8 million annually over the 2017–2021 period for NOAA, in coordination with the Department of the Interior, to carry out the John H. Prescott Marine Mammal Rescue and Response Program. That program makes grants to specific public and private entities for the purposes of rescuing and rehabilitating marine mammals that are stranded on land. (In 2016, NOAA allocated \$3 million for such grants.)

In addition, the bill would authorize appropriations totaling about \$2 million annually over the 2017–2021 period for NOAA to archive selected marine mammal tissues, compensate individuals who respond to emergencies involving large and unexpected die-offs in marine mammal populations, create and maintain a publicly accessible national system to monitor marine mammal health, and comply with other administrative requirements.

Based on historical spending patterns for NOAA’s activities, CBO estimates that implementing S. 3059 would cost \$37 million over the 2017–2021 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. S. 3059 would allow NOAA to accept and spend, without further appropriation, monetary gifts to assist in implementing a marine mammal health system. Such gifts would be recorded as offsetting receipts, which are treated as reductions in direct spending. Because CBO expects that monetary gifts would be spent soon after they are received, we estimate that the net change in direct spending would be negligible. Enacting S. 3059 would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 3059 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: S. 3059 contains no intergovernmental or private-sector mandates as defined in UM RA. By expanding federal grant programs that support research and response activities involving stranded or deceased marine mammals, the bill would benefit public entities involved in those activities. Any costs, including matching contributions, incurred by public entities under agreements with NOAA would result from participation in voluntary federal programs.

Estimate prepared by: Federal costs: Robert Reese; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

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:

REGULATORY IMPACT

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. 3059, as reported, does not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 3059 would require the Administrator of NOAA to submit to Congress a report summarizing the status of the Marine Mammal Health Map and gaps in data collection pursuant to the Marine Mammal Health Map. This report would be submitted not later than 1 year after the date of enactment of the Act. Additionally, not later than 5 years after the report is complete, and every 5 years thereafter, the Administrator of NOAA would be required to submit a data gap analysis.

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.

This section would provide the short title of the bill, the “Marine Mammal Research and Response Act of 2016.”

Section 2. Data collection and dissemination.

This section would provide for the inclusion of the word “entanglement,” or a similar phrase, into appropriate paragraphs in subsection (b) of section 402 of the MMPA (16 U.S.C. 1421a (b)) (regarding data collection). It also would strike subsection (c) of that section (governing data availability) and replace it with a more in-depth subsection on data availability and another subsection on data reporting requirements. The data availability subsection would require the Secretary of Commerce to develop a program to make information, including data and metadata, collected under the MMPA available to researchers, stranding networks, and the public. Each stranding network participant would be required to submit information to NOAA, for inclusion in the Marine Mammal Health Map, not later than 30 days after the date that the information is available or updated, as applicable. This section contains the Wicker 2 amendment as modified that would permit certain public display of non-releasable marine mammals.

Section 3. Stranding or entanglement response agreements.

This section would amend section 403 of the MMPA (16 U.S.C. 1421b) by including the terms “or entanglement” before “response” in the section heading. It also would add “or entanglement” to the end of subsection (a) of that section. This would allow the Secretary of Commerce to enter into an agreement under section 112(c) of the MMPA (16 U.S.C. 1382(c)) with any person to take marine mammals under section 109(h)(1) of the MMPA (16 U.S.C. 1379(h)(1)) in response to a stranding or an entanglement.

Section 4. Unusual mortality event activity funding.

This section would amend section 405 of the MMPA (16 U.S.C. 1421d), which establishes the Marine Mammal Unusual Mortality Fund. The funds would be available for use by the Secretary of Commerce, in consultation with the Secretary of the Interior, for costs incurred as a result of an unusual mortality event. This section also would allow deposits into the fund from sums received for marine mammal conservation, including fines and penalties, and up to \$750,000 per FY from amounts appropriated to the Secretary of Commerce for carrying out title IV and other titles in the MMPA.

Section 5. Liability.

This section would amend section 406(a) of the MMPA (16 U.S.C. 1421e(a)) by including the terms “or entanglement” after “to a stranding.” This would add further liability protection to individuals responding to a stranding or entanglement.

Section 6. National marine mammal tissue bank and tissue analysis.

This section would amend section 407 of the MMPA (16 U.S.C. 1421f) by adding reference data on the mortality of marine mammals to the central database established under the MMPA. This section also would ensure that access to this data is made public.

Section 7. John H. Prescott Marine Mammal Rescue and Response Grant Program and Rapid Response Fund.

This section would amend section 408 of the MMPA (16 U.S.C. 1421f-1), and rename the John H. Prescott Marine Mammal Rescue Assistance Grant Program as the John H. Prescott Marine Mammal Rescue Assistance Grant Program and Rapid Response Fund. The Prescott Grant Program would provide for: the recovery or treatment of sick, injured, or entangled marine mammals; marine mammal stranding events that require emergency assistance; the collection of data and samples from living or dead stranded marine mammals for scientific research; facility operation costs that are directly related to the aforementioned activities; and the development of stranding network capacity. The Secretary of Commerce could enter into contracts, grants, or agreements with any person to accomplish the purposes and would be required to ensure that funds awarded are distributed equitably among the stranding regions. Preference would be given to any facility with an established record of marine mammal rescue and rehabilitation or of scientific data collection and research on sick, stranded, or entangled marine mammals.

The Secretary of Commerce, in consultation with the Marine Mammal Commission, a representative from each of the stranding regions, and other individuals who represent public and private organizations, would develop criteria for awarding grants. The maximum grant amount would be \$200,000 for any 12-month period.

This section would authorize appropriations at \$7,000,000 for each of FY 2017 through 2022. This section also would authorize appropriations for the Rapid Response Fund at \$500,000 for each of FY 2016 through 2021, and these funds would remain available until expended. The Rapid Response Fund would be available for use by the Secretary of Commerce to provide emergency assistance for a stranding event or entangling event.

Section 8. Marine Mammal Health Map.

This section would amend the MMPA to insert a new section to require, not later than 1 year after the date of enactment of the Act, the Secretary of Commerce, acting through the Administrator of NOAA, in consultation with the Secretary of the Interior and the Marine Mammal Commission, to establish a national marine mammal health and stranding observing system referred to as the Marine Mammal Health Map. This Marine Mammal Health Map would be incorporated into the National Integrated Coastal and Ocean Observation System (33 U.S.C. 3603) and be made publicly accessible. The purpose of the program would be to promote: interdisciplinary research; the timely and sustained dissemination and availability of data; the evaluation of marine mammal health; the improved collaboration and forecasting of marine mammal and larger ecosystem health events; rapid communication and dissemi-

nation of information regarding marine mammal strandings; increased accessibility of data in a user friendly visual interface; and an ocean health index.

Section 9. Reports to Congress.

This section would amend the MMPA to insert a new section to require, not later than 1 year after the date of enactment, the Administrator of NOAA, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and the National Ocean Research Leadership Council, to submit to Congress a status report on the Marine Mammal Health Map. This report would include: a detailed evaluation of the data made publicly available; a list of any gaps in data collected; emerging marine mammal health concerns; and recommendations for the Marine Mammal Health Map.

Not later than 5 years after the date of enactment, and every 5 years thereafter, the Administrator of NOAA would be required to submit a data gap analysis to Congress. Not later than 1 year after the date of enactment, the Administrator of NOAA, in consultation with the Marine Mammal Commission and the Director of the FWS, would be required to submit to Congress a report on the response capabilities for sick and injured marine mammals in the Arctic regions of the United States.

Section 10. Authorization of appropriations.

This section would amend section 409 of the MMPA (16 U.S.C. 1421g) to authorize appropriations for the Marine Mammal Health and Stranding Response title of the MMPA at \$250,000 for each of FYs 2017 through 2022, and authorize \$500,000 to the Marine Mammal Unusual Mortality Event Fund for each of FYs 2017 through 2022.

Section 11. Definitions.

This section would amend section 410 of the MMPA (16 U.S.C. 1421h) to define “entangle” or “entanglement” to mean an event in which a living or dead marine mammal has material wrapped around or attached to the marine mammal and is found on a shore or in the navigable waters of the United States. A “stranding region” would be defined to mean a geographic region designated by the Secretary of Commerce for purposes of administration of the MMPA.

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

[16 U.S.C. 1361 et seq.]

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,】** *strandings and entanglements, including unusual mortality events*, which the Secretary shall compile and analyze, by *stranding* region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded **【marine mammals; and】** *and entangled marine mammals to allow comparison of the causes of illness and deaths in stranded and entangled marine mammals with physical, chemical, and biological environmental parameters; 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.】** *analyses.*

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

(c) DATA AVAILABILITY.—

(1) *IN GENERAL.—The Secretary shall develop a program to make information, including any data and metadata, collected under subsection (b) available to researchers, stranding networks, and the public—*

(A) *to improve real-time coordination of response to stranding and entanglement events across geographic areas and between stranding coordinators;*

(B) *to identify and quickly disseminate information on potential public health risks;*

(C) *to facilitate integrated interdisciplinary research;*

(D) *to facilitate peer-reviewed publications;*

(E) *to archive regional data into one national database for future analyses; and*

(F) *for education and outreach activities.*

(2) *PUBLIC ACCESS.—The Secretary shall ensure that—*

(A) *all information, including data and metadata, collected under subsection (b) is archived in a form that is*

readily accessible, understandable, and can be easily shared with, the public, as appropriate, through the Marine Mammal Health Map established under section 408A; and

(B) not later than 60 days after the date that any information, including any data and metadata, collected under paragraph (1), (2), or (3) of subsection (b), is made readily available to stranding network participants, other qualified scientists, employees of the Federal Government, and the public through the Marine Mammal Health Map and the Integrated Ocean Observation System.

(d) DATA REPORTING REQUIREMENTS.—The Secretary shall require each stranding network participant to submit to the National Oceanic and Atmospheric Administration, for inclusion in the Marine Mammal Health Map established under section 408A the following:

(1) NOAA Form 89–864 (OMB #0648–0178) and NOAA Form 89–878 (OMB #0648–0178), or similar successor form, not later than 30 days after the date of a response to a stranding or entanglement event.

(2) The information, including any data and metadata, described in paragraphs (1) and (2) of subsection (b), not later than 30 days after the date that the information is available or updated, as applicable.

(3) The information, including any data and metadata, described in paragraphs (3) and (4) of subsection (b), not later than 30 days after the date that the stranding network responds to a stranding or entanglement event.

(e) PUBLIC DISPLAY OF MARINE MAMMALS.—

(1) RESCUING FACILITY.—The facility rescuing and rehabilitating a stranded marine mammal that meets the public display criteria of this Act shall be given preference when the National Oceanic and Atmospheric Administration decides permanent placement of a marine mammal deemed non-releasable for public display purposes if—

(A) the marine mammal is deemed non-releasable; and

(B) the facility—

(i) meets the public display criteria of the Act and the Animal Welfare Act (7 U.S.C. 2131 et seq.); and

(ii) meet the requirements for maintenance and care established by the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) EXPLANATION.—If the facility that rescued and rehabilitated the marine mammal was not chosen for permanent placement, the National Oceanic and Atmospheric Administration shall provide written documentation to that facility explaining why the applicant has not met the requirements of this Act and the Animal Welfare Act.

(3) OTHER FACILITY.—A licensed public display facility in a contiguous geographic area where a marine mammal stranded and later deemed non-releasable by a stranding facility shall be given preference to acquire the marine mammal.

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~~...~~ 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 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 tissues collected with respect to an unusual mortality event 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.]

(b) USES.—Amounts in the Fund—

(1) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior and dispersed among claimants based on budgets approved by the Secretary prior to expenditure—

(A) 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;

(B) for reimbursing any stranding network participant for costs incurred in the collection, preparation, analysis, and transportation of marine mammal tissues and samples collected with respect to an unusual mortality event, including such transportation, for the Tissue Bank; and

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

(2) shall remain available until expended.

(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)**[.];**
- (4) *sums received for marine mammal conservation, including assessment costs, fines, penalties, restitution, and forfeitures of property for violations of any provision of this Act or other environmental statute and sums received from emergency declaration grants for marine mammal conservation; and*
- (5) *up to \$750,000 per fiscal year, as determined by the Secretary of Commerce and the Secretary of the Interior, from amounts appropriated to the Secretary for carrying out this title and 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. 407. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

[16 U.S.C. 1421f]

* * * * *

(c) DATA BASE.—

(1) IN GENERAL.—The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

(2) CONTENTS.—The data base established under this subsection shall include—

(A) reference data on [the health of marine mammals and] *marine mammal health and mortality and the health of populations of marine mammals*; and

(B) data on species of marine mammals that are subject to unusual mortality events.

(d) ACCESS.—The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for *public* access to—

(1) marine mammal tissues in the Tissue Bank;

(2) analyses conducted pursuant to subsection (b); and

(3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

[SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT 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.

[(2)(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 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.

[(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), 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, re-

garding 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.

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

SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE AND RESPONSE GRANT PROGRAM AND RAPID RESPONSE FUND.

(a) **JOHN H. PRESCOTT MARINE MAMMAL RESCUE AND RESPONSE GRANT PROGRAM.**—

(1) *IN GENERAL.*—Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue and Response Grant Program (hereinafter in this section referred to as the “Grant Program”) to award grants to eligible stranding network participants or stranding network collaborators as described in this subsection.

(2) *PURPOSES.*—The purposes of the Grant Program are to provide for—

(A) the recovery, care, or treatment of sick, injured, or entangled marine mammals;

(B) marine mammal stranding events that require emergency assistance;

(C) the collection of data and samples from living or dead stranded marine mammals for scientific research regarding marine mammal health;

(D) facility operating costs that are directly related to activities described in subparagraph (A), (B), or (C); and

(E) development of Stranding Network capacity, including training for emergency response, where facilities do not exist or are sparse.

(3) *CONTRACT, GRANT, AND COOPERATIVE AGREEMENT AUTHORITY.*—The Secretary may enter into a contract, grant, or cooperative agreement with any eligible stranding network participant or stranding network collaborator, as the Secretary determines appropriate, for the purposes described in paragraph (2).

(4) *EQUITABLE DISTRIBUTION OF FUNDS.*—

(A) *IN GENERAL.*—The Secretary shall ensure, to the extent practicable, that funds awarded under the Grant Program are distributed equitably among the stranding regions.

(B) *PREFERENCES.*—The Secretary shall give preference to awarding funds under the Grant Program in each stranding region to any facility with an established record of marine mammal rescue and rehabilitation.

(C) *CONSIDERATIONS.*—In determining priorities among the stranding regions under this paragraph, the Secretary may consider—

(i) any episodic stranding, entanglement, or mortality event, except for an unusual mortality event, that occurred in any stranding region in the preceding year;

(ii) any data regarding average annual stranding, entanglements, and mortality events per stranding region;

(iii) the size of the marine mammal populations inhabiting a geographic area within a stranding region; and

(iv) the conservation of protected, threatened, or endangered marine mammal species.

(5) *APPLICATION.*—To apply for a grant under the Grant Program a stranding network participant shall—

(A) submit an application in such form and manner as the Secretary prescribes; and

(B) comply with the data reporting requirements of section 402(d).

(6) *CONSULTATION.*—The Secretary shall consult with the Marine Mammal Commission, a representative from each of the 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 to develop criteria for awarding grants under the Grant Program.

(7) *LIMITATIONS.*—

(A) *MAXIMUM GRANT AMOUNT.*—No grant made under the Grant Program for a single project may exceed \$150,000 in any 12-month period.

(B) *UNEXPENDED FUNDS.*—Any funds awarded under the Grant Program that are unexpended or unobligated at the end a 12-month period shall remain available until expended.

(C) *LIMITATION.*—A new grant shall not be awarded until the first grants funds are expended.

(8) *MATCHING REQUIREMENT.*—*The non-Federal share of the costs of an activity conducted with funds awarded under the Grant Program shall be 25 percent of such costs.*

(9) *ADMINISTRATIVE COSTS AND EXPENSES.*—*Of the amounts available each fiscal year to carry out the Grant Program, the Secretary may expend not more than 6 percent or \$80,000, whichever is greater, to pay the administrative costs and expenses related to reviewing and awarding grants under the Grant Program.*

(b) *JOHN H. PRESCOTT MARINE MAMMAL RESCUE AND RAPID RESPONSE FUND.*—

(1) *IN GENERAL.*—*There is established in the Treasury of the United States an interest-bearing fund to be known as the “John H. Prescott Marine Mammal Rescue and Rapid Response Fund” (hereinafter in this section referred to as the “Fund”).*

(2) *USE OF FUNDS.*—*Amounts in the Fund shall be available only for use by the Secretary to provide emergency assistance.*

(3) *MATCHING REQUIREMENT.*—

(A) *IN GENERAL.*—*Except as provided in subparagraph (B), the non-Federal share of the costs of an activity conducted with amounts from the Fund shall be 25 percent of such costs.*

(B) *WAIVER.*—*The Secretary may waive the matching requirement under subparagraph (A) for activities to provide emergency assistance.*

(C) *IN-KIND CONTRIBUTIONS.*—*The Secretary may apply to the non-Federal share of an activity conducted with amounts from the Fund, the amount of funds and the fair market value of property and services provided by non-Federal sources and used for the activity.*

(c) *EMERGENCY ASSISTANCE DEFINED.*—*In this section:*

(1) *IN GENERAL.*—*The term “emergency assistance” means—*

(A) *financial assistance provided for a stranding event or entangling event that—*

(i) *causes an immediate increase in the cost of a response, recovery, or rehabilitation that is greater than the usual or allocated cost of a response, recovery, or rehabilitation;*

(ii) *is cyclical or endemic; and*

(iii) *involves a marine mammal that is out of the normal habitat for that marine mammal; or*

(B) *financial assistance provided for a stranding event or an entanglement event that the Secretary considers to be an emergency.*

(2) *EXCLUSIONS.*—*The term “emergency assistance” does not include financial assistance to respond to an unusual mortality event.*

(d) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—*There is authorized to be appropriated to carry out the Grant Program \$7,000,000 for each of fiscal years 2017 through 2022, to remain available until expended, of which for each fiscal year—*

(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) JOHN H. PRESCOTT MARINE MAMMAL RESCUE AND RAPID RESPONSE FUND.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund \$500,000 for each of fiscal years 2016 through 2021.

(B) TRANSFER OF FUNDS.—In addition to amounts appropriated pursuant to an authorization of appropriations in subparagraph (A), there shall be deposited into the Fund up to \$500,000 for each fiscal year (as determined by the Secretary) from amounts appropriated to the Secretary for carrying out this title and other titles of this Act.

(C) AVAILABILITY OF FUNDS.—Amounts in the Fund shall remain available until expended without regard to any law related to the negotiation, award, or administration of any contract, grant, or cooperative agreement.

(e) ACCEPTANCE OF DONATIONS.—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. 408A. MARINE MAMMAL HEALTH MAP.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of the Marine Mammal Research and Response Act of 2016, the Secretary, acting through the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Secretary of the Interior and the Marine Mammal Commission, shall—

(1) establish a national marine mammal health and stranding observing system referred to as the Marine Mammal Health Map;

(2) incorporate the Marine Mammal Health Map into the National Integrated Coastal and Ocean Observation System established under section 12304 of the Integrated Coastal and Ocean Observation System Act of 2009 (33 U.S.C. 3603); and

(3) make the Marine Mammal Health Map—

(A) publically accessible through the Integrated Coastal and Ocean Observation System's web portal; and

(B) interoperable with other national data systems or for management or research purposes, as practicable.

(b) PURPOSES.—The purposes of the Marine Mammal Health Map are to promote—

(1) interdisciplinary research among individuals with knowledge and experience in marine mammal science, marine mammal veterinary and husbandry practices, and medical science, oceanographers, and other marine scientists;

(2) the timely and sustained dissemination and availability of marine mammal health, stranding, entanglement, and mortality data;

(3) the identification of spatial and temporal patterns of marine mammal mortality, disease, and stranding;

(4) the evaluation of marine mammal health in terms of mortality as well as sublethal marine mammal health impacts;

(5) the improved collaboration and forecasting of marine mammal and larger ecosystem health events;

(6) rapid communication and dissemination of marine mammal strandings that may have implications for human health, such as harmful algal blooms;

(7) the increased accessibility of data in a user friendly visual interface for public education and outreach activities; and

(8) contribute to an ocean health index which incorporates marine mammal health data.

(c) **REQUIREMENTS.**—*The Marine Mammal Health Map shall—*

(1) integrate in situ, remote, and other marine mammal health, stranding, and mortality data, including visualization and metadata, from persons authorized to collect data on marine mammals, including the stranding network, Federal, State, and tribal governments, private partners, and academia;

(2) be designed to enhance data and information availability, including data sharing between stranding network participants, scientists, and the public across stranding network regions;

(3) be designed to facilitate data and information access across scientific disciplines, scientists, and managers;

(4) be designed to facilitate public access to national and regional marine mammal health, stranding, entanglement, and mortality data, including visualizations and metadata, through the Integrated Coastal and Ocean Observation System’s national and regional data portals.; and

(5) be designed in collaboration with, and with input from, States and stranding network participants.

(d) **PROCEDURES AND GUIDELINES.**—*The Secretary shall implement policies, protocols, and standards for—*

(1) the reporting requirements for marine mammal health data collected by stranding networks consistent with subsections (c) and (d) of section 402;

(2) the timely transmission of health data from the stranding networks and other appropriate data providers to the Marine Mammal Health Map;

(3) the timely and sustained dissemination and availability to the public of marine mammal health, stranding, entanglement, and mortality data; and

(4) the integration of other marine mammal health, stranding, or other data as the Secretary determines appropriate.

(e) **COORDINATION.**—*The Administrator of the National Oceanic and Atmospheric Administration shall carry out the Marine Mammal Health Map in consultation with the Secretary of the Interior, the Marine Mammal Commission, and the National Ocean Research Leadership Council.*

(f) **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. 408B. REPORTS TO CONGRESS.

(a) **APPROPRIATE COMMITTEES OF CONGRESS.**—*In this section, the term “appropriate committees of Congress” means the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources and the Committee on Science, Space, and Technology of the House of Representatives.*

(b) **MARINE MAMMAL HEALTH MAP STATUS REPORT.**—*Not later than 1 year after the date of the enactment of the Marine Mammal*

Research and Response Act of 2016, the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and the National Ocean Research Leadership Council, shall submit to the appropriate committees of Congress a report on the status of the Marine Mammal Health Map. Such report shall include the following:

(1) A detailed evaluation of the data made publically available through the Marine Mammal Health Map.

(2) A detailed list of any gaps in data collected pursuant to the Marine Mammal Health Map, a description of the reasons for such gaps, and recommendations to close such gaps.

(3) An analysis of the effectiveness of using the website of the Integrated Coastal and Ocean Observation System as a tool to collect, organize, visualize, archive, and disseminate marine mammal stranding and health data.

(4) A list of publications, presentations, or other relevant work product resulting from, or in collaboration with, such Marine Mammal Health Map.

(5) A description of emerging marine mammal health concerns and the applicability of such concerns to human health.

(6) An analysis of the feasibility of the Integrated Coastal and Ocean Observation System to be used as an alert during stranding events, entanglement events, and unusual mortality events for the stranding network, Integrated Coastal and Ocean Observation System partners, Marine Mammal Health Map partners, Federal and State agencies, and local and tribal governments.

(7) An evaluation of the use of Marine Mammal Health Map data to predict broader ecosystem events and changes that may impact marine mammal or human health and specific examples of proven or potential uses of Integrated Coastal and Ocean Observation System data for these purposes.

(8) Recommendations for the Marine Mammal Health Map related to—

(A) filling any identified data gaps;

(B) data standards that could be used to improve data accessibility, transmission, interoperability, and sharing;

(C) any other strategies that would contribute to the effectiveness and usefulness of the Marine Mammal Health Map; and

(D) the funding levels needed to carry out the Marine Mammal Health Map.

(c) DATA GAP ANALYSIS.—Not later than 5 years after the date that the report required by subsection (b) is submitted, and every 5 years thereafter, the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Marine Mammal Commission and the Secretary of the Interior, shall submit to the appropriate committees of Congress a data gap analysis. Such analysis shall include the following:

(1) An overview of existing participants within the Marine Mammal Stranding Network.

(2) An identification of participant gaps within the Network.

(3) An identification of data and reporting gaps from members of the Network.

(4) *An analysis of how stranding and health data is shared and made available to scientists, academics, State, local, and tribal governments, and the public.*

(d) **RESCUE AND RESPONSE CAPABILITIES IN THE ARCTIC.**—*Not later than 1 year after the date of the enactment of the Marine Mammal Research and Response Act of 2016, the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Marine Mammal Commission and the Director of the United States Fish and Wildlife Service, shall submit to the appropriate committees of Congress a report on the response capabilities for sick and injured marine mammals in the Arctic regions of the United States. Such report shall include the following:*

(1) *A description of all stranding agreements in place in the Arctic regions of the United States, including species covered, response capabilities, facilities, and data collection and analysis capabilities.*

(2) *A list of State and local government agencies that have personnel trained to respond to strandings in the Arctic regions of the United States.*

(3) *An assessment of potential response and data collection partners and sources of local information and knowledge, including Alaska Native people and villages.*

(4) *An analysis of spatial and temporal trends in strandings over time in response to changing environmental conditions in the Arctic regions of the United States and the relationships to other unusual mortality events, including birds and fish.*

(5) *A description of training and other resource needs to meet emerging response requirements in the Arctic regions of the United States.*

(6) *An analysis of oiled marine mammal and bird response and rehabilitation capabilities in the Arctic regions of the United States, including equipment, facilities, training, and husbandry capabilities, and an assessment of likely success rates.*

(7) *Recommendations for future stranding response needs in the Arctic regions of the United States.*

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;] 2017 through 2022;

(2) to the Secretary for carrying out section 407, \$250,000 for each of fiscal years [1993 and 1994;] 2017 through 2022; and

(3) to the Fund, \$500,000 for [fiscal year 1993.] for each of the fiscal years 2017 through 2022.

SEC. 410. DEFINITIONS.

[16 U.S.C. 1421h]

In this title, the following definitions apply:

(1) *The term “entangle” or “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 the marine mammal and is—*

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

(B) in navigable waters 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.

(6) *The term “stranding region” means a geographic region designated by the Secretary for purposes of administration of this Act.*

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

[(6)](8) 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.