

111TH CONGRESS  
1ST SESSION

# S. 859

To amend the provisions of law relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 22, 2009

Ms. CANTWELL (for herself, Ms. SNOWE, Mr. ROCKEFELLER, Mr. KERRY, and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the provisions of law relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marine Mammal Res-  
5 cue Assistance Amendments of 2009”.

6 **SEC. 2. STRANDING AND ENTANGLEMENT RESPONSE.**

7 (a) COLLECTION AND UPDATING OF INFORMA-  
8 TION.—Section 402(b)(1)(A) of the Marine Mammal Pro-

1 tion Act of 1972 (16 U.S.C. 1421a(b)(1)(A)) is amend-  
 2 ed by inserting “or entangled” after “stranded”.

3 (b) ENTANGLEMENT RESPONSE AGREEMENTS.—

4 (1) IN GENERAL.—Section 403 of that Act (16  
 5 U.S.C. 1421b) is amended—

6 (A) by striking the section heading and in-  
 7 serting the following:

8 **“SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE**  
 9 **AGREEMENTS.” ;**

10 and

11 (B) by striking “stranding.” in subsection  
 12 (a) and inserting “stranding or entanglement.”.

13 (2) CLERICAL AMENDMENT.—The table of con-  
 14 tents for title IV of that Act is amended by striking  
 15 the item relating to section 403 and inserting the  
 16 following:

“Sec. 403. Stranding or entanglement response agreements.”.

17 (c) LIABILITY.—Section 406(a) of such Act (16  
 18 U.S.C. 1421e(a)) is amended by inserting “or entangle-  
 19 ment” after “stranding”.

20 (d) ENTANGLEMENT DEFINED.—

21 (1) IN GENERAL.—Section 410 of such Act (16  
 22 U.S.C. 1421h) is amended—

23 (A) by redesignating paragraphs (1)  
 24 through (6) as paragraphs (2) through (7), re-  
 25 spectively; and

1 (B) by inserting before paragraph (2) (as  
2 so redesignated) the following:

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

7 “(A) on a beach or shore of the United  
8 States; or

9 “(B) in waters under the jurisdiction of  
10 the United States.”.

11 (2) CONFORMING AMENDMENT.—Section  
12 408(a)(2)(B)(i) of such Act (16 U.S.C. 1421f–  
13 1(a)(2)(B)(i)) is amended by striking “section  
14 410(6)” and inserting “section 410(7)”.

15 (e) UNUSUAL MORTALITY EVENT FUNDING.—Sec-  
16 tion 405 of such Act (16 U.S.C. 1421d) is amended—

17 (1) by striking “to compensate persons for spe-  
18 cial costs” in subsection (b)(1)(A)(i) and inserting  
19 “to make advance, partial, or progress payments  
20 under contracts or other funding mechanisms for  
21 property, supplies, salaries, services, and travel  
22 costs”;

23 (2) by striking “preparing and transporting” in  
24 subsection (b)(1)(A)(ii) and inserting “the prepara-  
25 tion, analysis, and transportation of”;

1           (3) by striking “event for” in subsection  
2           (b)(1)(A)(ii) and inserting “event, including such  
3           transportation for”;

4           (4) by striking “and” after the semicolon in  
5           subsection (c)(2);

6           (5) by striking “subsection (d).” in subsection  
7           (c)(3) and inserting “subsection (d); and”; and

8           (6) by adding at the end of subsection (c) the  
9           following:

10           “(4) up to \$500,000 per fiscal year (as deter-  
11           mined by the Secretary) from amounts appropriated  
12           to the Secretary for carrying out this title and the  
13           other titles of this Act.”.

14           (f) JOHN H. PRESCOTT MARINE MAMMAL RESCUE  
15           AND RESPONSE FUNDING PROGRAM.—

16           (1) AUTHORIZATION OF APPROPRIATIONS.—  
17           Section 408(h) of such Act (16 U.S.C. 1421f–1(h))  
18           is amended to read as follows:

19           “(h) AUTHORIZATION OF APPROPRIATIONS.—

20           “(1) IN GENERAL.—There are authorized to be  
21           appropriated to carry out this section, other than  
22           subsection (a)(3), \$7,000,000 for each of fiscal years  
23           2010 through 2014, to remain available until ex-  
24           pended, of which—

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

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

5           “(2) RAPID RESPONSE FUND.—There are au-  
6           thorized to be appropriated to the John H. Prescott  
7           Marine Mammal Rescue and Rapid Response Fund  
8           established by subsection (a)(3), \$500,000 for each  
9           of fiscal years 2010 through 2014.

10          “(3) ADDITIONAL RAPID RESPONSE FUNDS.—  
11          There shall be deposited into the Fund established  
12          by subsection (a)(3) up to \$500,000 per fiscal year  
13          (as determined by the Secretary) from amounts ap-  
14          propriated to the Secretary for carrying out this title  
15          and the other titles of this Act.”.

16          (2) ADMINISTRATIVE COSTS AND EXPENSES.—  
17          Section 408(f) of such Act (16 U.S.C. 1421f–1(f))  
18          is amended to read as follows:

19          “(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of  
20          the amounts available each fiscal year to carry out this  
21          section, the Secretary may expend not more than 6 per-  
22          cent or \$80,000, whichever is greater, to pay the adminis-  
23          trative costs and administrative expenses to implement the  
24          program under subsection (a). Any such funds retained  
25          by the Secretary for a fiscal year for such costs and ex-

1 penses that are not used for such costs and expenses be-  
2 fore the end of the fiscal year shall be provided under sub-  
3 section (a).”.

4 (3) EMERGENCY ASSISTANCE.—Section 408 of  
5 such Act (16 U.S.C. 1421f–1) is amended—

6 (A) by striking so much of subsection (a)  
7 as precedes paragraph (2) and inserting the fol-  
8 lowing:

9 “(a) IN GENERAL.—(1) Subject to the availability of  
10 appropriations, the Secretary shall conduct a program to  
11 be known as the John H. Prescott Marine Mammal Res-  
12 cue and Response Funding Program, to provide for the  
13 recovery or treatment of marine mammals, the collection  
14 of data from living or dead stranded or entangled marine  
15 mammals for scientific research regarding marine mam-  
16 mal health, facility operation costs that are directly related  
17 to those purposes, and stranding or entangling events re-  
18 quiring emergency assistance. All funds available to imple-  
19 ment this section shall be distributed to eligible stranding  
20 network participants for the purposes set forth in this  
21 paragraph and paragraph (2), except as provided in sub-  
22 section (f).”;

23 (B) by redesignating paragraph (2) as  
24 paragraph (4) and inserting after paragraph  
25 (1) the following:

1       “(2) CONTRACT AUTHORITY.—To carry out the ac-  
2 tivities set out in paragraph (1), the Secretary may enter  
3 into grants, cooperative agreements, contracts, or such  
4 other agreements or arrangements as the Secretary deems  
5 appropriate.

6       “(3) PRESCOTT RAPID RESPONSE FUND.—There is  
7 established in the Treasury an interest bearing fund to  
8 be known as the ‘John H. Prescott Marine Mammal Res-  
9 cue and Rapid Response Fund’, which shall consist of a  
10 portion of amounts deposited into the Fund under sub-  
11 section (h) or received as contributions under subsection  
12 (i), and which shall remain available until expended with-  
13 out regard to any statutory or regulatory provision related  
14 to the negotiation, award, or administration of any grants,  
15 cooperative agreements, and contracts.”;

16               (C) by striking “designated as of the date  
17 of the enactment of the Marine Mammal Res-  
18 cue Assistance Act of 2000, and in making such  
19 grants” in paragraph (4), as redesignated, and  
20 inserting “as defined in subsection (g)(3). The  
21 Secretary”; and

22               (D) by striking “subregions.” in paragraph  
23 (4), as redesignated, and inserting “subregions  
24 where such facilities exist.”;

1 (E) by striking subsections (d) and (e) and  
2 inserting the following:

3 “(d) LIMITATION.—

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

7 “(2) UNEXPENDED FUNDS.—Amounts provided  
8 as support for an individual project under this sec-  
9 tion that are unexpended or unobligated at the end  
10 of such period—

11 “(A) shall remain available until expended;  
12 and

13 “(B) shall not be taken into account in any  
14 other 12-month period for purposes of para-  
15 graph (1).

16 “(e) MATCHING REQUIREMENT.—

17 “(1) IN GENERAL.—Except as provided in para-  
18 graph (2), the non-Federal share of the costs of an  
19 activity conducted with funds under this section  
20 shall be 25 percent of such Federal costs.

21 “(2) WAIVER.—The Secretary shall waive the  
22 requirements of paragraph (1) with respect to an ac-  
23 tivity conducted with emergency funds disbursed  
24 from the Fund established by subsection (a)(3).



1           “(3) IN-KIND CONTRIBUTIONS.—The Secretary  
2           may apply to the non-Federal share of an activity  
3           conducted with a grant under this section the  
4           amount of funds, and the fair market value of prop-  
5           erty and services, provided by non-Federal sources  
6           and used for the activity.”; and

7                       (F) by redesignating paragraph (2) of sub-  
8                       section (g) as paragraph (3) and inserting after  
9                       paragraph (1) the following:

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

13                       “(A) that—

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

16                               “(ii) leads to an immediate increase in  
17                               required costs for stranding or entangling  
18                               response, recovery, or rehabilitation in ex-  
19                               cess of regularly scheduled costs;

20                               “(iii) may be cyclical or endemic; and

21                               “(iv) may involve out-of-habitat ani-  
22                               mals; or

23                       “(B) is found by the Secretary to qualify  
24           for emergency assistance.”.

1           (4) CONTRIBUTIONS.—Section 408 of such Act  
2           (16 U.S.C. 1421f–1) is amended by adding at the  
3           end the following:

4           “(i) CONTRIBUTIONS.—For purposes of carrying out  
5 this section, the Secretary may solicit, accept, receive,  
6 hold, administer, and use gifts, devises, and bequests with-  
7 out any further approval or administrative action.”.

8           (5) CONFORMING AMENDMENT.—The section  
9           heading for section 408 is amended to read as fol-  
10          lows:

11       **“SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE**  
12                               **AND RESPONSE FUNDING PROGRAM.”.**

13           (g) AUTHORIZATION OF APPROPRIATIONS FOR MA-  
14 RINE MAMMAL UNUSUAL MORTALITY EVENT FUND.—  
15 Section 409 of such Act (16 U.S.C. 1421g) is amended—

16           (1) by striking “1993 and 1994;” in paragraph  
17           (1) and inserting “2010 through 2014;”;

18           (2) by striking “1993 and 1994;” in paragraph  
19           (2) and inserting “2010 through 2014;” and

20           (3) by striking “fiscal year 1993.” in paragraph  
21           (3) and inserting “each of fiscal years 2010 through  
22           2014.”.

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