

MARINE MAMMAL RESCUE ASSISTANCE ACT OF 1999

JULY 20, 1999.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1934]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1934) to amend the Marine Mammal Protection Act of 1972 to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marine Mammal Rescue Assistance Act of 1999”.

SEC. 2. JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT PROGRAM.

(a) IN GENERAL.—Title IV of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.) is amended—

(1) by redesignating sections 408 and 409 as sections 409 and 410, respectively; and

(2) by inserting after section 407 the following:

“SEC. 408. JOHN H. PRESCOTT MARINE MAMMAL RESCUE ASSISTANCE GRANT PROGRAM.

“(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 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 designated stranding regions.

“(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; and

“(ii) data regarding average annual strandings and mortality events per 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) ADVISORY GROUP.—

“(1) IN GENERAL.—The Secretary, in consultation with the Marine Mammal Commission, shall establish an advisory group in accordance with this subsection to advise the Secretary regarding the implementation of this section, including the award of grants under this section.

“(2) MEMBERSHIP.—The advisory group shall consist of 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, and forensic science regarding stranded marine mammals.

“(3) PUBLIC PARTICIPATION.—

“(A) MEETINGS.—The advisory group shall—

“(i) ensure that each meeting of the advisory group is open to the public; and

“(ii) provide, at each meeting of the advisory group, an opportunity for interested persons to present oral or written statements concerning items on the agenda for the meeting.

“(B) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

“(C) MINUTES.—The Secretary shall keep and make available to the public minutes of each meeting of the advisory group.

“(4) EXEMPTION.—The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the establishment and activities of an advisory group in accordance with this subsection.

“(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 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 the Secretary to carry out this section \$5,000,000 for each of fiscal years 2001 through 2003, to remain available until expended.”

(b) CONFORMING AMENDMENT.—Section 3(12)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(12)(B)) is amended by inserting “(other than section 408)” after “title IV”.

(c) CLERICAL AMENDMENT.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 (86 Stat. 1027) is amended by striking the items relating to sections 408 and 409 and inserting the following:

“Sec. 408. John H. Prescott Marine Mammal Rescue Assistance Grant Program.

“Sec. 409. Authorization of appropriations.

“Sec. 410. Definitions.”.

PURPOSE OF THE BILL

The purpose of H.R. 1934 is to amend the Marine Mammal Protection Act of 1972 to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program.

BACKGROUND AND NEED FOR LEGISLATION

The Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361 et seq.) generally bans the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importation of marine mammals and marine mammal products into the United States. The term "take" is defined to mean "to harass, hunt, capture, or kill, or attempt to harass, hunt capture or kill any marine mammal."

Jurisdiction over marine mammals under the MMPA is divided between the Secretary of Commerce, acting through the National Marine Fisheries Service (NMFS), who is responsible for the conservation and management of pinnipeds (seals and sea lions, other than walruses) and cetaceans (dolphins and whales), and the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service (FWS), who is responsible for walruses, sea and marine otters, polar bears, manatees and dugongs. State management of resident marine mammal populations is allowed if the Secretary approves a State marine mammal management program consistent with the MMPA. Criminal and civil penalties are prescribed for violations of the MMPA.

In 1992, Congress enacted the Marine Mammal Health and Stranding Response Act which: (1) statutorily recognized the marine mammal stranding network; (2) established procedures for responding to unusual mortality events affecting marine mammals; and (3) established the National Marine Mammal Tissue Bank. The Marine Mammal Health and Stranding Response Act is Title IV of the MMPA. Section 408 of the MMPA authorizes appropriations for stranding data collection and the maintenance of the Marine Mammal Tissue Bank. Section 405 permits NMFS to compensate persons for: (1) special costs incurred in accordance with a contingency plan for an unusual mortality event; (2) costs incurred in preparing and transporting tissues collected during an unusual mortality event for the Tissue Bank; and (3) care and maintenance of marine mammals seized from a licensed public display facility.

A Marine Mammal Stranding Network has been established in most coastal States. Most members of the Stranding Network are volunteers who respond to both live and dead strandings of cetaceans and pinnipeds. Network organizations and their members must satisfy minimum marine mammal experience requirements to be authorized as Network participants by NMFS. Network participants are required to collect certain basic biological data, including species, sex, length, location, and any evidence of human interaction. In addition, they are encouraged to collect other data and tissues that can be used for scientific analysis (e.g., condition of ocean, temperature, etc.).

Each year there are some 3,000 marine mammal strandings reported in the United States. Seals and sea lions account for about

2,000 of the strandings. Of the 1,000 cetacean strandings, more than half involve bottlenose dolphins, but significant numbers of pygmy sperm whales, harbor porpoises, and common dolphins also strand each year. Stranding Network members rehabilitate and release to the wild several hundred animals. Although most of the animals released are seals and sea lions, the number of cetaceans successfully treated has risen in the last few years.

Most marine mammal strandings are not associated with unusual mortality events. They 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 most cases, this assistance is provided by small, underfunded members of the Marine Mammal Stranding Network, who go to extraordinary lengths to save these mammals. There is an overriding need to increase our scientific knowledge of marine mammals, and to conserve these valuable species. Therefore, it is essential that a small federal grant program be established to help defray the high cost of recovery and rehabilitation of these marine mammals that fall outside the existing MMPA Title IV program. H.R. 1954 expands the existing MMPA stranding assistance program by allowing eligible 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) improving the treatment and operation of rescue and rehabilitation centers. The legislation also authorizes appropriations of \$5 million per year until September 30, 2003.

The program is named for and honors John H. Prescott, a former Executive Director and Director Emeritus of the New England Aquarium in Boston, Massachusetts, who passed away on June 30, 1998. He was a well-known and well-respected marine mammal educator, scientist and conservationist. During his 40-year career, Mr. Prescott authored numerous articles on marine mammal behavior, husbandry, rehabilitation and rescue, and led the New England Aquarium to its preeminent position in the rescue, study and rehabilitation of stranded marine mammals. Mr. Prescott also served as an advisor to the U.S. Marine Mammal Commission; a member of the Scientific Advisory Board, American Cetacean Society; a member of the Society for Marine Mammalogy; Chairman of the NMFS Humpback Whale Recovery Team; and five years as a member of the U.S. delegation to the International Whaling Commission.

COMMITTEE ACTION

H.R. 1934 was introduced on May 25, 1999, by Congressmen Jim Saxton (R-NJ), Eni Faleomavaega (D-AS) and Frank LoBiondo (R-NJ). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On June 10, 1999, the Subcommittee held a hearing on the bill. Testimony was heard from Mr. Marshall Jones, Assistant Director for International Affairs, FWS; Ms. Penelope Dalton, Assistant Administrator for Fisheries, NMFS; Mr. Robert Schoelkopf, Director, Marine Mammal Stranding Center; Dr. Andrew Stamper, Head Veterinarian, New England Aquarium; Dr. Charles Manire, Chief, Marine Mammal Strandings, Mote Marine Laboratory; and Mr. Wayne Pacelle, Senior Vice President,

Humane Society of the United States. Each public witness strongly supported the bill. However, NMFS believed it was more appropriate to address the issue of funding the stranding network within the context of an MMPA reauthorization. On June 22, 1999, the Subcommittee met to mark up the bill. Chairman Saxton offered an amendment in the nature of a substitute that: (1) required the Secretary to establish an advisory group for evaluating grant proposals; (2) expanded the 25-percent non-federal match to include in-kind contributions; (3) authorized an administrative expense provision with a cap of six percent; and (4) clarified that the grants for collection of information include both live and dead marine mammals for the purpose of scientific research. The amendment was adopted by voice vote. The bill, as amended, was then favorably reported by voice vote to the Full Committee.

On June 30, 1999, the full Resources Committee met to consider the bill. Congressman Jim Saxton offered an amendment that: (1) ensured funds provided as grants are distributed equitably among the five designated stranding regions; (2) expanded membership of an existing advisory group to include representatives from each designated stranding region; and (3) defined "designated stranding region." It was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in this bill are not currently being nor could they be performed by one or more agencies, an advisory group already in existence or by enlarging the mandate of an existing advisory group.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.* Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. *Congressional Budget Act.* As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. *Government Reform Oversight Findings.* Under clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. *Congressional Budget Office Cost Estimate.* Under clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 16, 1999.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1934, the Marine Mammal Rescue Assistance Act of 1999.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1934—Marine Mammal Rescue Assistance Act of 1999

Summary: Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1934 would cost \$15 million over the 2001–2004 period. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1934 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs incurred by state, local, or tribal governments would result from the voluntary participation in the grant program established by the bill.

H.R. 1934 would direct the Secretary of Commerce to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program. Under this program, the National Marine Fisheries Service (NMFS) would provide grants to groups or individuals who assist stranded marine animals. The grants could be used to recover or treat these animals, collect data from living or dead specimens for research and cover operating costs for related facilities. The bill also would direct the Secretary to establish a group to advise the agency on implementing the new program, including making grants. The bill would authorize the appropriation of \$5 million for each of fiscal years 2001 through 2003.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1934 is shown in the following table. The costs

of this legislation fall within budget function 300 (natural resources and environment). For purposes of this estimate, CBO assumes that the entire amounts authorized will be appropriated for each fiscal year. Estimated outlays are based on the experience of similar programs carried out by NMFS and other parts of the National Oceanic and Atmospheric Administration.

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	0	5	5	5	0
Estimated Outlays	0	3	4	5	3

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 1934 contains no intergovernmental or private-sector mandates as defined in UMRA. Any costs incurred by state, local, or tribal governments would result from the voluntary participation in the grant program established by the bill.

Estimate prepared by: Deborah Reis.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE MARINE MAMMAL PROTECTION ACT OF 1972

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TABLE OF CONTENTS

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TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

Sec. 401. Establishment of program.

* * * * *

[Sec. 408. Authorization of appropriations.]

[Sec. 409. Definitions.]

Sec. 408. John H. Prescott Marine Mammal Rescue Assistance Grant Program.

Sec. 409. Authorization of appropriations.

Sec. 410. Definitions.

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DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) * * *

* * * * *

(12)(A) * * *

(B) in section 118 and title IV (*other than section 408*) the term “Secretary” means the Secretary of Commerce.

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TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

* * * * *

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

(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 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 designated stranding regions.*

(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; and*

(ii) *data regarding average annual strandings and mortality events per 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) *ADVISORY GROUP.*—

(1) *IN GENERAL.*—*The Secretary, in consultation with the Marine Mammal Commission, shall establish an advisory group in accordance with this subsection to advise the Secretary regarding the implementation of this section, including the award of grants under this section.*

(2) *MEMBERSHIP.*—*The advisory group shall consist of 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, and forensic science regarding stranded marine mammals.*

(3) *PUBLIC PARTICIPATION.*—

(A) *MEETINGS.*—*The advisory group shall—*

(i) *ensure that each meeting of the advisory group is open to the public; and*

(ii) provide, at each meeting of the advisory group, an opportunity for interested persons to present oral or written statements concerning items on the agenda for the meeting.

(B) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(C) MINUTES.—The Secretary shall keep and make available to the public minutes of each meeting of the advisory group.

(4) EXEMPTION.—The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the establishment and activities of an advisory group in accordance with this subsection.

(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 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 the Secretary to carry out this section \$5,000,000 for each of fiscal years 2001 through 2003, to remain available until expended.

SEC. [408.] 409. AUTHORIZATION OF APPROPRIATIONS.

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;

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

(3) to the Fund, \$500,000 for fiscal year 1993.

SEC. [409.] 410. DEFINITIONS.

In this title, the following definitions apply:

(1) * * *

* * * * *

ADDITIONAL VIEWS

We support this legislation which would enhance the activities of the Marine Mammal Health and Stranding Network. The Stranding Program is an important voluntary partnership network that provides invaluable information concerning the ecological and physical health of stranded marine mammals to the Federal government. Testimony before the Fisheries Conservation, Wildlife and Oceans Subcommittee demonstrated that average annual appropriations of \$250,000 made available from the National Marine Fisheries Service (NMFS) to support or reimburse participating network facilities are insufficient to cover stranding response costs, especially costs to respond to unusual mortality events. This often creates unintended financial hardships on these very same facilities. The additional \$5 million per year would provide much needed financial relief and would also enhance the capability of network facilities to provide expanded services including follow-up veterinary care, pharmaceutical treatments, and feed, maintenance and rehabilitation programs. In short, this additional funding should strengthen the existing network and ensure that participating facilities are not forced to choose between responding to stranding events or sacrificing other program activities. However, we do not intend this funding to be used by participating facilities to offset other expenses or replace funds raised from private sources.

Witness testimony also made it clear that the full potential of the Stranding Program remains unrealized and the additional financial support should enable the Stranding Program to become more proactive. We expect that a portion of additional funds would bolster activities that are presently inadequately funded, such as development of a strong marine mammal health assessment program, and more expansive data collection regarding stranding rates, diseases and contaminants. Such information is vital to determine causal connections between marine mammals, the marine environment, and human perturbations. Moreover, NMFS could learn more from the retrieved tissues of deceased marine mammals. Unfortunately, the majority of stranded marine mammals never recover and perish in captivity. These carcasses are a tremendous biological resource that remain underutilized by veterinary and forensic researchers. We would expect NMFS to use a portion of the increased funding to support greater use of necropsy and more expansive laboratory tissue analyses. Alarming findings in California report that disease organisms such as the herpes virus, and neurotoxins such as domoic acid which occurs in harmful algal blooms, have been found in the tissues of marine mammal that consume sardines and anchovies. Considering the real potential for crossover affects that could jeopardize human health and safety, it is imperative that NMFS make optimal use of marine mammal carcasses to better learn why strandings occur, how diseases and tox-

ins affect marine mammals, and how diseases might persist and be amplified through the marine food change.

We also appreciate the majority's willingness to include our provision to ensure equitable distribution of grant funds among the five stranding network regions. Ten-year stranding data conclusively demonstrates that the three Pacific regions (Southwest, Northwest and Alaska) experience twice the number of strandings as reported for the two Atlantic regions (Northeast, Southeast). Because a sizable majority of stranding facilities are located in the Atlantic regions, we acknowledge the concern that simple geographic distribution based on strandings data might be counterproductive to the ultimate goal of improving the overall effectiveness of the Stranding Program. We recognize the legitimate need for additional resources to support existing stranding facilities, however we contend that equitable funding should be distributed to regions that experience high numbers of stranding events, such as the Southwest region which alone exceeds in strandings all other regions combined. Furthermore, we believe that additional funds should be distributed to fill in gaps in current response coverage for strandings that occur in remote areas, such as strandings in the Pacific, including Hawaii and the territories such as American Samoa. The most effective way to enhance the stranding Program is for NMFS to ensure that these additional dollars follow the demand generated by actual strandings, and not simply address the existing needs of participating network facilities.

GEORGE MILLER,
CARLOS ROMERO-BARCELÓ.
ENI FALEOMAVAEGA.

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