

MARINE MAMMAL COMMISSION
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31 December 2003

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Dear Dr. Hogarth:

The Marine Mammal Health and Stranding Response Program was one of the major topics addressed at the 21–23 October 2003 annual meeting of the Marine Mammal Commission in Newport, Rhode Island. The program was established under Title IV (section 401) of the Marine Mammal Protection Act to “(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild; (2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and (3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 404 [of the Act].” These provisions, enacted in 1992, augmented the pre-existing stranding response provisions of section 109(h) of the Act, which under section 403, still provides the basis for stranding response agreements.

The potential value of an effective stranding program cannot be overstated. In addition to humane considerations involving care of animals that are still living, stranded animals provide an invaluable source of scientific information about individual animals and, in some cases, populations. Determining the health of marine mammals and marine mammal populations and responding to the number and range of stranding events that occur are considerable challenges requiring extensive coordination to accomplish a wide range of tasks. In recent years, the stranding network has grown and developed considerably due to the dedicated efforts of such persons as Drs. Teri Rowles and Janet Whaley. At its annual meeting, the Commission heard from them, other agency staff, and others outside the agency involved in implementing various aspects of the Marine Mammal Health and Stranding Program. All described progress in development and coordination of related tasks, and problems or obstacles not yet addressed.

Our general impression from those presentations was that the Service has made considerable progress in developing programs to accomplish some of the purposes of Title IV. The Service coordinates regional stranding networks that are providing important information on the occurrence, frequency, and cause of strandings. A working group on marine mammal unusual mortality events has been effectively identifying and investigating such events. The Service has developed draft guidelines for determining when rehabilitated

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marine mammals should be released back into the wild. The Service also is developing databases to provide access to basic stranding data. It appears that many stranding events have been managed effectively to provide useful scientific information and facilitate the well-being of the animals involved. Progress made in these areas is a direct result of dedicated efforts by program participants, including highly dedicated Service staff responsible for program development and management. We commend all the participants in the program for the important progress made to date.

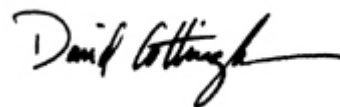
At the same time, we heard about what appears to be a serious lack of coordination within the Service at the national versus regional levels, inconsistencies among regions in carrying out the stranding program, insufficient funding, unresolved conflicts between scientific and humanitarian objectives, and the need to develop guidelines for various aspects of the program. The recent controversial determination to release five pilot whales served as a reminder that release guidelines must be finalized to facilitate management under such difficult circumstances. Several of our Commissioners and scientific advisors described other experiences, both positive and negative, working with Service staff managing the stranding program.

In view of these remaining concerns, the Marine Mammal Commission has been considering the potential costs and benefits associated with conducting a review of the Marine Mammal Health and Stranding Program. A preliminary set of questions that might be used to guide such a review is appended.

We anticipate that such a review will require considerable time and effort, whether conducted at the national level, the regional level, or some combination of the two. Prior to making a decision to undertake such a review, the Marine Mammal Commission would like to meet with members of your staff involved in the Marine Mammal Health and Stranding Response Program to explore in detail the potential costs and benefits of such a review. Although we believe that this program has achieved notable success in some areas, it is clear that the program is still evolving and requires further development to fully achieve the purposes established by Congress in Title IV of the Marine Mammal Protection Act.

With that in mind, I will contact you early in 2004 to set up a meeting to discuss this program and the merits of undertaking a comprehensive review. We look forward to working with both the National Marine Fisheries Service and the Fish and Wildlife Service to continue the development of this important program.

Sincerely,



David Cottingham
Executive Director

Encl. Appendix

Appendix: Review of Stranding Response Programs
under the Marine Mammal Protection Act

I. Statement of the Issue/Problem

Presentations made at the Commission's annual meeting and recent events involving stranding responses indicate that the National Marine Fisheries Service's stranding program is suffering from several shortcomings, including inconsistencies within and among regions and ad hoc decision-making resulting from a lack of national standards concerning –

- the qualifications for those authorized to respond to strandings and rehabilitate stranded marine mammals;
- criteria for determining when stranded marine mammals should be removed from the wild; and
- criteria for determining when, and under what conditions, rehabilitated marine mammals should be returned to the wild.

As such, the Commission believes that there is a need to review the stranding/rescue and rehabilitation programs of the NMFS and FWS to ensure that they:

- A. are based on and consistent with the underlying statutory authorities;
- B. adequately provide for the care, welfare, and, when feasible, return to the wild of live stranded marine mammals;
- C. maximize the scientific value derived from responses to strandings, including the collection and archiving of specimens from stranded/beached animals;
- D. provide adequate coverage throughout the United States; and
- E. unless differences are justified, prescribe uniform standards within and among regions.

II. Legal Authority

Section 109(h) of the MMPA provides that:

- (1) Nothing in this Title or Title IV shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from

taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for –

- (A) the protection or welfare of the mammal;
- (B) the protection of the public health and welfare, or
- (C) the nonlethal removal of nuisance animals.

(2) Nothing in this Title shall prevent the Secretary or a person designated under section 112(c) from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.

Title IV of the Marine Mammal Protection Act established the Marine Mammal Health and Stranding Response Program. According to section 401, the purposes of this program are to: “(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild; (2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and (3) coordinate effective responses to unusual mortality events...” Section 403 directs that stranding response agreements authorizing the taking of marine mammals under section 109(h) specify “each person who is authorized to perform activities under the agreement” and “any terms and conditions under which a person so specified may delegate that authority to another person.” Further, the Service is directed to “periodically review” agreements entered into under the Act for “performance adequacy and effectiveness.”

III. Questions to Resolve

A. State and Local Programs – State and local officials have independent authority to respond to strandings and, except for questions of coordination, should be evaluated separately from the Federal program. Questions to consider include –

1. What effort is being made by them?
2. What are the specifics as to area, species, etc.?
3. If there is substantial participation by state and local officials, is there a need for cooperative agreements with the Services to partition responsibilities and foster consistency in state and federal programs?

B. Federal Program –

1. The legal authorities for responding to strandings differ under the MMPA and the Endangered Species Act. Therefore, different mechanisms are needed to provide the necessary coverage. Questions to consider include –
 - a. What is the breakdown of effort between ESA listed species and those covered under the MMPA only?
 - b. What mechanisms are being used to authorize responses to strandings involving ESA species (e.g., enhancement and/or research permits)?
 - c. Are these mechanisms adequate?
2. The Services have exclusive jurisdiction for authorizing people from the private sector to participate in the stranding network. As such, they have complete control with respect to who participates and under what conditions. (Of course, if the requirements and procedures are too rigorous or burdensome, the Services run the risk that some participants will drop out, leaving the agencies to make up any shortfalls.) We should review and consider recommendations concerning –
 - a. How do the NMFS and FWS decide who is an appropriate stranding network participant?
 - b. Are there objective criteria that network participants must meet? If so, what are they? If not, should there be?
 - c. Are there different criteria for different types of responses (e.g., those that might require placement in captivity vs. those that do not, pinnipeds vs. cetaceans, ESA species vs. others, etc.)? If so, what are they? If not, should there be?
 - d. Are there regional differences that warrant differences in the authorization process or the issuance criteria?
 - e. Is coverage adequate in all regions?
 - f. If certain regions have more volunteers than are needed, should the number of authorizations issued be limited? If so, what system should be established for determining who receives an authorization? If not, who determines which facility responds to a particular event? How are such decisions made?
 - g. How are authorizations issued? Does the method used vary by region?
 - h. Should authorizations be reviewed periodically? If so, what is the proper duration of an authorization?
 - i. Are there standard provisions that are or should be included in all authorizations? What are they?
 - j. What reporting requirements are in place? Are they adequate?
 - k. Are participants authorized to designate other individuals to take marine mammals under their authorizations? If so, what role, if any does the Service play? What criteria and procedures are in place to ensure that

those responding to strandings on behalf of a participant are appropriately trained and qualified?

3. One of the benefits of the stranding program is the scientific information that can be obtained from stranded marine mammals. It appears, however, that scientific efforts related to the stranding program are not always well coordinated. Questions to be addressed include –

- a. Are procedures in place to maximize the scientific value of these animals?
- b. What data are collected?
- c. Are such data generally available to researchers and the public? How is access regulated?
- d. Are samples routinely collected? What protocols for sampling and archiving specimens are in place? Are these adequate?
- e. What analyses are done on these specimens? Who decides what is or is not done?
- f. How is access to specimens regulated?
- g. Under what circumstances, and under whose authority, can a researcher with a valid research permit for studies on stranded animals be prohibited from conducting that research?

4. Stranding network participants are routinely required to determine what action is in the best interest of stranded animals (e.g., treatment and release, captive rehabilitation, euthanasia, etc.). However, the bases for these determinations, and who is responsible for making them is not always clear. A review should therefore consider –

- a. Who is responsible for making on-site determinations as to the proper response?
- b. What criteria are used to make those determinations?
- c. What is the role of the Services in making or reviewing those decisions?
- d. Are there particular instances when the Services should or should not be consulted?
- e. What is the proper balance between humaneness considerations and the potential scientific value of stranded animals?

5. Once stranded marine mammals are placed in a captive facility for rehabilitation or long-term maintenance, additional considerations arise. Foremost among these is determining when returning an animal to the wild is appropriate. Congress directed that objective criteria for making such determinations be developed, however, they have never been finalized. A review should determine what is being done to finalize them and when the Service expects to have them in place. Other pertinent questions include –

- a. What interim measures are in place to make release determinations?
 - b. Who makes determinations concerning the releasability of an animal? Should the Services always be consulted?
 - c. What monitoring and follow-up should be required for releases? Should these requirements vary by species, length in captivity, etc?
 - d. What authorizations are needed under the Animal Welfare Act for the maintenance of animals in captivity during rehabilitation/long-term care? Should some rehabilitation facilities be exempted from AWA licensing requirements? If so, under what conditions?
 - e. When is public display of animals undergoing rehabilitation appropriate?
 - f. What research is being done or should be done on such animals? What authorizations are needed?
 - g. Should taking an animal into captivity for rehabilitation place a continuing (and perhaps lifelong) obligation on the facility to care for the animal?
6. For the past few years funding for some aspects of the stranding program has been available under the Prescott grant program. Review of this process should also be considered. Questions include –
- a. How are grants being made? Who is receiving them and in what amounts?
 - b. What criteria are being used to review proposals?
 - c. What projects are being funded? Should other types of proposals be encouraged?
 - d. Is the Service meeting the objective of equitable distribution among regions?
 - e. What steps are the FWS taking to secure Prescott funds?