111TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
111–175

SOUTHERN SEA OTTER RECOVERY AND RESEARCH ACT

JUNE 23, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 556]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 556) to establish a program of research, recovery, and other activities to provide for the recovery of the southern sea otter, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Southern Sea Otter Recovery and Research Act".

SEC. 2. SOUTHERN SEA OTTER RECOVERY AND RESEARCH PROGRAM.

(a) IN GENERAL.—The Secretary of the Interior, acting through the United States Fish and Wildlife Service and the United States Geological Survey, shall carry out a recovery and research program for southern sea otter populations along the coast of California, informed by the prioritized research recommendations of the Final Revised Recovery Plan for the southern sea otter (Enhydra lutris nereis) published by the United States Fish and Wildlife Service and dated February 24, 2003, the Research Plan for California Sea Otter Recovery issued by the United States Fish and Wildlife Service Southern Sea Otter Recovery Implementation Team and dated March 2, 2007, and any other recovery, research, or conservation plan adopted by the United States Fish and Wildlife Service after the date of enactment of this Act in accordance with otherwise applicable law. The Recovery and Research Program shall include the following:

(1) Monitoring, analysis, and assessment of southern sea otter population demographics, health, causes of mortality, and life history parameters, including range-wide population surveys.

(2) Development and implementation of measures to reduce or eliminate potential factors limiting southern sea otter populations that are related to marine ecosystem health or human activities.

(b) REAPPOINTMENT OF RECOVERY IMPLEMENTATION TEAM.—Not later than one year after the date of enactment of this Act, the Secretary shall appoint persons to a southern sea otter recovery implementation team as authorized under section 4(f)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)).

(c) SOUTHERN SEA OTTER RESEARCH AND RECOVERY GRANTS.—

(1) GRANT AUTHORITY.—The Secretary shall establish a peer-reviewed, merit-based process to award competitive grants for research regarding southern sea otters and for projects assisting the recovery of southern sea otter populations.

(2) PEER REVIEW PANEL.—The Secretary shall establish as necessary a peer review panel to provide scientific advice and guidance to prioritize proposals for grants under this subsection.

(3) RESEARCH GRANT SUBJECTS.—Research funded with grants under this subsection shall be in accordance with the research recommendations of any plan referred to in subsection (a), and may include the following topics:

(A) Causes of sea otter mortality.

(B) Southern sea otter demographics and natural history.

(C) Effects and sources of pollutants, nutrients, and toxicants on southern sea otters and sequestration of contaminants.

(D) Effects and sources of infectious diseases and parasites affecting southern sea otters.

(E) Limitations on the availability of food resources for southern sea otters and the impacts of food limitation on southern sea otter carrying capacity.

(F) Interactions between southern sea otters and coastal fisheries and other human activities in the marine environment.

(G) Assessment of the keystone ecological role of sea otters in southern and central California's coastal marine ecosystems, including both the direct and indirect effects of sea otter predation, especially as these effects influence human welfare, resource utilization, and ecosystem services.

(H) Assessment of the adequacy of emergency response and contingency plans.

(4) RECOVERY PROJECT SUBJECTS.—Recovery projects funded with grants under this subsection shall be conducted in accordance with recovery recommendations of any plan referred to in subsection (a), and may include projects to—

(A) protect and recover southern sea otters;

(B) reduce, mitigate, or eliminate potential factors limiting southern sea otter populations that are related to human activities, including projects to—

(i) reduce, mitigate, or eliminate factors contributing to mortality, adversely affecting health, or restricting distribution and abundance; and

(ii) reduce, mitigate, or eliminate factors that harm or reduce the quality of southern sea otter habitat or the health of coastal marine ecosystems; and

(C) implement emergency response and contingency plans.

(d) REPORT.—The Secretary shall—

(1) within 12 months after the date of enactment of this Act, report to Congress on—

(A) the status of southern sea otter populations;

(B) implementation of the Recovery and Research Program and the grant program; and

(C) any relevant formal consultations conducted under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) with respect to the southern sea otter; and

(2) within 24 months after the date of enactment of this Act and every 5 years thereafter, and in consultation with a southern sea otter recovery implementation team (if any) that is otherwise being utilized by the Secretary under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)), report to Congress and the public on—

(A) an evaluation of southern sea otter health, causes of southern sea otter mortality, and the interactions of southern sea otters with California's coastal marine ecosystems;

(B) an evaluation of actions taken to improve southern sea otter health, reduce southern sea otter mortality, and improve southern sea otter habitat;

(C) recommendation for actions, pursuant to current law, to improve southern sea otter health, reduce the occurrence of human-related mortality, and improve the health of such coastal marine ecosystems; and

(D) recommendations for funding to carry out this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) RECOVERY AND RESEARCH PROGRAM.—The term "Recovery and Research Program" means the recovery and research program under section 2(a).

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the United States Fish and Wildlife Service and the United States Geological Survey.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to the Secretary to carry out this Act $5,000,000 for each of fiscal years 2010 through 2015 of which—

(1) no less than 30 percent shall be for research grants under section 2(c)(3); and

(2) no less than 30 percent shall be for recovery projects under section 2(c)(4).

(b) ADMINISTRATIVE EXPENSES.—Of amounts available each fiscal year to carry out this Act, the Secretary may expend not more than 7 percent to pay the administrative expenses necessary to carry out this Act.

SEC. 5. TERMINATION.

This Act shall have no force or effect on and after the date the Secretary (as that term is used in section 4(c)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(2)) publishes a determination that the southern sea otter should be removed from the lists published under section 4(c) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)).

PURPOSE OF THE BILL

The purpose of H.R. 556, the Southern Sea Otter Recovery and Research Act, is to establish a program of research, recovery, and other activities to provide for the recovery of the southern sea otter.

BACKGROUND AND NEED FOR LEGISLATION

Historically, the range of sea otters extended across the North Pacific rim from the northern Japanese islands and Russia through the Aleutian Islands and down the coast of North America to Baja California, Mexico. The habitat of the southern subspecies, known as the southern or California sea otter (*Enhydra lutris nereis*), ranges from the coastal areas of San Mateo County to Santa Barbara County in California. A small translocated population of sea otters exists outside this range, at San Nicolas Island in Ventura County.

The carrying capacity of the California coast is estimated at 16,000 animals,[1] but the current population size, based on the most recent 3-year running average (for 2006–2008) is only 2,826 animals, less than 20% of its potential size. Through the years, southern sea otter distribution and abundance have been inextricably linked with the direct and indirect effects of human actions. Given California's inevitably increasing human population and mounting evidence of associated impacts on its coastal environment and ecosystems, the future of this population is uncertain.

In 1977, the southern sea otter was listed as threatened under the Endangered Species Act (ESA) and therefore is recognized as

[1] Laidre, K.L. (2001). "An Estimation of Carrying Capacity for Sea Otters along the California Coast." Marine Mammal Science 17(2):294–309.

"depleted" under the Marine Mammal Protection Act. It was listed because of its small population size and limited distribution and because of the potential threat to the remaining habitat and population in the event of an oil spill. The U.S. Fish and Wildlife Service (FWS) formed a Southern Sea Otter Recovery Implementation Team which finalized a recovery plan in 1982. The plan was reviewed and redrafted in 1991, 1996, 2000, and 2003. Over this time, the population has seen periods of growth and decline.

In 1986, Congress authorized the translocation and management of southern sea otters to San Nicolas Island offshore of southern California (P.L. 99–625). The intent of the translocation program, undertaken by FWS, was to create a second population of southern sea otters that could serve as a source population for future translocations should some portion of the mainland range become decimated by a large-scale catastrophe such as an oil spill.[2] The translocation plan designated a translocation zone within which sea otters would be released and protected, and a management zone surrounding the translocation zone, from which sea otters would be excluded to reduce resource conflicts between fishers and the translocated population. Sea otters found within the management zone were to be non-lethally captured and returned to San Nicolas Island or to the range of the parent population. By 1990, 140 sea otters had been translocated to San Nicolas Island, but most left the island shortly after they were released. Over the years a small group of animals has persisted at the island, and as of 2008, approximately 40 animals were counted there.

In 2000, FWS issued a biological opinion finding that complying with the containment requirements of the translocation program would likely jeopardize the continued existence of southern sea otters. In 2005, FWS issued a draft supplemental environmental impact statement as part of the process to determine whether to declare the translocation program a failure. A final supplemental environmental impact statement has not yet been released.

Even during periods of population growth, southern sea otters have never increased at more than a fraction of the species' maximum potential of 17% to 20% per year, typical of recovery of the northern subspecies.[3] The slow rate of recovery of southern sea otters has been attributed to elevated mortality rather than to a reduced birth rate or emigration. Southern sea otters die from myriad causes, including abandonment (as dependent pups), shark attacks, malnutrition, incidental entanglement in fishing gear, oiling, boat strikes, shooting, and intoxications caused by extreme proliferations of harmful algae. Infectious diseases comprise a particularly large proportion of sea otter deaths, a pattern that has been attributed to immune deficiencies, elevated parasite loads, and pathogen exposure, as well as to increasingly scarce food resources. Persistent organic pollutants and low genetic diversity may be contributing to suppressed immune function. Oil spills and range restriction (due to potential enforcement of a "management" or "no-otter" zone) are not responsible for the current high rates of mortality, but the possibility of a catastrophic oil spill or range restric-

[2] Sea otter fur is sensitive to soiling from oil or other contaminants, and soiling by oil generally results in death.

[3] Estes, J.A. (1990). "Growth and Equilibrium in Sea Otter Populations". Journal of Animal Ecology 59:385–401.

tion remain important threats that could negatively affect southern sea otter recovery.

Sea otters apparently lack immunity to many land-based diseases and parasites. From 1998 to 2006, infectious diseases were identified as the primary cause of death in over 40% of the fresh-dead sea otter carcasses examined at the California Department of Fish and Game Marine Wildlife Veterinary Care and Research Center in Santa Cruz, California. In addition, two potentially deadly parasites that cause systemic brain infections, *Toxoplasma gondii* and *Sarcocystis neurona,* were identified only within the last 10–15 years. The primary route of *T. gondii* to the sea is believed to be runoff containing feces from felids (domestic cats, feral cats, mountain lions, bobcats) carrying the parasite's eggs. Identifying specific routes of infection has not yet been possible. The parasite *S. neurona,* which is shed in the feces of opossums, probably reaches sea otters by a similar route of runoff and concentration in marine invertebrate prey, but as with *T. gondii* infections, the specific pathways are unknown.

Infections with thorny-headed worms *(Profilicollis spp.)* killed about 15% of the fresh-dead sea otters examined from 1998–2006 and are a significant cause of death, particularly in the Monterey Bay region. Persistent organic pollutants in the blood of southern sea otters are present at 50 to 100 times the levels seen in Alaskan sea otters. Associations between significantly higher levels of a number of persistent organic pollutants in tissues and death due to disease have been identified in a number of studies on deceased sea otters. Toxic algal blooms, some of which appear to be associated with nutrient loading of near shore waters from terrestrial sources, have caused mortality events in sea otters.

Another issue impacting sea otter recovery is food limitation. As sea otter populations and densities in a particular area increase, competition for food or prey can affect the body condition, health, and survival of some otters. Limited food resources may be affecting southern sea otter recovery in certain parts of their existing range. For example, sea otters at San Nicolas Island are larger and spend less time foraging than those in the central part of the range; their diet is dominated by a few energy-rich species, and food availability is much greater (1–2 orders of magnitude higher) than in central California. The dietary diversification that has occurred in response to food limitation in central California exposes sea otters to new parasites and disease pathogens, so that food limitation and disease may be acting synergistically to increase mortality. Together, these data suggest that food limitation is potentially an obstacle to the recovery of sea otters in central California and that sea otters in central California may be at or near the environmental carrying capacity.

In order for population growth to occur, sea otters must be able to expand their range into areas with more abundant prey resources. Range expansion may result in conflicts with fishers over resource allocation and gear restrictions and will require coordination with recovery efforts for the endangered white abalone *(Haliotis sorenseni)* and black abalone *(H. cracherodii)*.

Despite the number of continuing threats to the southern sea otter and the population's modest growth rate, it is conceivable that the FWS could delist the southern sea otter in the future. In

order for southern sea otters to be considered for delisting under the ESA, the 3-year running average must exceed a threshold of 3,090 animals for three continuous years. Even after delisting under the ESA, the southern sea otter will continue to receive protection under the Marine Mammal Protection Act. At that time, FWS will make a formal determination of the southern sea otter's "depleted" status in relation to its optimal sustainable population (OSP) size, which is estimated to be approximately 8,400 individuals. Recovery and attainment of the OSP level for southern sea otters will depend on a better understanding of the relative importance of, and interaction between, various causes of mortality and the means to mitigate them.

H.R. 556 directs FWS to implement a program assessing important aspects of southern sea otter population demographics, health, mortality and life history parameters; to develop measures to reduce or eliminate factors related to marine ecosystem health or human activities that limit sea otter populations; and to do so in accordance with consensus recommendations made by the Service's published Southern Sea Otter Recovery Plan.

The bill is necessary to provide a stable and reliable source of funding for critically needed research, monitoring, and implementation of recovery actions. Past funding by FWS has been inadequate to meet these needs. The benefits of the research, monitoring, and recovery actions funded by the bill will apply to sea otters, but because sea otters are a keystone and a sentinel species, the benefits will also translate to the California coastal ecosystem as a whole.

COMMITTEE ACTION

H.R. 556 was introduced by Representative Sam Farr (D–CA) on January 15, 2009. The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Insular Affairs, Oceans and Wildlife.

On May 5, 2009, the Subcommittee held a hearing on the bill. On June 10, 2009, the Subcommittee was discharged from further consideration of H.R. 556 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Madeleine Z. Bordallo (D–GU) offered an amendment in the nature of a substitute to eliminate the Sea Otter Scientific Advisory Committee and direct FWS to utilize its existing authorities under the ESA to reappoint a Southern Sea Otter Recovery Implementation Team, and to utilize peer review panels, as necessary, to provide scientific advice and guidance in prioritizing grant proposals. The substitute also requires the Secretary of the Interior, within two years and every five years thereafter, and in consultation with the Recovery Implementation Team, to recommend funding for further activities to implement the Act.

Representative Don Young (R–AK) offered an amendment to the amendment in the nature of a substitute, which was modified by unanimous consent, to terminate the Act upon the delisting of the southern sea otter under the ESA. The modified amendment to the amendment in the nature of a substitute was adopted by voice vote. The amendment in the nature of a substitute, as amended, was then adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that this Act may be cited as the "Southern Sea Otter Recovery and Research Act."

Section 2. Southern Sea Otter Recovery and Research Program

This section requires the Secretary to carry out a recovery and research program for southern sea otter populations along the coast of California informed by the prioritized research recommendations of the Final Revised Recovery Plan for the southern sea otter (*Enhydra lutris nereis*) published by FWS and dated February 24, 2003, the Research Plan for California Sea Otter Recovery issued by the FWS Southern Sea Otter Recovery Implementation Team and dated March 2, 2007, and any other recovery or research plan adopted by FWS. The Committee recognizes that these documents contain numerous research and recovery recommendations that should provide the foundation of recovery and research program. The Committee also recognizes that the Revised Recovery Plan is now seven years old and the recovery and research recommendations therein may require updating and reprioritization to accommodate new scientific information and state ocean policy initiatives. It is the Committee's intent that the Secretary has the flexibility to use these documents, subsequent revisions, and other scientific literature to effectively implement its Recovery and Research Program.

This section also directs the Recovery and Research Program to monitor and analyze southern sea otter population demographics, health, causes of mortality, and life history parameters, including range-wide population surveys. The Recovery and Research Program will also develop and implement measures to reduce or eliminate potential factors limiting the southern sea otter population that are related to marine ecosystem health or human activities.

Subsection (b) directs the Secretary to reappoint a Southern Sea Otter Recovery Implementation Team authorized under section 4(f)(2) of the ESA not later than one year after the date of enactment of this Act.

Subsection (c) establishes a peer-reviewed, merit-based process to award competitive grants for southern sea otter research and for projects assisting the recovery of southern sea otter populations. This subsection also directs the Secretary to establish, as necessary, a peer review panel to provide scientific advice and guidance to prioritize proposals for grants.

This subsection provides that research grant subjects may include eight listed topics. This list is not exhaustive, but rather illustrative, and as time goes by the Committee expects that research priorities will change based on the accumulation of scientific information and the emergence of new threats.

This subsection also directs the Secretary to provide grants for a number of different types of recovery projects.

Subsection (d) directs the Secretary to report, within 12 months after enactment, on the status of southern sea otter populations; implementation of the Recovery and Research Program and the grant program; and any relevant formal consultations conducted under section 7 of the ESA with respect to southern sea otters.

This subsection also requires the Secretary, within 24 months of enactment and every five years thereafter, and in consultation with the Southern Sea Otter Recovery Implementation Team, to report on the health of southern sea otters; the causes of southern sea otter mortality; and interactions of southern sea otters with California's coastal marine ecosystems. The report will also evaluate the effectiveness of actions taken to improve southern sea otter health, reduce southern sea otter mortality, and improve southern sea otter habitat. Based on that evaluation the report will recommend actions to improve southern sea otter health, reduce human-related mortality, and improve the health of coastal marine ecosystems. Finally, the report will also include recommendations regarding funding to carry out the Act.

Sec. 3. Definitions

Section 3 defines key terms included within the text of the proposed legislation, including "Recovery and Research Program" and "Secretary" where they appear in the bill.

Section 4. Authorization of Appropriations

This section authorizes $5,000,000 for each of fiscal years 2010 through 2015 and caps the administrative expenses at 7 percent. The authorization is further allocated with 30 percent of the authorization for research, 30 percent for recovery activities, and the remainder provided to the Secretary of the Interior for additional grants for either research or recovery projects.

Section 5. Termination

This section terminates the Act on or after the date the Secretary publishes a determination that the southern sea otter should be removed from the lists published under section 4(c) of the ESA.

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 Natural 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.

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. General Performance Goals and Objectives.

As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to is to establish a program of research, recovery, and other activities to provide for the recovery of the southern sea otter.

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:

H.R. 556—Southern Sea Otter Recovery and Research Act

Summary: H.R. 556 would authorize the appropriation of $5 million annually over the 2010–2015 period for the Fish and Wildlife Service and the United States Geological Survey to carry out a recovery and research program affecting the southern sea otters along the coast of California. The program would include awarding competitive grants for research regarding the otters and for projects to assist in the recovery of the otter population. Assuming appropriation of the authorized amounts, CBO estimates that carrying out those activities would cost $20 million over the next five years. Enacting the bill would not affect direct spending or revenues.

H.R. 556 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 556 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	5	5	5	5	5	25
Estimated Outlays	2	3	5	5	5	20

Basis of estimate: For this estimate, CBO assumes that H.R. 556 will be enacted near the end of fiscal year 2009 and that the authorized amounts will be appropriated for each year. Estimated outlays are based on historical spending patterns for similar programs.

Estimated intergovernmental and private-sector impact: H.R. 556 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

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

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 556 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

We are concerned that this bill will force the U.S. Fish and Wildlife Service to take actions and use funds for the Southern sea otter that the Service would otherwise classify as a lower priority when allocating species recovery funds under the Endangered Species Act (ESA). The Service testified at our Subcommittee hearing that "the bill could divert funds from other high priority recovery actions for threatened and endangered species in California."

The Service is the agency with management authority over the Southern sea otter and a number of other animals listed under the ESA. The Service should be afforded the opportunity to make its own determinations on how to best use the funds given to the agency for ESA recovery actions.

The original intent of the ESA was to protect and preserve species that have been identified as threatened or endangered. Over the past 36 years nearly 2600 species have been listed for protection. Although the ESA was intended to recover species, subspecies and distinct population segments of animals and plants threatened or endangered with extinction, 1 percent of the total number of U.S. species listed have been recovered and/or removed from the endangered list. Today, of the 2531 listed species on the ESA list, 1,959 are US domestic species and 572 are foreign species.

Under the ESA, at the time a species is listed, the government is required to designate critical habitat. Critical habitat is designated to alert the public and other governmental units to the habitat needs of the species. The only exception to this rule is where the Secretary of the Interior finds that it is not prudent to do so. The Service has designed critical habitat for 543 species or 27 percent of all listed species.

For many years, due to a high demand on its stretched resources, the Service has been unable to comply with certain deadlines imposed by the ESA for completing critical habitat designations. In response, private litigants have repeatedly sued the Service because it has failed to meet these statutory deadlines. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements. For example, the Bush Administration faced 369 listing related suits, or 185 more than were filed during the Clinton Administration. As a result, compliance with these court actions now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities or to direct scarce listing resources to program actions most urgently needed to conserve species. In fact, the former Director of the Service has testified that the Service had not listed a single species on its own initiative since 1994 because of ongoing court litigation.

Although recovery is the primary goal of the program, evidence suggests that recovery efforts have produced limited results, imple-

menting recovery actions plans are often low priority, and that recovery actions are not properly monitored. As a result, although the recovery program receives the highest percentage of funding among ESA programs, accomplishments are largely unknown and the agency is unaccountable for the effectiveness of the recovery efforts. As of May 30, 2009, the Service had developed 559 final recovery plans covering 1,084 species.

As stated above, only about 1 percent of the total number of species listed have been recovered and removed from the endangered list. In the more than three decades since the ESA's passage only a handful of species have "recovered" and been removed from the endangered list. In fact, fewer species have been delisted because of recovery than because the data used to justify their endangered listing was wrong.

Of the 49 domestic and foreign species delisted, nine were removed due to extinction and 17 were removed as data errors. The remaining 23 species have been claimed as "recovered." The primary factor in the recovery of several of these species was the ban on DDT, which was unrelated to and predated the Endangered Species Act. However, in at least six of these "success" cases, analysis of the Service data indicates that the threat to the species was overestimated.

Problems with the recovery program include the low priority given to developing and implementing plans. For example, since recovery plan activities are not regulatory requirements, they often receive lower priority than other actions, such as critical habitat designations and consultations, which are required by regulation and, increasingly, subject to litigation. In addition, because the Service does not have a centralized system to track and monitor recovery activities, the information on species' status may be questionable and because the Service lacks good criteria for downlisting or delisting a species, the ability to measure recovery progress is inconsistent.

Congress intended for this law to be used to *recover* species and to increase the number of those in need *before* triggering federal regulation (and its attendant restrictions on property rights). To merely prevent the extinction of a species is not a long-term measurable success. Congress never dreamed that it would turn into a tool used by vocal and well-funded special interest groups seeking to impose court ordered federal land and water use controls on the majority of Americans.

We should take the time to have oversight hearings to review the agency's funding decisions. We should also look at the ESA as a whole to see what changes, modifications or reforms are necessary to the Act and not pass new legislation for a single listed species.

While the Amendment in the Nature of a Substitute adopted in Committee addressed some of our concerns and made this legislation better, we remain concerned about the precedent H.R. 556 will have with regard to listed species under the Endangered Species Act. It is particularly interesting that this legislation singles out a species that while "threatened" is far more likely to survive in the future then a number of highly endangered species which desperately need recovery funding, which may now be diverted by

Congressional fiat to "recover" the merely threatened Southern sea otter.

DOC HASTINGS.
DON YOUNG.

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