

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 than 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.

