

COROLLA WILD HORSES PROTECTION ACT

DECEMBER 1, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 306]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 306) to direct the Secretary of the Interior to enter into an agreement to provide for management of the free-roaming wild horses in and around the Currituck National Wildlife Refuge, 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 “Corolla Wild Horses Protection Act”.

**SEC. 2. WILD HORSES IN AND AROUND THE CURRITUCK NATIONAL WILDLIFE REFUGE.**

(a) AGREEMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of the Interior shall enter into an agreement with the Corolla Wild Horse Fund (a nonprofit corporation established under the laws of the State of North Carolina), the County of Currituck, North Carolina, and the State of North Carolina within 180 days after the date of enactment of this Act to provide for management of free-roaming wild horses in and around the Currituck National Wildlife Refuge.

(2) TERMS.—The agreement shall—

(A) allow a herd of not less than 110 and not more than 130 free-roaming wild horses in and around such refuge, with a target population of between 120 and 130 free-roaming wild horses;

(B) provide for cost-effective management of the horses while ensuring that natural resources within the refuge are not adversely impacted;

(C) provide for introduction of a small number of free-roaming wild horses from the herd at Cape Lookout National Seashore as is necessary to maintain the genetic viability of the herd in and around the Currituck National Wildlife Refuge; and

(D) specify that the Corolla Wild Horse Fund shall pay the costs associated with—

(i) coordinating a periodic census and inspecting the health of the horses;

(ii) maintaining records of the horses living in the wild and in confinement;

(iii) coordinating the removal and placement of horses and monitoring of any horses removed from the Currituck County Outer Banks; and

(iv) administering a viable population control plan for the horses including auctions, adoptions, contraceptive fertility methods, and other viable options.

(b) **CONDITIONS FOR EXCLUDING WILD HORSES FROM REFUGE.**—The Secretary shall not exclude free-roaming wild horses from any portion of the Currituck National Wildlife Refuge unless—

(1) the Secretary finds that the presence of free-roaming wild horses on a portion of the Refuge threatens the survival of an endangered species for which such land is designated as critical habitat under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) such finding is based on a credible peer-reviewed scientific assessment; and

(3) the Secretary provides a period of public notice and comment on that finding.

(c) **REQUIREMENTS FOR INTRODUCTION OF HORSES FROM CAPE LOOKOUT NATIONAL SEASHORE.**—During the effective period of the memorandum of understanding between the National Park Service and the Foundation for Shackleford Horses, Inc. (a non-profit corporation organized under the laws of and doing business in the State of North Carolina) signed in 2007, no horse may be removed from Cape Lookout National Seashore for introduction at Currituck National Wildlife Refuge except—

(1) with the approval of the Foundation; and

(2) consistent with the terms of such memorandum (or any successor agreement) and the Management Plan for the Shackleford Banks Horse Herd signed in January 2006 (or any successor management plan).

(d) **NO LIABILITY CREATED.**—Nothing in this section shall be construed as creating liability for the United States for any damages caused by the free-roaming wild horses to any person or property located inside or outside the boundaries of the refuge.

#### PURPOSE OF THE BILL

The purpose of H.R. 306, as ordered reported, is to direct the Secretary of the Interior to enter into an agreement to provide for management of the free-roaming wild horses in and around the Currituck National Wildlife Refuge.

#### BACKGROUND AND NEED FOR LEGISLATION

While it is not precisely known when the Corolla horses arrived on the Currituck Outer Banks, North Carolina, there is some evidence that they were introduced by Spanish explorers 500 years ago. In 2007, the National Horse of the Americas Registry recognized and registered these horses as Colonial Spanish Mustangs. These wild horses have survived nearly five centuries of fierce hurricanes, severe droughts, floods and swarms of biting insects. Today, the herd is comprised of about 140 animals that live on approximately 7,544 acres of public and private lands. This is divided in the following way: 4,671 acres are privately owned by individuals and corporations; 2,495 acres are part of the Currituck National Wildlife Refuge; 326 acres are found in the North Carolina

National Estuarine Research Reserve; and 51 acres are owned by the Nature Conservancy.

In 1988, the Corolla Wild Horse Fund was established to support the wild Spanish mustangs and to educate the public about the history of the herd. The Fund was also instrumental in the enactment of a 1989 Wild Horse Ordinance which made it “unlawful” for “any person to lure, attract, or entice a wild horse to come within 50 feet of any person” or “any person to lure or entice a wild horse out of a wild horse sanctuary.” In Currituck County, the wild horse sanctuary is defined to extend from Corolla, North Carolina, to the Virginia Commonwealth line.

In 2007, the latest Wild Horse Management Plan was approved with the concurrence of the Corolla Wild Horse Fund, the County of Currituck, the State of North Carolina and the U.S. Fish and Wildlife Service, which administers the wildlife refuge. Under the Plan, the maximum number of horses allowed within the sanctuary is 60 and the Corolla Wild Horse Fund is permitted to control the population of these horses “through adoption, relocation, auction or contraceptive fertility methods.” There was apparently no scientific basis for selecting this herd size. It was the result of contentious discussions where the Corolla Wild Horse Fund requested a herd size of at least 100 against the Service’s position of zero horses.

During the past four years, the Corolla Wild Horse Fund, the County of Currituck and the State of North Carolina have formally requested that the maximum herd size be increased and that a small number of mares from the nearby Shackleford Banks herd be introduced to restore diversity to the Corolla horses’ gene pool. According to a veterinary expert, “Horses of the Corolla herd show levels of genetic variability that are among the lowest seen in any horse population.” Under the existing agreement, any changes to the Plan management must be adopted by a consensus vote. These requests have been repeatedly denied by the Service, prompting the need for H.R. 306.

The Currituck National Wildlife Refuge was established in 1984 to manage waterfowl, migratory birds, and endangered species such as piping plovers, sea turtles and sea beach amaranth. The Service will allow wild horses, which they define as feral animals, to freely roam the refuge as long as the horses do not significantly impact habitat or wildlife under the Endangered Species Act, the Refuge Administration Act, and the National Wildlife Refuge System Improvement Act. While the Service has been unable to quantify any negative impacts of the 35 Corolla horses that utilize refuge land, the Service has initiated a research project to “determine the impacts of deer, hogs, and horses on refuge habitats.” Those results are not expected before June 2012.

On June 8, 2011, the Acting Deputy Director of the Service submitted a letter outlining various estimates of the annual costs of managing the wild horses, the additional expenses the Service may incur and an estimate of one-time costs as a result of the passage of H.R. 306. While the Committee appreciates having this information, it lacks detail, justification and specificity. For instance, there is no explanation as to why it would cost the Service an additional \$160,000 a year to manage these horses simply because this legislation is enacted into law. H.R. 306 does not mandate any additional management requirements for the Service and there is no in-

dication that the Service intends to assign staff to what is currently an unstaffed refuge or that they intend to build a visitor center, roads, hiking trails or any facilities which currently do not exist. The projected costs do not match up with existing or future management requirements.

Second, after carefully examining the estimated annual costs, it is clear that the overwhelming majority of these expenditures are for a new wildlife biologist, staff salaries, expenses such as a horse survey, adoption and feeding of wild horses, and veterinary costs. With the exception of a new biologist and staff salaries, each of those expenses will be incurred by the Corolla Wild Horse Fund and not the Service. The Committee notes that the 2006 Comprehensive Conservation Plan for the refuge states: "The assistant manager performs the functions of a wildlife biologist. The refuge needs additional staff to meet its objectives. The biological and public use programs are currently the greatest needs." The document goes on to describe the types of activities that the new wildlife biologist would perform, including conducting surveys of shorebirds, establishing an inventory protocol for neotropical migratory songbirds and monitoring the impacts of feral hogs on vegetation and habitat. It appears that the Service is now trying to use this legislation to justify the hiring of a new wildlife biologist that was an identified need for Currituck long before the introduction of this legislation.

Third, included within the estimated one-time costs attributed to the enactment of H.R. 306 are \$186,000 for a new barn and corral for the horses, \$54,000 for a new boat and trailer, pickup truck and utility vehicle, and \$26,000 for wild herd examinations. Together, these represent \$266,000 of the \$285,000 the Service has identified as "one-time" costs. In justifying the need for a new barn and corral, the Service has stated that it is needed for those horses they handle, constructing horse facilities and herd examinations. If this is the case, then the Service would be in direct violation of the Currituck County Code of Ordinances as it applies to wild horses. Specifically the Ordinance says: "No person shall possess, harbor or keep in possession by confinement any wild horse. The provision of this section shall not apply to the keeping of wild horses in a licensed veterinary hospital or other location for treatment under the care and supervision of a licensed veterinarian." In addition, the Service has not provided any details on the need for these new vehicles, and the Corolla Wild Horse Fund is responsible for all wild horse health-related activities and costs including herd examinations.

During the markup of this legislation, the Committee adopted an amendment offered by Congressman John Fleming that capped the number of wild horses at 130 and stipulated that the Corolla Wild Horse Fund would be legally responsible for periodic census and inspection of the health of the wild horses; coordinating the removal and placement of horses; administering a viable population control plan for the horses including adoptions, auctions, contraceptive fertility methods and other viable options; and maintaining the records of the horses. The intent of this amendment was to clarify that expenses related to wild horse management are to be incurred by the privately-funded Corolla Wild Horse Fund and not the Service. While this legislation will not eliminate the need for the Service to effectively administer the Currituck National Wildlife Refuge,

including its desire to hire a new wildlife biologist, it does make it clear that in terms of the management of the Corolla Wild Horses, the responsibility will continue to reside with the Corolla Wild Horse Fund.

#### COMMITTEE ACTION

H.R. 306 was introduced on January 18, 2011, by Congressman Walter Jones (R–NC). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. On April 7, 2011, the Subcommittee held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. Congressman John Fleming (R–LA) offered an amendment designated .001; the amendment 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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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. 306—Corolla Wild Horses Protection Act*

H.R. 306 would require the U.S. Fish and Wildlife Service (USFWS) to enter into an agreement with the Corolla Wild Horse Fund (CWHF), a nonprofit organization, to manage wild horses in and around the Currituck National Wildlife Refuge. The wild horse population in the area is currently managed under a similar agreement between USFWS and CWHF. The new agreement would require CWHF to reduce the number of wild horses in the area from 144 to 130 and would specify that CWHF is responsible for certain costs associated with managing the wild horse population.

Based on information provided by CWHF, CBO expects that, under the bill, the organization would manage the wild horse population using private funds; we estimate that the federal government would incur no significant additional costs to manage or mitigate the effects of horses on the refuge. If, however, CWHF was un-

able to maintain the population at or below 130 horses as required under the bill, CBO expects that USFWS would incur costs totaling roughly \$200,000 a year to manage the horses. Such spending would be subject to the availability of appropriated funds. Enacting H.R. 306 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 306 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of 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. Based on information provided by the Corolla Wild Horse Fund, CBO expects that, under the bill, the organization would manage the wild horse population using private funds; estimates that the federal government would incur no significant additional costs to manage or mitigate the effects of horses on the refuge. If, however, the Corolla Wild Horse Fund was unable to maintain the population at or below 130 horses as required under the bill, CBO expects that U.S. Fish and Wildlife Service would incur costs totaling roughly \$200,000 a year to manage the horses. Such spending would be subject to the availability of appropriated funds.

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, as ordered reported, is to direct the Secretary of the Interior to enter into an agreement to provide for management of the free-roaming wild horses in and around the Currituck National Wildlife Refuge.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### 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

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

## DISSENTING VIEWS

H.R. 306, as amended, would call upon the Secretary of the Interior to enter into an agreement with the Corolla Wild Horse Fund, as well as local and state authorities, to provide for the management of the free-roaming wild horses in and around the Currituck National Wildlife Refuge. The agreement would cap the herd size in and around the Currituck National Wildlife Refuge to 130 horses and specifies that the costs of managing the herd would be covered by the Corolla Wild Horse Fund.

In 2007, the Fish and Wildlife Service entered into a joint management agreement with the Corolla Wild Horse Fund, the County of Currituck, and the North Carolina Department of Environment and Natural Resources to implement a cooperative management strategy for the herd on both public and private lands. This agreement provides for a maximum of 60 horses, with the population controlled through adoption, relocation, or contraceptive fertility methods. The agreement provides management flexibility to respond to changing circumstances in the area and it is therefore unclear why H.R. 306 is necessary.

On April 7, 2011, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs in the Committee on Natural Resources held a hearing on H.R. 306. The Administration testified against the bill because the Currituck National Wildlife Refuge was established for the purpose of managing specific trust wildlife species, including waterfowl, migratory birds, and endangered species, and not horses. The Fish and Wildlife Service estimates one-time costs of \$285,800 and annual costs of \$265,030 to manage for the impacts of the wild horses on native wildlife and their habitat. These costs would include staff salaries, since no staff is currently stationed at Currituck National Wildlife Refuge; corrals to keep the horses from trampling critical habitat; and research to study the negative impacts of these horses.

The management of non-native wildlife is always a challenge and we remain concerned that the Fish and Wildlife Service does not have adequate resources to accomplish the conservation purposes set forth for the Currituck National Wildlife Refuge. Without providing these resources, we will contribute to the operations and maintenance backlog of the National Wildlife Refuge System, which has not only been chronically underfunded, but has incurred additional maintenance costs from this year's natural disasters, including Hurricane Irene in North Carolina. For these reasons, we do not support H.R. 306 as reported.

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