

IN HONOR OF 7TH LANCE
CORPORAL JAMES R. SARGENT

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 2005

Mr. RAHALL. Mr. Speaker, today, 7th Lance Corporal James R. Sargent USMC, was laid to rest at Arlington Cemetery after being listed as missing in action for more than 37 years.

Lance Corporal Sargent, a native of Anawalt, WV, was a true American hero and today marks the end of a long journey for his family and friends.

Lance Corporal Sargent, like so many West Virginians, answered our Nation's call to arms. He wore the uniform and gave his life for freedom's cause.

Lance Corporal Sargent was part of an artillery platoon airlifted to provide support to the 11th Mobile Strike Force, which was under threat of attack from North Vietnamese forces near Kham Duc in South Vietnam. On May 9, 1968, the Strike Force had been directed to reconnoiter an area known as Little Ngok Tavak Hill near the Laos-Vietnam border, in the Kham Duc Province. Their base came under heavy attack by North Vietnamese Army troops, but after a 10-hour battle, all of the survivors were able to withdraw from the area.

LCpl, Sargent, one of 13 Marines killed in this battle, was awarded the Meritorious Unit Commendation for his heroism at Ngok Tavak. The Bible says in the book of John, Chapter 15, Verse 13, "Greater love has no one than this, than to lay down one's life for his friends." Today we honor not only Lance Corporal Sargent, but all of the soldiers, airmen and Marines who, through commitment and courage, have answered the call to protect the ones they love. This is truly the greatest gift one can give.

I would also like to submit for the RECORD The Secretary of the Navy Citation for the Meritorious Unit Commendation—a detailed account of Lance Corporal Sargent's heroism:

The Secretary of the Navy takes pleasure in presenting the Meritorious Unit Commendation to: Detachment, Battery D, Second Battalion, and Thirteenth Marines, First Marine Division (Reinforced)

CITATION

For heroic achievement in action against enemy Viet Cong and North Vietnamese forces during the defense of the Civilian Irregular Defense Group camp known as Ngok Tavak on 10 May 1968. The detachment, consisting of one officer and 43 enlisted men, was tasked with the mission of providing artillery support to the camp. In the early morning, while providing this support to a mixed force of U.S. Army Special Forces and Vietnamese irregulars, the detachment's defensive position came under attack by a determined and well equipped enemy force of estimated battalion size. Employing an intense mortar barrage, grenades and heavy small-arms fire, the enemy breached the outer defensive wire in two places and surged through the wire in superior numbers, launching a series of assaults directly against the small defensive perimeter the Marines had formed around their howitzers.

Although seriously depleted by heavy casualties, including the detachment commander and the platoon sergeant, the gallant men of the detachment steadfastly met and contained each assault with withering fire from automatic weapons, grenades, and

point-blank individual weapons. On separate occasions, Marines braved the hail of grenade fragments and automatic weapons fire to man a 4.2-inch mortar, an 81mm mortar, and a 30-caliber machine gun belonging to the Special Forces Detachment. Although continually exposed, they brought the fires of these weapons to bear on the attacking enemy and inflicted heavy casualties.

When the survivors of the detachment were ordered to abandon their position, mute evidence of their ferocity as fighting men lay about them in the form of 31 confirmed enemy dead. The successful evacuation of the position was completed under the direct observation and fire of the remaining enemy force. Accompanied by the surviving Civilian Irregular Defense Group forces, the men of the detachment marched for six hours through dense enemy-infested jungle until successfully extracted by helicopter. Of the original detachment, 13 Marines were killed in action and 20 were wounded in action. By their effective teamwork, aggressive fighting spirit, and individual acts of heroism and daring, the artillerymen of this detachment achieved an illustrious record of courage and skill in keeping with the highest traditions of the Marine Corps and the United States Naval Service.

All personnel attached to and serving with Detachment, Battery D, Second Battalion, Thirteenth Marines, First Marine Division (Reinforced), during the cited action, are hereby authorized to wear the Meritorious Unit Commendation Ribbon.

For the Secretary of the Navy, L. F. CHAPMAN, JR., Commandant of the Marine Corps.

CELEBRATING THE LIFE OF CARMEN N. CIQUEIROS TAFOYA PERKINS MULLALY

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 2005

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise today to take a few moments to honor my cousin, Carmen N. Ciqueiros Tafoya Perkins Mullaly, from Long Beach, California, whose life was cut short on September 11, 2005.

Carmen was born in Los Angeles, California on September 17, 1926 and was always a proud Angeleno. She attended Hammel Elementary School and Belvedere Junior High, and graduated from Roosevelt High School in Los Angeles.

Early on in life, Carmen developed a belief in the principles of the Democratic Party. An active member of the League of Women Voters, Carmen never missed voting in a single election. My cousin's enthusiasm for Election Day was an inspiration to all those around her, as she often opened her own home to serve as a polling precinct for primary and general elections.

In addition to her allegiance to the Democratic Party, Carmen loved being an Anaheim Angels fan. Carmen enjoyed cheering her favorite team on to victory over the years at the Angel Stadium of Anaheim.

Carmen was beloved by our large family, and we all miss her since her passing. I know that my father, former Congressman Edward R. Roybal, will especially miss his cousin.

Carmen is survived by her children: Virgilia Goodwin of Aurora, Colorado; Jack Perkins of Huntington Beach, California; Dwight Perkins of Woodburn, Oregon; Gayle Rex of Walla

Walla, Washington; and Patrick Mullaly of Kennewick, Washington. She is also survived by her sister, Geraldine Overton of Lakewood, California, and by her stepchildren, Tom Mullaly of Irvine, California; Cindy Mullaly of Chicago, Illinois; and Scott Mullaly of San Diego, California. Carmen is also survived by a niece, Geraldine O. Wiese of Cornwall, England. Carmen was preceded in death by her stepson, Mark Mullaly, and her husband Thomas J. Mullaly.

Although my family and I mourn Carmen today, we are also grateful for the many happy moments she brought into the lives of those around her. Today we mourn her death and celebrate her abundant life.

RECOGNIZING THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) AND ITS DIRECTOR GENERAL, MOHAMED ELBARADEI, JOINT RECIPIENTS OF THE 2005 NOBEL PEACE PRIZE

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 2005

Mr. MARKEY. Mr. Speaker, I rise to recognize the award of the 2005 Nobel Peace Prize to the International Atomic Energy Agency (IAEA) and its Director General, Mohamed ElBaradei. Today the IAEA and Dr. ElBaradei were jointly awarded this most prestigious of awards for their active efforts against the spread of nuclear arms and against the misuse of nuclear energy for military purposes.

As we know, Dr. ElBaradei and the IAEA were asked by the United Nations, at the urging of the United States, to serve the cause of world peace by engaging in a vigorous effort to find whatever evidence might exist of a Nuclear Weapons program in Iraq through any-time, anywhere inspections. Dr. ElBaradei and the IAEA did their jobs, and the world had an opportunity both to serve the cause of preventing weapons proliferation and heading off a very costly war. Unfortunately, the United States decided to forego this opportunity, and war ensued.

Now, the world is turning once again to the IAEA as the only way to prevent weapons proliferation in Iraq and in North Korea. Will the IAEA be supported this time? The Nobel Committee's decision to recognize the work of the IAEA, and of Dr. ElBaradei, increases the likelihood that such support will be forthcoming. It is needed now more than ever.

I submit below an excerpt from the press release from the Nobel Committee, describing why the important work of the IAEA and Dr. ElBaradei is deserved of such an honor.

At a time when the threat of nuclear arms is again increasing, the Norwegian Nobel Committee wishes to underline that this threat must be met through the broadest possible international cooperation. This principle finds its clearest expression today in the work of the IAEA and its Director General. In the nuclear non-proliferation regime, it is the IAEA which controls that nuclear energy is not misused for military purposes, and the Director General has stood out as an unafraid advocate of new measures to strengthen that regime. At a time when disarmament efforts appear deadlocked, when there is a danger that nuclear arms

will spread both to states and to terrorist groups, and when nuclear power again appears to be playing an increasingly significant role, IAEA's work is of incalculable importance.

In his will, Alfred Nobel wrote that the Peace Prize should, among other criteria, be awarded to whoever had done most for the "abolition or reduction of standing armies". In its application of this criterion in recent decades, the Norwegian Nobel Committee has concentrated on the struggle to diminish the significance of nuclear arms in international politics, with a view to their abolition. That the world has achieved little in this respect makes active opposition to nuclear arms all the more important today.

THREATENED AND ENDANGERED SPECIES RECOVERY ACT OF 2005

SPEECH OF

HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 29, 2005

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 3824) to amend and reauthorize the Endangered Species Act of 1973 to provide greater results conserving and recovering listed species, and for other purposes:

Mr. COSTA. Mr. Chairman, I rise today to clarify the intent and importance of language in H.R. 3824 regarding the discretionary nature of recovery plans under the ESA. Language in TESRA states that, "Nothing in a recovery plan shall be construed to establish regulatory requirements." This important language will ensure that, as is currently the case, recovery plans cannot be used as a regulatory "hammer" on private landowners or others. Let me elaborate.

The ESA § 4(f) states that the Secretaries of Interior and Commerce "shall develop and implement recovery plans" for listed species, "unless . . . such a plan will not promote the conservation of the species." This responsibility has been delegated to the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) (collectively, the Services).

Thus, as a general matter, the ESA compels the Services to develop recovery plans. While FWS and NOAA Fisheries are under a general duty to develop a recovery plan for listed species, the federal courts are in unanimous agreement that the contents of a recovery plan are discretionary with the Services. Recovery plans do not impose legal obligations or requirements on anyone—not on private landowners, not on local or state government units, and not even on the federal government itself. Rather, the case law makes clear that recovery plans are guidance documents.

For example, the 11th Circuit Court of Appeals rejected the argument of an environmental group that would have "elevate[d] the 1987 [Florida panther] recovery plan into a document with the force of law." *Fund for Animals v. Rice*, 85 F.3d 535,547 (11th Cir. 1996). The 11th Circuit wrote that ESA § 4(f):

"makes it plain that recovery plans are for guidance purposes only. . . . By providing general guidance as to what is required in a recovery plan, the ESA 'breathe[s] discretion at every pore.'"

Id. (emphasis supplied), citing *Strickland v. Morton*, 519 F.2d 467, 469 (9th Cir. 1975)).

FWS itself has taken the position that recovery plans have no binding effect. Courts have agreed with the agency's position. For example, in *Biodiversity Legal Found. v. Norton*, 285 F.Supp. 2d 1 (D.D.C. 2003), environmental groups argued that the recovery plan for the Cape Sable Seaside sparrow had a binding impact to compel revisions to the species' critical habitat. FWS asserted that "the content of Recovery Plans required under ESA § 4(f) is not binding upon the Service, so cannot create a legal duty." Id. at 13. The district court, citing the 11th Circuit's opinion in *Fund for Animals* (discussed above), agreed with FWS. It ruled that the sparrow's recovery plan "was merely a guidance, which FWS had discretion to follow." Id.

Similarly, environmental groups claimed that the recovery plan for certain whale species was deficient because it failed to include substantive, mandatory requirements. The court disagreed, holding that "[c]ase law instructs that [FWS is] correct in [its] assertion that the content of recovery plans is discretionary." *Strahan v. Linnon*, 967 F.Supp. 581, 597 (D.Mass. 1997), *aff'd*, 187 F.3d 623 (1st Cir. 1998). The court recognized that FWS is under a statutory duty to develop a recovery plan "to the extent that it is feasible and possible," but that "requirement does not mean that the agency can be forced to include specific measures in its recovery plan." Id. at 598. Environmental groups also argued that the recovery plan for the Perdido Key beach mouse must include an expansion of the species' critical habitat. The court, aligned with all of the other opinions on the topic, rejected the environmentalists' argument because "the contents of the [recovery plan] are discretionary." *Morrill v. Lujan*, 802 F.Supp. 424, 433 (S.D.Ala. 1992).

There is a strong policy justification for finding that recovery plans are discretionary: namely, to allow FWS to allocate its scarce resources as it sees fit. "Congress recognized that the development of recovery plans for listed species would take significant time and resources. It therefore provided in the ESA that the Secretary could establish a priority system for developing and implementing such plans. This priority system allows the Secretary broad discretion to allocate scarce resources to those species that he or she determines would most likely benefit from development of a recovery plan." *Oregon Natural Resources Council, supra*, 863 F.Supp. at 1282–83 (emphasis supplied).

To conclude, in a rare show of agreement among court interpretations of the ESA, the federal judges that have addressed this point have all agreed that recovery plans are simply discretionary guidance documents, with no binding effect. It is clearly the intent of H.R. 3824 to not only remain consistent with this established line of precedent, but to codify this important fact.

CONFERENCE REPORT ON H.R. 2360,
DEPARTMENT OF HOMELAND SECURITY
APPROPRIATIONS ACT,
2006

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 2005

Mr. UDALL of Colorado. Mr. Speaker, I rise in support of the FY 2006 Homeland Security Appropriations conference report. This bill does not fully address our homeland security needs. Still, it provides vital funds to make our country safer, and so I will support it today.

Total funding in the bill is increased from this year's levels. Specifically, the bill increases funding over the requested levels for immigration and for customs and border protection. The agreement also provides \$1.5 billion, 35 percent more than current funding, for science and technology programs.

I am pleased that the conferees adopted an important amendment offered by Rep. DAVID OBEY that requires the Department of Homeland Security (DHS) to provide details on how money appropriated for responding to Hurricanes Katrina and Rita is spent. I am a co-sponsor of H.R. 3737, a bill that would create a Special Inspector General for Hurricane Katrina Recovery who would have oversight over all federal Hurricane Katrina emergency funding. While the Obey amendment doesn't go as far as this legislation, it is a significant step forward.

I am also pleased that the conference report includes funding to help states comply with the REAL ID Act. Estimates are that complying with the Act will cost the states between \$100 million and \$500 million over the next 4 years. Since the majority saw fit to push the REAL ID provisions through Congress, it is important that Congress also provides funding to do the job.

Still, I'm concerned about shortfalls in the bill. It cuts fire grants by \$60 million (8 percent) below FY 2005, even as a recent survey found that fire departments all over the country aren't prepared to respond to a haz-mat incident and lack equipment. The bill also cuts State and local domestic preparedness grants by \$585 million (19 percent) and Urban Area Security Initiative grants by \$270 million (26 percent) below FY 2005 levels. Funding for communications equipment for first responders is cut from the levels in the bill the House passed in May, before Katrina struck—from \$27 million to \$15 million. The bill does provide additional funding for border patrol, but the number of agents still falls 1,000 short of the 2,000 called for in the Intelligence Reform bill. Since September 11th, just 965 additional border patrol agents have been hired—less than a 10 percent increase in 4 years.

The conference report fails to provide much more than basic funding for the security of rail and public transportation systems because DHS has not yet spent funds it was allocated last year. Despite the fact that passenger rail in the U.S. carries about five times as many passengers each day as do airlines, this bill only includes \$36 million for ground transportation security and \$150 million for State grants to protect mass transit systems, as compared to \$4.6 billion for aviation security. I'm very concerned that crucial security upgrades to our rail and public transportation