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SENATE

{ REPORT  
109-154

### CAPE LOOKOUT NATIONAL SEASHORE FREE-ROAMING HORSE LAW AMENDMENT

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OCTOBER 19, 2005.—Ordered to be printed

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Mr. DOMENICI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany H.R. 126]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 126) to amend Public Law 89-366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

#### PURPOSE OF THE MEASURE

The purpose of H.R. 126 is to amend the enabling legislation for Cape Lookout National Seashore in North Carolina to increase the number of free-roaming horses permitted within the park boundaries.

#### BACKGROUND AND NEED

Cape Lookout National Seashore stretches along 56 miles of the Outer Banks of North Carolina, running from Ocracoke Inlet on the northeast to Beaufort Inlet on the southeast. The park includes three undeveloped barrier islands—North Core Banks, South Core Banks and Shackleford Banks. A herd of wild horses, known as the “Shackleford Ponies,” resides on the Shackleford Banks. They are decedants of domestic horses left on the island after residents abandoned it late in the 19th century.

In 1998 Congress enacted legislation (Public Law 105-229) which directed the National Park Service to enter into an agreement with the Foundation for Shackleford Horses, Inc., a non-profit organization, to provide for the management of the wild horses living with-

in the national seashore. The purpose of the 1998 law was to ensure that a viable population of free roaming horses remained within the park. The management plan at the park preserves the herd's wild lifestyle and allows visitors to see the horses in their natural state. Human contact, socialization, and intervention are strictly limited.

In the wild, the horse population would grow and either the herd's territory would expand or grazing would be compromised. Because these are not viable alternatives, the Park Service and the Foundation periodically remove selected horses for adoption and use immunocontraceptive (birth control) drugs on others. Genetics and herd lineage scientists help identify suitable candidates and the herd is periodically reviewed for population, structure and health. Adoptions are handled by the Foundation according to a strict screening process. The short-duration contraceptive drug, given to mares, inhibits fertilization but does not affect current pregnancies or behavior. Thus, pregnancies can be limited and the population will remain at a reasonable level.

The 1998 law required the park to maintain a free-roaming horse population of between 100 and 110 horses. H.R. 126 increases the number of free roaming horses the Secretary of the Interior is required to permit in Cape Lookout National Seashore to 110, with a target population of between 120 and 130. The need to set a target population for the herd is necessary to ensure genetic viability and habitat integrity for the continued health of the horses and the island.

#### LEGISLATIVE HISTORY

H.R. 126 was introduced by Representative Jones on January 4, 2005, and passed the House of Representatives by a voice vote on March 14, 2005.

Similar legislation, H.R. 2055, was introduced by Representative Jones in the 108th Congress. That bill passed the House of Representatives by a voice vote on June 14, 2004. The Subcommittee on National Parks held a hearing on the measure on September 21, 2004, although no further action occurred in the Senate.

The Subcommittee on National Parks held a hearing on H.R. 126 on April 28, 2005, (S. Hrg. 109-74). At its business meeting on September 28, 2005, the Committee on Energy and Natural Resources ordered H.R. 126 favorably reported without amendment.

#### COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on September 28, 2005, by a voice vote of a quorum present, recommends that the Senate pass H.R. 126 as described herein.

#### SECTION-BY-SECTION ANALYSIS

Section 1(a) amends section 5 of Public Law 89-366 to increase the population of free-roaming horses at Cape Lookout National Seashore to a minimum of 110 horses, with a target population of between 120 and 130 horses. The section adds a new requirement that the Secretary not remove or assist in the removal of free-roaming horses from the national seashore unless removal is car-

ried out as part of a plan to maintain the viability of the herd. Finally, the subsection amends paragraph (b)(5) of section 5, which clarifies that the Secretary is not required to replace horses in the national seashore where the population falls below a minimum threshold as a result of natural causes. The amendment increases that minimum threshold from 100 to 110 horses. While the amendments made by this section establish minimum and target free-roaming horse populations, the Committee does not intend that they supersede the National Park Service's obligation to manage the national seashore in accordance with applicable law, including the National Park Service Organic Act of 1916. The Committee intends that allowable adjustments to the herd population be accomplished in a manner that retains the viability of the herd while protecting other park resources, consistent with applicable law and the national seashore's general management plan.

Subsection (b) repeals a duplicate section.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

*H.R. 126—An act to amend Public Law 89-366 to allow for an adjustment in the number of free-roaming horses permitted in Cape Lookout National Seashore*

H.R. 126 would raise the existing ceiling on the number of free-roaming horses that the National Park Service may maintain at Cape Lookout National Seashore. Based on information provided by the agency, CBO estimates that allowing the herd to increase from the current limit of 100 animals to a maximum of 130 would have no significant effect on the cost of operating the national seashore.

H.R. 126 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 Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 126. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 126, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

The views of the administration on H.R. 126 were included in testimony received by the Committee at a hearing on the bill on April 28, 2005 as follows:

STATEMENT OF MICHAEL SOUKUP, ASSOCIATE DIRECTOR,  
NATURAL RESOURCE STEWARDSHIP AND SCIENCE, NA-  
TIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on H.R. 126, a bill to adjust the number of free-roaming horses within Cape Lookout National Seashore.

The Department supports H.R. 126, with an amendment regarding the population range of the horses that incorporates recommendations from a panel of scientists and others interested in the Shackleford Banks. This bill passed the House on March 14, 2005. The Department testified before the House Subcommittee on National Parks and the Senate Subcommittee on National Parks in the 108th Congress in support of an identical bill, H.R. 2055.

The Department is strongly committed to conserving, protecting, and maintaining a representative number of horses on the Shackleford Banks portion of the Seashore, as Congress has directed. The Department believes that the number of horses on Shackleford Banks should be determined by the ecology of the island and with a strong focus on means that protect the genetic viability of the Shackleford Banks horses. Without this legislation, NPS would manage this herd consistent with P.L. 105-229 that provides for a herd of 100 free-roaming horses.

H.R. 126 amends P.L. 89-366 by changing the number of free-roaming horses at Cape Lookout National Seashore from 100, to not less than 110, and establishes a target population of between 120 and 130 horses. The bill also changes one of the criteria that the Secretary of the Interior may use to remove free-roaming horses from the Seashore, allowing removal as part of a plan to maintain viability of the herd.

Congress established Cape Lookout National Seashore (Seashore) on March 10, 1966. Encompassing more than 28,000 acres of land and water about 3 miles off the mainland coast, the Seashore protects one of the few remaining natural barrier island systems in the world with excellent opportunities for fishing, shellfishing, hunting, beachcombing, hiking, swimming, and camping in a wild and remote setting.

The enabling legislation for the Seashore did not address the issue of free-roaming wild horses on Shackleford Banks. Public comments on the Seashore's 1982 Draft General Management Plan demonstrated widespread concern about, and interest in, the future of the horses on Shackleford Banks. The Final General Management Plan stated that a representative number of horses would remain on Shackleford Banks after the privately owned land on the island was purchased by the United States.

In 1996, following a series of public meetings, as well as discussions with scientists and professional managers of wild horse herds, the Seashore developed an Environmental Assessment (EA) with alternatives for managing

the Shackleford Banks horse herd. The plan proposed to maintain a representative herd of horses by using a combination of contraceptive drugs and periodic roundups and removal of horses.

On November 11, 1996, the National Park Service (NPS), with assistance from state veterinarians from the North Carolina Department of Agriculture, initiated a roundup of the Shackleford horses. State law required testing the horses for Equine Infectious Anemia (EIA). Out of the 184 horses on the island, 76 tested positive for EIA and were removed to the mainland for temporary quarantine. On the advice of the North Carolina Department of Agriculture, these horses were euthanized.

In December 1996, the NPS established the Shackleford Banks Horse Council, representing a wide variety of interests and stakeholders, as a working committee to assist the park with plans for managing horses. In 1997, a second roundup and testing program was conducted on the Shackleford horses. Of the 103 horses on the island, five tested positive for EIA. By this time, the Foundation for Shackleford Horses, Inc. had secured a state-approved quarantine site and the five EIA positive horses were transferred to it. In the transfer document, the Foundation and the Service committed to develop a long-term Memorandum of Agreement (MOA) to cooperate in the management of the Shackleford Banks horses. On an interim basis, the Service issued a special use permit to the Foundation to allow it to assist with the management of the herd.

On August 13, 1998, Congress passed P.L. 105-229, "An Act To Ensure Maintenance of a Herd of Wild Horses in Cape Lookout National Seashore." This act directed the NPS to maintain a herd of 100 free roaming horses and to enter into an agreement with the Foundation for Shackleford Horses, Inc. or another qualified nonprofit entity, to provide for the management of free-roaming horses in the Seashore. In April 1999, a Memorandum of Understanding with the Foundation for Shackleford Horses, Inc. was signed.

Public Law 105-229 requires an annual Findings Report that provides the public with information regarding the population, structure, and health of the horses on Shackleford Banks. Research, monitoring and record-keeping, with the goal of informed decisions for removal and immunocontraception, is ongoing, as is consultation with internationally recognized advisors in the fields of equine behavior, genetics, virology, immunocontraception, management, humane issues, and island ecology. The NPS continues to work with the Foundation under the MOU and management decisions regarding the horses are reached jointly with the Foundation and with the advice of scientists.

On October 29 and 30, 2002, the NPS hosted a roundtable meeting with the aim of reaching a consensus on the free-roaming horse population range and the strategy for

achieving that range. Participants included the Seashore Superintendent and staff, staff from Representative Jones' office, and representatives from the Foundation for Shackleford Horses, Inc. Three leading scientists considered experts in their respective fields also participated: Dr. Dan Rubenstein of Princeton University, Dr. Gus Cothran of the University of Kentucky, and (by telephone) Dr. Jay Kirkpatrick of ZooMontana.

Included in the discussion was the value of occasional herd expansion to maintain genetic variability in the population. The conclusion reached was that the population should be allowed to fluctuate between 110–130 individuals. The methodology of conducting removal and contraception toward this goal was also discussed and agreed upon. The range of 110 to 130 horses is based on sound science and provides the population changes, which are necessary for maintaining the genetic viability of the herd.

Based upon the October roundtable discussion, we recommend an amendment to the bill that is attached to this testimony. We believe that this amendment will more clearly reflect the need to allow the population bloom necessary for maintaining the genetic viability of the herd.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you or other members of the subcommittee may have.

#### SUGGESTED AMENDMENT, H.R. 126

On page 2, line 9–10, delete “with a target population of between 120 and 130” and insert, “allowing periodic population expansion of the herd to a maximum of 130 horses”.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H. R. 126, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

#### PUBLIC LAW 89–366, AS AMENDED

AN ACT to provide for the establishment of the Cape Lookout National Seashore in the State of North Carolina, and for other purposes.

\* \* \* \* \*

SEC. 5. [(a)] The Secretary shall administer the Cape Lookout National Seashore for the General purposes of public outdoor recreation including conservation of natural features contributing to public enjoyment. In the administration of the seashore and the administrative site, the Secretary may utilize such statutory authorities relating to areas administered and supervised by the Secretary through the National Park Service and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate to carry out the purpose of this Act.

(b)(1) The Secretary, in accordance with this subsection, shall allow a herd of ~~100 free roaming horses~~ *free roaming horses, with a target population of between 120 and 130 free roaming horses, in Cape Lookout National Seashore (hereinafter referred to as the 'Seashore')*: *Provided, That nothing in this section shall be construed to preclude the Secretary from implementing or enforcing the provisions of paragraph (3).*

(2) Within 180 days after enactment of this subsection, the Secretary shall enter into an agreement with the Foundation for Shackelford Horses (a nonprofit corporation established under the laws of the State of North Carolina), or another qualified nonprofit entity, to provide for management of free roaming horses in the seashore. The agreement shall—

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

(B) allow the authorized entity to adopt any of those horses that the Secretary removes from the seashore.

(3) The Secretary shall not remove, assist in, or permit the removal of any free roaming horses from Federal lands within the boundaries of the seashore—

(A) unless the entity with whom the Secretary has entered into the agreement under paragraph (2), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

~~(B) unless the number of free roaming horses on Federal lands within Cape Lookout National Seashore exceeds 110; or~~

*(B) unless removal is carried out as part of a plan to maintain the viability of the herd;*

(C) except in the case of an emergency, or to protect public health and safety.

(4) The Secretary shall annually monitor, assess, and make available to the public findings regarding the population, structure, and health of the free roaming horses in the national seashore.

(5) Nothing in this subsection shall be construed to require the Secretary to replace horses or otherwise increase the number of horses within the boundaries of the seashore where the herd numbers fall below ~~100~~ *110* as a result of natural causes, including, but not limited to, disease or natural disasters.

(6) Nothing in this subsection shall be construed as creating liability for the United States for any damages caused by the free roaming horses to property located inside or outside the boundaries of the seashore.