

(16 U.S.C. 1331, et seq.)

**CHANGES TO THE WILD FREE-ROAMING HORSES AND BURROS ACT
AS WOULD BE EFFECTIVE ACCORDING TO THE LANGUAGE IN S.1579
AS PUBLISHED ON AUGUST 5, 2009**

Removed language is struck through.

New language is in italics.

Sec. 1

To require the protection, management, and control of wild free-roaming horses and burros on public lands. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered ~~in the area where presently found,~~ as an integral part of the natural system of the public lands.

Sec. 2.

As used in this Act-

- (a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;
- (b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros *born or present* on public lands of the United States;
- (c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, ~~which does not exceed their known territorial limits,~~ and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;
- (d) "herd" means one or more stallions and his mares *and any associated foals;* ~~and~~
- (e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service;
- (f) "excess animals" means wild free-roaming horses or burros ~~(1) which have been removed from an area by the Secretary pursuant to application law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area, in accordance with~~

Section 3(d);

(g) *"thriving ecological balance" means a condition that protects ecosystem health, the ecological processes that sustain ecosystem function and a diversity of life forms, including those species listed under the Endangered Species Act of 1973, and further ensures that wild horses and burros, livestock and wildlife species are given fair consideration in the allocation of resources on those lands where said species are authorized or managed consistent with the requirements of the Federal Land Policy and Management Act of 1976 (Public Law 94-579) and other applicable law; and*

(h) *"fatally injured or terminally ill" means an animal exhibiting one or more of the following:*

(1) A hopeless prognosis for life.

(2) A chronic or incurable disease, injury, lameness or serious physical defect (including severe tooth loss or wear, club foot and other severe congenital abnormalities).

(3) A condition requiring continuous treatment for the relief of pain and suffering in a domestic setting.

(4) An acute or chronic illness, injury, physical condition or lameness that would preclude an acceptable quality of life for the foreseeable future.

Sec. 3.

(a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary ~~is authorized and directed to shall--~~

(1) protect and manage wild free-roaming horses and burros as components of the public lands; and he may

(2) designate and maintain specific ranges on public lands as sanctuaries for ~~their~~ the protection and preservation of wild free-roaming horses and burros, where the Secretary after consultation with the wildlife agency of the State where any such range is proposed and with the Advisory Board established in section 7 of this Act, considers such action desirable;

(3) ~~The Secretary shall~~ manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands;

(4) ~~He shall~~ consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in Section 7 of this Act;

(5) ~~All~~ ensure that management activities ~~shall be~~ are at the minimal feasible level and ~~shall be~~ carried out in consultation with the *relevant state* wildlife agency ~~of the state wherein such lands are located~~ in order to protect the natural ecological balance of all wildlife species ~~which inhabit such lands~~, particularly endangered wildlife species;

(6) *ensure that any adjustments in forage allocations on ~~any such lands~~ shall take are made after taking into consideration the needs of other wildlife species which inhabit such lands, and*

(7) *ensure that, to the extent practicable, the acreage available to wild free-roaming horses and burros shall never be less than the acreage where wild and free-roaming horses and burros were found in 1971.*

(b)

~~(1) The Secretary shall~~ *In order to determine if a thriving natural ecological balance exists with regards to wild free-roaming horses and burros, the Secretary shall--*

(1) ~~maintain a current~~ *an inventory of wild free-roaming horses and burros on given areas of the public lands;*

(2) *update the inventory every two years; and*

(3) *make the inventory available to the public on the Website of the Bureau of Land Management.*

~~The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations the Secretary~~

(c) *In order to better manage and protect wild free-roaming horses and burros, and to achieve and maintain a thriving ecological balance, the Secretary, not later than one year after the date of the enactment of this section, shall take the following actions:*

(1) *Adopt and employ the best scientific, peer-reviewed methods to accurately estimate wild free-roaming horse and burro populations on public lands for purposes of the inventory required in subsection (b).*

(2) *Develop a policy and standards, with public involvement, for setting consistent, appropriate management levels on public lands, based on scientifically sound methodologies.*

(3) Provide a public process, including a period for notice and comment, for finalizing appropriate management levels.

(4) Publish and distribute these standards to each field office so that the methodology for estimating population and determining appropriate management levels is consistent across public lands.

(5) Train Federal personnel on the use of these standard techniques to estimate population and determine appropriate management levels.

(6) ~~shall consult with~~ Develop and finalize the standards in consultation with--

(a) the United States Fish and Wildlife Service;

(b) wildlife agencies of the State or States ~~wherein~~ where wild free-roaming horses and burros are located;

(c) ~~such~~ individuals independent of Federal and State government as have been recommended by the National Academy of Sciences; and

(d) ~~such other~~ individuals whom ~~he~~ the Secretary determines to have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

(7) Identify new, appropriate rangeland for wild free-roaming horses and burros, including the use of land acquisitions, exchanges, conservation easements, voluntary grazing buyouts, and agreements with private landowners to allow for federally supervised protection of wild horses and burros on private lands, except that the Secretary shall assess the effects of new range for wild free-roaming horses and burros on rangeland health, riparian zones, water quality, soil compaction, seed bed disturbance, native wildlife, and endangered or threatened species and transmit the results of the assessment to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(8) Establish sanctuaries or exclusive use areas, except that the Secretary shall assess the effects of sanctuaries or exclusive use areas for wild free-roaming horses and burros on rangeland health, riparian zones, water quality, soil compaction, seed bed disturbance, native wildlife, and endangered or threatened species and transmit the results of the assessment to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(9) In identifying or designating any new rangeland, or establishing any sanctuary or exclusive use area for wild free-roaming horses and burros, the Secretary of the Interior and the Secretary of Agriculture shall take into account any potential conflicts with wind, solar, geothermal, oil,

natural gas, energy transmission, and mineral resources potential of the lands affected by the identification, designation, or establishment.

(10) Research, develop, and implement enhanced fertility control for mares, stallions, or both, such as surgical or immunocontraception sterilization or other safe, humane, and effective methods of fertility control.

~~(2) Where (d) if the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Rangelands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:~~

~~—(a) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;~~

~~—(b) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be~~

... has exhausted all practicable options for maintaining a thriving ecological balance on the range, the Secretary may provide that wild-free roaming horses and burros are humanely captured and removed for private maintenance and care for which he determines so long as the Secretary has determined that an adoption demand exists by qualified individuals, and for which he determines he can assure and the Secretary can ensure humane treatment and care (including proper transportation, feeding, and handling): Provided, That, not by requiring that:

(1) ~~not~~ no more than four ~~animals~~ wild free-roaming horses and burros may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four ~~animals~~ wild free-roaming horses and burros, including the transportation of such the animals by the adopting party; and [PRIA 10/25/1978]

(2) each individual adopter shall execute an appropriate attestation, pursuant to section 1001 of title 18, United States Code, affirming that adopted animals or their remains shall not be sold or transferred for consideration for processing into commercial products; and

(3) wild free-roaming horses and burros may not be contained in short-term

holding facilities for more than 6 months while awaiting disposition.

~~(c) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost-efficient manner possible.~~

(e)

~~(1) Where excess animals have~~ *When a wild free-roaming horse or burro has been transferred to a qualified individual for adoption and private maintenance pursuant to this Act and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for a period of one year, the Secretary is authorized shall upon application by the transferee, to grant title to not more than four animals to the transferee at the end of the one-year period title to that animal..*

(f) ~~Wild~~

(1) Except as provided for in paragraph (2), wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act-

~~(A) upon passage of title pursuant to subsection (c) except for the limitation of subsection (c)(1) of this section (e), or~~

(B) if they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes before passage of title; or

(C) upon destruction by the Secretary or his designee pursuant to subsection ~~(b)~~ (h) of this section; or

(D) if they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 4 and disposal is authorized by the Secretary or his designee, or.

~~or (5) upon destruction or death for purposes of or incident to the program authorized in section 3 of this Act; Provided, That no wild free-roaming horse or burro~~

(2) No animal covered under this Act or its remains may be sold or transferred for consideration for processing into commercial products.

(g) Not later than one year after the enactment of this subsection, for the purposes of carrying out a successful wild free-roaming horse and burro adoption program, the Secretary shall --

(1) Implement creative and more aggressive marketing strategies for the

adoption program, including the use of the internet and other media to showcase horses and the adoption program;

(2) explore public outreach opportunities, including agreements with local and state organizations that are using horses for rehabilitation, therapy, or prisoner programs;

(3) provide resources to properly screen and train potential adopters;

(4) conduct tours of Bureau of Land Management facilities for interested parties;

(5) develop volunteer mentor and compliance check programs for assisting the agency in facilitating successful adoptions;

(6) develop a program through which potential adopters may be offered an economic incentive for successful completion of the adoption process; and

(7) take any and all other actions that the Secretary determines to be necessary and useful towards expanding the wild horse and burro adoption program.

(h)The Secretary may not destroy or authorize the destruction of wild free-roaming horses and burros unless the Secretary--

(1) determines that the wild free-roaming horse or burro is terminally ill or fatally injured; and

(2) ensures that the terminally ill or fatally injured wild free-roaming horse or burro will be destroyed in the most humane manner.

(i) The Secretary shall--

(1) track the number of wild free-roaming horses and burros injured or killed during gathering or holding in a centralized database system;

(2) determine what information on the treatment of gathered wild free-roaming horses and burros in holding and adopted wild free-roaming horses and burros could be provided to the public to help inform the public about the treatment of wild free-roaming horses and burros; and

(3) ensure that such information is easily accessible on the Website of the Bureau of Land Management.

(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special

knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a redesign panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983.

Sec. 4.

If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the ~~animals removed~~ *returned to public land*. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary *pursuant to section 3(h)*. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses and burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained.

Sec. 5.

A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Sec. 6.

The Secretary is authorized to enter into cooperative agreements with other landowners *and other private entities* and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this Act.

Sec. 7.

The Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than ~~nine~~ *12* members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons who are not employees of the Federal or State ~~Governments and whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management.~~ *Governments, and shall include three representatives of the livestock industry; three representatives of the environmental community; three representatives of the animal protection community; and three scientists with expertise in wildlife management, animal husbandry, or natural resource*

management. Members of this board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services. Nomination of members of the board shall be conducted by public notice and comment in accordance with the Federal Advisory Committee Act (5 U.S.C. appendix) and shall be for a term of four years. No individual shall serve more than two consecutive terms.

Sec. 8.

(a) Any person who—

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary, or

(2) converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) processes, *transports for process* or permits to be processed into commercial products ~~the remains of a~~ *a live or deceased* wild free-roaming horse or burro *for consideration*, or

(5) sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of this Act, or the remains thereof, or

(6) willfully violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than \$2,000, or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code.

(b) Any employee designated by the Secretary of the Interior or the Secretary of Agriculture shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this Act or any regulation made pursuant thereto, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, and shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations made pursuant thereto. Any judge of a court established under the laws of the United States, or any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

Sec. 9

In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.

~~Sec. 10.~~

~~Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist.~~

~~Sec. 11.~~

~~Sec 10.~~

~~After the expiration of thirty calendar months following the date of enactment of this Act, and every twenty four calendar months thereafter,~~

~~(a)~~

~~(1) Not later than one year after the date of enactment of this subsection and annually thereafter the Secretaries of the Interior and Agriculture will submit to Congress a joint report shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a joint report on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as the Secretaries might deem appropriate.~~

~~(2) The report shall also contain the following--~~

~~(A) the number of acres managed by the Bureau of Land Management and the USDA Forest Service for wild free-roaming horses and burros;~~

~~(B) the appropriate management levels for public rangelands;~~

~~(C) a description of the methods used to determine the appropriate management levels and whether it was applied consistently across the agency;~~

~~(D) the number of wild free-roaming horses and burros on public lands;~~

~~(E) a description of the methods used to determine the wild free-roaming horse and burro population;~~

~~(F) any land acquisitions, exchanges, conservation easements, and voluntary grazing buyouts that the Secretary has acquired or pursued for wild free-roaming horses and burros;~~

(G) any sanctuaries or exclusive use areas established for wild free-roaming horses or burros;

(H) programs established for fertility control research, development, and management level implementation;

(I) the extent to which fertility control is being used by the Secretary to control the population of wild free-roaming horses and burros;

(J) the percentage of the Bureau of Land Management budget devoted to contraception annually;

(K) the ratio of animals the agency has contracepted and put back on the range; and

(L) which herds have been administered contraception and with what results.

(3) Each report submitted under paragraph (2) shall be made available to the public on the Website of the Bureau of Land Management.

(b) The Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this Act and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this Act. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros that they may deem necessary in order to carry out the provisions of this Act.