

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

systems—especially in light of the bombings in Madrid and London—can't move forward more quickly. The bill also underfunds port security and does not include \$50 million for chemical plant security that was included in the House-passed bill.

I'm also concerned that this bill includes DHS Secretary Chertoff's proposal to create a new Preparedness Directory and take that responsibility away from FEMA, making FEMA a standalone office focused on response and recovery only. Secretary Chertoff's proposal was made in July—before Hurricane Katrina hit—and this bill would move it forward. This Administration crippled FEMA by making it just one of many organizational boxes under the Homeland Security Department. Splitting preparedness and response and recovery tasks now would weaken FEMA even further, at a time when we should be focusing on how to learn from the lessons of Katrina.

Instead of making these changes in FEMA, we should remove it from DHS and make it an independent agency under qualified leadership, as would happen under the bill (H.R. 3816) I introduced last month.

Mr. Speaker, much remains to be done to improve our defenses against terrorism. I do not believe this bill sets the right priorities or provides sufficient resources, but it does fund programs that are critical to our homeland security. The conference report is an important step, and I will vote for it.

INDIA'S UNFINISHED AGENDA:  
EQUALITY AND JUSTICE FOR 200  
MILLION VICTIMS OF THE CASTE  
SYSTEM

**HON. CHRISTOPHER H. SMITH**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Friday, October 7, 2005*

Mr. SMITH of New Jersey. Mr. Speaker, yesterday the Subcommittee on Africa, Global Human Rights and International Operations studied the terrible situation facing India's Dalits and tribal peoples. Taken together, Dalits and tribal peoples constitute as many as 250 million people. The Dalits, whose name means "the oppressed," are much better known as "untouchables," although this demeaning name is not the one they choose for themselves. They are also often referred to in official documents as "Scheduled Castes, and occasionally as "Harijans," or "Children of God," a name given them by Gandhi. The tribal peoples are often referred to as Scheduled Tribes, or Adivasis, which means indigenous or aboriginal inhabitants. The Dalits and tribal peoples are treated as virtual non-humans, and suffer pervasive discrimination and violation of their human rights.

This topic has taken on a special relevance. India's reformist government has made great strides to open its economy, and improve the lot of all its citizens. It has also played a leading role in the Community of Democracies and the U.N.'s Democracy Caucus and the U.N. Democracy Fund. In June and July of this year the U.S. and India announced a series of agreements that represent a quantum leap in cooperation between the world's two most populous democracies after decades of estrangement during the Cold War. On July 18th, U.S. and Indian leaders issued a joint

statement resolving to establish a "global partnership" between the two nations through increased cooperation on a wide range of issues. We heartily welcome all of these actions.

However, there is still a long road to travel. Most observers have focused on the nuclear proliferation implications of our announced agreements as potential stumbling blocks to a true strategic partnership between the U.S. and India. But as we seek to develop a strategic partnership, we must not lose sight of India's serious human rights problems. These problems are amply documented in the three current State Department reports: the 2004 Human Rights Report on India, the 2005 Report on Trafficking in Persons, and the 2004 Report on Religious Freedom. All three are massive catalogues of human rights violations which the Government of India condones, ignores, and in some instances, has even promoted.

To quote the 2004 Human Rights Report on India:

Security force officials who committed human rights abuses generally enjoyed de facto legal impunity . . . violations included: torture and rape by police and other government agents; . . . harassment and arrest of human rights monitors; . . . forced prostitution; child prostitution and female infanticide; trafficking in women and children; . . . serious discrimination and violence against indigenous people and scheduled castes and tribes; widespread intercaste and communal violence; religiously motivated violence against Muslims and Christians; and widespread exploitation of indentured, bonded, and child labor.

Further, the 2005 Report on Trafficking in Persons has this to say. Again I quote:

India is a source, transit, and destination country for women, men, and children trafficked for the purposes of sexual and labor exploitation . . . Internal trafficking . . . for . . . sexual exploitation, domestic servitude, bonded labor, and indentured servitude is widespread . . . the vast majority of females in the Indian commercial sex industry are currently victims of sexual servitude or were originally trafficked into the sex trade. India is also home to millions of victims of forced or bonded labor.

The Government of India does not fully comply with the minimum standards for the elimination of trafficking.

India was placed on Tier 2 Watch List for human trafficking a second consecutive year in 2005. Many of us believe it should be a Tier III country.

The State Department's 2004 Report on Religious Freedom also had many harsh words for India's respect for religious freedom. It noted that the Indian government, despite India's constitutional commitment to religious freedom and secular government, was often lax in protecting religious minorities from attack, and in punishing their persecutors. Religious extremists have taken such laxity as a signal that they can attack with impunity. Missionaries were often harassed, and the right to freely choose one's own religion was often violated.

Finally, there is abortion. In theory, India only allows abortions for risk to the life of the mother, or "grave risks" to her health, or for "substantial risk" of fetal impairment. Yet like so many countries where the absolute right to life of the unborn child has been disregarded in a misguided attempt to provide a so-called

"limited" abortion license, the reality is that there is abortion on demand. Estimates of abortions run as high as 7 million a year. There are some estimates that 17 percent of maternal deaths are due to abortion: so much for "safe, legal and rare."

And abortion is not just at the demand of the mother, but often at the demand of relatives who don't want girl babies. The incidence of "sex-selection abortions" has reached staggering proportions. As many as 50 million girls and women are missing from India's population as a result of infanticide and abortion. In most countries in the world, there are approximately 105 female births for every 100 males. In India, there are less than 93 women for every 100 men in the population. In one wealthier area of the capital of New Delhi, the sex ratio at birth has dropped to 762 girls for every 1,000 boys, one of the lowest in the entire country. The problem is getting worse as scientific methods of detecting the sex of a baby and of performing abortions are improving. These methods are becoming increasingly available even in rural areas.

India banned sex-selection abortions in 1996, but the health minister recently admitted that not a single person has ever been convicted or otherwise punished for having carried out sex selective abortions. UNICEF has warned that unless steps are taken to address the problem, India will soon face severe social problems, not least increased trafficking of women, which is already an enormous problem. As more and more girls are aborted or murdered after birth, more and more poor women and girls will be trafficked.

All of this background will provide the context for today's hearing. India's Dalits and tribal peoples are victims of all the human rights violations prevalent in India, and to a far greater extent than most other Indians.

According to India's caste system, Dalits are impure, and even their shadow can pollute. Dalits are discriminated against, denied access to land and forced to work in degrading conditions. Dalit men, women, and children numbering in the tens of millions work as agricultural laborers for a few pounds of rice or less than a dollar a day. Their upper-caste employers frequently use caste as a cover for exploitative economic arrangements. In India's own version of "apartheid," entire villages in many Indian states remain completely segregated by caste. Dalits dare not even walk in the part of the village occupied by higher castes. They may not use the same wells, visit the same temples, drink from the same cups in tea stalls, or lay claim to land that is legally theirs. Dalit children are frequently made to sit in the back of classrooms.

Most Dalits continue to live in extreme poverty, without land or opportunities for better employment or education. India has a policy of quotas in education and government jobs to benefit Dalits and tribal peoples. But most cannot afford primary education, so their literacy rates remain very low and only a small minority can benefit from these quotas.

Dalits are routinely abused at the hands of the police and of higher caste group that enjoys the state's protection. According to India's National Crime Records Bureau, in 2000, the last year for which figures are available, 25,455 crimes were committed against Dalits. Every hour two Dalits were assaulted; every day three Dalit women were raped, two Dalits were murdered, and two Dalit homes were