

CRS Report for Congress

Received through the CRS Web

Wild Horse and Burro Issues

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Summary

The Wild Free-Roaming Horses and Burros Act of 1971 sought to protect wild horses and burros on federal lands and placed them under the jurisdiction of the Bureau of Land Management (BLM) and the Forest Service (FS). Management of wild horses and burros has long been controversial. Current issues include the priority to be given wild horses and burros in land use decisions, removal of animals from the range, adoption and sales programs, slaughter of animals, holding animals in facilities, use of fertility control, and costs of management. This report will be updated to reflect developments.

Background

At the turn of the 20th Century, some two million wild horses lived on the range, but by the 1950s their population was thought to be fewer than 20,000. Public concern developed over falling populations and instances of inhumane treatment by profiteers who captured and sold the animals for slaughter. A protection movement culminated in the Wild Horse Annie Act of 1959 (18 U.S.C. §47) and later in the Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §1331 *et seq.*, hereafter the "1971 Act").¹ The 1971 Act seeks to preserve wild horses and burros on federal lands as "living symbols of the historic and pioneer spirit of the West." It imposes criminal penalties for removing, converting to private use, killing, harassing, selling, or processing into commercial products the remains of wild horses and burros (with exceptions) under federal jurisdiction without federal authority. Management responsibility is assigned to the Bureau of Land Management (BLM) in the Department of the Interior and the Forest Service (FS) in the Department of Agriculture. The animals are to be managed "to achieve and maintain a thriving natural ecological balance on the public lands," according to the act. A nine-member Wild Horse and Burro Advisory Board of private citizens advises the Secretaries.

¹ The 1971 Act was modified by the Federal Land Policy and Management Act of 1976 (FLPMA, P.L. 94-579) and the Public Rangelands Improvement Act of 1978 (PRIA, P.L. 95-514).

Under the 1971 Act, the agencies inventory horse and burro populations on federal land to determine “appropriate management levels” (AMLs). They are authorized to remove animals exceeding the range’s carrying capacity to restore a natural ecological balance and protect the range from deterioration associated with an overpopulation of wild horses and burros. First, the agencies are to destroy old, sick, or lame animals by the most humane means available. Second, they are to remove healthy animals for private adoption. BLM takes the lead in gathering animals and holding adoptions for both agencies. Third, if adoption demand is insufficient, the remaining healthy animals are to be destroyed; however, the agencies have not used this authority since January 1982, and BLM was prohibited from doing so in the FY1988-FY2004 Interior appropriations acts.

The 108th Congress enacted changes to wild horse and burro management on federal lands (§142, P.L. 108-447) to provide an additional tool for reducing wild horse and burro populations. One change directed the agencies to sell, “without limitation,” excess animals (or their remains) that essentially are deemed too old (more than 10 years old) or otherwise unable to be adopted (offered unsuccessfully at least three times). Proceeds are to be used for the BLM wild horse and burro adoption program. A second change removed a ban on the sale of wild horses and burros and their remains for processing into commercial products. A third change removed criminal penalties for processing into commercial products the remains of a wild horse or burro, if it is sold under the new authority. Also, the law did not expressly prohibit BLM from slaughtering healthy wild horses and burros. These changes have been supported as providing a cost-effective way of helping the agencies achieve AML, to improve the health of the animals, protect range resources, and restore a natural ecological balance on federal lands. The changes have been opposed as potentially leading to the slaughter of healthy animals. There are about 31,760 wild horses and burros on 201 BLM Herd Management Areas (HMAs). BLM has set the upper limit for AML for all herds at 28,186. There are another 2,716 wild horses and burros on 37 active “Territories” — FS management areas. Horses greatly outnumber burros, and about half of all the animals on federal land are in Nevada. Thousands of additional animals are in agency holding facilities (see below).

Current Issues

Federal management of wild horses and burros has generated controversy and lawsuits for years. The changes enacted in the 108th Congress have renewed attention to wild horse and burro issues. Several of these issues are discussed below.²

Wild Horses and Burros vs. Livestock. One controversy has been the priority to be given wild horses and burros versus domestic livestock in decisions on forage and land allotments. Critics assert that AMLs are set low to favor livestock. Currently, livestock graze on approximately 160 million acres of BLM land and 95 million acres of FS land while wild horses and burros roam on 29.5 million BLM acres and 2.1 million FS acres. The Secretaries may designate specific ranges exclusively for wild horse and burros; in practice, most areas also have livestock. In FY2005, forage consumed on BLM

² For current information on relevant legislation, see CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, by Ross W. Gorte and Carol Hardy Vincent. For information on horse slaughter legislation, see CRS Report RS21842, *Horse Slaughter Prevention Bills and Issues*, by Geoffrey S. Becker.

lands by wild horses and burros was 381,120 animal unit months (AUMs) and by livestock was 6,835,458 AUMs. Forage consumed on FS lands by wild horses and burros was 32,592 AUMs and by livestock was projected by the FS to be 6.6 million AUMs. An AUM is the amount of forage to sustain an animal unit (a cow with calf) for one month.

Removal. A long-standing controversy is whether to remove wild horses and burros from the range. Some animal rights and conservation groups believe they should roam freely. Others stand by a 1990 Government Accountability Office (GAO) conclusion that removals have not demonstrably improved range conditions, because livestock consume more forage and cause more degradation to riparian areas. Other wildlife, conservation, and livestock interests agree that reduction of horse herds protects range resources and balances wild horse and burro levels with wildlife and domestic livestock. Many livestock groups contend that wild horses and burros are more environmentally destructive than domestic stock because they graze year round without limit, whereas the time, place, and quantity of cattle grazing is controlled. Where drought, fire, and other emergencies reduce forage, domestic livestock usually are removed first to protect forage for wild horses and burros, according to BLM. The debate on the extent of damage by wild horses and burros versus livestock continues because of value differences and lack of definitive data on forage consumed and range degradation.

BLM is determining AMLs based on population censuses and range monitoring in tandem with removal efforts. The agency takes into account natural resources, such as wildlife and vegetation, and land uses, such as grazing and recreation. Determining AMLs and removing animals to achieve AMLs are controversial. Concerns involve the lack of an environmental analysis of overall removal efforts, removal of animals below AML, and removal of entire herds. While 317 herd areas were identified initially, BLM currently manages wild horses and burros in 201 HMAs. Some herds were combined, while others were removed because they roamed on private lands or were not suitable to retain, according to BLM. Other removal issues include the effect on the genetic viability of herds, increased reproduction of remaining horses, and accuracy of supporting data.

As shown in **Table 1**, more horses and burros were removed from the range in recent years — due to weather conditions, efforts to reach AML, and other factors — than could be adopted. Critics contend that a disproportionate share of funding is used for removal versus adoption. BLM has reached AML in 116 of the 201 HMAs, and continues to remove animals to achieve AML. While wild horses and burros on the range have been reduced to the lowest level in decades, reaching the national AML has eluded BLM. Likely reasons may include the high population growth rate of horses and burros, inadequate funding, insufficient interest in adoptions, and poor program management. Animals that are removed may be offered for adoption, sold, or sent to holding facilities.

Adoption. The primary disposal method for healthy animals has been through adoption. From FY1972-FY2005, 258,783 horses and burros were removed, of which 208,637 were adopted (others died of natural causes or were sent to holding facilities). The base fee to adopt a wild horse or burro is a minimum of \$125, although the BLM Director may reduce or waive the fee. In most cases, competitive bidding is used and the fee is the highest bid over the base. New owners can receive title after a one-year wait, with certification of proper care during that time. An individual may receive title to no more than 4 animals per year. BLM has established other conditions for the transportation, feeding, and care of wild horses and burros.

The adoption process stems in part from past concerns that some adopted animals were slaughtered. Approximately 20,000 horses were placed with large scale adopters, without fee, from 1984-September 1988; hundreds of them died of starvation or dehydration during the one year probationary period and thousands were slaughtered soon after title passed.³ Public protest led BLM to resume charging an adoption fee. Further changes followed reports in 1997 that wild horses were sold to slaughterhouses and charges, denied by BLM, of related misconduct by some employees. Changes required adopters to certify that they have “no intent” to sell their animals for slaughter; established a monitoring program with slaughterhouses and federal inspectors to return untitled animals intended for slaughter and retain records on titled, slaughtered animals; prohibited individuals from using power of attorney from others to adopt animals, and increased compliance inspections of untitled adopted animals. Also, the Wild Horse and Burro Advisory Board was reestablished, although whether it reflects the range of wild horse and burro interests is a matter of dispute.

A lingering question, despite court reviews and the changes in law in 2004, is whether wild horses and burros are protected from slaughter once adopted. From August 1, 2004, to July 18, 2005, 597 titled horses were sent to U.S. slaughterhouses. The BLM asserts that it has no authority over a titled animal because the 1971 Act states that wild horses and burros “or their remains shall lose their status as wild free-roaming horses and burros and shall no longer be considered as falling within the purview of this chapter—upon passage of title...”(16 U.S.C. §1333(d)(1)). The agency seeks to protect horses and burros through efforts to place them with qualified adopters and subsequent monitoring for one year. By contrast, animal advocacy groups contend that the legislative history and intent of the 1971 Act show that titled animals were to be protected indefinitely from slaughter. They further note that adopters are to certify that they have “no intent” to sell their wild horse or burro “for slaughter or bucking stock, or for processing into commercial products...” Controversy over this attestation has centered on how long it should last and the extent to which it can be enforced in court.

Table 1. Wild Horse and Burro Removals and Adoptions

	FY1999		FY2000		FY2001		FY2002		FY2003		FY2004		FY2005	
	R	A	R	A	R	A	R	A	R	A	R	A	R	A
Horses	4,983	5,745	7,004	5,080	11,764	6,054	10,822	5,987	8,865	4,982	9,252	5,699	10,650	5,193
Burros	1,095	1,033	1,627	1,122	1,513	1,576	1,207	1,759	1,216	1,183	647	945	373	508
Total	6,078	6,778	8,631	6,202	13,277	7,630	12,029	7,746	10,081	6,165	9,899	6,644	11,023	5,701

Notes and Sources: “R” indicates the number of animals removed, while “A” indicates the number of animals adopted. The information is from BLM, including BLM’s *Public Land Statistics*.

Sale. As a result of stepped up removals, large numbers of excess animals for which there is no demand for adoption are being held in facilities (see below). In this context, in 2004 Congress directed BLM to sell excess animals that were older or deemed unadoptable. While support for the sales is strong among livestock groups and others, animal activists and other groups question its desirability. According to the

³ U.S. General Accounting Office, *Improvements Needed in Federal Wild Horse Program*, GAO/RCED-90-110 (Washington, DC: August, 1990). Hereafter “1990 GAO Report.”

BLM, about 7,000 animals were available for sale as of September 20, 2005, with approximately 1,445 sold and delivered — far fewer than the agency had anticipated. BLM negotiates sales of excess animals, for instance with ranchers, tribes, and humane organizations, with the price determined on a case-by-case basis. The average price has been \$21 per animal sold. On April 25, 2005, BLM temporarily suspended sale and delivery of wild horses and burros due to concerns about the slaughter of some animals. The agency did not sell animals directly for slaughter, and was requiring purchasers to give written affirmation of an intent to provide humane care. Nevertheless, 41 sold animals were resold or traded and then sent to slaughterhouses. Another 52 animals were sold to slaughterhouses, but Ford Motor Co. committed to purchasing them. On May 19, 2005, the agency resumed sales after revising its bill of sale and pre-sale negotiation procedures to protect against slaughter. Purchasers now also must agree not to sell or transfer ownership to those intending to resell, trade, or give away animals for processing into commercial products. Sales contracts also incorporate criminal penalties for anyone who knowingly or willfully falsifies or conceals information. Some horse advocates question whether the penalties would withstand legal challenge because the 2004 law provides for the sale of animals “without limitation.” Also, according to BLM, purchased animals are classified as private property free of federal protection.

Holding in Facilities. Large numbers of animals have been sent to holding facilities, and BLM continues to be responsible for these animals. Initially, animals are placed in preparation facilities, and there currently are 3,154 animals in 6 preparation facilities. Many more of the animals are in maintenance facilities or long-term facilities (also called sanctuaries). There are 5,084 animals in 18 maintenance facilities, which will either be made available for adoption or sale or sent to long-term facilities. There also are 16,806 animals in 9 long-term facilities, with a total capacity of 18,600. The adoptable animals in long-term facilities will be put up for adoption when demand allows, which for some animals may be years. The unadoptable ones, such as older animals, will be sold or live out their lives in long-term facilities. Such extensive use of holding facilities has prompted a number of issues, including whether to remove more horses than can be adopted, whether the cost of holding is too high (see below), and whether animals in long-term facilities receive appropriate care.

Fertility Control. Wild horses and burros are thought to reproduce at a rate of 15%-20% yearly. To slow reproduction, there is research to develop a fertility control agent. In selected areas, BLM is testing one- and two-year vaccines on mares, with final results expected in 2008. Data from a trial with the two-year vaccine indicated 94% infertility in year 1, 82% in year 2, 68% in year 3, and near normal herd reproductive rates in year 4. BLM considers the vaccine humane, safe to administer, reversible, and cost effective. Research is focused on the effect of vaccines over several years, and developing a fertility control vaccine that would last at least three years and could be approved as safe for general use. Advocates of fertility control assert that it improves the genetic viability and health of the horses, as well as foal survival, by delaying pregnancy in younger mares. Researchers report no ill side effects on horses or the environment. Some view fertility control as less stressful and disruptive to horses than removals, and worth more emphasis. Opponents contend that fertility control meddles with nature, and that its long-term effect on the behavior and size of herds is uncertain. Some favor natural controls such as predation, disease, and starvation.

Costs. Whether funding is sufficient to achieve AML and reduce long-term budgetary needs is not clear. Appropriations for BLM for managing wild horses and burros increased 77% from FY2000 (\$20.9 million) to FY2006 (\$36.9 million, excluding a rescission). The biggest increase occurred from FY2000 to FY2001, when BLM received a 68% increase (to \$35.0 million) to achieve AML over several years and, by FY2010, reduce budgetary needs below the FY2001 level. The FY2006 appropriation was \$2.1 million (5%) less than the FY2005 level of \$39.0 million.⁴ The agency asserted that the FY2006 reduction could be accomplished through anticipated efficiencies, such as a lower cost of adoptions and an increase in animals adopted. BLM also had expected a reduction during FY2005 of 5,000 animals in long-term facilities, but far fewer animals than expected were sold. As a result, higher numbers of animals are in facilities, and many may become a long-term cost. One question is whether animals can be moved more quickly through the adoption and sales systems or into long-term facilities, as the cost of preparation and maintenance facilities is relatively high. The average cost for preparation and maintenance facilities is \$4.48 per animal per day, down from a 2003 average of \$6 per day due to efficiencies in moving animals through these facilities. For the 8,238 animals currently being held, the cost is \$13.5 million annually. The average cost for long-term facilities is \$1.38 daily, or \$8.5 million annually for the 16,806 animals now in long-term holding. The cost of animals in all facilities is more than half the BLM's budget for wild horse and burro management. A particular focus is whether the average cost of adoption, estimated at \$1,054 per animal (or \$1,594 with overhead), can be reduced.

Other issues involve whether additional funds could supplement appropriations. One question is whether long-term facilities could become financially self-sufficient through fund raising and donations, as apparently was expected when the first facilities were created. A related issue is whether the current base adoption fee of \$125 could be increased to generate more money for the program. In FY2006, BLM received \$1.2 million in adoption fees. Contrarily, some support reducing the base adoption fee to promote adoptions. Collections from sales, estimated at \$32,000 to date, have been relatively low. Still other ideas include allowing proceeds of land disposals to be used for wild horse and burro management and selling horse sponsorships.

Other. The difficulty in achieving AML and the extensive use of holding facilities have prompted consideration of other options for managing wild horses and burros. Ideas have included exchanging land to allow for exclusive land use by either wild horses and burros or livestock, and allowing grazing permittees to care for wild horses and burros on their allotments. Proposals to create wild horse sanctuaries included one for 10,000 wild horses in Sonora, Mexico, with multi-species grazing and an interpretive center. Supporters said the project would provide a humane environment for horses throughout their lives; allow BLM to reach AML quickly; and be cost efficient — with a goal of financial self sufficiency. BLM concluded that under law, wild horses and burros may not be transferred outside the United States. Some opponents had feared that horses cared for in Mexico might have been particularly vulnerable to slaughter and mismanagement, as oversight abroad would be difficult.

⁴ Appropriations to the FS for wild horses and burros are not available.