



DEFENDERS OF WILDLIFE

ANALYSIS OF REPRESENTATIVE RICHARD POMBO'S THREATENED AND ENDANGERED SPECIES RECOVERY ACT OF 2005 H.R. 3824

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The Pombo bill, adopted by the U.S. House of Representatives, would decimate the conservation of endangered species under the Endangered Species Act. Contrary to assertions by Rep. Pombo, the bill would undermine, not enhance, species recovery. H.R. 3824 would cripple the Endangered Species Act in the following ways:

Undermines Duty of Federal Agencies to Conserve Endangered Species

- Some of the Endangered Species Act's strongest and most effective provisions require all federal agencies to consult with the U.S. Fish and Wildlife Service to ensure that their actions do not jeopardize threatened and endangered wildlife. The Pombo bill authorizes the Secretary to establish undefined "alternative procedures" for complying with section 7 requirements for inter-agency consultation, making it highly unlikely that federal agencies will be required to do anything to protect listed wildlife. Since "alternative procedures" is undefined, this could allow the Secretary to create broad, whole-scale exemptions from the requirements of this section.
- The Pombo bill also eliminates consultation requirements when incidental take permits are issued pursuant to a habitat conservation plan. In other words, the protections of section 7 would not apply—as they do to every other federal action that may affect listed species—to permit authorizing the killing or harming of threatened and endangered species.

Eliminates Safeguards to Protect Endangered Species from Harmful Pesticides

- The Pombo bill exempts all pesticide decisions from ESA compliance. Not only does the bill eliminate the requirement that the EPA consult with federal wildlife agencies on approval of pesticides, but it exempts all pesticide users from responsibility if the use of a pesticide harms a threatened or endangered species. This amendment would take away the ability under the ESA to stop pesticide use even when necessary to prevent extinction. Pesticides like DDT played a major role in the decline of the bald eagle and peregrine falcon. It is estimated that, even with federal laws regulating their use, pesticides kill more than 67 million birds in the U.S. every year. The effect on wildlife of this provision of the Pombo bill would be devastating, and human health would be placed at risk as well.

Eliminates Protection of Endangered Species Habitat

- The Pombo bill eliminates current protection for habitat without providing adequate alternative protection for habitat necessary for species recovery.
- Not only does the Pombo bill strip habitat protections from the ESA, but a last minute amendment to the bill by Rep. Pombo eliminated an improved standard for determining when an action "jeopardizes" a species.

Undermines Scientific Basis for Decisions

- The Pombo bill creates a new set of excessive hurdles for endangered species conservation decisions and precludes use of established biological tools such as population modeling and projections by requiring that information comply with the Data Quality Act, be empirical and peer-reviewed, and comply with yet-to-be-written regulations before it can be considered when making key wildlife decisions.
- The Pombo bill creates yet another unnecessary hurdle by prohibiting the Secretary from considering information submitted during any public comment period that was not otherwise made available to the public, even where such information is otherwise the "best available" science.

Requires Taxpayers to Pay Developers Not to Kill or Injure Endangered Species

- The Pombo bill requires the federal government to use taxpayer dollars to pay developers not to kill or injure endangered species, sets no limits on these payments, and undermines the existing system of permitting and habitat conservation planning under the Endangered Species Act.

Gives Developers a Free Pass

- The Pombo bill allows developers to violate the law and move forward with actions that could kill endangered wildlife if the government, for whatever reason, cannot meet imposed consultation deadlines. The Pombo bill fails to provide any additional budgetary resources to ensure that the U.S. Fish and Wildlife can meet the deadline for potentially hundreds of thousands of developer demands. Currently, the ESA prohibits killing or injuring endangered wildlife but provides for flexibility by authorizing permits for "take" if the developer mitigates the impact of their project on a threatened or endangered plant or animal.

Undermines Protections for Marine Species

- The Pombo bill exempts "dock building permits" from the take requirements of the Marine Mammal Protection Act. This provision is targeted permitting of docks in Florida manatee habitat by the Army Corps of Engineers. Conservationists have secured protections for manatees from the harmful impacts of the increasing number of docks, marinas, and resulting boat traffic in manatee habitat. Dozens of manatees are killed each year after being struck by high-speed boats. This provision is intended to eliminate protections for manatees that have been implemented primarily because of the MMPA.
- The Pombo bill eliminates the Department of Commerce's endangered species program and consolidates responsibility for marine species with the Department of the Interior. Currently, endangered and threatened marine species are managed by the National Marine Fisheries Service, which is a branch of the Commerce Department. Combining programs will likely result in loss of expertise in marine species conservation and a reduction of resources for species recovery, as the bill specifies no additional funding for Interior's Fish & Wildlife Service to handle these additional responsibilities.

For additional information and background on the Endangered Species Act, visit www.SaveESA.org or contact Mary Beth Beetham, Defenders of Wildlife, Legislative Director at 202/682-9400