

September 19, 2005 update

Legislation Introduced to Gut Endangered Species Act

First vote will be this Thursday morning

If you contact your member of Congress over just one issue this year, please make it the survival of the Endangered Species Act.

Dozens of animals and plants that would have gone extinct have been saved by the Endangered Species Act since it was signed into law by President Richard M. Nixon on December 28, 1973.

Many more are on the brink, along with the special places they call home. Your phone call can make the difference for well-known animals such as the grizzly bear, polar bear, orca (aka killer whale), Mexican gray wolf, Mexican spotted owl, and California condor.

It can also mean the difference between life and death for hundreds of obscure creatures struggling to survive, such as the Chiricahua leopard frog that lives in streams in the desert, the spectacled eider that nests on the Arctic coast, and the coral in the Caribbean along with the many fish that thrive in the architecture of coral reefs.

The House Resources Committee will vote this Thursday, September 22, on a bill introduced by the committee chairman, Richard Pombo (R-CA), that would tear gaping holes in the safety net that is the Endangered Species Act in order to expedite development of the last natural habitats for wildlife in the United States. Details are described below. The bill will first be voted on in the House Resources Committee, then if it passes will go to the full House of Representatives, and if it passes there a similar process will be underway in the Senate.

Imperiled animals and plants need your help to stop this bill. Please call your Representative in Congress first thing Tuesday morning and ask them to oppose Representative Pombo's extinction bill, H.R. 3824, that would eliminate key protections of the Endangered Species Act.

It is especially important that members of the House Resources Committee hear from people who live in their districts. You can look up those members at:

<http://resourcescommittee.house.gov/fullcommittee/members.htm> .

To learn who your Representative is and his or her direct phone number, go to:

<http://www.house.gov/writerep/> . The congressional switchboard number is 202-224-3121.

Please make these calls even if your Representative is known to be hostile to conservation. We may be able to swing some votes from members of Congress nervous about their re-election.

Thank you for your help.

Highlights of Rep. Pombo's Wildlife Extinction Bill

Eliminates Independent Federal Oversight. The Endangered Species Act requires that U.S. Fish and Wildlife Service or Fisheries Service biologists review all federal actions that may harm endangered species. The review is done only on the basis of the best available science. It is conducted by scientists who are completely independent of the federal agency proposing the harmful action.

The Pombo bill allows the exemption of individual projects and entire categories of actions from independent review and instead substitutes undefined "alternate procedures." As Pombo and the

Bush administration have consistently pushed to shield federal agency actions from environmental review by the Fish and Wildlife Service, it is clear that the "alternate procedures" will eliminate independent oversight over a vast array of habitat destruction projects.

Eliminates Critical Habitat. The Endangered Species Act requires the designation of mapped-out "critical habitat" areas for all threatened and endangered species. Critical habitat is the only portion of the Act which directly protects ecosystems in themselves, regardless of whether an endangered species currently reside there -- because it may need to reclaim that habitat in order to recover. Critical habitat is the only portion of the Act which expressly establishes a recovery management standard. It works: Species with critical habitat are twice as likely to be recovering as species without it.

Pombo's bill completely eliminates critical habitat from the Endangered Species Act. .

Makes Recovery Plans Optional. Recovery plans constitute road maps for specific actions that will lead to a species' resurgence and eventual removal from the threatened and endangered species list. The Endangered Species Act requires development of recovery plans.

Pombo's bill would allow the federal government to choose which creatures get a recovery plan and which do not

Destructive Projects Proceed by Default. The Endangered Species Act currently requires that a destructive project can not proceed until it is reviewed and approved by government scientists. The review can not take place unless the agency or corporation proposing the project provides detailed information about the project and its likely effects.

Pombo's bill turns this precautionary process on its head by specifying that destructive projects are allowed to proceed unless government scientists intercede to stop it. The scientists will have little information to make such an intercession, because the Pombo bill allows agencies to simply provide the "nature, the specific location, and the anticipated schedule and duration of the proposed action." This is not enough information to support a scientific review.

Eliminates and Politicizes Science. The Endangered Species Act currently requires that all decisions be made on the basis of "the best available scientific information." Wisely, the Act does not define "best available" because scientific technology, knowledge, and methods constantly change. The Act leaves it up to the scientific community to determine the best science available. Pombo's bill requires a politically appointee, the Secretary of Interior, to issue regulations predetermining the definition of best science.

The Pombo bill also codifies a Bush Administration policy that has been widely condemned by scientists and rejected by courts. The policy, and the bill, prohibit the Fish and Wildlife Service and the Fisheries Service from updating conservation plans for private lands that receive government funding or permits to destroy habitat, even if those plans are not working as intended -- unless the private land owner holding the permit agrees. Thus new scientific information and the results of biological monitoring no would longer require updating of conservation plans.

Eliminates Species Protections and Up-To-Date Science. As currently written, the Endangered Species Act provides full protection to each new animal or plant added to the endangered species list. Pombo's bill allows the Fish and Wildlife Service and Fisheries Service to sign an agreement with individual states prior to a species being listed, which would prohibit new protections for that creature. If a species were to be listed despite the presence of such an agreement, it would indicate that the agreement was necessarily insufficient to protect it. But such an agreement would have the force of law even though scientists had already determined that it allowed the animal or plant to proceed toward endangerment.

Slows Species Protections. The Fish and Wildlife Service has issued a nationwide policy protecting threatened species from unregulated take (i.e. killing, harming or harassing). Pombo's bill prohibits this efficient national approach, requiring the agency to issue separate regulations for each threatened species.

Prevents and Bureaucratizes the Listing of Endangered Species. The Endangered Species Act currently allows the listing of species, subspecies, and "distinct population segments." Pombo's bill makes it harder to list populations by requiring that it be done "sparingly" -- thus allowing different populations of a species to slip away one by one instead of taking action early.

The Endangered Species Act requires that decisions to place species on the endangered list be done solely on the basis of the best available scientific information. In 2003, the Government Accountability Office issued a report (at the request of Congressman Pombo) which found that Fish and Wildlife Service listing decisions are scientifically sound. Pombo's bill would bureaucratize a system that is already working fine by making petitioners supply the agency with documents it already possesses and making the agency post all those documents on a website. While this will not affect listing decisions, it dramatically increases burdensome, unnecessary paperwork tasks for scientists in government, academia and the conservation community

Bankrupts the Endangered Species Act with an Expansive "Taking" Provision. Pombo's bill requires the federal government to pay private landowners for the loss of commercial value when an action (logging, development, etc) is prohibited by the protections of the Endangered Species Act. Pombo has hidden this provision under the misleading rubric of "conservation aid." The bill specifies that "The amount of the Aid is to be no less than the fair market value of the forgone use of the affected portion of the property" -- meaning that the federal government would have to pay for profits that developers hoped to gain by developing that portion of the land, including any profits lost due to mitigations asked of the landowner, such as retaining riparian corridors or protecting a small part of the land.

Not only would this provision deplete the federal budget, it would set a precedent to require the government to pay industry for any profits lost to environmental protections, and would reward developers who plan the maximum and most potentially profitable projects for the most ecologically important habitats. In short, it begs developers to plan projects that allow them to extort payment from the government.