Congressman Pombo Seeks to Modify Endangered Species Act

WASHINGTON, DC, September 16, 2005 (ENS) - Congressman Richard Pombo, a California Republican who chairs the House Resources Committee, has decided to “modernize” the Endangered Species Act of 1973, which Pombo believes is ineffective and too costly to landowners.

On Thursday, a Pombo staff summary of the Congressman’s legislation to reduce the power of the Endangered Species Act was leaked.

The conservation group Center for Biological Diversity says the leaked version of the Pombo measure, as summarized by his staff, would eliminate independent federal oversight of actions by federal agencies that may harm endangered species.

The Pombo legislation would eliminate the designation of mapped-out critical habitat areas for all threatened and endangered species.

The Pombo bill would allow destructive projects to “proceed by default,” the Center for Biological Diversity (CBD) says. Agencies would be required only to provide the “nature, the specific location, and the anticipated schedule and duration” of the proposed action, not enough information to support a scientific review.

The Pombo bill codifies the Bush administration’s No Surprises policy by prohibiting the U.S. Fish and Wildlife Service and NOAA Fisheries from updating failing Habitat Conservation Plans unless the private land owner holding the permit agrees. New scientific information and the results of biological monitoring would no longer require updating of plans.

As currently written, the Endangered Species Act provides full protection to each new species added to the endangered species list. The Pombo bill allows the U.S. Fish and Wildlife Service and NOAA Fisheries to sign an agreement with individual states before a species is listed, which prohibits new protections for those species.

The conservation group warns that the Pombo bill “slows species protections.” The U.S. Fish and Wildlife Service has issued a nationwide policy protecting threatened species from unregulated “taking” such as killing, harming or harassing. Pombo’s bill prohibits this national approach, viewed by the CBD as “efficient.” Instead the Service would be required to issue separate regulations for each threatened 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.”

Pombo has long stood for the rights of property owners, and this bill requires the federal government to pay private landowners for the loss of commercial value when an action such as timber harvest or development, is prohibited by the protections of the Endangered Species Act.

Criticized for this provision in the previous leaked version of the bill, Pombo has hidden the same provision under the code word “conservation aid.”

The newest version of the Pombo 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.”

That is, the federal government would have to pay for profits 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 setting aside mitigation habitat.
The Center for Biological Diversity says, “This not only would have a tremendous impact on the federal budget, it would set a precedent to require the government to pay industry for any profits lost to environmental protections, and it would reward developers who plan the maximum and most potentially profitable projects for the most ecologically important habitat. In short, it begs developers to plan projects that allow them to extort payment from the government.”

The Pombo bill allows the U.S. Fish and Wildlife Service to enter into recovery agreements with private land owners. The summary does not specify what the terms of the agreements are.

The Pombo bill eliminates the Endangered Species Committee, a cabinet level panel with the authority to approve project which would otherwise be prohibited by the Endangered Species Act. While intended to provide an mechanism to overrule species conservation, the God Squad, as it is also known, has been a disappointment to development interests because it can only be invoked by a federal agency or state governor, and it has rarely been invoked and is always very controversial. When it has been invoked, the committee has often sided with the species rather than developers.

In May, Congressman Pombo submitted a report to the Committee on Resources that outlines why he believes the Endangered Species Act (ESA) needs revision.

“While some species have clearly benefited from the ESA, three decades after the Act’s passage few species have been delisted or downlisted because of effective ESA conservation efforts,” the Pombo report states. “With well under half of 1,264 listed species considered stable or improving and the vast majority of listed species falling in the 0 to 25 percent recovery achieved bracket, it seems unlikely that the slow pace of delisting and downlisting will change substantially in the near future.”

It is unclear how the Congressman’s new legislation will increase the rate of species recovery.