

Overhaul of Endangered Species Act Taking Shape--The Californian/North County Times

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After more than three decades of life with the Endangered Species Act, there is a growing indication that one of the world's most significant environmental laws is about to undergo its first major overhaul.

In early autumn, the U.S. House of Representatives adopted a bill by Rep. Richard Pombo, R-Stockton, the House Resources Committee chairman, that would make several major changes to the landmark 1973 federal law.

Then Dec. 15, Sen. Mike Crapo, R-Idaho, introduced similarly sweeping legislation that will frame debate on the issue in the Senate in 2006.

Meanwhile, Sen. Lincoln Chafee, R-R.I., chairman of the Senate Fisheries, Wildlife and Water Subcommittee, also is expected to introduce by March a proposal to rewrite the oft-criticized law, although in a manner more palatable to the environmental community.

"What all these things indicate is that there is growing bipartisan support for some reform of the Endangered Species Act, which is long overdue," said Andrew R. Henderson, vice president and general counsel for the Building Industry Association of Southern California.

However, like the Pombo bill that representatives passed on Sept. 29, the Crapo bill is causing great consternation among environmental groups. They suggest the new Senate legislation is not only an overhaul but a complete dismantling of the law's key provisions that aim to prevent imperiled species of animals and plants from disappearing from the planet.

"The few things Pombo missed in his bill, Crapo picked up in his bill," said Brian Nowicki, conservation biologist for the Tucson-based Center for Biological Diversity. "Were this bill to become law, it would be a serious impediment to the conservation and recovery of endangered species."

Not surprisingly, builders and landowners disagree.

"It sounds good so far, from my perspective," said Bruce Colbert, executive director for the Property Owners Association of Riverside County.

'No surprises' would become law

Builders and landowners are pleased with the legislation's attempt to codify a controversial federal regulation known as "no

surprises," which has major implications for regional habitat conservation plans, including those adopted in recent years for Western Riverside County and North San Diego County. The rule essentially says that, once a federal agency determines a habitat plan will protect an area's wildlife, it cannot come back later and say the plan isn't good enough ---- and require that more land be set aside.

Tom Mullen, interim executive director for the Western Riverside County Conservation Authority, which is managing a massive plan that aims to conserve 153,000 acres to preserve the habitats for 144 species, said the "no surprises" policy "is absolutely needed."

"When you have a large county doing the largest habitat conservation plan in the nation, with more species covered than in any other plan in existence in the nation, ... it's imperative that there not be any surprises," Mullen said. "A deal is a deal."

Once a federal agency approves a conservation plan, it should be treated like a contract, he said.

"Once government says that, 'If you do A, we're going to give you B,' you should be able to do what you want on your land," Mullen said. "When we make a

handshake and look someone in the eye, give them our word, and then we reduce that to a written contract, I don't believe that contract is revocable."

Western Riverside County's plan was approved by federal and state wildlife agencies in June 2004.

Nowicki said, however, that Crapo's bill goes well beyond the notion of honoring an agreement on a conservation plan. He said the legislation prevents the federal government from requesting a revised plan if new scientific information suggests not enough is being done to save a species, even if the government pays for the extra conservation efforts that would be required.

"It ties the government's hands so that they can't even step in to save a species from extinction," Nowicki said.

Less than 1 percent

Nowicki also objects to the bill's proposed change to the deadline for deciding whether to place a rare animal or plant type under the safety net of the Endangered Species Act. Under current law, once a petition is filed to place a species on the endangered species list, the U.S. Fish and Wildlife Service has 12 months to make a decision. The legislation would extend that deadline by two years.

Nowicki said the bill also would allow profit-motivated business interests to influence the framing of recovery plans that now are required to be based solely on biology.

Like the Pombo bill, Crapo's legislation would compensate landowners for conservation work they do on their property through tax breaks. Nowicki said environmentalists don't like that because it essentially means the federal government would pay people to obey the law.

But Colbert said the compensation provision is a positive aspect because the majority of land needed for endangered species is private, and offering an incentive to private property owners is more likely to achieve the goal of preserving crucial habitat.

Colbert maintains that, with incentives, the law would become much more successful than it has been in its first 33 years.

"If you really want conservation, this is one way to achieve it," he said.

Since the law's passage, 10 species have recovered to the point where they no longer require federal protection, federal officials say. Those 10 include the gray whale, American peregrine falcon and American alligator.

That's not many success stories, Colbert maintains, given the 1,300 species considered to be in danger in this country.

"With a success rate of less than 1 percent, you can't do much worse than the current law," he said. "To say that the existing law is doing a good job is really stretching the definition of what

a good job is."

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