

## **Pombo Proposal Wouldn't Gut the Endangered Species Act: It Could Give it Formidable New Teeth**

To: National Desk, Environment Reporter

Contact: Ryan Balis of the National Center for Public Policy Research at 202-543-4110 or [RBalis@nationalcenter.org](mailto:RBalis@nationalcenter.org)

WASHINGTON, July 26 /U.S. Newswire/ -- Critics of Representative Richard Pombo's Endangered Species Act reform initiative -- critics such as the Center for Biological Diversity -- are simply wrong when they claim it would gut the Endangered Species Act, says The National Center for Public Policy Research.

"Richard Pombo's bill, if unchanged, could give the ESA alarming new powers," said David Ridenour, vice president of The National Center and a long-time activist on land issues.

Representative Pombo's proposal is called "The Threatened and Endangered Species Recovery Act of 2005" and, until recently, was expected to sail quickly through the House Resources Committee. Representative Pombo chairs the Committee.

"Property rights advocates are voicing concern about a provision that would extend the ESA's reach into so-called 'invasive species' -- never before regulated under the law," said Ridenour.

Under an Executive Order signed by President Clinton, invasive species are "any species, including seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem."

"By this definition," says Ridenour, "almost any living thing could be considered an 'invasive species,' thereby giving federal bureaucrats broad new powers to regulate human activity -- where we live, what we plant in our yards, and where and how we vacation."

"Representative Pombo may have been attempting to create a more narrow definition of invasive species," he said, "in an attempt to pre-empt more onerous regulations. If so, he should be applauded for his good intentions. But good intentions or not, such regulations could do more harm than good."

"Extending regulations to cover invasive species is a Pandora's Box that once opened may never be closed," Ridenour continued. "We won't need to wait for its ill-effects: Since equestrians, dirt bikers and ATV enthusiasts can carry seeds on or in their clothing, equipment and horses, these regulations can immediately be used as a pretext for kicking recreationists out of our national parks and other public lands."

The draft legislation also includes a compensation provision for property rights losses due to the ESA. But it would only kick in after a landowner loses 50 percent or more of the affected portion of his/her property value. Many small landowners can't afford a 25 percent loss of their farmlands, homes, ranches and investment property, much less 49.9 percent.

And even those who hit that magic 50 percent trigger may never see any money, as property owners would still be required to jump through costly and time-consuming bureaucratic hoops that can make it uneconomic to file a claim.

"The protections offered to private landowners are a lot like having the French on your side in war -- largely symbolic," said David Ridenour.

"Chairman Pombo could have done better, especially in light of the growing public support for property right protections in the wake of the Supreme Court's *Kelo v. City of New London* decision."

The National Center identified other problems with the draft legislation, including:

- It would require property owners who are compensated for losses under the ESA to transfer title to their land to the federal government. This may permit the government to acquire land at bargain prices. It is not clear, for example, if government could gain 100 percent title by paying for a 50 percent loss.

- The proposal would exempt ESA advisory committees from the Federal Advisory Committee Act, which, among other things, requires public disclosure of advisory committee membership. Important decisions should not be made in secret by unaccountable and anonymous committees.

"I applaud Chairman Pombo for recognizing the importance of fixing the ESA, but I don't believe his bill will produce the results he hopes," said Ridenour. "You can't fix an already poisonous law by increasing its dosage. Unfortunately, I believe this is what some of the provisions of the bill would do."

The Endangered Species Act is already one of the most powerful statutes on the books. Critics say this is one of the main reasons it has failed so miserably.

Of the nearly 1,300 domestic species listed as either endangered or threatened since the ESA went into effect over 30 years ago, less than one percent of these species have recovered sufficiently to be delisted.

A similar number of species have gone extinct over that time.

Environmentalists claim that the one percent extinction rate is a sign of the ESA's success. This, they say, means the ESA has "saved" 99 percent of the protected species from extinction.

Critics call this position "delusional."

"The act of delisting species -- including those long since extinct and those that were never in danger in the first place -- is so politically-charged that it practically takes an Act of Congress to get a species off these lists," said Ridenour. "Continued listing of a species can be more of a statement on the power of the environmental movement than it is the true condition of a species. The only measure that counts is recovery."

Recovery of species, Ridenour says, is linked to strong property rights protections.

Close to 80 percent of all species listed as either endangered and threatened species have habitat on private lands. Thus, private landowners are critically important to the survival of these species.

Under the current ESA structure, because the discovery of such species on private land can result in severe land use restrictions that can lead to economic ruin, private landowners have strong financial incentives to make their land as inhospitable as possible to rare species.

"If landowners are punished for being good environmental stewards, we should not be surprised if many of them are not good stewards," said Ridenour. "Compensation to property owners for losses resulting from species conservation is an effective means of ending this perverse incentive system. Species would benefit; people would benefit."

The National Center for Public Policy Research is a non-partisan, non-profit educational foundation based in Washington, DC. Founded in 1982, it has promoted innovative, market-based solutions to environmental problems.