



COMMITTEE ON RESOURCES DEMOCRATS

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H.R. 3824 Threatened and Endangered Species Recovery Act November 2005

H.R. 3824, the Threatened and Endangered Species Recovery Act, passed the House of Representatives on September 29, 2005, by a vote of 229-193. Sponsored by Chairman Richard Pombo, this legislation was opposed by a majority of the Democratic Caucus. A bipartisan substitute amendment which would have strengthened the ESA was narrowly defeated by a vote of 216-206.

Background. H.R. 3824 is the most far-reaching ESA legislation to be approved by the House of Representatives since amendments were enacted in 1988. Despite its wide-ranging impact, however, the bill, which was introduced on September 19, 2005, sailed through the House with a hearing on September 21, 2005, and a markup by the House Resources Committee immediately thereafter, on September 22, 2005.

H.R. 3824 is strongly opposed by conservation organizations including Defenders of Wildlife, Environmental Defense, World Wildlife Fund, Trout Unlimited, Nature Conservancy and National Wildlife Federation. Below is a discussion of key provisions in H.R. 3824, which undermines the purpose of the ESA to conserve endangered and threatened species. (For a more extensive analysis of the bill, see Summary and Analysis of H.R. 3824, prepared by the Congressional Research Service.)

Critical Habitat. H.R. 3824 eliminates the requirement that critical habitat -- geographic areas essential for the conservation of the species -- be designated at the time of listing. The bill also removes the requirement that the Secretary ensure that proposed agency actions do not result in the destruction or adverse modification of habitats.

While the bipartisan substitute also removed the critical habitat provisions in the ESA, the substitute included a statutory definition of "jeopardy," which would have ensured that those proposed agency actions that delay species recovery or increase recovery costs, would result in a jeopardy determination. In contrast, H.R. 3824, as passed by the House, does not statutorily define jeopardy and will likely allow actions to proceed, even if they will destroy the habitat necessary for a species' recovery.

Payment for ESA Compliance. Section 14 creates a new, potentially open-ended entitlement program for property developers and speculators at taxpayers' expense. Under the procedure created in Section 14 of H.R. 3824, a property owner can request a written determination as to whether a proposed use of a property, such as a condominium development, would violate the Section 9 take provisions in the ESA. If the Secretary determines, based on the applicant's information, that the proposed use would not comply with Section 9 of the ESA because it would result in the harm of a listed species, Section 13 of H.R. 3824 enables the property owner to receive compensation from the Federal government for the foregone use of the property. There is nothing in the bill to keep a landowner from submitting multiple development proposals for the same parcel of land.

Notwithstanding the "takings" clause of the Fifth Amendment to the Constitution which states "nor shall private property be taken for public use, without just compensation," Section 14 enables property owners to be compensated for government actions that are not takings under the Constitution. If such "pay people to comply with the law" language as that of Section 14 were applied to local zoning, no mayor or city council could govern a community without facing fear that a decision might drive the community into financial ruin.

Among its many flaws, Section 14 redefines "fair market value" to include speculative "business losses" and allows for compensation of "no less than fair market value" even if only a portion of the property is affected by the government action.

The Statement of Administration Policy issued September 29, 2005, stated that this provision "could result in significant budgetary impact." Similarly, the Congressional Budget Office (CBO) said this bill would increase direct spending, although CBO's less than \$20 million per year price tag for this provision may be low, according to the Congressional Research Service.

Pesticide Waiver. H.R. 3824 would repeal the Endangered Species Act provisions that protect threatened and endangered species from the harmful impacts of pesticides. Have we forgotten that it was the pesticide DDT that was largely responsible for the demise of the bald eagle? Pesticides have also been blamed for poisoning the salmon in the Pacific Northwest, and are suspected of playing a key role in the recent dramatic decline of fish populations in California's San Francisco Bay/Sacramento-San Joaquin Delta.

Under H.R. 3824, pesticide users would have no obligation other than to comply with the Federal Insecticide, Fungicide and Rodenticide Act, a statute that does not address impacts on endangered and threatened species. Notwithstanding the billions of dollars this country has spent to restore estuaries and waterways from the Chesapeake Bay to the Everglades to San Francisco Bay/Sacramento-San Joaquin Delta, this provision would lift prohibitions that were put into place to protect drinking water quality, fisheries, and wildlife. The economic and environmental implications of this provision are staggering.

Section 7 Exemptions. Section 7, the consultation requirements in the ESA, requires the Secretary to evaluate whether proposed agency actions are likely to jeopardize the continued existence of a species. H.R. 3824 undermines existing law by allowing the Secretary to delegate Section 7 responsibilities to other Federal agencies through undefined procedures. The bill imposes no standards for these procedures, thus potentially allowing destructive Federal activities to proceed without the normal review by the scientists with wildlife expertise. Agencies may be able to substitute alternative procedures for the current biological assessment and biological opinion requirements in the ESA, according to the Congressional Research Service.

H.R. 3824 also enables those charged with determining the effects of a proposed agency action on endangered and threatened species to wear blinders when considering whether a species is in jeopardy of extinction. Under existing law, the Secretary considers the condition of the species at the time the proposed action is to be carried out. If other projects are negatively impacting the species, the Secretary addresses the cumulative effects of all the projects when evaluating whether the species is in trouble. Yet, H.R. 3824 prohibits the Secretary from taking these baseline conditions into account. Instead, the Secretary is to ignore reality and base the decision on fiction.

Conclusion. H.R. 3824 will eliminate the possibility that endangered and threatened species can recover. There is no justification to overhaul the Endangered Species Act this way, and its enactment will likely result in more species extinctions.

We cannot know what currently unforeseen miracles of science and medicine reside in the small, seemingly insignificant life forms which surround us. But modern medicine has saved untold numbers of lives by gaining a deeper understanding of life forms. If we wish for human life to continue, we must recognize that human life is inextricably interwoven with all other life.

None among us fully understands the complex design of life on Earth. Until we do, we should preserve nature's wonders. It is not for us to decide which pieces of God's plan meet our standards, which should recover, and which should be extinguished for our convenience and pleasure.