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Endangered Species Act gets listed

By Holly Doremus

DAVIS, CALIFORNIA - The Endangered Species Act (ESA) has served the nation well as a last refuge for vanishing species since it was first enacted in 1973. But an effort to scuttle the act is now moving at breakneck speed through the US House of Representatives.

Last week, the chair of the House Resources Committee, Rep. Richard Pombo (R) of California, proposed changes to the act with a 74-page bill. The committee voted in favor and now the bill is poised for an immediate vote by the full House.

If it becomes law, Mr. Pombo's bill - which weakens current protections governing private and public lands - will be a disaster for endangered species and deepen existing divides on the issue. This is unfortunate because the time is ripe for a more moderate approach.

No one is fully satisfied with the ESA. It is not helping dwindling species enough, developers and mining and timber industries see it as impeding progress, and state officials think it intrudes on their autonomy. The current bill, however, focuses on relief for landowners to the exclusion of the interests of protected species. It misses the opportunity to offer moderate incentives to landowners to save, or improve habitat of endangered species, or involve states more in the development and enforcement of protective regulations.

The proposed changes to the ESA are centered on the premise that it is failing. Only a handful of species have recovered over the past 30 years to the point where they no longer need the law's protection. But that doesn't make the act a failure. Only nine species of the 1,300 listed as endangered since 1973 are now extinct. Rebounding takes time. By the time they get legal protection, species are typically reduced to critically low numbers.

Furthermore, a "recovered" rating requires confidence that the species will not decline again. For many species threatened by loss of habitat, there simply is no other protection.

The House bill will not help these dwindling species. It sets new deadlines for development of recovery plans, but because it would not make those plans enforceable by the courts, many would never be implemented. For at least five years, the act would not apply to pesticides, a major factor in the historic decline of species such as the bald eagle and a current problem for the Pacific salmon.

Government authorities would be given discretion to ignore many species. Protection of "threatened" species, which are not yet listed as endangered, would no longer be mandatory. The Department of Interior could also unilaterally exempt whole categories of federal actions from ESA review. History suggests the government will use any discretion it is given to avoid protecting species.

Further, the bill would provide a windfall for developers. Currently, landowners whose

development projects harm endangered species have to mitigate that harm through habitat conservation planning. The proposed law would substitute a very different process. Landowners could demand review of proposed developments in a very short time and on the basis of a brief project description.

If the government failed to meet the deadline or concluded that the action would not violate the law, the landowner could develop with impunity. If the government concluded the development would harm a listed species, it would have to pay the fair market value of the land's proposed use. In other words, developers could aggressively prospect endangered habitat and receive financial reward for not building.

The Fish and Wildlife Service, on the other hand, would face the Hobson's choice of depriving endangered species of protection or draining its budget with payments to enterprising developers.

Revisiting the Endangered Species Act is a good idea. But amendments ought to help endangered species as well as developers. Pombo's bill is the wrong approach.

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