

**H.R.3824****Latest Title:** Threatened and Endangered Species Recovery Act of 2005**Sponsor:** [Rep Pombo, Richard W.](#) [CA-11] (introduced 9/19/2005) [Cosponsors](#) (95)**Related Bills:** [H.RES.470](#), [S.2110](#)**Latest Major Action:** 9/30/2005 Referred to Senate committee. Status: Received in the Senate and Read twice and referred to the Committee on Environment and Public Works.**House Reports:** [109-237](#)

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**SUMMARY AS OF:**

9/29/2005--Passed House amended.

Threatened and Endangered Species Recovery Act of 2005 - Amends the Endangered Species Act of 1973 (ESA) to revise various provisions of that Act relating to determinations of endangered or threatened species, recovery plans for such species, and the role of states and private property owners in protecting such species.

(Sec. 3) Defines "best available scientific data" as scientific data, regardless of source, that are available to the Secretary of the Interior at the time of a decision or action for which such data are required by ESA and that the Secretary determines are the most accurate, reliable, and relevant for use in that decision or action. (The Secretary of the Interior has primary responsibility for enforcing ESA, but the Secretaries of Agriculture and of Commerce also have certain program responsibilities under ESA.)

Requires the Secretary to: (1) issue regulations to establish criteria for determining which data constitute the best available scientific data; and (2) take steps to secure the best available scientific data.

Redefines "permit or license applicant" as any person who has applied to a federal agency for a permit or license or for formal legal approval to perform an act.

(Sec. 4) Revises criteria for making determinations of endangered or threatened species. Requires the Secretary to make such determinations only sparingly and to prepare an analysis when such determinations are made of the economic, national security, and other relevant impacts and benefits of such determinations.

Substitutes the criteria of "best available scientific data" for "best scientific and commercial data available" in making determinations of endangered or threatened species.

Requires the Secretary to consider information contained in recovery plan biennial reports to Congress and any other relevant information in conducting the five-year reviews of lists of endangered or threatened species required by ESA.

(Sec. 5) Repeals the authority of the Secretary to designate critical habitats.

(Sec. 6) Prohibits the Secretary from finding that a petition to add or remove a species from the endangered or threatened species list presents substantial scientific or commercial information unless the petitioner provides the Secretary with a copy of all information cited in such petition.

Requires the Secretary to provide notice of any regulation, including emergency regulations, implementing an endangered or threatened species determination, designation, or revision to the governor of a state, as well as the appropriate state agency.

Requires the Secretary to: (1) make available on the Internet a complete record of all information concerning the determination or revision of an endangered or threatened species listing; (2) include in such record any status review, all information cited in such review, and all information submitted by third parties; and (3) withhold from public review information protected by the Administrative Procedures Act.

(Sec. 7) Requires the Secretary in reviewing any proposed change in the status of an endangered or threatened species to consider: (1) criteria identified in a recovery plan or criteria established by ESA; (2) a finding of fundamental error in an initial determination; and (3) a determination that a species is no longer an endangered or threatened species or in danger of extinction.

(Sec. 8) Provides that the governor of a state, a county, or a unit or local government, as well as the appropriate state agency, may comment on ESA regulations proposed by the Secretary.

(Sec. 9) Revises ESA recovery plan provisions to require the Secretary to give priority in developing recovery plans to species that are most likely to benefit from such plans, particularly species that are in conflict with economic development activity. Sets forth deadlines for the publication of recovery plans.

Requires recovery plans to be based upon the best available scientific data and to include objective, measurable criteria for making endangered or threatened species determinations and alternative species protection measures that are least costly.

Directs the Secretary to: (1) issue regulations to establish recovery teams for the development of recovery plans; (2) provide biennial reports to Congress on the status of all domestic endangered or threatened species and the status of efforts to develop and implement recovery plans; and (3) consult with states, Indian tribes, or regional or local land use agencies prior to the approval of a new or revised recovery plan.

Authorizes the Secretary to enter into species recovery agreements and species conservation contract agreements with persons, other than federal or state agencies, to provide incentives for species recovery and conservation activities. Requires the Secretary to make annual payments to such persons to implement the agreements. Prohibits the Secretary, or any other federal official, from coercing any individual to participate in such an agreement.

(Sec. 10) Revises provisions relating to cooperative agreements between the Secretary and states and Indian tribes to allow such agreements to: (1) cover a candidate species or any other species that the Secretary and the state agree is at risk of being determined an endangered or threatened species in that state; (2) provide for monitoring, or monitoring assistance, for candidate and recovered species; and (3) require that any agreement to enroll private lands or water rights be made on a voluntary basis.

Authorizes the Secretary to suspend or terminate a cooperative agreement under certain conditions, after consultation with the governor of an affected state.

(Sec. 11) Revises provisions relating to federal interagency cooperation and consultations under ESA. Applies the best available scientific data standard to such consultations.

Authorizes the Secretary to adopt by regulation alternative procedures for consultations with federal agencies taking actions that may jeopardize the continued existence of endangered or threatened species (jeopardy analysis). Requires federal agencies or the Secretary, in conducting any jeopardy analysis, to consider only the effects of any agency actions that are distinct from a baseline of all effects upon the species that have occurred or are occurring prior to such actions.

Requires the Secretary to consider any comment from a federal agency and a permit or license applicant before issuing a final written opinion (incidental take statement) on the effect of a federal agency action on an endangered or threatened species and to publish notice of such written opinion in the Federal Register. Requires that terms and conditions imposed upon an agency or applicant be roughly proportional to the impact of the incidental taking identified in the Secretary's written opinion.

Eliminates the Endangered Species Committee and the process for obtaining federal agency exemptions under ESA.

(Sec. 12) Modifies provisions relating to incidental take permits to require habitat conservation plans submitted with a permit application to include: (1) objective, measurable biological goals to be achieved for the species and specific measures for achieving such goals; (2) measures for monitoring impacts of such plans on species; and (3) adaptive management provisions.

Requires that the terms and conditions offered by the Secretary to reduce or offset the impacts of incidental taking shall be roughly proportional to the impact of the incidental taking. Preserves the authority of the Secretary to require greater than acre-for-acre mitigation when necessary to address the extent of such impacts.

Extends (from 30 to 45 days) the period for public review and comment on applications for incidental take permits.

Permits a private property owner to request a written determination from the Secretary that a proposed use of the owner's property complies with ESA take avoidance requirements.

Authorizes the President to waive requirements under ESA if necessary for national security or in the event of a federally-declared major disaster. Directs the Secretary to issue regulations for the application of ESA in an emergency involving a threat to human health or safety or to property.

Exempts operators of certain water delivery facilities from liability for a taking of any aquatic species resulting from state-managed recreational fishing programs.

(Sec. 13) Authorizes the Secretary to provide grants to promote the voluntary conservation of endangered or threatened species by private property owners. Requires the Secretary to compensate such owners for the cost to them of conservation measures imposed by this Act. Establishes priorities for awarding grants to private property owners and procedures for applications for such grants.

Requires the Secretary to report to Congress annually on all aid and grants awarded to private property owners and to make such report available to the public on the Internet.

(Sec. 14) Requires the Secretary to make publicly available on the Internet: (1) lists of threatened or endangered species; (2) all final and proposed regulations relating to such lists; (3) the results of all five-year reviews of such lists; (4) all draft and final recovery plans; and (5) certain required reports and data.

(Sec. 15) Revises requirements for the annual report of the Secretary to Congress on expenditures made primarily for the conservation of species. Requires the Secretary to provide a means for local governments to voluntarily submit verified electronic data on their expenditures for the conservation of species.

Denies financial assistance under ESA to states that fail to provide the Secretary with information on expenditures on a species-by-species basis.

(Sec. 16) Authorizes the Secretary to reimburse owners of livestock for any loss of livestock resulting from reintroduction of endangered and threatened species into the wild.

(Sec. 17) Authorizes appropriations for FY2006-FY2010. Makes certain technical and clerical amendments to ESA.

(Sec. 20) Deems any actions taken by a federal or state agency or other person with respect to a pesticide that complies with the Federal Insecticide, Fungicide, and Rodenticide Act to comply with specified provisions of ESA relating to consultation with federal agencies and take avoidance requirements.

(Sec. 21) Directs the President to transfer to the Secretary all duties, resources, and responsibilities of the Secretary of Commerce under ESA. Directs the Secretary and the Secretary of Commerce to jointly report to specified congressional committees on such transfer.

(Sec. 22) Directs the Secretary to review ESA regulations relating to the conservation of endangered or threatened species and to report to Congress on such review.

(Sec. 23) Directs the Administrator of the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration to include in customer billing statements information identifying each customer's share of ESA compliance costs.

(Sec. 24) Directs the Secretary to survey all lands under the administrative jurisdiction of the Bureau of Land Management and the Forest Service prior to the enactment of this Act to assess the value of such lands for management of endangered and threatened species and for addition to the National Wildlife Refuge System.

(Sec. 25) Declares that the consultation process under ESA is equivalent to an incidental take authorization under the Marine Mammal Protection Act of 1972 for receiving dock building permits.