
LEGISLATIVE ALERT

April 30, 2004

House Resources Committee Focuses on ESA Modernization

The House Resources Committee turned this week to the modernization of the Endangered Species Act (ESA) with the issuance of a report Tuesday entitled, “The ESA at 30: A Mandate for Modernization,” followed by a hearing Wednesday on H.R. 2933, Rep. Dennis Cardoza’s (D-CA) “Critical Habitat Reform Act.”

Report Highlights Need for Change

The Committee’s report, prepared by Chairman Richard Pombo (R-CA), highlights a dismal recovery record, undefined standards in the use of science for ESA decisionmaking, and costly litigation as major failures of the thirty-year-old ESA. According to Pombo, the current law, “checks species in for conservation and recovery, but never checks them out.” U.S. Fish and Wildlife Service (FWS) data indicates that only twelve of approximately 1,300 protected species have recovered, a success rate of less than 0.01 percent. Additionally, whereas other environmental laws have avoided the problem of setting standards for scientific data by requiring peer review, the ESA has no such requirement for peer review.

Stating a need to update and modernize the Act for the 21st century, the report calls for a focus on results for species recovery. Modernization priorities set forth include: (1) incentivizing species stewardship by taking steps to get landowners engaged in the recovery process through establishing well-defined scientific standards for listing and critical habitat decisions; (2) focusing on the recovery of species through innovative approaches, including moving critical habitat into the development of species recovery planning; and (3) encouraging states to play more active roles in state and local based innovation and collaboration that recover species.

Hearing Focuses on Critical Habitat Fix

Following the report’s release, the Committee held its first hearing on ESA modernization. More than two dozen Committee members attended the hearing from both sides of the aisle. The hearing highlighted legislation introduced by Rep. Cardoza that would help focus the Act on species recovery. H.R. 2933, The “Critical Habitat Reform Act,” would move the designation of critical habitat into the recovery planning stage for listed species. The bill would also broaden the criteria for determining the economic effects of critical habitat designations, including indirect and cumulative effects. The legislation would encourage consultation with state and local officials and exclude from critical habitat designations any land already included in a habitat conservation plan or other federal, state or local conservation plan.

Chairman Pombo called the hearing encouraging, and noted that, “there appears to be a growing, bi-partisan consensus that the critical habitat component of the Endangered Species Act must be improved to embrace the goal of species recovery.” Pombo vowed to see the proposal to its completion, but did not announce a timeline for future action on the measure.

Committee Ranking Member Nick Rahall (D-WV) sounded positive at times about the Cardoza proposal and reform efforts from Pombo, but stopped short of supporting the legislation. “While supporters of H.R. 2933 and myself have fundamental differences on how we view the Endangered Species Act, this bill represents a piecemeal effort to address what some view as problems with the statute,” he said.

Craig Manson, Assistant Secretary for Fish, Wildlife and Parks of the Fish and Wildlife Service, again testified on the need for critical habitat reform. He stated that, while habitat protection is important, “critical habitat as the Act outlines is not the best method.” Manson also announced in his testimony revised agency regulations for endangered species conservation agreements on private lands. The revised regulations provide clearer definitions and more certainty for property owners to incentivize private conservation.

Several California local elected officials testified on the legislation, including Supervisor Kathleen Crookham of Merced County District 2; Supervisor Paul Kelley of Sonoma County; Council Member Mike Martini City of Santa Rosa; and Supervisor Joni Gray of Santa Barbara County. They stressed the need for increased local involvement in ESA decision making processes, and for regulatory certainty for those who voluntarily participate in conservation plans.

Representatives and affiliates of several NESARC member organizations also testified before the Committee, including Supervisor Paul Kelley, Sonoma County, CA, a member of the National Association of Counties; Donald B. Walters, Jr., Primary Systems Services Group, LLC on behalf of the National Association of Home Builders; and Steve L. McKeel, Martin Marietta Materials, Inc, a member of the National Stone, Sand and Gravel Association. A full witness list and copies of prepared testimony is available on the House Resources Committee’s website.

The attached NESARC release was distributed at the hearing.

Additional Information

To access the House Resources Committee’s report, go to <http://resourcescommittee.house.gov/issues/more/esa/whitepaper.htm>

To access to complete witness list and testimony from Wednesday’s hearing, go to http://resourcescommittee.house.gov/archives/108/full/04_28_04.htm

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NESARC Supports Improvements to Critical Habitat Program

The National Endangered Species Act Reform Coalition (NESARC) commends Chairman Richard Pombo and Representative Dennis Cardoza for working to spotlight the need to update and improve the Endangered Species Act (ESA). The ESA was enacted over thirty (30) years ago. While our understanding of what is required to protect and recover endangered species has grown and become much more sophisticated, the ESA has remained a blunt set of mandates that do not reflect or accommodate the lessons that have been learned over those thirty years.

The critical habitat provisions of the ESA are a case in point. The ESA now requires the designation of critical habitat upon listing of a species even though, oftentimes, very little is known at that time regarding what type of habitat is actually needed by the listed species. Further, the designation of critical habitat essentially ignores the presence and availability of other mechanisms such as habitat conservation plans under Section 10(a) of the ESA, safe harbor agreements, candidate consideration agreements and voluntary habitat conservation programs under other federal or state laws that provide equal, if not more, protection than a critical habitat designation. To compound matters, the arbitrary deadline for issuance of critical habitat designations has become a favorite target for litigants which take ever larger shares of available federal funds away from on-the ground species conservation efforts.

If the ESA is to be an effective statute, it must ensure that actions such as the designation of critical habitat are grounded in sound decisionmaking principles. Further, the ESA must move away from procedures and deadlines and focus on facilitating and promoting the conservation of species through pro-active efforts.

NESARC is encouraged by the bipartisan effort to identify necessary improvements to the critical habitat provisions of the ESA that produced H.R. 2933. NESARC believes that the Critical Habitat Reform Act of 2003 is a reasonable and important first step towards improving the ESA. On behalf of the rural irrigators, municipalities, farmers, electric utilities, homebuilders and the other businesses and individuals throughout the U.S. whom support balanced reform of the ESA through NESARC membership, we thank Chairman Pombo, Rep. Cardoza and all of the members of the Resources Committee for their continued efforts on this important issue.