New ESA Amendments: Sound Science or Political Shell Game?

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The number of species officially listed as threatened or endangered under the Endangered Species Act (ESA) is 1261 and still rising. Nine species have gone extinct, and only 8 domestic species have been recovered and delisted. On one point, both supporters and critics of the ESA agree: The act has thus far failed to achieve its goal of conserving and recovering species threatened with extinction. How best to achieve recovery is currently the subject of great contention among policymakers, managers, scholars, and scientists.

Rep. Richard Pombo (R–CA), chair of the House Resources Committee, has spoken of a “mandate for modernizing” the law, and two ESA reform measures were successfully passed through his committee this summer. The bills are the latest attempts by Congress to amend the ESA directly, rather than allow the US Fish and Wildlife Service (USFWS) and NOAA (National Oceanic and Atmospheric Administration) to modernize the ESA through administrative action.

Holly Doremus, professor of law at the University of California, calls the bills a “stealth attack” on the ESA that would “impose significant regulatory barriers” to the listing and recovery processes. Other policy experts and scientists share her view. Michael Bean, senior attorney at Environmental Defense in Washington, DC, testified before Congress that the bills would “make it virtually impossible” for the USFWS and NOAA—the primary federal agencies that administer the ESA—to meet many of the statutory deadlines already prescribed under the ESA, and would do nothing to expedite recovery.

One of the bills, the Sound Science for Endangered Species Act Planning Act (H.R. 1662 in the House, S. 2009 in the Senate), would mandate heavier weighting of empirical, field-tested, or peer-reviewed data over experimental data or predictive models for listing decisions. It would also mandate a formal peer review, in addition to the administrative peer-review requirement already in place, of all decisions regarding listing, jeopardy, or recovery. Congress considered a similar bill in 2002, but failed to garner adequate support for a full House vote (see “Science: The Newest Political Football in the Endangered Species Game,” by Ellen Paul, in the September 2002 issue of BioScience).

The bill’s emphasis on field-based data runs counter to recommendations of the National Academies. In a National Research Council report commissioned by Congress, Science and the Endangered Species Act, a panel of scientists unanimously recommend greater use of predictive modeling techniques, such as population viability analysis, in ESA decisionmaking. Doremus notes that a prescribed emphasis on certain types of data would undermine the current ESA mandate to use the “best available science,” which requires all data to be evaluated equally.

Though Rep. Greg Walden (R–OR), sponsor of H.R. 1662, has stated “it is imperative that we require the work of federal scientists to withstand the scrutiny of their peers,” the bill authorizes no new funding for the panel of experts that would be chosen by the secretary of the interior and the National Academy of Sciences to formally review ESA decisions. The USFWS has estimated that each peer review would cost $100,000 to $160,000—money that would have to come from the already-strapped USFWS budget. Doremus disagrees with Walden, calling the new legislation “a solution in search of a problem” because there is already an effective, administratively required ESA peer-review process.

Rep. Chris Cannon (R–UT), cosponsor of H.R. 1662, says, “All too often the implementation of the ESA has been based on questionable scientific data.” On the other hand, David Wilcove, professor of ecology and public policy at Princeton University, says that he has seen “no evidence of improper use of science under the ESA.” ESA decisions about endangered species are necessarily made before all the pertinent information on even well-studied species can be compiled—the longer the ESA waits to protect a species, the worse the species’ chances for recovery. Therefore, critics argue, the requirement for more peer review may simply delay action and weaken species protection.

Although neither of the ESA reform measures was adopted before Congress adjourned this year, such legislation has some powerful supporters who are not likely to give up anytime soon.

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