

June 16, 2005

The Hon. Richard W. Pombo
Chairman
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Pombo:

On February 10, you called for a new approach to species conservation.

Pointing out that only one percent of the plants and animals put on the endangered species list over the past thirty years has actually recovered, you said the ESA has failed to live up to "our intrinsic values as Americans."

We agree.

Since its enactment in 1973, the ESA has penalized landowners for their stewardship of their property. Farmers, ranchers, tree farmers, homeowners and other landowners who harbor endangered species on their property or merely have wildlife habitat are subjected to severe land-use restrictions that often lead to economic ruin. In much of rural America the ESA has turned landowners and endangered species into mortal enemies. To keep their property from falling under the ESA's land use controls, landowners have to preemptively sterilize their land, making it inhospitable to the species the ESA is supposed to protect. Such are the perverse incentives of this dysfunctional law.

Indeed, rare plants and animals are at greater risk today than they were before the ESA became law.

In states as diverse as North Carolina, Texas, Colorado and California, the ESA has brought much-needed public works projects to a standstill. Hundreds of millions of taxpayer dollars have been diverted to cover the cost of the ESA -- often on the basis of the most dubious of scientific data. Once a species has been added to the endangered species list, it can stay there for decades because there is little incentive to recover species or remove them from the endangered list. As long as species remain on the list, greens and bureaucrats can maintain cost free land use control. Listing has become an end in itself.

There are some who say the ESA needs to be "strengthened."

In truth, the ESA is arguably the most powerful statute on the books. It has opened the floodgates to regulatory takings of private property for which landowners receive no compensation. As such, the ESA is a direct affront to the U.S. Constitution's Fifth Amendment, which clearly states: "Nor shall private property be taken for public use without just compensation."

Those who don't understand what's wrong with the ESA -- its almost unchecked power to coerce law-abiding citizens, regardless of the consequences -- will never know how to fix the law.

Fixing the ESA is absolutely critical – not just for species, property owners and our nation’s economy – but for our nation’s security.

The ESA and other command-and-control approaches have undermined the nation's security – in an era when we can least afford it. In recent years, "critical habitat" designations have been extended to military installations around the country where they come into direct conflict with the armed forces' ability to train soldiers for combat. Fully 72 percent of the Army's base at Fort Lewis, Washington is critical habitat for the Northern Spotted Owl, even though not a single one of these birds currently resides on the installation.

Camp Pendleton Marine base in California has endangered species on its beaches, in riparian areas, and even on brushy dry land – leaving little land available for maneuvers.

What’s more, our efforts to secure our borders from illegal entry – including entry by members of Al Qaeda – have been seriously compromised in the name of species protection.

We remind you that in 1996 Congress appropriated money for Operation Gatekeeper, a Border Patrol initiative to equip fences with state-of-the-art lights, sensors and surveillance equipment along a 14-mile stretch of the U.S./Mexico Border. After nearly nine years, the project still hasn’t been completed because government wildlife officials claim that the final four miles of the fences would disturb seven individual birds -- two vireos, two flycatchers and three gnatcatchers.

The ESA and other regulatory schemes are failing the public they are supposed to serve, and failed the wildlife they are supposed to protect.

We can do better, and we can begin by supporting real reform of the ESA.

A new ESA should be rooted in the principles on which this country was founded, and should be commensurate with the creative, innovative talents of our people. At a minimum, an ESA for the 21st century should include:

- ✓ Compensating landowners for any taking of their property or loss of use of their property resulting from the ESA.
- ✓ Ending the perverse incentives of the current ESA that turn people against wildlife and replacing them with incentive-based approaches.
- ✓ Requiring the government to develop a recovery plan, subject to public comment, before a species is added to the endangered species list, and when the recovery goals are met, mandating the removal of the species from the list.

- ✓ Ensuring that decisions regarding listing and recovery of endangered and threatened species be based on sound, transparent science that is subject to public comment and is subject to double-blind peer review.

As noted earlier, efforts to fix the ESA will fail miserably without a clear understanding of the reasons why it doesn't work.

As you begin your important work, we urge you to keep in mind that you cannot fix an already poisonous law by increasing its dosage.

Sincerely,

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