

Threatened and Endangered Species **Recovery Act of 2005¹**

SECTION ONE: *Situation:* Local, State and Tribal governments often complain that they are often left out of the ESA process concerning species that are found on their lands and in their regions.

- **Solution: TESRA 2005 strengthens cooperation and coordination with local, state and tribal governments.**
 - ✓ Ensures information is sought from local, state and tribal governments when making assessments and decisions under the Act.
 - ✓ Governors and States are provided time to comment and seek improvements on recovery plans before final approval by the Secretary.
 - ✓ Enhances authority for States to enter into cooperative agreements with the Secretary to manage candidate and species at risk of being added to the list, bringing local expertise to bear.

SECTION TWO: *Situation:* The Fish and Wildlife Service works in a vacuum on ESA and the public is not allowed to directly participate in reviewing documents that have been submitted to the Secretary for consideration in his/her final decision.

- **Solution: TESRA 2005 increases sunshine and public accountability.**
 - ✓ Establishes requirement that a record of all information received by the Secretary concerning species determinations, designations or revisions be in at least one repository (in addition to internet access) for public review, comment and duplication in each State the species is believed to occur.
 - ✓ Outlines that recovery teams are to include local and regional representatives within the current range of the species.
 - ✓ Requires decisional documents to be made available on a publicly accessible website.

SECTION THREE *Situation:* Need new authority to utilize the Act to remove harmful invasive species that are competing for the same habitat of the listed species.

- **Solution: TESRA 2005 provides new authority to protect listed species from harmful invasive species.**
 - ✓ Addresses growing problem of cases where the biggest obstacle to the recovery of a species is the presence of a harmful invasive species.

SECTION FOUR *Situation:* The Fish and Wildlife Service makes ESA decisions using science that is not peer reviewed or from reliable sources.

- **Solution: TESRA 2005 makes uniform existing scientific review**

¹ Section numbers were added by the Center for Biological Diversity to aid referencing. All other text is exactly as produced by Congressman Richard Pombo's office.

process.

- ✓ Ensures species are managed under the "best available scientific information".
- ✓ Updates the Act to comply with 2001 Data Quality Act Law.
- ✓ Secretary is prohibited from making final decisions using information or data that has not been made available to the public for review and comment.
- ✓ Secretary can only make a finding when a petitioner provides copies of all information cited in the petition.

SECTION FIVE: *Situation:* Through years of reinterpretation, the ESA no longer differentiates regulation requirements between species that are "endangered" from those that are designated less in need of protection as "threatened".

- ***Solution:* TESRA 2005 reestablishes congressional intent that the Act is to provide differing levels of regulatory protection based upon the "status" of a listed species.**
 - ✓ Strengthens the understanding that there is to be regulatory differences correlated to the status of a species listed under the Act: The most restrictive level being for those species listed as "endangered" and to a lesser degree those listed as "threatened".
 - ✓ Reestablishes congressional intent that "endangered" species are priority above all other species.

SECTION SIX: *Situation:* Definition of "critical habitat" is not specific to the vital needs of a species and creates confusion amongst the regulated and general public.

- ***Solution:* TESRA 2005 updates the definition of "critical habitat" to make it comparable with its cousin law, the Marine Mammal Protection Act.**
 - ✓ Correlates it directly to whether a species uses or, if presently used habitat is insufficient, is likely to use an area for key basic activities vital to breeding, feeding, sheltering or other essential behavioral patterns.

SECTION SEVEN: *Situation:* Congress needs to consider measures that strengthen oversight of the implementing Agencies, improves inter-agency communication and makes the most of limited resources.

- ***Solution:* TESRA 2005 puts in place stronger accountability, improved oversight, and consistent communication.**
 - ✓ Reports to Congress improved to include listing the governments work with threatened as well as endangered.
 - ✓ Eliminates the outdated, expensive and irrelevant ESA Committee (God Squad).
 - ✓ Consolidates all regulatory enforcement authority with Secretary of the Interior.
 - Provides accountability.
 - Provides that the mission of the Agency is consistent with the goals of the Act.

- Strengthens consistent communication with the public.
- Eliminates uncoordinated efforts on the same species.

SECTION EIGHT: *Situation:* The current process of identifying habitat appropriate for protection provides no significant benefits to the species and provides no incentives for local, state or tribal cooperation to manage key regions that the species occupies.

➤ **Solution: TESRA 2005 creates incentives to local, state, tribal and federal governments to develop sound species conservation management plans.**

- ✓ Prioritizes designation of habitat on lands that lack current and adequate conservation management plans.
- ✓ Reaffirms Congressional intent and existing authority for the Secretary to use the strongest habitat protection mechanism: voluntary landowner Habitat Conservation Plans (HCP's).
- ✓ Codifies "No Surprises" incentives for developing HCP's.
- ✓ Requires the consideration of economic impacts and benefits in promulgating final regulations in designating critical habitat.
 - This is to include, landowner revenues, as well as those to federal, tribal, state, and local governments.
- ✓ Separates critical habitat decision from listing process, thereby reducing the burden of the listing process and allowing a more deliberative critical habitat process.
 - Requires critical habitat be designated at the earlier of two points:
 - Within 1 year after approval of species recovery plan.
 - Within 3 years of determining the species is endangered.

SECTION NINE: *Situation:* The ESA can create disincentives to landowners who have endangered species or habitat on their property.

➤ **Solution: TESRA 2005 fosters conservation by reducing the threat to landowners who provide habitat for threatened and endangered species and thereby reducing conservation disincentives.**

- ✓ Defines the trigger for the taking of private property to be 50% of the affected portion.

SECTION TEN: *Situation:* The ESA does not provide for mediation, and only perpetuates the running to the courts to settle all disagreements related to the Act.

➤ **Solution: TESRA 2005 establishes an administrative appeal process.**

- ✓ Encourages a mediation of issues, before one can file suit in court.
- ✓ Species will benefit most. Currently the Fish and Wildlife Service listing budget is consumed with responding to Court

orders.

- ✓ System similar to other environmental laws.
- ✓ Reduces judicial backlog.
- ✓ Prohibits the Fish and Wildlife Service from de facto denials by indefinite delays.