

ANALYSIS of H.R. 3824
Threatened and Endangered Species Recovery Act of 2005 (TESRA)
(As Passed by the House)

The Threatened and Endangered Species Recovery Act of 2005 updates and improves the Endangered Species Act (ESA) by:

- Providing for the use of the best available scientific data in all decisions;
- Replacing the critical habitat program with a more integrated recovery planning process that includes the identification of specific areas that are of special value to the conservation of the species which are then given priority in recovery efforts;
- Providing for active implementation of recovery plans through implementation agreements between the Secretary and other federal agencies where the federal agency agrees to implement programs and projects identified in the recovery plans;
- Increasing the role for States, Indian tribes, counties and local governments by:
 - ensuring that a Governor and responsible State agencies, county and local governments are provided full notice and opportunity to comment on ESA decisions affecting their States and regions,
 - developing recovery plan goals for species on a state-by-state basis and improving the State and Indian tribe cooperative agreement provisions of Section 6 to cover candidate species and other species of concern, and
 - clarifying the treatment of Section 6 cooperative agreement activities under the consultation provisions of Section 7 and take prohibitions of Sections 4(d) and 9;
- Improving the Section 7 consultation process by:
 - authorizing the development of alternative consultation procedures that are consistent with the existing consultation provisions,
 - ensuring that permit and license applicants fully participate in the consultation process, and
 - clarifying that terms and conditions to avoid incidental take imposed under Section 7 should be roughly proportional to the impact of the identified incidental take;

- Establishing new incentives for voluntary conservation efforts including:
 - Species Recovery Agreements which will allow landowners to enter into species recovery agreements for terms of no less than five years to carry out activities that protect and restore habitat for covered species and contribute to the recovery of listed species,
 - Species Conservation Contract Agreements which establish agreements with terms of 30 years, 20 years, and 10 year for the implementation of a management plan for endangered, threatened and candidate species as well as other species comparably designated under State law,
 - Authorization of technical assistance and management training to support enrollment in Species Recovery Agreements and Species Conservation Contract Agreements, and
 - Establishment of a conservation grants program to promote voluntary conservation of listed species on private property and to provide financial compensation to alleviate the burden of conservation measures imposed upon private property owners;
- Codifying the No Surprises/Assurances policy for persons developing habitat conservation plans;
- Improving the habitat conservation plan procedures under Section 10 by ensuring that plans include objective, measurable goals to be achieved for the species, monitoring procedures and adaptive management provisions to respond to reasonably foreseeable changed circumstances in a species status;
- Providing certainty for private property owners by allowing landowners to request a written determination as to whether their land use activities will violate the take prohibitions of Section 9, granting the landowner incidental take coverage where the written determination is that they comply with Section 9 and giving a mechanism for compensating the private property for foregone use of his property where the determination is that the activity would violate the take prohibitions;
- Compensating private property owners for the fair market value of loss of use for foregone use of their property where the Secretary has determined that the use of that property would constitute a “take” under Section 9 and the activity is not otherwise determined a “nuisance” under principles of property and nuisance law;
- Ensuring public accountability by requiring the Secretary maintain a publicly accessible website that includes: (1) endangered and threatened species lists; (2) all final and proposed endangered and threatened species regulations issued under Section 4; (3) draft and final recovery plans; (4) the results of five year status

reviews; and (5) all Reports and supporting data to Congress required under what would be the recovery planning provisions of Section 5 and the Annual Cost Analysis under Section 18; and

- Providing for annual and biennial reports to Congress on the status of listed species as well as expenditures for species recovery efforts.