PROBLEMS WITH POMBO BILL

Undermines the Requirement of Federal Agencies to Ensure that Their Actions Do Not Jeopardize the Continued Existence of Listed Plants or Animals

Cuts wildlife experts out of the loop in determining whether agency actions would harm endangered or threatened plants and animals by authorizing the Secretary to establish "alternative procedures" for complying with section 7. At a minimum this would sanction the types of counterpart section 7 regulations already issued by this Administration and under legal challenge by Defenders and other groups. Since "alternative procedures" is undefined, this could allow the Secretary to create even broader, whole-scale exemptions from the requirements of section 7.

Defines "jeopardize the continued existence" in a manner that could sanction agency actions that cause significant immediate harm to endangered and threatened species and their prospects for recovery, where the Secretary determines that such impacts would be insignificant over some undefined "long-term" period of time.

Exempts section 10 conservation plans from the requirements of section 7.

Creates a broad section 7 waiver for section 6 cooperative agreements and actions or programs administered pursuant to them.

Directs the Secretary to ignore a species' current status or "environmental baseline" in making a jeopardy determination.

Repeals Critical Habitat and Prohibition on Destruction or Adverse Modification of Critical Habitat Without Providing Adequate Assurances that Habitat Necessary For Recovery Will Be Protected

The provisions requiring the designation of critical habitat and prohibiting the "destruction or adverse modification" of any such habitat are currently the only places in the Act that provide explicit regulatory protection for that habitat endangered and threatened species need to recover. The Pombo Bill eliminates these provisions and fails to provide adequate substitute regulatory protection for species' habitat.

Puts Roadblocks in the Way of the Use of the Best Available Science

Requires information to comply with the Data Quality Act, and be empirical, and be peer-reviewed and comply with yet-to-be-written regulations before such information can be considered the "best scientific data available" and, therefore, utilized in listing determinations, section 7 consultations, recovery plans or other provisions of the Act. This provision would impose unscientific and unwarranted obstacles in the way of species listings, issuance of biological opinions and virtually every decision made under the Act.

Prohibits the Secretary from considering information submitted during any public comment period that was not otherwise made available to the public, even where such information is otherwise the "best available."

Places Endangered Plants and Animals at Risk from Development and other Actions that "Take" Endangered Species.

Developers would get a de facto exemption from the Act's prohibition on the killing or harming of endangered species whenever the federal government fails to meet a 90-day deadline for telling them whether their actions would take an endangered species.

Authorizes agreements with the States to provide broad exemptions from the Act's prohibition on killing or harming endangered species.

Requires the Federal Government to Pay Landowners to Not Violate the Law

This would establish terrible precedent regard to environmental protection and would create a financial windfall for unscrupulous developers by requiring the government to compensate them for the value of any activity they propose on their land which would result in a take of a listed plant or animal.

Eliminates the Endangered Species Committee

This Cabinet-level body was created by Congress in 1978 to resolve truly irreconcilable conflicts between species conservation and economic development.

Misc.

Includes language regarding the listing of "distinct population segments" which could cast doubt on or prevent future listings of the U.S. portion of a species that straddles international boundaries, such as the grizzly bear, bald eagle, or wolf.

Eliminates "conservation" as the standard for issuing take regulations for threatened species pursuant to section 4(d) of the Act.

Specifies that recovery plans are non-regulatory and non-binding guidance, which is inconsistent with the existing requirement that the Secretary must "develop **and implement**" them for all species, and could undermine their use in other provisions of the Act, including section 7 consultations.

Language stating that "any terms and conditions" of a section 10 conservation plan must be proportional to the extent of impact of the authorized take could prevent the Secretary from securing adequate mitigation. For example, this language could prohibit anything greater than 1:1 mitigation, even where a greater mitigation ration is appropriate and necessary to avoid jeopardy.

Provision that listing petitions be rejected unless accompanied by copies of all cited information, even where the petition otherwise establishes that listing is warranted, is unreasonable.

Authorizes the delisting of endangered or threatened species solely on the basis of criteria contained in recovery plans, even where such criteria are inadequate and fall short of actual recovery.