

# Action Item

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*To be completed by NASDA Staff:*

**Date Submitted:** September 8, 2011    **Committee:** Natural Resources, Pesticide Regulation and Environment  
 Recommended by Committee     Recommended with Amendment by Committee     Not Recommended by Committee  
 Adopted by NASDA     Adopted with Amendment by NASDA     Not Adopted by NASDA  
**Additional Notes:**

**Subject of Action Item:** Endangered Species Act Response and Reform

**Submitted By:** Commissioner Todd Staples, Texas Department of Agriculture

**Text of Action Item:** Current misuse of the Endangered Species Act (ESA) must be challenged and Congress must be petitioned to adopt ESA reform.

Immediate action is needed to address the onslaught of federal listings of species as threatened or endangered. Resources are needed to ensure that the U.S. Fish and Wildlife Service (FWS) only consider petitions that are based on sound and proven science. If the scientific reliability and validity of the petition cannot be confirmed, taxpayer resources should not be expended to pursue the listing.

ESA reform should ensure:

- legitimate and proven science guides the listing process toward a goal of species recovery;
- the burden of proof for listings rests with the advocates of species listings and not private landowners who would be negatively affected and may oppose such listings;
- the burden of proof for listings is met BEFORE stakeholders are required to invest resources in developing mitigation strategies;
- responsibility for prioritizing and determining species listings and implementation of the ESA shall reside with the executive branch, working with private stakeholders, thereby enabling the species recovery system to rely on the judicial branch to ensure this stakeholder and scientifically based process is followed;
- the rights of private landowners are prioritized and leveraged as part of species recovery; and
- before considering or proposing a listing, the listing agency is required to commission a formal external economic analysis conducted by a landowner-focused expert organization that clearly proves beyond reasonable debate the benefits to the environment of a listing will outweigh the cost of implementation and the restrictions placed on affected stakeholders.

**Background & Rationale:** Farmers and ranchers are the original conservationists. Their efforts to manage the nation's natural resources have had significant positive impacts on habitat, wildlife and the environment.

The broad language of the ESA establishes a low threshold for the scientific basis of petitions to list species as endangered or threatened. As a result, FWS is increasingly inundated with listing requests; the judiciary, as opposed to the executive and legislative branches, is becoming more involved in endangered species listings; and states and landowners are bearing the burden of proof to dispute the petitions or implement strategies to abate the taking of species granted protected status.

This misuse of the ESA will result in the extension of federal regulatory authority over private and state land and water, which threatens the basic principles of landowners' rights and local control and reduces the incentive for voluntary stewardship.