

103^D CONGRESS
1ST SESSION

H. R. 1992

To amend the Endangered Species Act of 1973 to ensure that listing of species is in the public interest, that species are listed only on basis of actual threats, not speculative future threats to their existence, that listing of species and designation of their critical habitat will be subject to blind peer review, that persons conducting listing processes do not benefit economically from a listing decision, that emergency listing without full public and scientific community participation will occur only in emergency situations, that incidental take prosecutions will occur only after a recovery plan has been prepared which provides guidance as to what constitutes a take, and that the Act does not encourage suits between private citizens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. SMITH of Oregon (for himself, Mrs. VUCANOVICH, Mr. YOUNG of Alaska, Mr. SKEEN, Mr. DOOLITTLE, Mr. HERGER, Mr. ROBERTS, Mr. TAYLOR of North Carolina, Mr. PACKARD, Mr. HANCOCK, Mr. BOEHNER, and Mr. HANSEN) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Endangered Species Act of 1973 to ensure that listing of species is in the public interest, that species are listed only on basis of actual threats, not speculative future threats to their existence, that listing of species and designation of their critical habitat will be subject to blind peer review, that persons conducting listing processes do not benefit economically from a listing decision, that emergency listing without full public

1 “(ii) Overutilization for commercial, rec-
2 reational, scientific, or educational purposes.

3 “(iii) Disease or predation.

4 “(iv) The inadequacy of existing regulatory
5 mechanisms.

6 “(v) Other natural or manmade factors af-
7 fecting its continued existence.

8 “(B) That the listing of the species is in the
9 public interest after considering the following fac-
10 tors:

11 “(i) The technical practicability of recover-
12 ing the species.

13 “(ii) The biological significance of the spe-
14 cies.

15 “(iii) The quality of available data on the
16 species.

17 “(iv) The direct and indirect costs to the
18 public and private sectors, including public serv-
19 ice and employment, which may be imposed by
20 the application of the protections of this Act to
21 such species.

22 “(v) The impacts on the use and value of
23 non-Federal property which may result from
24 application of the protections of this Act to
25 such species.

1 “(vi) The impacts on the environment and
2 other species which may result from the appli-
3 cation of the protections of this Act to such
4 species.

5 “(vii) The scientific and other benefits
6 which may result from the application of the
7 protections of this Act to such species.

8 “(viii) Any other beneficial or adverse ef-
9 fects which may result from the application of
10 the protections of this Act to such species.”.

11 (b) CONFORMING AMENDMENT.—Section 4(b)(1)(A)
12 of the Endangered Species Act of 1973 (16 U.S.C.
13 1533(b)(1)(A)) is amended by striking “subsection
14 (a)(1)” and inserting in lieu thereof “subsection
15 (a)(1)(A)”.

16 **SEC. 3. REQUIRING BLIND PEER REVIEW.**

17 Section 4(b) of the Endangered Species Act of 1973
18 (16 U.S.C. 1533(b)) is amended by adding at the end
19 thereof the following new paragraph:

20 “(9) Prior to making any determination pursuant to
21 subsection (a)(1), the Secretary shall submit for peer re-
22 view all information on and analyses of the species or habi-
23 tat upon which such determination will be made to a panel
24 of experts who are not employed by, under contract to,
25 or recipients of grants from the department of the Sec-

1 retary. The panel shall be selected by the Inspector Gen-
2 eral of the department of the Secretary without the advice
3 or consent of the Secretary or any official of any agency
4 advising the Secretary on the determination. The Sec-
5 retary shall consider the report of the panel prior to mak-
6 ing a determination, shall make the report available to the
7 public, and shall provide a response to the report in the
8 preamble to the final rule setting forth the determina-
9 tion.”.

10 **SEC. 4. AVOIDING BIAS.**

11 Section 4(b) of the Endangered Species Act of 1973
12 (16 U.S.C. 1533(b)), as amended by section 3 of this Act,
13 is further amended by adding at the end thereof the
14 following paragraph (11):

15 “(10) No person who advises the Secretary on, or
16 otherwise participates formally in procedures leading to,
17 a determination pursuant to subsection (a)(1), or the in-
18 stitution with which such person is employed, shall receive
19 any grant or other funding under or pursuant to this Act
20 or any other authority of the Secretary to study, conduct
21 research on, undertake conservation activities for, or oth-
22 erwise address the species which is the subject of such de-
23 termination.”.

1 **SEC. 5. ESTIMATION OF NUMBER OF A SPECIES.**

2 Section 4(b) of the Endangered Species Act of 1973
3 (16 U.S.C. 1533(b)), as amended by sections 3 and 4 of
4 this Act, is further amended by adding at the end the
5 following new paragraph:

6 “(11)(A) The Secretary shall determine and publish
7 in the Federal Register with each proposed rule under
8 subsection (a)(1) an estimate of the number of the species
9 that is the subject of the rule.

10 “(B) The estimate published under subparagraph (A)
11 for a species—

12 “(i) shall be periodically reviewed and revised
13 by the Secretary to reflect changes in the number of
14 the species; and

15 “(ii) shall be used by the Secretary to make de-
16 terminations under subsection (c)(2)(B).”.

17 **SEC. 6. APPLYING THE EMERGENCY LISTING PROCESS TO**
18 **EMERGENCY SITUATIONS.**

19 Section 4(b)(7) of the Endangered Species Act of
20 1973 (16 U.S.C. 1533(b)(7)) is amended by striking “a
21 significant risk to the well-being” and inserting in lieu
22 thereof “an immediate threat of extinction”.

1 **SEC. 7. LIMITING APPLICATION OF TAKE PROHIBITION**
2 **PRIOR TO COMPLETION OF A RECOVERY**
3 **PLAN.**

4 Section 9(a) of the Endangered Species Act of 1973
5 (16 U.S.C. 1538(a)) is amended by inserting at the end
6 thereof a new paragraph (3) as follows:

7 “(3) For purposes of paragraph (1)(B) of this sub-
8 section and any regulation applying such paragraph to a
9 threatened species pursuant to section 4(d) of this Act,
10 the terms “harm” and “harass” in the definition of “take”
11 in section 3(19) of this Act shall apply only to such species
12 which are subject to a recovery plan issued under section
13 4(f) of this Act.”.

14 **SEC. 8. ELIMINATING CITIZEN SUITS AGAINST PRIVATE**
15 **PARTIES.**

16 Section 11(g) of the Endangered Species Act of 1973
17 (16 U.S.C. 1540(g)) is amended—

18 (1) in paragraph (1)(A) by striking “any per-
19 son, including the United States and any other gov-
20 ernmental instrumentality or agency (to the extent
21 permitted by the eleventh amendment to the Con-
22 stitution), who” and inserting in lieu thereof “the
23 United States, or any instrumentality or agency
24 thereof, which”;

1 (2) in the first sentence following subparagraph
2 (C) of paragraph (1) by striking “or the citizenship
3 of the parties”; and

4 (3) in paragraph (3) by striking “(A)” and sub-
5 paragraph (B).

6 **SEC. 9. COMPENSATION FOR DIMINUTION IN VALUE OF**
7 **PRIVATE PROPERTY RIGHTS.**

8 (a) IN GENERAL.—The Endangered Species Act of
9 1973 (16 U.S.C. 1531 et seq.) is amended by adding at
10 the end thereof the following:

11 **“SEC. 19. COMPENSATION FOR DIMINUTION IN VALUE OF**
12 **PRIVATE PROPERTY RIGHTS.**

13 “(a) IN GENERAL.—The head of any Federal agency
14 who takes an action under this Act, or regulations issued
15 pursuant to this Act, shall compensate the owner of pri-
16 vate property for any diminution in value caused by the
17 action. Action may cause the diminution in value of pri-
18 vate property—

19 “(1) even though the action results in less than
20 a complete deprivation of all use or value or of all
21 separate distinct interests in the same private prop-
22 erty; and

23 “(2) even if the action is temporary in nature.

24 “(b) DUTY OF FEDERAL AGENCY HEADS.—The head
25 of each Federal agency shall, at the time of issuing regula-

1 tions or undertaking any activity under this Act, deter-
2 mine whether such regulations or activity results in the
3 diminution in value of private property such that such
4 diminution is compensable under this section.

5 “(c) COMPENSATION.—(1) Within 60 days after the
6 date of issuance of any such regulation or the taking of
7 any such action which results in a diminution in value of
8 private property which is compensable under this section,
9 the head of the Federal agency concerned shall make an
10 offer of compensation to the owner of the private property
11 affected. Any offer made under this paragraph shall be
12 effective for one year.

13 “(2) Such owner may reject the offer and, within one
14 year after such rejection, file a claim for compensation in
15 the United States Claims Court for a determination of the
16 value of the property affected. In addition to awarding fair
17 market value for the property affected, the court may
18 award reasonable attorney’s fees and expenses of litiga-
19 tion.

20 “(3) In any case in which the property affected in-
21 volves lands, such owner, in lieu of a claim under para-
22 graph (2), may exchange in accordance with applicable
23 Federal law lands affected by such law, regulation, or
24 activity.

1 “(4) Such owner may also accept such compensation
2 as may be available under other laws for tax benefits, min-
3 eral rights credits, and comparable offers for value by the
4 United States.

5 “(5) Any cash settlement or judgment from the Unit-
6 ed States Claims Court pursuant to paragraph (2) shall
7 be paid as a matter of right from the land and water con-
8 servation fund established by section 2 of the Land and
9 Water Conservation Fund Act of 1965 (16 U.S.C.
10 4601-5).”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to any activity of the United
13 States Government after the date of enactment of this Act.

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