

106TH CONGRESS
1ST SESSION

S. 1305

To amend the Endangered Species Act of 1973 to improve the processes for listing, recovery planning, and delisting and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 1999

Mr. THOMAS (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 to improve the processes for listing, recovery planning, and delisting and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species
5 Listing and Delisting Process Reform Act of 1999”.

6 **SEC. 2. LISTING PROCESS REFORMS.**

7 (a) BEST SCIENTIFIC AND COMMERCIAL DATA
8 AVAILABLE.—

1 (1) IN GENERAL.—Section 3 of the Endangered
2 Species Act of 1973 (16 U.S.C. 1532) is amended—

3 (A) by striking the section heading and in-
4 serting the following:

5 “DEFINITIONS AND GENERAL PROVISIONS”;

6 (B) by striking “For the purposes of this
7 Act—” and inserting the following:

8 “(a) DEFINITIONS.—In this Act:”; and

9 (C) by adding at the end the following:

10 “(b) GENERAL PROVISIONS.—Where this Act re-
11 quires the Secretary to use the best scientific and commer-
12 cial data available, the Secretary shall obtain and use sci-
13 entific or commercial data that is empirical or has been
14 field-tested or peer-reviewed.”.

15 (2) CONFORMING AMENDMENT.—The table of
16 contents in the first section of the Endangered Spe-
17 cies Act of 1973 (16 U.S.C. prec. 1531) is amended
18 by striking the item relating to section 3 and insert-
19 ing the following:

“Sec. 3. Definitions and general provisions.”.

20 (b) FINDING OF SUFFICIENT BIOLOGICAL INFORMA-
21 TION TO SUPPORT RECOVERY PLANNING.—Section 4(b)
22 of the Endangered Species Act of 1973 (16 U.S.C.
23 1533(b)) is amended—

24 (1) in paragraph (1)(A), by adding at the end
25 the following: “The Secretary shall determine that a

1 species is an endangered species or a threatened spe-
2 cies only if the Secretary finds that there is suffi-
3 cient biological information to support recovery plan-
4 ning for the species under subsection (f).”; and

5 (2) in the first sentence of paragraph (3)(A), by
6 inserting before the period at the end the following:
7 “and as to whether the petition presents sufficient
8 biological information to support recovery planning
9 for the species under subsection (f)”.

10 (c) PETITION PROCESS.—Section 4(b)(3) of the En-
11 dangered Species Act of 1973 (16 U.S.C. 1533(b)(3)) is
12 amended by adding at the end the following:

13 “(E) LISTING PETITION INFORMATION.—
14 In the case of a petition to add a species to a
15 list published under subsection (c), a finding
16 that the petition presents the information de-
17 scribed in subparagraph (A) shall not be made
18 unless the petition provides—

19 “(i) documentation from a published
20 scientific source that the fish, wildlife, or
21 plant that is the subject of the petition is
22 a species;

23 “(ii) a description of the available
24 data on the historical and current range
25 and distribution of the species, an expla-

1 nation of the methodology used to collect
2 the data, and identification of the location
3 where the data can be reviewed;

4 “(iii) an appraisal of the available
5 data on the status and trends of all extant
6 populations of the species;

7 “(iv) an appraisal of the available
8 data on the threats to the species;

9 “(v) an identification of the informa-
10 tion contained or referred to in the petition
11 that has been peer-reviewed or field-tested;
12 and

13 “(vi) a description of at least 1 study
14 or credible expert opinion, from a person
15 not affiliated with the petitioner, to sup-
16 port the action requested in the petition.

17 “(F) NOTIFICATION TO STATES.—

18 “(i) PETITIONED ACTIONS.—If a peti-
19 tion is found to present information de-
20 scribed in subparagraph (A), the Secretary
21 shall notify and provide a copy of the peti-
22 tion to the State agency of each State in
23 which the species is believed to occur and
24 solicit the assessment of the agency, to be
25 submitted to the Secretary during a com-

1 ment period ending 90 days after the date
2 of notification, as to whether the petitioned
3 action is warranted.

4 “(ii) OTHER ACTIONS.—If the Sec-
5 retary has not received a petition to add a
6 species to a list published under subsection
7 (c) and the Secretary is considering pro-
8 posing to list the species as an endangered
9 species or a threatened species under sub-
10 section (a), the Secretary shall notify the
11 State agency of each State in which the
12 species is believed to occur and solicit the
13 assessment of the agency, to be submitted
14 to the Secretary during a comment period
15 ending 90 days after the date of the notifi-
16 cation, as to whether the listing would be
17 in accordance with subsection (a).

18 “(iii) CONSIDERATION OF STATE AS-
19 SESSMENTS.—Before publication of a find-
20 ing described in subparagraph (A) that a
21 petition is warranted, the Secretary shall
22 consider any assessments submitted with
23 respect to the species within the comment
24 period established under clause (i) or (ii).”.

1 (d) IMPROVING PUBLIC HEARINGS IN THE LISTING
2 PROCESS.—

3 (1) IN GENERAL.—Section 4(b)(5) of the En-
4 dangered Species Act of 1973 (16 U.S.C.
5 1533(b)(5)) is amended by striking subparagraph
6 (E) and inserting the following:

7 “(E) promptly hold at least 2 hearings in each
8 State in which the species proposed for determina-
9 tion as an endangered species or a threatened spe-
10 cies is located (including at least 1 hearing in an af-
11 fected rural area if 1 or more rural areas within the
12 State are affected by the determination), except that
13 the Secretary may not be required to hold more than
14 10 hearings under this subparagraph with respect to
15 the proposed regulation.”.

16 (2) DEFINITION OF RURAL AREA.—Section 3(a)
17 of the Endangered Species Act of 1973 (16 U.S.C.
18 1532(a)) (as amended by subsection (a)(1)(B)) is
19 amended—

20 (A) by redesignating paragraphs (12)
21 through (14) as paragraphs (11) through (13),
22 respectively; and

23 (B) by inserting before paragraph (15) the
24 following:

1 “(14) RURAL AREA.—The term ‘rural area’
2 means a county or unincorporated area that has no
3 city or town that has a population of more than
4 10,000 inhabitants.”.

5 (3) CONFORMING AMENDMENT.—Section 7(n)
6 of the Endangered Species Act of 1973 (16 U.S.C.
7 1536(n)) is amended in the first sentence by striking
8 “, as defined by section 3(13) of this Act,”.

9 (e) EMERGENCY LISTING.—Section 4(b)(7) of the
10 Endangered Species Act of 1973 (16 U.S.C. 1533(b)(7))
11 is amended by striking “posing a significant risk to the
12 well-being” and inserting “that poses an imminent threat
13 to the continued existence”.

14 (f) OTHER LISTING REFORMS.—Section 4(b) of the
15 Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is
16 amended by adding at the end the following:

17 “(9) AVAILABILITY OF LISTING DATA.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), upon publication of a proposed regu-
20 lation determining that a species is an endan-
21 gered species or a threatened species, the Sec-
22 retary shall make publicly available—

23 “(i) all information on which the de-
24 termination is based, including all sci-

1 entific studies and data underlying the
2 studies; and

3 “(ii) all information relating to the
4 species that the Secretary possesses and
5 that does not support the determination.

6 “(B) LIMITATION.—Subparagraph (A)
7 does not require disclosure of any information
8 that—

9 “(i) is not subject to section 552 of
10 title 5, United States Code (commonly
11 known as the ‘Freedom of Information
12 Act’); or

13 “(ii) is prohibited from being disclosed
14 under section 552a of title 5, United
15 States Code (commonly known as the ‘Pri-
16 vacy Act’).

17 “(10) ESTABLISHMENT OF CRITERIA FOR SCI-
18 ENTIFIC STUDIES TO SUPPORT LISTING.—Not later
19 than 1 year after the date of enactment of this para-
20 graph, the Secretary shall promulgate regulations
21 that establish criteria that must be met for scientific
22 and commercial data to be used as the basis of a de-
23 termination under this section that a species is an
24 endangered species or a threatened species.

25 “(11) FIELD DATA.—

1 “(A) REQUIREMENT.—The Secretary may
2 not determine that a species is an endangered
3 species or a threatened species unless the deter-
4 mination is supported by data obtained by ob-
5 servation of the species in the field.

6 “(B) DATA FROM LANDOWNERS.—The
7 Secretary shall—

8 “(i) accept and acknowledge receipt of
9 data regarding the status of a species that
10 is collected by the owner of land through
11 observation of the species on the land; and

12 “(ii) include the data in the rule-
13 making record compiled for any determina-
14 tion that the species is an endangered spe-
15 cies or a threatened species.”.

16 **SEC. 3. DEADLINE FOR DEVELOPMENT OF RECOVERY**
17 **PLANS.**

18 Section 4(f) of the Endangered Species Act of 1973
19 (16 U.S.C. 1533(f)) is amended by adding at the end the
20 following:

21 “(6) DEADLINE FOR DEVELOPMENT OF RECOV-
22 ERY PLANS.—The Secretary shall—

23 “(A) begin developing a recovery plan re-
24 quired for a species under paragraph (1) on the
25 date of promulgation of the proposed regulation

1 to implement a determination under subsection
2 (a)(1) with respect to the species; and

3 “(B) issue a recovery plan in final form
4 not later than the date of promulgation of the
5 final regulation to implement the determina-
6 tion.”.

7 **SEC. 4. DELISTING.**

8 Section 4(f) of the Endangered Species Act of 1973
9 (16 U.S.C. 1533(f)) (as amended by section 3) is amended
10 by adding at the end the following:

11 “(7) EFFECT OF FULFILLMENT OF RECOVERY
12 PLAN CRITERIA.—

13 “(A) CHANGE IN STATUS.—If the Sec-
14 retary finds that the criteria of a recovery plan
15 have been met for a change in status of the
16 species covered by the recovery plan from an
17 endangered species to a threatened species, or
18 from a threatened species to an endangered
19 species, the Secretary shall promptly publish in
20 the Federal Register a notice of the change in
21 status of the species.

22 “(B) REMOVAL FROM LISTING.—If the
23 Secretary finds that the criteria of a recovery
24 plan have been met for the removal of the spe-
25 cies covered by the recovery plan from a list

1 published under subsection (c), the Secretary
2 shall promptly publish in the Federal Register
3 a notice of an intent to remove the species from
4 the list.”.

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