

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3920

To amend the Endangered Species Act of 1973 to establish special requirements for determining whether the black-tailed prairie dog is an endangered species or threatened species.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2002

Mr. THUNE introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To amend the Endangered Species Act of 1973 to establish special requirements for determining whether the black-tailed prairie dog is an endangered species or threatened species.

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 “Rancher Preservation  
5       Act”.

1 **SEC. 2. SPECIAL REQUIREMENTS REGARDING BLACK-**  
2 **TAILED PRAIRIE DOG.**

3 (a) IN GENERAL.—Section 13 of the Endangered  
4 Species Act of 1973 is amended to read as follows:

5 “SPECIAL REQUIREMENTS REGARDING BLACK-TAILED  
6 PRAIRIE DOG

7 “SEC. 13. (a) USE OF BEST SCIENTIFIC AND COM-  
8 Mercial DATA AVAILABLE.—In any case in which the  
9 Secretary is required by this Act to use the best scientific  
10 and commercial data available with respect to determining  
11 whether the black-tailed prairie dog (*Cynomys*  
12 *ludovicianus*) is an endangered species or a threatened  
13 species, the Secretary—

14 “(1) in evaluating comparable data, shall give  
15 greater weight to scientific or commercial data that  
16 are empirical or have been field-tested or peer-re-  
17 viewed; and

18 “(2) shall include, in data used with respect to  
19 that species, data regarding population numbers of  
20 the species.

21 “(b) FIELD DATA.—

22 “(1) REQUIREMENT.—The Secretary may not  
23 determine under section 4 that the black-tailed prai-  
24 rie dog (*Cynomys ludovicianus*) is an endangered  
25 species or a threatened species unless the determina-

1 tion is supported by data obtained by observation of  
2 the species in the field.

3 “(2) DATA FROM LANDOWNERS.—The Sec-  
4 retary shall—

5 “(A) accept and acknowledge receipt of  
6 data regarding the status of that species that is  
7 collected by an owner of land through observa-  
8 tion of the species on the land; and

9 “(B) include the data in the rulemaking  
10 record compiled for any determination that the  
11 species is an endangered species or a threatened  
12 species.

13 “(c) INDEPENDENT SCIENTIFIC REVIEW REQUIRE-  
14 MENTS.—

15 “(1) DEFINITIONS.—In this subsection:

16 “(A) ACTION.—The term ‘action’ means—

17 “(i) the determination that the black-  
18 tailed prairie dog (*Cynomys ludovicianus*)  
19 is an endangered species or a threatened  
20 species under section 4(a); and

21 “(ii) the determination under section  
22 4(a) that the black-tailed prairie dog  
23 should be removed from any list published  
24 under section 4(c)(1).

1           “(B) QUALIFIED INDIVIDUAL.—The term  
2           ‘qualified individual’ means an individual with  
3           expertise in the biological sciences—

4                   “(i) who through publication of peer-  
5                   reviewed scientific literature or other  
6                   means, has demonstrated scientific exper-  
7                   tise on the black-tailed prairie dog or a  
8                   similar species or other scientific expertise  
9                   relevant to the decision of the Secretary  
10                  under section 4(a) or (f);

11                   “(ii) who does not have, or represent  
12                   any person with, a conflict of interest with  
13                   respect to the determination that is the  
14                   subject of the review;

15                   “(iii) who is not a participant in any  
16                   petition or proposed or final determination  
17                   before the Secretary; and

18                   “(iv) who has no direct financial in-  
19                   terest, and is not employed by any person  
20                   with a direct financial interest, in opposing  
21                   the action under consideration.

22           “(2) LIST OF INDEPENDENT SCIENTIFIC RE-  
23           VIEWERS.—The Secretary shall solicit recommenda-  
24           tions from the National Academy of Sciences and  
25           develop and maintain a list of qualified reviewers to

1 participate in independent scientific review of ac-  
2 tions.

3 “(3) APPOINTMENT OF INDEPENDENT SCI-  
4 ENTIFIC REVIEWERS.—(A) Before any action shall  
5 become final, the Secretary shall appoint randomly,  
6 from among the list prepared in accordance with  
7 this section, 3 qualified individuals who shall review  
8 and report to the Secretary on the scientific infor-  
9 mation and analyses on which the proposed action is  
10 based.

11 “(B) The selection and activities of the review-  
12 ers selected pursuant to this section shall not be  
13 subject to the Federal Advisory Committee Act (5  
14 U.S.C. App.).

15 “(C) Reviewers shall be compensated for con-  
16 ducting the independent review.

17 “(4) OPINION OF PEER REVIEWERS.—Inde-  
18 pendent reviewers shall provide the Secretary, within  
19 3 months, their opinion regarding all relevant sci-  
20 entific information and assumptions relating to the  
21 taxonomy, population models, and supportive biologi-  
22 cal and ecological information for the black-tailed  
23 prairie dog.

24 “(5) FINAL DETERMINATION.—If the referees  
25 have made a recommendation on a proposed action,

1 the Secretary shall evaluate and consider the infor-  
2 mation that results from the independent scientific  
3 review and include in the final determination—

4 “(A) a summary of the results of the inde-  
5 pendent scientific review; and

6 “(B) in a case in which the recommenda-  
7 tion of a majority of the referees who conducted  
8 the independent scientific review is not followed,  
9 an explanation as to why the recommendation  
10 was not followed.

11 “(6) PUBLIC NOTICE.—The report of the peer  
12 reviewers shall be included in the official record of  
13 the proposed action and shall be available for public  
14 review prior to the close of the comment period on  
15 the proposed action.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-  
17 tions in the first section of such Act is amended by strik-  
18 ing the item relating to section 13 and inserting the fol-  
19 lowing:

“Sec. 13. Special requirements regarding black-tailed prairie dog.”.

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