

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.

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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

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## 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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