

107TH CONGRESS  
1ST SESSION

# H. R. 2829

To amend the Endangered Species Act of 1973 to require the Secretary of the Interior to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. WALDEN (for himself, Mr. HERGER, Mr. DOOLITTLE, Mr. SIMPSON, Mr. HASTINGS of Washington, Mr. NETHERCUTT, and Mr. GIBBONS) 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 require the Secretary of the Interior to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed, 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 “Sound Science for En-  
5       dangered Species Act Planning Act of 2001”.

1 **SEC. 2. SOUND SCIENCE.**

2 (a) BEST SCIENTIFIC AND COMMERCIAL DATA

3 AVAILABLE.—

4 (1) IN GENERAL.—Section 3 of the Endangered

5 Species Act of 1973 (16 U.S.C. 1532) is amended—

6 (A) by amending the section heading to

7 read as follows:

8 **“SEC. 3. DEFINITIONS AND GENERAL PROVISIONS.”;**

9 (B) by striking “For the purposes of this

10 Act—” and inserting the following:

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

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

13 “(b) USE OF CERTAIN DATA.—In any case in which

14 the Secretary is required by this Act to use the best sci-

15 entific and commercial data available, the Secretary, in

16 evaluating comparable data, shall give greater weight to

17 scientific or commercial data that is empirical or has been

18 field-tested or peer-reviewed.”.

19 (2) CONFORMING AMENDMENT.—The table of

20 contents in the first section of the Endangered Spe-

21 cies Act of 1973 (16 U.S.C. prec. 1531) is amended

22 by striking the item relating to section 3 and insert-

23 ing the following:

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

1       (b) USE OF SOUND SCIENCE IN LISTING.—Section  
2 4(b) of the Endangered Species Act of 1973 (16 U.S.C.  
3 1533(b)) is amended by adding at the end the following:

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

12           “(10) FIELD DATA.—

13           “(A) REQUIREMENT.—The Secretary may  
14 not determine that a species is an endangered  
15 species or a threatened species unless the deter-  
16 mination is supported by data obtained by ob-  
17 servation of the species in the field.

18           “(B) DATA FROM LANDOWNERS.—The  
19 Secretary shall—

20           “(i) accept and acknowledge receipt of  
21 data regarding the status of a species that  
22 is collected by an owner of land through  
23 observation of the species on the land; and  
24           “(ii) include the data in the rule-  
25 making record compiled for any determina-

tion that the species is an endangered species or a threatened species.”.

3 (c) USE OF SOUND SCIENCE IN RECOVERY PLAN-  
4 NING.—Section 4(f) of the Endangered Species Act of  
5 1973 (16 U.S.C. 1533(f)) is amended by adding at the  
6 end the following:

7       “(6)(A) The Secretary shall identify and publish in  
8 the Federal Register with the notice of a proposed regula-  
9 tion pursuant to paragraph (5)(A)(i) a description of addi-  
10 tional scientific and commercial data that would assist in  
11 the preparation of a recovery plan and—

12                   “(i) invite any person to submit the data to the  
13                   Secretary; and

14                   (ii) describe the steps that the Secretary plans  
15                   to take for acquiring additional data.

16        "(B) Data identified and obtained under subpara-  
17 graph (A)(i) shall be considered by the recovery team and  
18 the Secretary in the preparation of the recovery plan in  
19 accordance with section 5.".

## 20 SEC. 3. PEER REVIEW.

21 Section 4 of the Endangered Species Act of 1973 (16  
22 U.S.C. 1533) is amended by adding at the end the fol-  
23 lowing:

24        "(j) INDEPENDENT SCIENTIFIC REVIEW REQUIRE-  
25 MENTS.—

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

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

3               “(i) the determination that a species  
4               is an endangered species or a threatened  
5               species under subsection (a);

6               “(ii) the determination under sub-  
7               section (a) that an endangered species or  
8               a threatened species be removed from any  
9               list published under subsection (c)(1);

10               “(iii) the development of a recovery  
11               plan for a threatened species or endan-  
12               gered species under subsection (f); and

13               “(iv) the determination that a pro-  
14               posed action is likely to jeopardize the con-  
15               tinued existence of a listed species and the  
16               proposal of any reasonable and prudent al-  
17               ternatives by the Secretary under section  
18               7(b)(3).

19           “(B) QUALIFIED INDIVIDUAL.—The term  
20               ‘qualified individual’ means an individual with  
21               expertise in the biological sciences—

22               “(i) who through publication of peer-  
23               reviewed scientific literature or other  
24               means, has demonstrated scientific exper-  
25               tise on the species or a similar species or

1 other scientific expertise relevant to the de-  
2 cision of the Secretary under subsection  
3 (a) or (f);

15               “(2) LIST OF INDEPENDENT SCIENTIFIC RE-  
16       VIEWERS.—The Secretary shall solicit recommenda-  
17       tions from the National Academy of Sciences and  
18       develop and maintain a list of qualified reviewers to  
19       participate in independent scientific review actions.

“(3) APPOINTMENT OF INDEPENDENT SCIENTIFIC REVIEWERS.—(A) Before any action shall become final, the Secretary shall appoint randomly, from among the list prepared in accordance with this section, 3 qualified individuals who shall review and report to the Secretary on the scientific information and analysis contained in the petition, and any other information the Secretary deems relevant.

1 mation and analyses on which the proposed action is  
2 based.

3 “(B) The selection and activities of the referees  
4 selected pursuant to this section shall not be subject  
5 to the Federal Advisory Committee Act (5 U.S.C.  
6 App.).

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

9 “(4) OPINION OF PEER REVIEWERS.—Inde-  
10 pendent reviewers shall provide the Secretary, within  
11 3 months, their opinion regarding all relevant sci-  
12 entific information and assumptions relating to the  
13 taxonomy, population models, and supportive biologi-  
14 cal and ecological information for the species in  
15 question.

16 “(5) FINAL DETERMINATION.—If the referees  
17 have made a recommendation on a proposed action,  
18 the Secretary shall evaluate and consider the infor-  
19 mation that results from the independent scientific  
20 review and include in the final determination—

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

23 “(B) in a case in which the recomenda-  
24 tion of a majority of the referees who conducted  
25 the independent scientific review is not followed,

1                   an explanation as to why the recommendation  
2                   was not followed.

3                   “(6) PUBLIC NOTICE.—The report of the peer  
4                   reviewers shall be included in the official record of  
5                   the proposed action and shall be available for public  
6                   review prior to the close of the comment period on  
7                   the proposed action.”.

8                   **SEC. 4. IMPROVED RECOVERY PLANNING.**

9                   (a) USE OF INFORMATION PROVIDED BY STATES.—  
10                  Section 7(b)(1) of the Endangered Species Act of 1973  
11                  (16 U.S.C. 1536(b)(1)) is amended by adding at the end  
12                  the following:

13                   “(C) USE OF STATE INFORMATION.—In  
14                  conducting a consultation under subsection  
15                  (a)(2), the Secretary shall actively solicit and  
16                  consider information from the State agency in  
17                  each affected State.”.

18                   (b) OPPORTUNITY TO PARTICIPATE IN CONSULTA-  
19                  TIONS.—Section 7(b)(1) of the Endangered Species Act  
20                  of 1973 (16 U.S.C. 1536(b)(1)) (as amended by sub-  
21                  section (a)) is further amended by adding at the end the  
22                  following:

23                   “(D) OPPORTUNITY TO PARTICIPATE IN  
24                  CONSULTATIONS.—

1                             “(i) IN GENERAL.—In conducting a  
2                             consultation under subsection (a)(2), the  
3                             Secretary shall provide any person who has  
4                             sought authorization or funding from a  
5                             Federal agency for an action that is the  
6                             subject of the consultation, the opportunity  
7                             to—

8                             “(I) before the development of a  
9                             draft biological opinion, submit and  
10                            discuss with the Secretary and the  
11                            Federal agency information relevant  
12                            to the effect of the proposed action on  
13                            the species and the availability of rea-  
14                            sonable and prudent alternatives (if a  
15                            jeopardy opinion is to be issued) that  
16                            the Federal agency and the person  
17                            can take to avoid violation of sub-  
18                            section (a)(2);

19                             “(II) receive information, on re-  
20                            quest, subject to the exemptions speci-  
21                            fied in section 552(b) of title 5,  
22                            United States Code, on the status of  
23                            the species, threats to the species, and  
24                            conservation measures, used by the  
25                            Secretary to develop the draft biologi-



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