

108TH CONGRESS
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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.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2004

Mr. SMITH 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 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 2004”.

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-

1 tion that the species is an endangered spe-
 2 cies 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

other scientific expertise relevant to the decision of the Secretary under subsection (a) or (f);

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

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

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

“(2) LIST OF INDEPENDENT SCIENTIFIC REVIEWERS.—The Secretary shall solicit recommendations from the National Academy of Sciences and develop and maintain a list of qualified reviewers to 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 infor-

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 recommenda-
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-

1 cal opinion and the final biological
2 opinion, including the associated inci-
3 dental taking statements; and

4 “(III) receive a copy of the draft
5 biological opinion from the Federal
6 agency and, before issuance of the
7 final biological opinion, submit com-
8 ments on the draft biological opinion
9 and discuss with the Secretary and
10 the Federal agency the basis for any
11 finding in the draft biological opinion.

12 “(ii) EXPLANATION.—If reasonable
13 and prudent alternatives are proposed by a
14 person under clause (i) and the Secretary
15 does not include the alternatives in the
16 final biological opinion, the Secretary shall
17 explain to the person why those alter-
18 natives were not included in the opinion.

19 “(iii) PUBLIC ACCESS TO INFORMA-
20 TION.—Comments and other information
21 submitted to, or received from, any person
22 (pursuant to clause (i)) who seeks author-
23 ization or funding for an action shall be
24 maintained in a file for that action by the
25 Secretary and shall be made available to

1 the public (subject to the exemptions speci-
2 fied in section 552(b) of title 5, United
3 States Code).”.

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