

108TH CONGRESS  
1ST SESSION

# S. 369

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

FEBRUARY 12, 2003

Mr. THOMAS 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 2003”.

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

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

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

1 (A) by striking the section heading and in-  
 2 serting the following:

3 “DEFINITIONS AND GENERAL PROVISIONS”;

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

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

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

8 “(b) GENERAL PROVISIONS.—In any case in which  
 9 this Act requires the Secretary to use the best scientific  
 10 and commercial data available, the Secretary shall obtain  
 11 and use scientific or commercial data that are empirical  
 12 or have been field-tested or peer-reviewed.”.

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

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

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

22 (1) in paragraph (1)(A)—

23 (A) by striking “shall make” and inserting  
 24 the following: “shall—

25 “(i) make”;

1 (B) by striking the period at the end and  
 2 inserting “; and”; and

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

4 “(ii) determine that a species is an endangered  
 5 species or a threatened species only if the Secretary  
 6 finds that there is sufficient biological information to  
 7 support recovery planning for the species under sub-  
 8 section (f).”; and

9 (2) in the first sentence of paragraph (3)(A), by  
 10 inserting before the period at the end the following:

11 “and as to whether the petition presents sufficient  
 12 biological information to support recovery planning  
 13 for the species under subsection (f)”.

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

17 “(E) LISTING PETITION INFORMATION.—

18 In the case of a petition to add a species to a  
 19 list published under subsection (c), a finding  
 20 that the petition presents the information de-  
 21 scribed in subparagraph (A) shall not be made  
 22 unless the petition provides—

23 “(i) documentation from a published  
 24 scientific source that the fish, wildlife, or

1 plant that is the subject of the petition is  
2 a species;

3 “(ii)(I) a description of the available  
4 data on the historical and current range  
5 and distribution of the species;

6 “(II) an explanation of the method-  
7 ology used to collect the data; and

8 “(III) identification of the location  
9 where the data can be reviewed;

10 “(iii) an appraisal of the available  
11 data on the status and trends of all extant  
12 populations of the species;

13 “(iv) an appraisal of the available  
14 data on the threats to the species;

15 “(v) an identification of the informa-  
16 tion contained or referred to in the petition  
17 that has been peer-reviewed or field-tested;  
18 and

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

23 “(F) NOTIFICATION TO STATES.—

24 “(i) PETITIONED ACTIONS.—If a peti-  
25 tion is found to present information de-

scribed in subparagraph (A), the Secretary shall—

“(I) notify and provide a copy of the petition to the State agency of each State in which the species is believed to occur; and

“(II) solicit the assessment of the agency as to whether the petitioned action is warranted, which assessment shall be submitted to the Secretary during a comment period ending 90 days after the date of the notification.

“(ii) OTHER ACTIONS.—If the Secretary has not received a petition to add a species to a list published under subsection (c) and the Secretary is considering proposing to list the species as an endangered species or a threatened species under subsection (a), the Secretary shall—

“(I) notify the State agency of each State in which the species is believed to occur; and

“(II) solicit the assessment of the agency as to whether the listing would be in accordance with subsection (a),

which assessment shall be submitted to the Secretary during a comment period ending 90 days after the date of the notification.

“(iii) CONSIDERATION OF STATE ASSESSMENTS.—Before publication of a finding described in subparagraph (A) that a petitioned action is warranted, the Secretary shall consider any assessments submitted with respect to the species within the comment period established under clause (i) or (ii).”.

(d) IMPROVEMENT OF PUBLIC HEARINGS IN THE LISTING PROCESS.—

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

“(E) promptly hold at least 2 hearings in each State in which the species proposed for determination as an endangered species or a threatened species is located (including at least 1 hearing in an affected rural area if 1 or more rural areas within the State are affected by the determination), except that the Secretary may not be required to hold more than

1       10 hearings under this subparagraph with respect to  
2       the proposed regulation.”.

3               (2) DEFINITION OF RURAL AREA.—Section 3(a)  
4       of the Endangered Species Act of 1973 (16 U.S.C.  
5       1532(a)) (as amended by subsection (a)(1)(B)) is  
6       amended—

7               (A) by redesignating paragraphs (12)  
8               through (14) as paragraphs (11) through (13),  
9               respectively; and

10              (B) by inserting before paragraph (15) the  
11              following:

12              “(14) RURAL AREA.—The term ‘rural area’  
13              means a county or unincorporated area that has no  
14              city or town with a population of more than 10,000  
15              individuals.”.

16              (3) CONFORMING AMENDMENT.—Section 7(n)  
17              of the Endangered Species Act of 1973 (16 U.S.C.  
18              1536(n)) is amended in the first sentence by striking  
19              “, as defined by section 3(13) of this Act,”.

20              (e) EMERGENCY LISTING.—Section 4(b)(7) of the  
21              Endangered Species Act of 1973 (16 U.S.C. 1533(b)(7))  
22              is amended in the first sentence by striking “posing a sig-  
23              nificant risk to the well-being” and inserting “that poses  
24              an imminent threat to the continued existence”.

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

4 “(9) AVAILABILITY OF LISTING DATA.—

5 “(A) IN GENERAL.—Subject to subpara-  
 6 graph (B), upon publication of a proposed regu-  
 7 lation determining that a species is an endan-  
 8 gered species or a threatened species, the Sec-  
 9 retary shall make publicly available—

10 “(i) all information on which the de-  
 11 termination is based, including all sci-  
 12 entific studies and data underlying the  
 13 studies; and

14 “(ii) all information relating to the  
 15 species that the Secretary possesses and  
 16 that does not support the determination.

17 “(B) LIMITATION.—Subparagraph (A)  
 18 does not require disclosure of any information  
 19 that—

20 “(i) is not required to be made avail-  
 21 able under section 552 of title 5, United  
 22 States Code (commonly known as the  
 23 ‘Freedom of Information Act’); or

24 “(ii) is prohibited from being disclosed  
 25 under section 552a of title 5, United



1 States Code (commonly known as the ‘Pri-  
2 vacy Act’).

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

11 “(11) FIELD DATA.—

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

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

19 “(i) accept and acknowledge receipt of  
20 data regarding the status of a species that  
21 is collected by an owner of land through  
22 observation of the species on the land; and

23 “(ii) include the data in the rule-  
24 making record compiled for any determina-

1                   tion that the species is an endangered spe-  
 2                   cies or a threatened species.”.

3 **SEC. 3. DEADLINE FOR DEVELOPMENT OF RECOVERY**  
 4 **PLANS.**

5       Section 4(f) of the Endangered Species Act of 1973  
 6 (16 U.S.C. 1533(f)) is amended by adding at the end the  
 7 following:

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

10                   “(A) begin developing a recovery plan re-  
 11                   quired for a species under paragraph (1) on the  
 12                   date of promulgation of the proposed regulation  
 13                   to implement a determination under subsection  
 14                   (a)(1) with respect to the species; and

15                   “(B) issue a recovery plan in final form  
 16                   not later than the date of promulgation of the  
 17                   final regulation to implement the determina-  
 18                   tion.”.

19 **SEC. 4. DELISTING.**

20       Section 4(f) of the Endangered Species Act of 1973  
 21 (16 U.S.C. 1533(f)) (as amended by section 3) is amended  
 22 by adding at the end the following:

23                   “(7) EFFECT OF FULFILLMENT OF RECOVERY  
 24       PLAN CRITERIA.—

1           “(A) CHANGE IN STATUS.—If the Sec-  
2           retary finds that the criteria of a recovery plan  
3           have been met for a change in status of the  
4           species covered by the recovery plan from an  
5           endangered species to a threatened species, or  
6           from a threatened species to an endangered  
7           species, the Secretary shall promptly publish in  
8           the Federal Register a notice of the change in  
9           status of the species.

10           “(B) REMOVAL FROM LISTING.—If the  
11           Secretary finds that the criteria of a recovery  
12           plan have been met for the removal of the spe-  
13           cies covered by the recovery plan from a list  
14           published under subsection (c), the Secretary  
15           shall promptly publish in the Federal Register  
16           a notice of an intent to remove the species from  
17           the list.”.

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