

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.

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

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.".

“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”;

(B) by striking the period at the end and
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

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:

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.

1 scribed in subparagraph (A), the Secretary
2 shall—

3 “(I) notify and provide a copy of
4 the petition to the State agency of
5 each State in which the species is be-
6 lieved to occur; and

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

13 “(ii) OTHER ACTIONS.—If the Sec-
14 retary has not received a petition to add a
15 species to a list published under subsection
16 (c) and the Secretary is considering pro-
17 posing to list the species as an endangered
18 species or a threatened species under sub-
19 section (a), the Secretary shall—

20 “(I) notify the State agency of
21 each State in which the species is be-
22 lieved to occur; and

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

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

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

15 (1) IN GENERAL.—Section 4(b)(5) of the En-
16 dangered Species Act of 1973 (16 U.S.C.
17 1533(b)(5)) is amended by striking subparagraph
18 (E) and inserting the following:

19 “(E) promptly hold at least 2 hearings in each
20 State in which the species proposed for determina-
21 tion as an endangered species or a threatened spe-
22 cies is located (including at least 1 hearing in an af-
23 fected rural area if 1 or more rural areas within the
24 State are affected by the determination), except that
25 the Secretary may not be required to hold more than

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

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.”.

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 subparagraph (B), upon publication of a proposed regulation determining that a species is an endangered species or a threatened species, the Secretary shall make publicly available—

10 “(i) all information on which the determination is based, including all scientific studies and data underlying the studies; and

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

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

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

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

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

“(10) ESTABLISHMENT OF CRITERIA FOR SCIENTIFIC STUDIES TO SUPPORT LISTING.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall promulgate regulations that establish criteria that must be met for scientific and commercial data to be used as the basis of a determination under this section that a species is an 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—

tion that the species is an endangered species 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—

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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