

Union Calendar No. 855

115TH CONGRESS
2D SESSION

H. R. 6355

[Report No. 115–1105]

To amend the Endangered Species Act of 1973 to define petition backlogs and provide expedited means for discharging petitions during such a backlog.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2018

Mr. WESTERMAN (for himself, Mr. BIGGS, Mr. BISHOP of Utah, Mr. CRAMER, Mr. DUNCAN of South Carolina, Mr. GOSAR, Mr. NORMAN, Mr. ABRAHAM, Mr. LUETKEMEYER, Mr. SMITH of Missouri, Mr. BANKS of Indiana, Mrs. NOEM, Mr. STEWART, Mr. COLLINS of Georgia, Mr. MCCLINTOCK, Mr. ESTES of Kansas, Mr. GOHMERT, and Mr. NEWHOUSE) introduced the following bill; which was referred to the Committee on Natural Resources

DECEMBER 21, 2018

Additional sponsors: Mr. GUTHRIE, Mr. HUNTER, Mr. MARSHALL, Mr. LATTA, Mr. MOONEY of West Virginia, and Mr. ROKITA

DECEMBER 21, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 12, 2018]

A BILL

To amend the Endangered Species Act of 1973 to define petition backlogs and provide expedited means for discharging petitions during such a backlog.

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 “Providing ESA Timing*
 5 *Improvements That Increase Opportunities for Nonlisting*
 6 *Act of 2018” or the “PETITION Act of 2018”.*

7 **SEC. 2. DEFINITIONS.**

8 *Section 3 of the Endangered Species Act of 1973 (16*
 9 *U.S.C. 1532) is amended—*

10 *(1) by moving the margins of paragraphs (1)*
 11 *through (21) 2 ems to the right;*

12 *(2) by inserting before the text the following: “(a)*
 13 *IN GENERAL.—”; and*

14 *(3) by adding at the end the following:*

15 *“(b) DEFINITIONS RELATED TO PETITIONS.—In this*
 16 *Act:*

17 *“(1) 90-DAY PETITION BACKLOG.—The term ‘90-*
 18 *day petition backlog’ means such a backlog declared*
 19 *by the Secretary under section 4(b)(3)(E).*

20 *“(2) 12-MONTH PETITION BACKLOG.—The term*
 21 *‘12-month petition backlog’ means such a backlog de-*
 22 *clared by the Secretary under section 4(b)(3)(E).*

23 *“(3) BACKLOG SCHEDULE.—The term ‘backlog*
 24 *schedule’ means a comprehensive, regularly updated*
 25 *compendium of petitioned-for species that are the sub-*

1 *ject of a 90-day petition backlog or a 12-month peti-*
2 *tion backlog—*

3 *“(A) that consists of—*

4 *“(i) a list of petitions to add a species*
5 *to a list of species under section 4(c), in-*
6 *cluding petitions to move a species from the*
7 *list of threatened species to the list of en-*
8 *dangered species; and*

9 *“(ii) a list of petitions to remove a spe-*
10 *cies from a list of species under section 4(c),*
11 *including petitions to move a species from*
12 *the list of endangered species to the list of*
13 *threatened species; and*

14 *“(B) in which the petitions in each such list*
15 *appear in the order in which the petitions were*
16 *submitted to the Secretary.*

17 *“(4) BACKLOG PROCEDURES.—The term ‘backlog*
18 *procedures’ means the actions taken by the Sec-*
19 *retary—*

20 *“(A) under section 4(b)(3)(G) following the*
21 *declaration of a 90-day petition backlog; or*

22 *“(B) under section 4(b)(3)(H) following the*
23 *declaration of a 12-month petition backlog.*

24 *“(5) PETITIONED-FOR SPECIES.—The term ‘peti-*
25 *tioned-for species’ means a species that has been iden-*

1 *tified in a petition presented under subparagraph (A)*
 2 *or (B) of section 4(b)(3).”.*

3 **SEC. 3. BACKLOG DECLARATION AND PROCEDURES.**

4 *(a) IN GENERAL.—Section 4(b)(3) of the Endangered*
 5 *Species Act of 1973 (16 U.S.C. 1533(b)(3)) is amended by*
 6 *adding at the end the following:*

7 *“(E)(i) The Secretary shall—*

8 *“(I) declare a 90-day petition backlog*
 9 *at any time the total number of species for*
 10 *which a petition is presented to the Sec-*
 11 *retary under subparagraph (A) that has not*
 12 *been the subject of a finding by the Sec-*
 13 *retary within the timeframe established*
 14 *under such subparagraph exceeds 5 percent*
 15 *of the number of species for which such peti-*
 16 *tions have been presented during the pre-*
 17 *ceding 15 years;*

18 *“(II) submit a backlog schedule for*
 19 *such backlog to—*

20 *“(aa) the President;*

21 *“(bb) the Chairman and ranking*
 22 *minority Member of the Committee on*
 23 *Environment and Public Works of the*
 24 *Senate; and*

1 “(cc) the Chairman and ranking
2 minority Member of the Committee on
3 Natural Resources of the House of Rep-
4 resentatives; and

5 “(III) comply with backlog procedures
6 under subparagraph (G) during the period
7 such backlog is in effect.

8 “(ii) The Secretary shall—

9 “(I) declare a 12-month petition back-
10 log at any time the total number of species
11 for which a petition is being considered by
12 the Secretary under subparagraph (B) that
13 has not been the subject of a finding by the
14 Secretary within the timeframe established
15 under such subparagraph exceeds 5 percent
16 of the number of species for which such peti-
17 tions have been presented during the pre-
18 ceding 15 years;

19 “(II) submit a backlog schedule for
20 such backlog to—

21 “(aa) the President;

22 “(bb) the Chairman and ranking
23 minority Member of the Committee on
24 Environment and Public Works of the
25 Senate; and

1 “(cc) the Chairman and ranking
2 minority Member of the Committee on
3 Natural Resources of the House of Rep-
4 resentatives; and

5 “(III) comply with backlog procedures
6 under subparagraph (H) during the period
7 such declaration is in effect.

8 “(iii) Not later than 90 days after declaring
9 a 90-day petition backlog or 12-month petition
10 backlog, and every 90 days thereafter during the
11 period such backlog is in effect, the Secretary
12 shall submit to the recipients under clause
13 (ii)(II) and (iii)(II), respectively, an updated
14 backlog schedule that contains—

15 “(I) a list of petitioned-for species for
16 which a finding had been made since the
17 last submission of the backlog schedule
18 under such clause;

19 “(II) the outcomes of findings for all
20 petitioned-for species for which a finding
21 has been made since the last submission of
22 the backlog schedule under such clause; and

23 “(III) a summary of the bases of all
24 findings for any petitioned-for species for

1 *which a finding has been made since the*
2 *preceding submission of the backlog.*

3 “(F) *The Secretary shall terminate a 90-*
4 *day petition backlog or 12-month petition back-*
5 *log at such time as the requirements for declar-*
6 *ing such backlog under subparagraph (E)(i) or*
7 *(E)(ii), respectively, are not fulfilled.*

8 “(G) *During the effective period of a 90-day*
9 *petition backlog—*

10 “(i) *the requirement under subpara-*
11 *graph (A) to make a finding within 90 days*
12 *shall not apply with respect to any species*
13 *that is the subject of a petition included in*
14 *the list under section 2(b)(3)(A)(i);*

15 “(ii) *except as provided in clause (iii),*
16 *the Secretary shall not make any finding*
17 *under subparagraph (A) with respect to any*
18 *species included in the list under section*
19 *2(b)(3)(A)(i) in the applicable backlog*
20 *schedule, until the earlier of—*

21 “(I) *the date the Secretary termi-*
22 *nates the backlog under subparagraph*
23 *(F);*

1 “(II) the date the applicable back-
2 log schedule consists of only the list
3 under such section; or

4 “(III) the date the only peti-
5 tioned-for species in the backlog sched-
6 ule to which the Secretary has not de-
7 voted sufficient resources so as to issue
8 such a finding within 90 days are
9 those in the list under such section;
10 and

11 “(iii) the Secretary is deemed to have
12 made a finding under subparagraph (A)
13 that each petition for a species included in
14 the list under section 2(b)(3)(A)(i) in the
15 applicable backlog schedule does not present
16 substantial scientific or commercial infor-
17 mation indicating that the petitioned action
18 may be warranted, effective upon the expi-
19 ration of the 180-day period beginning on
20 the date the petition was submitted.

21 “(H) Except as provided in subparagraph
22 (I)—

23 “(i) after declaring a 12-month peti-
24 tion backlog under subparagraph (E)(ii)
25 and before taking any actions under clause

1 (ii) of this subparagraph, the Secretary
2 shall assign each petition and petitioned-for
3 species to be considered under such clause to
4 one of the five priority bins referred to in
5 the notice issued by the United States Fish
6 and Wildlife Service entitled ‘Methodology
7 for Prioritizing Status Reviews and Accom-
8 panying 12-month findings on Petitions for
9 Listing Under the Endangered Species Act
10 (81 Fed. Reg. 49248 (July 27, 2016))’; and

11 “(ii) during the effective period of such
12 12-month petition backlog under subpara-
13 graph (E)(i)—

14 “(I) the requirement under sub-
15 paragraph (B) to make a finding with-
16 in 12 months shall not apply with re-
17 spect to any species that is the subject
18 of a petition included in the list under
19 section 2(b)(3)(A)(i);

20 “(II) the Secretary shall consider
21 under this paragraph only petitions
22 for species included in the list under
23 section 2(b)(3)(A)(ii) in the applicable
24 backlog schedule, that were submitted

1 *more than 12 months before the estab-*
2 *lishment of the backlog;*

3 *“(III) except as provided in sub-*
4 *clause (IV), the Secretary shall not*
5 *make any finding under subparagraph*
6 *(B) with respect to any species in-*
7 *cluded in the list under section*
8 *2(b)(3)(A)(i) in the applicable backlog*
9 *schedule, until the earlier of—*

10 *“(aa) the date the Secretary*
11 *terminates the backlog under sub-*
12 *paragraph (F);*

13 *“(bb) the date the applicable*
14 *backlog schedule consists of only*
15 *the list under such section; or*

16 *“(cc) the date the only peti-*
17 *tioned-for species in the backlog*
18 *schedule to which the Secretary*
19 *has not devoted sufficient re-*
20 *sources so as to issue such a find-*
21 *ing within 12 months are those in*
22 *the list under such section; and*

23 *“(IV) the Secretary is deemed to*
24 *have made a finding under subpara-*
25 *graph (B)(i) for each species included*

1 *in the list under section 2(b)(3)(A)(i)*
2 *that the petitioned action is not war-*
3 *ranted—*

4 *“(aa) effective upon the expi-*
5 *ration of the 18-month period be-*
6 *ginning on the date the petition*
7 *was submitted, if the Secretary*
8 *has not assigned the species to the*
9 *‘Highest Priority—Critically Im-*
10 *periled’, ‘Strong Data Already*
11 *Available on Status’ priority bin*
12 *or ‘New Science Underway to In-*
13 *form Key Uncertainties’ priority*
14 *bin referred to in the notice re-*
15 *ferred to in clause (i); or*

16 *“(bb) effective upon the expi-*
17 *ration of the 24-month period be-*
18 *ginning on the date the petition*
19 *was submitted, if the Secretary*
20 *has assigned the species to the*
21 *‘Strong Data Already Available*
22 *on Status’ priority bin or ‘New*
23 *Science Underway to Inform Key*
24 *Uncertainties’ priority bin re-*

1 *ferred to in the notice referred to*
2 *in clause (i).*

3 *“(I)(i) In the case of the first 12-month pe-*
4 *tition backlog under subparagraph (E)(ii)—*

5 *“(I) item (aa) of subparagraph*
6 *(H)(ii)(IV) shall be applied by substituting*
7 *‘30-month’ for ‘18-month’; and*

8 *“(II) item (bb) of subparagraph*
9 *(H)(ii)(IV) shall be applied by substituting*
10 *‘36-month’ for ‘24-month’.*

11 *“(ii) The Secretary may not under subpara-*
12 *graph (H)(i) change the assignment of a petition*
13 *or petitioned-for species from one priority bin to*
14 *another priority bin.*

15 *“(J) In the case of findings under subpara-*
16 *graph (G)(iii) and (H)(ii)(IV), the publication*
17 *under subparagraph (A) or (B)(i), respectively,*
18 *may consist solely of a notice of each finding.*

19 *“(K)(i) Except as otherwise provided in this*
20 *Act, the Secretary shall regularly maintain on*
21 *the internet site of the United States Fish and*
22 *Wildlife Service a publically available database*
23 *of petitions referred to in this paragraph and*
24 *species otherwise evaluated under subsection (a).*

1 “(ii) *The database shall contain informa-*
2 *tion about each petitioned-for species includ-*
3 *ing—*

4 “(I) *the date a petition for such species*
5 *was submitted;*

6 “(II) *the person who submitted the pe-*
7 *tition;*

8 “(III) *the current status of the petition*
9 *within the statutory and agency process, in-*
10 *cluding the most recent agency action taken;*

11 “(IV) *a web link to any documents re-*
12 *ceived under this paragraph that con-*
13 *stituted the petition for such species;*

14 “(V) *a web link to any materials the*
15 *Secretary has received from State or local*
16 *governments pertaining to petitions to list*
17 *such species;*

18 “(VI) *the outcomes of all prior peti-*
19 *tioning or listing procedures for such spe-*
20 *cies; and*

21 “(VII) *the outcomes of all prior litiga-*
22 *tion against the Federal Government on the*
23 *basis of a petition for or listing of such spe-*
24 *cies, including actions or agreements by the*
25 *Federal Government to—*

1 “(aa) dispense monies to liti-
2 gating parties or counsel;

3 “(bb) promulgate rules as a direct
4 or indirect result of litigation outcomes
5 or agreements;

6 “(cc) resolve any matter related to
7 the petition or a petitioned-for species
8 by a certain date, or otherwise;

9 “(dd) conduct further research or
10 analysis related to the petition or peti-
11 tioned-for species; or

12 “(ee) engage in any other activity
13 as a result of the terms of litigation
14 settlements or court orders related to
15 such petitions or petitioned-for species.

16 “(L) Notwithstanding subparagraph
17 (C)(ii), a finding by the Secretary under
18 subparagraph (G)(iii), and any failure by
19 the Secretary in the effective period of a 90-
20 day petition backlog to make a finding
21 under subparagraph (A) with respect to any
22 species included in the list under section
23 2(b)(3)(A)(i) in the applicable backlog
24 schedule, is not subject to judicial review.

1 “(M)(i) *The Secretary shall enter into a*
2 *contract with any person under which the person*
3 *agrees to reimburse the Federal Government for*
4 *all costs incurred for review of and decision*
5 *upon any petition under this Act to add a spe-*
6 *cies to a list of species under section 4(c), includ-*
7 *ing petitions to move a species from the list of*
8 *threatened species to the list of endangered spe-*
9 *cies.*

10 “(ii) *Such a contract—*

11 “(I) *shall require the person to reim-*
12 *burse such costs monthly during the period*
13 *the petition is under review by the Sec-*
14 *retary; and*

15 “(II) *if payment of reimbursement is*
16 *made in accordance with subclause (I)*
17 *without lapse, shall require the Secretary,*
18 *notwithstanding any other provision of this*
19 *Act, to—*

20 “(aa) *issue a decision on the peti-*
21 *tion; and*

22 “(bb) *continuously study, review,*
23 *or render such a decision during the*
24 *period the contract is in effect.”.*

1 (b) *CONFORMING AMENDMENT.*—Section 4(b)(3)(C) of
2 the *Endangered Species Act of 1973* (16 U.S.C.
3 1533(b)(3)(C)) is amended—

4 (1) by striking clause (ii); and

5 (2) by redesignating clause (iii) as clause (ii).

6 (c) *EFFECT OF DISMISSAL OF PETITION.*—Section
7 4(b)(3) of the *Endangered Species Act of 1973* (16 U.S.C.
8 1533(b)(3)), as amended by subsection (a), is further
9 amended by adding at the end the following:

10 “(N) Dismissal of a petition by backlog pro-
11 cedures shall not affect the review of any subse-
12 quent petition for any species”.

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