

107TH CONGRESS
2^D SESSION

H. R. 3705

To amend the Endangered Species Act of 1973 to require the Secretary of the Interior to use the best sound science available in implementing the Endangered Species Act.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2002

Mr. POMBO introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Endangered Species Act of 1973 to require the Secretary of the Interior to use the best sound science available in implementing the Endangered Species Act.

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 Saves
5 Species Act of 2002”.

1 **SEC. 2. AMENDMENT OF ENDANGERED SPECIES ACT OF**
2 **1973.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Endangered Species Act
8 of 1973 (16 U.S.C. 1531 et seq.).

9 **SEC. 3. IMPROVING THE SCIENCE USED IN IMPLEMENTING**
10 **ENDANGERED SPECIES ACT OF 1973.**

11 (a) CONTENTS OF PETITIONS.—Section 4(b)(3) (16
12 U.S.C. 1533(b)(3)) is amended by adding at the end the
13 following:

14 “(E) A petition referred to in subparagraph (A) shall
15 contain each of the following:

16 “(i) Clear and convincing evidence of each of
17 the following:

18 “(I) The known and historic ranges of the
19 species.

20 “(II) The most recent population estimates
21 and trends.

22 “(III) The reason that the petitioned ac-
23 tion is warranted, including known or perceived
24 threats to the species.

25 “(IV) The population of the species is de-
26 clining or has declined from historic population

1 levels and beyond normal population fluctua-
2 tions for the species.

3 “(V) Any other information that the peti-
4 tioner considers appropriate.

5 “(ii) A bibliography of scientific literature on
6 the species in support of the petition.

7 “(iii) A description of all available data on the
8 historical and current range, population, and dis-
9 tribution of the species, an explanation of the meth-
10 odology used to collect the data, and an identifica-
11 tion of the location where the data can be re-
12 viewed.”.

13 (b) NOTICE OF PETITIONS.—Section 4(b)(3) (16
14 U.S.C. 1533(b)(3)) is amended by striking “(3)(A)” and
15 inserting the following:

16 “(3)(A)(i) Within 30 days after receiving a petition
17 from an interested person under section 553(e) of title 5,
18 United States Code, to add a species to, or to remove a
19 species from, either list published under subsection (c), the
20 Secretary shall—

21 “(I) publish in the Federal Register a notice in-
22 dicating receipt of such petition and inviting inter-
23 ested persons to submit any relevant scientific infor-
24 mation regarding the status of the species con-
25 cerned;

1 “(II) promptly publish the petition on the Inter-
2 net website of the United States Fish and Wildlife
3 Service;

4 “(III) provide notice of such receipt to each pri-
5 vate owner of land or water on or in which the spe-
6 cies may exist by publication of such notice in an ap-
7 propriate newspaper of general circulation, except
8 that such notice shall be provided directly to each
9 such owner if the number of such owners is 100 or
10 less; and

11 “(IV) notify the Governor of each State that
12 could be affected by the petition.

13 “(ii)”.

14 (c) INDEPENDENT REVIEW OF PETITIONS AND
15 FINDINGS REGARDING PETITIONS.—Section 4(b) (16
16 U.S.C. 1533(b)) is amended by adding at the end the fol-
17 lowing:

18 “(9)(A)(i) After the Secretary makes a finding under
19 paragraph (3)(A) the Secretary shall appoint and convene
20 an independent review board to conduct an independent
21 scientific review of the data included in the petition.

22 “(ii) Within 60 days after the date the Secretary con-
23 venes the independent review board, the board shall pro-
24 vide to the Secretary its findings regarding the following:

1 “(I) The sufficiency of all relevant scientific in-
2 formation and assumptions in the petition relating
3 to the taxonomy, population models, and supportive
4 biological and ecological information regarding the
5 species that is the subject of the petition.

6 “(II) Whether the methodology and analysis
7 supporting the petition meet the standards of the
8 academic and scientific community.

9 “(III) Whether the petition is supported by
10 clear and convincing evidence/provides clear and con-
11 vincing evidence that the petitioned action may be
12 warranted? see section 4(b)(3)(B) of ESA.

13 “(IV) Whether the review board concurs in the
14 finding of the Secretary under paragraph (3)(A).

15 “(B)(i) If, within 30 days after the Secretary pub-
16 lishes a finding under paragraph (3)(B)(ii) or (iii), any
17 person submits to the Secretary in writing a request for
18 an independent scientific review of the data upon which
19 such finding is based, the Secretary shall appoint and con-
20 vene an independent review board to conduct such review.

21 “(ii) Within 90 days after the date the Secretary con-
22 venes the independent review board, the board shall pro-
23 vide to the Secretary its findings regarding the following:

24 “(I) The sufficiency of all relevant scientific in-
25 formation and assumptions that are the basis for the

1 finding relating to the taxonomy, population models,
2 and supportive biological and ecological information
3 regarding the species that is the subject of the find-
4 ing.

5 “(II) Whether the methodology and analysis
6 supporting the finding meet the standards of the
7 academic and scientific community.

8 “(III) Whether the finding is supported by clear
9 and convincing evidence.

10 “(IV) Whether the review board concurs in the
11 finding of the Secretary under paragraph (3)(B)(ii)
12 or (iii), as applicable.

13 “(C) The Secretary shall—

14 “(i) publish in the Federal Register each find-
15 ing by an independent review board under subpara-
16 graph (A) or (B);

17 “(ii) post each such finding on the Internet
18 website of the United States Fish and Wildlife Serv-
19 ice; and

20 “(iii) otherwise make each such finding avail-
21 able to the public.

22 “(D) If an independent review board finds under sub-
23 paragraph (A) or (B) that it does not concur in the finding
24 of the Secretary, the Secretary shall—

25 “(i) revoke the finding of the Secretary; or

1 “(ii) publish in the Federal Register an expla-
2 nation of why the finding of the review board is in-
3 correct, with clear and convincing evidence sup-
4 porting such explanation.

5 “(E) The Secretary shall—

6 “(i) maintain a list of individuals who are avail-
7 able to participate on independent review boards
8 under this paragraph;

9 “(ii) seek nominations of individuals to partici-
10 pate on such boards (upon appointment by the Sec-
11 retary), through the Federal Register, scientific and
12 commercial journals, and the National Academy of
13 Sciences and other such institutions; and

14 “(iii) update such list every two years.

15 “(F)(i) An independent review board under subpara-
16 graph (A) shall be composed of 3 members, of which—

17 “(I) 2 shall be appointed by the Secretary from
18 the list under subparagraph (E); and

19 “(II) 1 shall be appointed by the Secretary
20 from among qualified individuals nominated by the
21 Governor of a State in which the species concerned
22 is located.

23 “(ii) An independent review board under subpara-
24 graph (B) shall be composed of 5 members, of which—

1 “(I) 3 shall be appointed by the Secretary from
2 the list under subparagraph (E); and

3 “(II) 2 shall be appointed by the Secretary
4 from among qualified individuals nominated by the
5 Governor of a State in which the species concerned
6 is located.

7 “(iii) If any individual declines appointment to an
8 independent review board under this paragraph, the Sec-
9 retary shall appoint another individual in the same man-
10 ner.

11 “(iv) The selection of the members, and activities, of
12 independent review boards under this paragraph is not
13 subject to the Federal Advisory Committee Act (5 U.S.C.
14 App.).

15 “(v) The identities of the members of independent re-
16 view boards under this paragraph shall not be made pub-
17 lic.

18 “(vi) The Secretary shall provide compensation to an
19 individual for service as a member of an independent re-
20 view board under this paragraph, at a rate equal to not
21 to exceed the daily equivalent of the maximum annual rate
22 of basic pay for grade GS-12 of the General Schedule for
23 each day (including travel time) during which the indi-
24 vidual is engaged in the actual performance of duties as
25 a member of such board.

1 “(vii) In this subparagraph, the term ‘qualified indi-
2 vidual’ means an individual with expertise in the biological
3 sciences—

4 “(I) who is by virtue of advanced education,
5 training, or avocational, academic, commercial, re-
6 search, or other experience competent to review the
7 adequacy of any scientific methodology supporting a
8 finding by the Secretary and the validity of any con-
9 clusions drawn from data used to support the find-
10 ing;

11 “(II) who is not a participant in any petition or
12 proposed or final determination before the Secretary;

13 “(III) who is not, and has not been, employed
14 by or under contract to the Secretary or the State
15 in which is located the species that is the subject of
16 an independent scientific review in which the indi-
17 vidual participates, for work related to the finding or
18 species under consideration in such review; and

19 “(V) who has no direct financial interest, and
20 is not employed by any person with a direct financial
21 interest, in the finding under consideration in such
22 review.

23 “(G) The Secretary shall publish, with any final regu-
24 lation implementing an action with respect to which an
25 independent scientific review board is required under this

1 paragraph to be convened, a summary of the report of the
2 independent review board, noting points of disagreement
3 between the reviewers, if any, and the response of the Sec-
4 retary to the report.

5 “(H) The report of each independent scientific review
6 board required under this paragraph shall be included in
7 the official record of any regulation with respect to which
8 the board is convened and shall be available for public re-
9 view 30 days before the close of the period for comment
10 on the regulation.”.

11 (d) INDEPENDENT REVIEW OF JEOPARDY OPIN-
12 IONS.—Section 7(b) (16 U.S.C. 1536(b)) is amended by
13 adding at the end the following:

14 “(5)(A)(i) Within 30 days after the date on which
15 the Secretary issues a statement under paragraph (3) that
16 a proposed action is likely to jeopardize the continued ex-
17 istence of a species included in a list under section 4(c),
18 any person may submit to the Secretary a written request
19 for an independent scientific review of the scientific infor-
20 mation used in making such statement and any reasonable
21 and prudent measures the Secretary proposes in the state-
22 ment.

23 “(ii) Promptly after receiving such a request, the Sec-
24 retary shall appoint and convene an independent review
25 board to conduct such an independent scientific review.

1 “(B) Within 90 days after the date the Secretary con-
2 venes the independent review board, the board shall pro-
3 vide to the Secretary its findings regarding the following:

4 “(I) The sufficiency of all relevant scientific in-
5 formation and assumptions in such statement relat-
6 ing to the taxonomy, population models, and sup-
7 portive biological and ecological information regard-
8 ing the species that is the subject of the statement.

9 “(II) Whether the methodology and analysis
10 supporting the statement meet the standards of the
11 academic and scientific community.

12 “(III) Whether the statement is supported by
13 clear and convincing evidence.

14 “(IV) Whether the review board concurs in the
15 statement.

16 “(C) The Secretary shall—

17 “(i) publish in the Federal Register each find-
18 ing by an independent review board under subpara-
19 graph (A) or (B);

20 “(ii) post each such finding on the Internet
21 website of the United States Fish and Wildlife Serv-
22 ice; and

23 “(iii) otherwise make each such finding avail-
24 able to the public.

1 “(D) If an independent review board finds under sub-
2 paragraph (B) that it does not concur in the statement
3 of the Secretary, the Secretary shall—

4 “(i) revoke the statement; or

5 “(ii) publish in the Federal Register an expla-
6 nation of why the finding of the review board is in-
7 correct, with clear and convincing evidence sup-
8 porting such explanation.

9 “(E) The Secretary shall—

10 “(i) maintain a list of individuals who are avail-
11 able to participate on independent review boards
12 under this paragraph;

13 “(ii) seek nominations of individuals to partici-
14 pate on such boards (upon appointment by the Sec-
15 retary), through the Federal Register, scientific and
16 commercial journals, and the National Academy of
17 Sciences and other such institutions; and

18 “(iii) update such list every two years.

19 “(F)(i) An independent review board under subpara-
20 graph (A) shall be composed of 5 members, of which—

21 “(I) 3 shall be appointed by the Secretary from
22 the list under subparagraph (E); and

23 “(II) 2 shall be appointed by the Secretary
24 from among qualified individuals nominated by the

1 Governor of a State in which the species concerned
2 is located.

3 “(ii) If any individual declines appointment to an
4 independent review board under this paragraph, the Sec-
5 retary shall appoint another individual in the same man-
6 ner.

7 “(iii) The selection of the members, and activities, of
8 independent review boards under this paragraph is not
9 subject to the Federal Advisory Committee Act (5 U.S.C.
10 App.).

11 “(iv) The identities of the members of independent
12 review boards under this paragraph shall not be made
13 public.

14 “(v) The Secretary shall provide compensation to an
15 individual for service as a member of an independent re-
16 view board under this paragraph, at a rate equal to not
17 to exceed the daily equivalent of the maximum annual rate
18 of basic pay for grade GS–12 of the General Schedule level
19 for each day (including travel time) during which the indi-
20 vidual is engaged in the actual performance of duties as
21 a member of such board.

22 “(vi) In this subparagraph, the term ‘qualified indi-
23 vidual’ means an individual with expertise in the biological
24 sciences—

1 “(I) who is by virtue of advanced education,
2 training, or avocational, academic, commercial, re-
3 search, or other experience competent to review the
4 adequacy of any scientific methodology supporting a
5 statement by the Secretary and the validity of any
6 conclusions drawn from data used to support the
7 statement;

8 “(II) who is not a participant in any petition or
9 proposed or final determination before the Secretary;

10 “(III) who is not, and has not been, employed
11 by or under contract to the Secretary or the State
12 in which is located the species that is the subject of
13 an independent scientific review in which the indi-
14 vidual participates, for work related to a statement
15 or species under consideration in such review; and

16 “(V) who has no direct financial interest, and
17 is not employed by any person with a direct financial
18 interest, in any statement under consideration in
19 such review.”.

20 “(G) The Secretary shall publish, with any final regu-
21 lation implementing an action with respect to which an
22 independent scientific review board is required under this
23 paragraph to be convened, a summary of the report of the
24 independent review board, noting points of disagreement

1 between the reviewers, if any, and the response of the Sec-
2 retary to the report.

3 “(H) The report of each independent scientific review
4 board required under this paragraph shall be included in
5 the official record of any regulation with respect to which
6 the board is convened and shall be available for public re-
7 view 30 days before the close of the period for comment
8 on the regulation.”.

9 (e) LIMITATION ON RE-PETITION.—Secretary
10 4(b)(3) (16 U.S.C. 1533(b)(3)) is further amended by
11 adding at the end the following:

12 “(G) If the Secretary determines pursuant to a peti-
13 tion that addition of a species to either of the lists under
14 subsection (e) is not warranted, another petition regarding
15 that species may not be considered by the Secretary for
16 one year.”.

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