

107TH CONGRESS
2D SESSION

H. R. 4840

To amend the Endangered Species Act of 1973 to ensure the use of sound science in the implementation of that Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2002

Mr. HANSEN (for himself, Mr. POMBO, and Mr. WALDEN) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Endangered Species Act of 1973 to ensure the use of sound science in the implementation of that 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 for En-
5 dangered Species Act Planning Act of 2002”.

6 **SEC. 2. SOUND SCIENCE.**

7 (a) BEST SCIENTIFIC AND COMMERCIAL DATA
8 AVAILABLE AS BASIS OF DETERMINATIONS.—Section
9 4(b)(1)(A) of the Endangered Species Act of 1973 (16
10 U.S.C. 1533(b)(1)(A)) is amended in the first sentence,

1 by inserting “, including any finding under paragraph
2 (3)(B) on a petition referred to in paragraph (3)(A),”
3 after “determinations required by subsection (a)(1)”.

4 (b) PREFERENCE FOR EMPIRICAL, FIELD-TESTED,
5 AND PEER-REVIEWED DATA.—Section 4(b) of the Endan-
6 gered Species Act of 1973 (16 U.S.C. 1533(b)) is amend-
7 ed by adding at the end the following:

8 “(9) In making any determination under this section,
9 the Secretary shall give greater weight to any scientific
10 or commercial study or other information that is empirical
11 or has been field-tested or peer-reviewed.”.

12 (c) CONTENTS OF LISTING PETITIONS.—

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

17 “(E) A petition referred to in subparagraph (A) re-
18 garding a species—

19 “(i) shall, to the maximum extent practicable,
20 contain clear and convincing evidence—

21 “(I) of the current known and historic
22 ranges of the species concerned;

23 “(II) of the most recent population esti-
24 mates and trends for the species, if available;

1 “(III) that any change in the population
2 that is alleged in the petition is beyond the nor-
3 mal fluctuations for the species; and

4 “(IV) of the reason that the petitioned ac-
5 tion is warranted, including known or perceived
6 threats to the species;

7 “(ii) shall include a bibliography of scientific lit-
8 erature on the species in support of the petition; and
9 “(iii) may contain any other information the pe-
10 titioner considers appropriate.

11 “(F) For purposes of subparagraph (E), evidence is
12 clear and convincing evidence if—

13 “(i) a preponderance of the evidence is based on
14 reliable scientific and commercial information; and

15 “(ii) the evidence is sufficient to support a firm
16 belief that the petitioned action may be warranted.”.

17 (2) REQUIREMENT FOR CONSIDERATION OF PE-
18 TITION.—Section 4(b)(3) of the Endangered Species
19 Act of 1973 (16 U.S.C. 1533(b)(3)) is further
20 amended—

21 (A) in subparagraph (A) in the first sen-
22 tence, by inserting “and contains the informa-
23 tion required under clauses (i) and (ii) of sub-
24 paragraph (E)” after “may be warranted”; and

1 (B) in subparagraph (B) in the matter
2 preceding clause (i), by inserting “and contains
3 the information required under clauses (i) and
4 (ii) of subparagraph (E)” after “may be war-
5 ranted”.

6 (d) USE OF SOUND SCIENCE IN LISTING.—Section
7 4(b) of the Endangered Species Act of 1973 (16 U.S.C.
8 1533(b)) is amended by adding at the end the following:

9 “(9) ESTABLISHMENT OF CRITERIA FOR SCI-
10 ENTIFIC STUDIES TO SUPPORT LISTING.—Not later
11 than 1 year after the date of enactment of this para-
12 graph, the Secretary shall promulgate regulations
13 that establish criteria that must be met for scientific
14 and commercial data, studies, and other information
15 to be used as the basis of a determination under this
16 section.

17 “(10) FIELD DATA.—

18 “(A) REQUIREMENT.—The Secretary may
19 not determine that a species is an endangered
20 species or a threatened species unless data col-
21 lected in the field on the species concerned sup-
22 ports the determination.

23 “(B) DATA FROM LANDOWNERS.—The
24 Secretary shall—

1 “(i) accept and acknowledge receipt of
2 data regarding the status of a species that
3 is collected by an owner of land, including
4 data obtained by observation of the species
5 on the land; and

6 “(ii) include the data in the rule-
7 making record compiled for any determina-
8 tion that the species is an endangered spe-
9 cies or a threatened species.”.

10 (e) USE OF SOUND SCIENCE IN RECOVERY PLAN-
11 NING.—Section 4(f) of the Endangered Species Act of
12 1973 (16 U.S.C. 1533(f)) is amended by adding at the
13 end the following:

14 “(6)(A) The Secretary shall identify and publish in
15 the Federal Register with the notice of a proposed regula-
16 tion pursuant to paragraph (5)(A)(i) a description of addi-
17 tional scientific and commercial data that, if collected,
18 would assist in the preparation of a recovery plan and—

19 “(i) invite any person to submit the data to the
20 Secretary; and

21 “(ii) describe the steps that the Secretary plans
22 to take for acquiring additional data.

23 “(B) Data identified and obtained under subpara-
24 graph (A)(i) shall be considered by the recovery team and
25 the Secretary in the preparation of the recovery plan.”.

1 **SEC. 3. INDEPENDENT SCIENTIFIC REVIEW.**

2 (a) IN GENERAL.—Section 4 of the Endangered Spe-
3 cies Act of 1973 (16 U.S.C. 1533) is amended by adding
4 at the end the following:

5 “(j) INDEPENDENT SCIENTIFIC REVIEW REQUIRE-
6 MENTS.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) ACTION.—The term ‘covered action’
9 means—

10 “(i) the determination that a species
11 is an endangered species or a threatened
12 species under subsection (a);

13 “(ii) the determination under sub-
14 section (a) that an endangered species or
15 a threatened species be removed from any
16 list published under subsection (c)(1);

17 “(iii) the development of a recovery
18 plan for a threatened species or endan-
19 gered species under subsection (f); and

20 “(iv) the determination that a pro-
21 posed action is likely to jeopardize the con-
22 tinued existence of a listed species and the
23 proposal of any reasonable and prudent al-
24 ternatives by the Secretary under section
25 7(b)(3), if the Secretary finds that—

1 “(I) there is significant disagree-
2 ment regarding that determination or
3 proposal; or

4 “(II) that determination or pro-
5 posal may have significant economic
6 impact.

7 “(B) QUALIFIED INDIVIDUAL.—The term
8 ‘qualified individual’ means an individual who
9 meets the standards of the National Academy
10 of Sciences for independent scientific review
11 conducted by the Academy.

12 “(2) LIST OF INDEPENDENT SCIENTIFIC RE-
13 VIEWERS.—The Secretary shall—

14 “(A) maintain a list of qualified individuals
15 who are available to participate on independent
16 review boards under this subsection;

17 “(B) seek nominations of individuals to
18 participate on such boards (upon appointment
19 by the Secretary), through the Federal Reg-
20 ister, scientific and commercial journals, and
21 the National Academy of Sciences and other
22 such institutions; and

23 “(C) update such list every two years.

24 “(3) APPOINTMENT OF INDEPENDENT REVIEW
25 BOARDS.—(A) Before any covered action becomes

1 final, the Secretary shall appoint an independent re-
2 view board in accordance with this section that shall
3 review and report to the Secretary in writing on the
4 scientific information and analyses on which the cov-
5 ered action is based.

6 “(B) Each independent review board under this
7 paragraph shall be composed of 5 members, of
8 which—

9 “(i) 3 shall be appointed by the Secretary
10 from the list under paragraph (2); and

11 “(ii) 2 shall be appointed by the Secretary
12 from among qualified individuals nominated by
13 the Governor of a State in which the species
14 concerned is located.

15 “(C) If any individual declines appointment to
16 an independent review board under this paragraph,
17 the Secretary shall appoint another individual in the
18 same manner.

19 “(D) The selection of the members, and the ac-
20 tivities, of independent review boards under this
21 paragraph are not subject to the Federal Advisory
22 Committee Act (5 U.S.C. App.).

23 “(E) The Secretary shall provide compensation
24 to an individual for service as a member of an inde-
25 pendent review board under this paragraph, at a

1 rate not to exceed the daily equivalent of the max-
2 imum annual rate of basic pay for grade GS-14 of
3 the General Schedule for each day (including travel
4 time) during which the individual is engaged in the
5 actual performance of duties as a member of such
6 board.

7 “(F) The Secretary may not delegate the au-
8 thority to make appointments under this paragraph
9 to any official who—

10 “(i) is below the level of the Director of the
11 United States Fish and Wildlife Service; or

12 “(ii) has not been confirmed by the Senate.

13 “(4) OPINIONS OF REVIEWERS.—(A) Each
14 independent review board under this subsection shall
15 provide to the Secretary, within 90 days after the
16 completion of appointment of the board, the opinion
17 of the board regarding all relevant scientific infor-
18 mation and assumptions relating to the taxonomy,
19 population models, and supportive biological and ec-
20 ological information for the species in question.

21 “(B) The Secretary shall—

22 “(i) develop a protocol for the conduct of
23 scientific independent review under this sub-
24 section that includes review of the adequacy of
25 any scientific methodology used to support an

1 action and the validity of any conclusions drawn
2 from data used to support an action; and

3 “(ii) provide to each independent review
4 board established under this subsection clear
5 guidelines as to the conduct of its review con-
6 sistent with that protocol.

7 “(5) CONSIDERATION OF RESULTS OF RE-
8 VIEW.—If an independent review board under this
9 subsection makes a recommendation regarding a
10 covered action, the Secretary shall, within 90 days
11 after receiving the recommendation, evaluate and
12 consider the information that results from the review
13 by the board, and shall include in the rulemaking
14 record for the covered action—

15 “(A) a summary of the results of the re-
16 view by the board; and

17 “(B) in a case in which the recommenda-
18 tion of a majority of the members of the board
19 is not followed, an explanation of why the rec-
20 ommendation was not followed.

21 “(6) INCLUSION OF REPORT IN RULEMAKING
22 RECORD.—The report of each independent review
23 board under this subsection shall be included in the
24 rulemaking record of any regulation with respect to
25 which the board is convened, and shall be available

1 for public review for at least 30 days before the close
2 of the period for comment on the regulation.”.

3 (b) BIOLOGICAL ASSESSMENTS.—Section 7(c) of the
4 Endangered Species Act of 1973 (16 U.S.C. 1536(c)) is
5 amended by adding at the end the following:

6 “(3) In preparing a biological assessment under this
7 subsection, the head of an agency shall solicit and review
8 any scientific and commercial data that a prospective per-
9 mit or license applicant believes is relevant to the assess-
10 ment, and shall make that data available to the Sec-
11 retary.”.

12 **SEC. 4. IMPROVED INTERAGENCY COOPERATION.**

13 (a) USE OF INFORMATION PROVIDED BY STATES.—
14 Section 7(b)(1) of the Endangered Species Act of 1973
15 (16 U.S.C. 1536(b)(1)) is amended by adding at the end
16 the following:

17 “(C) USE OF STATE INFORMATION.—In
18 conducting a consultation under subsection
19 (a)(2), the Secretary shall actively solicit and
20 consider information from the State agency in
21 each affected State.”.

22 (b) OPPORTUNITY TO PARTICIPATE IN CONSULTA-
23 TIONS.—Section 7(b)(1) of the Endangered Species Act
24 of 1973 (16 U.S.C. 1536(b)(1)) (as amended by sub-

1 section (a)) is further amended by adding at the end the
2 following:

3 “(D) OPPORTUNITY TO PARTICIPATE IN
4 CONSULTATIONS.—

5 “(i) IN GENERAL.—In conducting a
6 consultation under subsection (a)(2), the
7 Secretary shall provide any person who has
8 sought authorization or funding from a
9 Federal agency for an action that is the
10 subject of the consultation, the opportunity
11 to—

12 “(I) before the development of a
13 draft biological opinion, submit and
14 discuss with the Secretary and the
15 Federal agency information relevant
16 to the effect of the proposed action on
17 the species and reasonable and pru-
18 dent alternatives that the Federal
19 agency and the person can take to
20 avoid violation of subsection (a)(2),
21 including any such alternatives pro-
22 posed by the person;

23 “(II) receive information, on re-
24 quest, subject to the exemptions speci-
25 fied in section 552(b) of title 5,

1 United States Code, on the status of
2 the species, threats to the species, and
3 conservation measures, used by the
4 Secretary to develop the draft biological
5 opinion and the final biological
6 opinion, including any associated inci-
7 dental taking statements; and

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

16 “(ii) EXPLANATION.—If alternatives
17 are proposed by a person under clause (i)
18 and the Secretary does not include the al-
19 ternatives in the final biological opinion,
20 the Secretary shall provide to the person
21 reasonable justification, based on the best
22 scientific and commercial data available,
23 why those alternatives were not included in
24 the opinion.

1 “(iii) PUBLIC ACCESS TO INFORMA-
2 TION.—Comments and other information
3 submitted to, or received from, any person
4 (pursuant to clause (i)) who seeks author-
5 ization or funding for an action shall be
6 maintained in a file for that action by the
7 Secretary and shall be made available to
8 the public (subject to the exemptions speci-
9 fied in section 552(b) of title 5, United
10 States Code).”.

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