

LISTING REFORM ACT

FEBRUARY 15, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 717]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 717) to amend the Endangered Species Act of 1973 to require review of the economic cost of adding a species to the list of endangered species or threatened species, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 717 is to amend the Endangered Species Act of 1973 to require review of the economic cost of adding a species to the list of endangered species or threatened species.

BACKGROUND AND NEED FOR LEGISLATION

Pursuant to the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.), the Secretary of the Interior or Secretary of Commerce does not consider economic factors when listing a species as endangered or threatened. Species listings, however, impact our national economy and can restrict the ability of State and local entities to provide for the public health and safety. Species listings also can curtail the right of industry and private landowners to utilize property and resources to generate income or to increase local development. The ESA's prohibition of economic considerations in

listing decisions of endangered or threatened species should therefore be addressed.

H.R. 717 authorizes the Secretary of the Interior to consider economic impacts in listing decisions for threatened species, and allow preclusion of the listing if the likelihood of significant, cumulative economic effects would result from the listing, or from the resulting designation of critical habitat for that species. The bill also prohibits reconsideration of the decision unless the Secretary finds there is danger of species extinction, or receives a new petition that includes possible alternative actions to avoid the economic impact of the listing.

The ESA also requires the federal government to make an initial decision concerning listing or delisting of a species within 90 days of receiving a petition. The agencies then have up to 12 months to issue a final determination whether a listing or delisting is warranted, not warranted, or warranted but precluded from listing at that time, in which case species are then placed on a candidate list. However, when the federal government does not meet these deadlines, it becomes vulnerable to litigation.

Environmental lawsuits serve as a fundraising and revenue-generating tool for non-governmental organizations, and the number of petitions agencies receive each year from these groups has generally increased since the ESA's enactment. According to a February 2017 Government Accountability Office report, the U.S. Fish and Wildlife Service (FWS) at the Department of the Interior received 170 petitions to list 1,446 species between fiscal years 2005 and 2010 alone, some of which called for listing of hundreds of species at one time.

As nongovernmental organizations overwhelm agencies with large numbers of petitions for listings, the agencies have not been able to meet their statutory deadlines to properly review the data and science supporting a petition to list. Instead, they have settled with the groups, leading to multi-species mega-listings conducted under non-transparent circumstances. Such listings are to the detriment of many State and local communities that have no opportunity to submit comments or otherwise provide stakeholder input.

H.R. 717 authorizes FWS and National Marine Fisheries Service (NMFS) of the Department of Commerce to prioritize petitions to list a species as endangered or threatened under ESA at their discretion, as opposed to the current order in which a petition was received. Such discretion will allow the agencies increased flexibility to process petitions. The bill also removes the current 12-month deadline for FWS and NMFS to process petitions and instead requires listing petitions be processed as expeditiously as practicable. This will reduce the number of lawsuits that can be filed based on lapsed deadlines. The bill also requires FWS and NMFS to refrain from prioritizing listing petitions over delisting petitions.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Act may be referred to as the Listing Reform Act.

Section 2. Consideration of economic cost in review of Listing Petitions Under Endangered Species Act of 1973

Subsection (a) removes the current ESA statutory deadlines by which the relevant Secretary is required to make a decision and take action on a listing petition. Instead the bill authorizes the Secretary to prioritize consideration of petitions other than in the order they are received and as expeditiously as practicable. However, the Secretary must not give general priority to petitions to add a species to the endangered or threatened list over a petition to remove a species from such list. This ensures one category of listing petitions is not significantly prioritized over others.

Subsection (b) amends ESA to allow for the consideration of significant, cumulative economic effects that would result from the listing of a species as ‘threatened’ or subsequent designation of critical habitat for the species. This subsection also outlines the conditions under which the relevant Secretary may reconsider a decision to preclude a species from the threatened list based on significant economic effects. These conditions include a determination that there is endangerment or extinction of the species or if the Secretary receives a new petition for the species. This petition must: 1) contain an analysis of the areas affected by potential actions resulting from the ESA listing; and 2) identify alternative actions that avoid the significant, cumulative economic effects.

COMMITTEE ACTION

H.R. 717 was introduced on January 27, 2017, by Congressman Pete Olson (R-TX). The bill was referred to the Committee on Natural Resources. On July 19, 2017, the Committee held a hearing on the bill. On October 3, 2017, the Natural Resources Committee met to consider the bill. Congressman Garret Graves (R-LA) offered and withdrew an amendment designated 063. No further amendments were offered and the bill was ordered favorably reported to the House of Representatives on October 4, 2017, by a bipartisan roll call vote of 22 ayes and 13 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 10-04-17

Recorded Vote #: 1

Meeting on / Amendment on: FC Mark Up on **Favorably Reporting** H.R. 717 (Rep. Pete Olson), To amend the Endangered Species Act of 1973 to require review of the economic cost of adding a species to the list of endangered species or threatened species, and for other purposes. "*Listing Reform Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>	X			<i>Mr. Clay, MO</i>			
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>				<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM				Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>		X		Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA			
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>							
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>		X		TOTAL:	22	13	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 717, the Listing Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 717—Listing Reform Act

Summary: H.R. 717 would authorize the Secretary of the Interior to make a determination under the Endangered Species Act (ESA) that placing species on the endangered or threatened list would be warranted but precluded because the action would have significant effects on the economy.

Using information from the U.S. Fish and Wildlife Service (USFWS) and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$16 million over the 2018–2022 period. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 717 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 717 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 717 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					2018–2022
	2018	2019	2020	2021	2022	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	4	4	4	3	3	18
Estimated Outlays	2	4	4	3	3	16

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted early in calendar year 2018 and that the necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar activities.

H.R. 717 would authorize the Secretary to prevent the listing of species under the ESA if the action would have significant effects on the economy, including effects on property values, employment, or state and local revenue collections. CBO expects that the agency will determine that, on average, about 20 new species each year warrant listing under the ESA over the 2018–2022 period. CBO estimates that the economic analyses necessary to determine whether those species should be listed under ESA would cost \$150,000 each. In addition, CBO expects that the agency would complete 25 additional analyses over the 2018–2020 period for listing determinations in progress at the time the bill is enacted. On that basis CBO estimates that implementing the bill would cost \$16 million over the 2018–2022 period.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 717 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 717 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Jeff LaFave; Mandates: Zach Byrum.

Estimate approved by: H. Samuel Papenfuss; Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to require review of the economic cost of adding a species to the list of endangered species or threatened species.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in

any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973

* * * * *

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

- (A) in any case in which the Secretary of Commerce determines that such species should—
 - (i) be listed as an endangered species or a threatened species, or
 - (ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;
- (B) in any case in which the Secretary of Commerce determines that such species should—
 - (i) be removed from any list published pursuant to subsection (c) of this section, or
 - (ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Inte-

rior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3)(A) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—

(i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(ii) may, from time-to-time thereafter as appropriate, revise such designation.

(B)(i) The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

(ii) Nothing in this paragraph affects the requirement to consult under section 7(a)(2) with respect to an agency action (as that term is defined in that section).

(iii) Nothing in this paragraph affects the obligation of the Department of Defense to comply with section 9, including the prohibition preventing extinction and taking of endangered species and threatened species.

(b) BASIS FOR DETERMINATIONS.—(1)(A) The Secretary shall make determinations required by subsection (a)(1) solely (*except as provided in clause (iv) of paragraph (3)(B)*) on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he de-

termines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) **【To the maximum extent practicable, within 90 days after】** (i) *After* receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(ii) *The Secretary may prioritize the consideration of petitions under this subparagraph other than in the order in which the petitions are received, except the Secretary may not give general priority to petitions to add species to such a list over petitions to remove a species from such a list.*

(B) **【Within 12 months】** *As expeditiously as practicable* after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from such lists species for which the protections of the Act are no longer necessary,

in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(iv)(I) *In the case of a petition to add a species to a list of threatened species, the petitioned action may be warranted but is precluded due to the likelihood of significant, cumulative economic effects that would result from listing or, to the extent it can be determined, from the likely resulting designation of critical habitat of the species.*

(II) *The Secretary may not reconsider such finding unless—*

(aa) the Secretary determines there is endangerment of extinction of the species; or

(bb) the Secretary receives a new petition to add such species to such list that includes a written qualitative and quantitative analyses reexamining the incremental and significant, cumulative economic effects of likely actions to protect the petitioned species and its potential habitat upon each State and locality that is affected by the petitioned species listing and that, in the opinion of the Secretary, credibly concludes that alternative actions are possible other than those resulting in significant, cumulative economic effects.

(III) In this clause the term “significant, cumulative economic effects” includes economic effects on—

(aa) public land and, to the maximum extent practicable, private land and property values;

(bb) the provision of water, power, or other public services;

(cc) employment; and

(dd) revenues available for State and local governments.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

- (i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and
 - (ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;
- (B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;
- (C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;
- (D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and
- (E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.
- (6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—
- (i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—
 - (I) a final regulation to implement such determination,
 - (II) a final regulation to implement such revision or a finding that such revision should not be made,
 - (III) notice that such one-year period is being extended under subparagraph (B)(i), or
 - (IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or
 - (ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—
 - (I) a final regulation to implement such designation, or
 - (II) notice that such one-year period is being extended under such subparagraph.
- (B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.
- (ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not

propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that—

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish and wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation des-

ignates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(c) **LISTS.**—(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b).

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsection (a) and (b).

(d) **PROTECTIVE REGULATIONS.**—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2) in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such, regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) **SIMILARITY OF APPEARANCE CASES.**—The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even through it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f)(1) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan—

(i) a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan’s goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) MONITORING.—(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c).

(2) The Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of the section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3), the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

* * * * *

DISSENTING VIEWS

H.R. 717 would eliminate important deadlines in the Endangered Species Act (ESA) for federal agencies to determine the status of species that may need the Act's protections. The bill also allows the Interior and Commerce Secretaries to ignore science and delay action to protect imperiled species based on economic concerns. Finally, H.R. 717 prohibits agencies from prioritizing protection of vulnerable species over removing protections for recovered ones, even if the best available science shows that listing should take priority.

The ESA's 90-day deadline to consider a listing petition and the 12-month deadline to make a listing decision are critically important to ensuring timely protection of species that are teetering on the brink of extinction. Federal agencies rarely make these determinations without judicial enforcement of the deadlines. Removing these deadlines would make it much more difficult to protect imperiled species.

Further, allowing for the consideration of economic concerns as opposed to the current ESA standard of the "best scientific and commercial data available" would severely undermine conservation efforts. The ESA already gives the Fish and Wildlife Service and the National Marine Fisheries Service the discretion to designate species as "warranted but precluded" from being listed by higher conservation priorities, meaning that species can wait years to receive the protections they need and begin the path to recovery. Inserting a second loophole solely for economic concerns would exacerbate this problem and is not consistent with the intent of the ESA.

Finally, the agencies made significant changes to their listing regulations just last year to slow down incoming petitions and give themselves more flexibility in responding. We have yet to see how the agencies will perform given these updates and H.R. 717 would override the new regulations. For these reasons, we oppose H.R. 717 as reported.

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