

Union Calendar No. 815

115TH CONGRESS
2D SESSION

H. R. 3608

[Report No. 115–1048]

To amend the Endangered Species Act of 1973 to require publication on the Internet of the basis for determinations that species are endangered species or threatened species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2017

Mr. MCCLINTOCK (for himself, Mr. HUIZENGA, Mr. LAMALFA, Mr. JONES, Mr. GIANFORTE, and Mr. TIPTON) introduced the following bill; which was referred to the Committee on Natural Resources

NOVEMBER 27, 2018

Additional sponsors: Mr. BANKS of Indiana, Mr. GOHMERT, Mr. ESTES of Kansas, Mr. LUETKEMEYER, Mr. MARSHALL, Mr. MULLIN, Mr. PEARCE, Mr. STEWART, Mr. NORMAN, Ms. JENKINS of Kansas, Mr. BIGGS, Mr. PERRY, Mr. ROKITA, Mr. MOONEY of West Virginia, Mr. THOMPSON of Pennsylvania, Miss GONZÁLEZ-COLÓN of Puerto Rico, and Mr. HUNTER

NOVEMBER 27, 2018

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Endangered Species Act of 1973 to require publication on the Internet of the basis for determinations that species are endangered species or threatened species, 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 Transparency and Reasonableness Act”.

6 **SEC. 2. REQUIREMENT TO PUBLISH ON THE INTERNET THE**
7 **BASIS FOR LISTINGS.**

8 Section 4(b) of the Endangered Species Act (16
9 U.S.C. 1533(b)) is amended by adding at the end the fol-
10 lowing:

11 “(9) The Secretary shall make publicly available on
12 the Internet the best scientific and commercial data avail-
13 able that are the basis for each regulation, including each
14 proposed regulation, promulgated under subsection (a)(1),
15 except that, at the request of a Governor, State agency,
16 or legislature of a State, the Secretary shall not make
17 available under this paragraph information regarding
18 which the State has determined public disclosure is pro-
19 hibited by a law or regulation of that State, including any
20 law or regulation requiring the protection of personal in-
21 formation; and except that within 30 days after the date
22 of the enactment of this paragraph, the Secretary shall
23 execute an agreement with the Secretary of Defense that
24 prevents the disclosure of classified information pertaining

1 to Department of Defense personnel, facilities, lands, or
 2 waters.”.

3 **SEC. 3. DECISIONAL TRANSPARENCY AND USE OF STATE,**
 4 **TRIBAL, AND LOCAL INFORMATION.**

5 (a) **REQUIRING DECISIONAL TRANSPARENCY WITH**
 6 **AFFECTED STATES.**—Section 6(a) of the Endangered
 7 Species Act of 1973 (16 U.S.C. 1535(a)) is amended—

8 (1) by inserting “(1)” before the first sentence;
 9 and

10 (2) by striking “Such cooperation shall include”
 11 and inserting the following:

12 “(2) Such cooperation shall include—

13 “(A) before making a determination under
 14 section 4(a), providing to States affected by
 15 such determination all data that is the basis of
 16 the determination; and

17 “(B)”.

18 (b) **ENSURING USE OF STATE, TRIBAL, AND LOCAL**
 19 **INFORMATION.**—

20 (1) **IN GENERAL.**—Section 3 of the Endangered
 21 Species Act of 1973 (16 U.S.C. 1532) is amended—

22 (A) by redesignating paragraphs (2)
 23 through (21) as paragraphs (3) through (22),
 24 respectively; and

1 (B) by inserting after paragraph (1) the
2 following:

3 “(2) The term ‘best scientific and commercial data
4 available’ includes all such data submitted by a State, trib-
5 al, or county government.”.

6 (2) CONFORMING AMENDMENT.—Section 7(n)
7 of such Act (16 U.S.C. 1536(n)) is amended by
8 striking “section 3(13)” and inserting “section
9 3(14)”.

10 **SEC. 4. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
11 **GERED SPECIES ACT OF 1973.**

12 (a) REQUIREMENT TO DISCLOSE.—Section 13 of the
13 Endangered Species Act of 1973 (87 Stat. 902; relating
14 to conforming amendments which have executed) is
15 amended to read as follows:

16 **“SEC. 13. DISCLOSURE OF EXPENDITURES.**

17 “(a) REQUIREMENT.—The Secretary of the Interior,
18 in consultation with the Secretary of Commerce, shall—

19 “(1) not later than 90 days after the end of
20 each fiscal year, submit to the Committee on Nat-
21 ural Resources of the House of Representatives and
22 the Committee on Energy and Natural Resources of
23 the Senate an annual report detailing Federal Gov-
24 ernment expenditures for covered suits during the

1 preceding fiscal year (including the information de-
2 scribed in subsection (b)); and

3 “(2) make publicly available through the Inter-
4 net a searchable database of the information de-
5 scribed in subsection (b).

6 “(b) INCLUDED INFORMATION.—The report shall in-
7 clude—

8 “(1) the case name and number of each covered
9 suit, and a hyperlink to the record or decision for
10 each covered suit (if available);

11 “(2) a description of the claims in each covered
12 suit;

13 “(3) the name of each covered agency whose ac-
14 tions gave rise to a claim in a covered suit;

15 “(4) funds expended by each covered agency
16 (disaggregated by agency account) to receive and re-
17 spond to notices referred to in section 11(g)(2) or to
18 prepare for litigation of, litigate, negotiate a settle-
19 ment agreement or consent decree in, or provide ma-
20 terial, technical, or other assistance in relation to, a
21 covered suit;

22 “(5) the number of full-time equivalent employ-
23 ees that participated in the activities described in
24 paragraph (4);

1 “(6) attorneys fees and other expenses
2 (disaggregated by agency account) awarded in cov-
3 ered suits, including any consent decrees or settle-
4 ment agreements (regardless of whether a decree or
5 settlement agreement is sealed or otherwise subject
6 to nondisclosure provisions), including the bases for
7 such awards; and

8 “(7) any Federal funding used by a person or
9 a governmental or nongovernmental entity in bring-
10 ing a claim in a covered suit.

11 “(c) REQUIREMENT TO PROVIDE INFORMATION.—
12 The head of each covered agency shall provide to the Sec-
13 retary in a timely manner all information requested by the
14 Secretary to comply with the requirements of this section.

15 “(d) LIMITATION ON DISCLOSURE.—Notwith-
16 standing any other provision of this section, this section
17 shall not affect any restriction in a consent decree or set-
18 tlement agreement on the disclosure of information that
19 is not described in subsection (b).

20 “(e) DEFINITIONS.—

21 “(1) COVERED AGENCY.—The term ‘covered
22 agency’ means any agency of the Department of the
23 Interior, the Forest Service, the National Marine
24 Fisheries Service, the Bonneville Power Administra-
25 tion, the Western Area Power Administration, the

1 Southwestern Power Administration, or the South-
 2 eastern Power Administration.

3 “(2) COVERED SUIT.—The term ‘covered suit’
 4 means any civil action containing a claim against the
 5 Federal Government, in which the claim arises under
 6 this Act and is based on the action of a covered
 7 agency.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
 9 in the first section of such Act is amended by striking the
 10 item relating to such section and inserting the following:
 “Sec. 13. Disclosure of expenditures.”.

11 (c) PRIOR AMENDMENTS NOT AFFECTED.—This sec-
 12 tion shall not be construed to affect the amendments made
 13 by section 13 of such Act, as in effect before the enact-
 14 ment of this Act.

15 **SEC. 5. AWARD OF LITIGATION COSTS TO PREVAILING PAR-**
 16 **TIES IN ACCORDANCE WITH EXISTING LAW.**

17 Section 11(g)(4) of the Endangered Species Act of
 18 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to
 19 any” and all that follows through the end of the sentence
 20 and inserting “to any prevailing party in accordance with
 21 section 2412 of title 28, United States Code.”.

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