

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

September 25, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff—Melissa Beaumont (x57107)

Markup: **H.R. 3608 (Rep. Tom McClintock)**, 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.
September 27, 2018, 10:15 a.m.; 1324 Longworth House Office Building.

H.R. 3608 (Rep. Tom McClintock), “Endangered Species Transparency and Reasonableness Act”

Summary of the Bill

H.R. 3608 amends the Endangered Species Act of 1973 (ESA) to require public availability on the Internet of the best scientific and commercial data available, which is the basis of each decision to list a species for protection under the ESA. It requires the federal government to disclose scientific information used in making listing or critical habitat decisions to States, tribes, and local governments and ensures the inclusion of data submitted by those governments as part of the best available scientific and commercial data.

Further, this bill requires U.S. Fish and Wildlife Service (FWS) to report funds expended by the federal government in response to ESA litigation, full time employees tasked with ESA litigation, and attorneys’ fees associated with ESA litigation and settlements. This annual report will be submitted to the House Natural Resources Committee and Senate Energy and Natural Resources Committee. Lastly, to protect taxpayer dollars, this bill caps the attorney fees for ESA litigation and settlements at \$125 per hour, consistent with the Equal Access to Justice Act.

Cosponsors

[22 cosponsors](#)

Background

The Endangered Species Act of 1973

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) sets out the broad goal of conserving and recovering species facing extinction. The law authorizes federal agencies to identify imperiled species and list them as either threatened or endangered as appropriate.¹ The law further requires agencies to take necessary actions to conserve those species and their

¹ 16 U.S.C. 1533.

habitats.² The Secretary of the Interior, through the U.S. Fish and Wildlife Service (FWS), has responsibility for plants, wildlife and inland fisheries. The Secretary of Commerce, through the National Marine Fisheries Service (NMFS) is responsible for implementing the ESA with respect to ocean-going fish and some marine mammals.³ Congress made its most significant amendments to ESA in 1978, 1982, and 1988, although the overall framework has remained essentially unchanged since its original enactment in 1973.⁴

Despite the worthy goal set out by the ESA to conserve and protect species, in the 45 years since its enactment, less than 2 percent of species have recovered enough to warrant removal from the list of endangered and threatened species.⁵ In fact, many of those species were delisted after it was discovered that federal agencies used erroneous data in the original listing.⁶ In total, to date there have been 2,421 listings⁷ under the ESA. In that time the Secretaries have delisted 77 species, but only 47 distinct species have been removed, either entirely or partially throughout their range, due to population recovery.⁸

In addition to failing to achieve meaningful recovery for species, implementation of the ESA disincentivizes conservation and can lead to increased conflict between people and species through unpredictable and expansive restrictions on land use.⁹ Excessive litigation and a lack of transparency in federal ESA decision-making has only exacerbated these problems and reduced the ESA's effectiveness in recovering species.¹⁰

In many cases, implementation of the ESA has caused increased burdens for those living in close proximity to the protected species.¹¹ Often States and local communities have the most knowledge about the species located in their State and can bring the greatest amount of resources to conservation efforts.¹² They are eager to stabilize species populations to prevent listings that

² *Id.*

³ CONG. RESEARCH SERV., RL31654, THE ENDANGERED SPECIES ACT: A PRIMER 15 (2016).

⁴ A History of the Endangered Species Act of 1973, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, https://www.fws.gov/endangered/esa-library/pdf/history_ESA.pdf (last visited Sept. 18, 2018).

⁵ ECOS Environmental Conservation Online System, Listed Species Summary (Boxscore), U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, <https://ecos.fws.gov/ecp0/reports/box-score-report> (last visited Sept. 19, 2018).

⁶ ECOS Environmental Conservation Online System, Delisted Species, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, <https://ecos.fws.gov/ecp0/reports/delisting-report> (last visited Sept. 19, 2018).

⁷ *Supra*, note 5. This number was determined by adding the total number of species listed as endangered or threatened under the ESA to the total number delisted since the ESA's enactment.

⁸ *Supra*, note 6.

⁹ COMMITTEE ON HOUSE NATURAL RESOURCES, ENDANGERED SPECIES ACT CONGRESSIONAL WORKING GROUP, REPORT FINDINGS AND RECOMMENDATIONS, (2014) available at https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf; See also: *Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131: Hearing before the H. Comm. on Natural Resources*, 115th Cong. (2017) (testimony of Kent Holsinger, Manager and Founder, Holsinger Law, LLC) available at https://naturalresources.house.gov/uploadedfiles/testimony_holsinger.pdf.

¹⁰ *Hearing on Examining Policy Impacts of Excessive Litigation Against the Department of the Interior, Before the Subcomm. on Oversight & Investigations of the H. Comm. on Natural Resources*, 115th Cong. (2017), available at https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_ov_hrg_06.28.17.pdf.

¹¹ *Supra*, note 9.

¹² *Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, and H.R. 3131: Hearing before the H. Comm. on Natural Resources*, 115th Cong. (2017) (testimony of Kent Holsinger, Manager and Founder, Holsinger Law, LLC) available at https://naturalresources.house.gov/uploadedfiles/testimony_holsinger.pdf.

can have a major economic impact on State and local communities through restrictions on land use.¹³ Yet, too often federal management of threatened and endangered species fails to take advantage of the wealth of knowledge of State and local officials and of the successful conservation measures implemented by States.¹⁴

Despite these shortcomings in how the ESA has been implemented since its enactment, the ESA and its overall goal of conserving and recovering species remains widely popular and accepted.¹⁵ ESA modernization should prioritize effective species recovery while maintaining the core principles of the Act.

Data Transparency

Section 4 of the ESA requires listings be made based on the best scientific and commercial data available.¹⁶ Defining best scientific and commercial data available, as well as the application of that data by federal agencies and its availability to the public, is a source of controversy. The data used to inform ESA policy decisions is a substantial factor in the total economic cost of the ESA to taxpayers and remains the basis for costly litigation.¹⁷

Currently, most data used to make critical listing decisions is not readily available to the public. ESA proposed rules and final ruling are published in the Federal Register,¹⁸ which serves as the official public notice. Finalized listings are publicly available on the FWS website,¹⁹ providing the public with access to threatened and endangered plant and animal species. Although listings are readily available to the public, the scientific and commercial data used in

¹³ *Id.*

¹⁴ See e.g., Letter from John Hickenlooper, Governor, State of Colorado, and Matt Mead, Governor, State of Wyoming, to Steve Ellis, Deputy Director, Bureau of Land Management, U.S. Dep't of the Interior, and Leslie Weldon, Deputy Chief, National Forest System, U.S. Forest Service, U.S. Dep't of Agriculture, Sept. 29, 2014, available at http://westgov.org/images/editor/LTR_GSG_Rollup_Mtgs_FINAL.pdf.

¹⁵ See e.g., Memo from Ben Tulchin, Ben Krompack, and Kiel Brunner, Tulchin Research, to Interested Parties, Jul. 6, 2015, available at <https://earthjustice.org/sites/default/files/files/PollingMemoNationalESASurvey.pdf>.

¹⁶ [ELRS] Science And Deference: The "Best Available Science" Mandate is A Fiction in the Ninth Circuit, HARVARD ENVIRONMENTAL LAW REVIEW(2016), <http://harvardelr.com/2016/11/07/elrs-science-and-deference-the-best-available-science-mandate-is-a-fiction-in-the-ninth-circuit> (last visited Sep 19, 2018); see also: P. J. Sullivan et al., *Defining and Implementing Best Available Science for Fisheries and Environmental Science, Policy, and Management*, 31 DEFINING AND IMPLEMENTING BEST AVAILABLE SCIENCE FOR FISHERIES AND ENVIRONMENTAL SCIENCE, POLICY, AND MANAGEMENT (2006) available at <https://www.fws.gov/wafwo/fisheries/Publications/Fisheries3109.pdf> (last visited Sep 19, 2018)..

¹⁷ Natalie Lowell & Ryan P. Kelly, *Evaluating agency use of "best available science" under the United States Endangered Species Act*, 196 BIOLOGICAL CONSERVATION 53–59 (2016), https://www.researchgate.net/publication/295684321_Evaluating_agency_use_of_best_available_science_under_the_United_States_Endangered_Species_Act (last visited Sep 19, 2018).

¹⁸ Wildlife Service, LISTING AND CRITICAL HABITAT | PETITION PROCESS OFFICIAL WEB PAGE OF THE U S FISH AND WILDLIFE SERVICE, <https://www.fws.gov/endangered/what-we-do/listing-petition-process.html> (last visited Sep 19, 2018).

¹⁹ Sarah Leon, FIND ENDANGERED SPECIES OFFICIAL WEB PAGE OF THE U S FISH AND WILDLIFE SERVICE, <https://www.fws.gov/endangered/> (last visited Sep 19, 2018).

making such decisions is generally unavailable. Testimony from local entities has raised concerns regarding unavailability of reports used to make controversial listing decisions.²⁰

H.R. 3608 aims to increase transparency by making listing data available to the public through the Internet. The current available information allows the public to see the aftermath of the decision-making process. This bill will give taxpayers the ability to view what each agency identifies as the “best scientific and commercial data available” for use in each ESA listing, prompting agencies to ensure the data used meets the standards set forth by the ESA.

Use of State, Tribal, and Local Information

Section 6 of the ESA requires federal cooperation with the States “to the maximum extent practicable” in listing decisions.²¹ Species listings and critical habitat designations have the potential to impact communities and industries while placing unnecessary burdens upon State and local governments. States, tribes, and local governments are well-equipped to participate in listing decisions in a productive manner; however, federal cooperation with such governments does not always occur.

State witnesses have testified that the ESA, as currently implemented, does not properly honor their ability to participate to the maximum extent practicable in federal ESA listing decisions. State witnesses have stated that they are not made aware of factors used by the federal government in listing decisions that impact lands, communities, and species within their borders.²² States possess on-the-ground experience and expertise in managing wildlife as a public asset and in practical policy application, making them valuable resources for NMFS and FWS with regard to ESA listings.²³ State expertise and data must be utilized to better manage ESA listed species.

Local governments, particularly those in areas with a significant portion of federally-owned lands, have expressed concerns that federal ESA-implementing agencies often ignore locally generated science.²⁴ In more than one case, a court order has been required to obtain

²⁰ Transparency and Sound Science Gone Extinct?: The Impacts of the Obama Administration's Closed-Door Settlements on Endangered Species and People: Oversight Hearing Before the H. Comm. On Natural Resources, 113th Cong. (2013) (testimony of Kent McMullen, Franklin County Natural Resources Advisory Committee, at 21).

²¹ Endangered Species Act of 1973, 16 U.S.C. 1531 (1973).

²² See, *The Status of the Federal Government's Management of Wolves: Hearing Before the H. Comm. on Natural Resources*, 114th Cong. (2016) (States were not included in decisions to introduce and manage wolf populations in the Southwest, Mid-Atlantic, West, and Great Lakes regions. Faulty science and implementation caused failure of Red Wolf program in North Carolina).

²³ See, H.B. 1025, 83rd Legislature (TX 2009) (The Texas Legislature provided \$5 million to the Texas Comptroller's Office to support high-quality species research through state-funded universities and continues to provide funding. This has kept species, such as the Dunes Sagebrush Lizard, off of the Endangered Species List), <https://comptroller.texas.gov/programs/species-economy/>. See also, Letter from Glenn Hegar, Comptroller, State of Texas to the People of Texas (2017) available at <https://comptroller.texas.gov/programs/species-economy/letter.php>.

²⁴ Defining Species Conservation Success: Tribal, State and Local Stewardship vs. Federal Courtroom Battles and Sue-and-Settle Practices: Oversight Hearing Before the H. Comm. On Natural Resources, 113th Cong. (2013) (written testimony of Tom Jankovsky, Garfield County, Colorado, at 39), which describes Garfield County, Colorado's questioned the accuracy of a map developed by the FWS for sage grouse habitat in Colorado after the federal agency refused its request to verify data used by the U.S. Fish and Wildlife Service federal report.

listing data from federal officials, even though the data was obtained through taxpayer-funded studies.²⁵ Additionally, local entities have raised the concern that a key document used by the FWS in an ESA listing determination was an unpublished manuscript that was inaccessible to the public.²⁶

Tribal governments also play a significant role in species conservation and recovery activities. Witnesses have testified that tribal data and science are not factored into ESA listing decisions. For example, in the Columbia and Snake Rivers, where 13 populations of salmon are listed under the ESA, tribal hatchery managers have successfully utilized hatchery supplementation to enhance salmon and steelhead recovery. The Snake River fall chinook run has rebounded to near-record levels due in large part to the tribal hatchery programs.²⁷ Though a federal court ordered NMFS in 2001 to consider hatchery salmon in populations proposed for ESA listing, the agency issued a revised policy that emphasized the “negative impacts” of hatchery fish on naturally spawning fish, and ignored tribal data highlighting the benefits hatchery fish are having on recovering salmon.²⁸

Despite the expertise and willingness of State, local, and tribal governments to participate in the ESA process, the Department of the Interior and the Department of Commerce are not required to disclose scientific information or the basis they use in making listing decisions to these governments. It is also not required to utilize data generated by States, tribes, or local governments, even though these governments often have data federal agencies lack.²⁹

H.R. 3608 would require FWS and NMFS to be transparent in their use of data for ESA listing decisions, both with regard to their ESA section 6 responsibilities and use of valuable State, local and tribal data to guide listing determinations. It ensures that States are afforded every opportunity to provide input on laws, regulations, and policies related to the implementation of the ESA before such policies are finalized. This bill would ensure that the best scientific and commercial data available for ESA listing decisions includes data from those closest to the ground and most impacted by the listings – the States, local governments, and tribes.³⁰

²⁵[*Transparency and Sound Science Gone Extinct?: The Impacts of the Obama Administration's Closed-Door Settlements on Endangered Species and People: Oversight Hearing Before the H. Comm. On Natural Resources, 113th Cong. \(2013\) \(testimony of Dr. Ramey, at 27\).*](#)

²⁶Transparency and Sound Science Gone Extinct?: The Impacts of the Obama Administration's Closed-Door Settlements on Endangered Species and People: Oversight Hearing Before the H. Comm. On Natural Resources, 113th Cong. (2013) (testimony of Kent McMullen, Franklin County Natural Resources Advisory Committee, at 21).

²⁷[*Defining Species Conservation Success: Tribal, State and Local Stewardship vs. Federal Courtroom Battles and Sue-and-Settle Practices: Oversight Hearing Before the H. Comm. On Natural Resources, 113th Cong. \(2013\) \(written testimony of N. Kathryn Brigham, Columbia River Inter-Tribal Fish Commission, at 17\).*](#)

²⁸[*Trout Unlimited v. Lohn*, 559 F.3d 946 \(9th Cir. 2009\); 70 Fed. Reg. 37, 204.](#)

²⁹See, Western Energy Alliance, *Environmental Groups Keep Suing Despite Vast ESA Settlement Agreements* (July 13, 2017), <https://www.westernenergyalliance.org/knowledge-center/legal/sue-and-settle> (FWS settled agreements behind closed doors with WildEarth Guardians and the Center for Biological Diversity on a combined 878 species in 2011 and the scientific information utilized in the settlement listing decisions was not made available to the States).

³⁰John Stroud, *Garfield County Protests Sage Grouse Protection Plan*, THE ASPEN TIMES, July 8, 2015 at <http://www.aspentimes.com/news/garfield-county-protests-sage-grouse-protection-plan/> (Garfield County, Co challenged the Northwest Colorado Greater Sage-Grouse management plan on the basis that the plan fails to recognize habitat differences in that portion of Colorado, designating critical habitat where the birds are unable to live. It also challenges the federal failure to take local and state habitat conservation plans into consideration) and

Disclosure of Expenditures

Federal expenditures associated with implementing and administering the ESA has long been a contentious issue. Much of the debate is centered on ESA's "tremendous costs and adverse impact on private property owners and effective land management."³¹ Enormous economic and regulatory burdens hinder species conservation, rendering ESA ineffective.³² The Competitive Enterprise Institute (CEI) recently reported that the overall economic impact of ESA cannot be systematically analyzed due to the complex nature of the ESA's impact on both individuals and businesses. All things considered, CEI estimates that the total cost of implementing ESA over its lifetime is "close to hundreds of billions of dollars."³³

To decipher the cost to taxpayers associated with ESA, it is imperative for the agencies responsible for its implementation report their spending to Congress. H.R. 3608 requires the creation of an annual expenditure report to be submitted to the House Natural Resources Committee and Senate Energy and Natural Resources Committee. Both FWS and NMFS must report the federal spending for ESA litigation costs for the previous year. This information will also be publicly available through an online searchable database. The information required includes funds spent responding to ESA lawsuits, total number of full-time employees that participate in ESA lawsuits, and attorneys' fees associated with litigation and settlement agreements.

Litigation Costs Under the ESA

Attorneys' fees play a significant role in the enormous financial burden associated with ESA. Special interest attorneys representing environmental groups argue that their expertise is "specialized" to justify substantial, uncapped fees.³⁴ Some special interest attorneys have collected fees as high as \$750 taxpayer dollars per hour.³⁵ According to records from the

Garfield County, CO, Comments on the BLM's NW Colorado Greater Sage Grouse Draft Resource Management Plan and Final Environmental Impact Statement (May 13, 2015) at <https://www.garfield-county.com/community-development/sage-grouse-resource-management.aspx>.

³¹ Robert Gordon, CEI REPORT: ENDANGERED SPECIES ACT COSTS BILLIONS MORE THAN GENERALLY ACKNOWLEDGED, GOVERNMENT ACCOUNTING OBSCURES COSTS COMPETITIVE ENTERPRISE INSTITUTE (2018), <https://cei.org/content/cei-report-endangered-species-act-costs-billions-more-generally-acknowledged-government> (last visited Sep 19, 2018).

³² ENDANGERED SPECIES ACT CONG. WORKING GROUP, 113TH CONG., REPORTS, FINDINGS AND RECOMMENDATIONS 32 (2014), available at https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf.

³³ Robert Gordon, CEI REPORT: ENDANGERED SPECIES ACT COSTS BILLIONS MORE THAN GENERALLY ACKNOWLEDGED, GOVERNMENT ACCOUNTING OBSCURES COSTS COMPETITIVE ENTERPRISE INSTITUTE (2018), <https://cei.org/content/cei-report-endangered-species-act-costs-billions-more-generally-acknowledged-government> (last visited Sep 19, 2018).

³⁴ ENDANGERED SPECIES ACT CONG. WORKING GROUP, 113TH CONG., REPORTS, FINDINGS AND RECOMMENDATIONS 32 (2014), available at https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf.

³⁵ JORDAN LOFTHOUSE, RYAN M. YONK & RANDY T. SIMMONS, EQUAL ACCESS TO JUSTICE ACT 12, available at <http://www.strata.org/wp-content/uploads/ipePublications/Final-Print.pdf>; RaeLynn Ricarte, *Taxpayers Foot the*

Department of Justice, at least two such attorneys have garnered more than \$2 million in attorneys' fees by filing ESA suits.³⁶ Further, a review of 141 ESA lawsuits from 2005 to 2015 show that only ten environmental advocacy groups accounted for over 80 percent of all ESA settlements reached during the decade. These "sue and settle" ESA cases cost taxpayers huge amounts in attorneys' fees to fund ongoing litigation.³⁷

With environmental groups leading the charge on "sue and settle" cases, it is important to evaluate the cost of litigation to American taxpayers³⁸. This month, the Interior Department issued an order to promote transparency and accountability in consent decrees and settlement agreements.³⁹ The Department plans to establish a publicly accessible website making available litigation information, consent decrees, and settlements.

The Equal Access to Justice Act (EAJA) authorizes a "prevailing party" to collect attorneys' fees in litigation against the federal government.⁴⁰ EAJA also provides that "attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee."⁴¹

H.R. 3608 would require ESA litigants to abide by the same rules as others suing the federal government, requiring plaintiffs to prevail to collect attorneys' fees, as well as impose the \$125 fee cap set by EAJA. Capable environmental attorneys are no longer a rarity; therefore, uncapped attorneys' fees are not justified. While this legislation does not restrict aggrieved parties' ability to seek redress in court, it removes an incentive for litigious plaintiffs to request large fee awards. Most importantly, it safeguards taxpayer dollars against abusive litigation.⁴²

Bill of Resource Lawsuits, DALLAS CHRON., May 13, 2014,

<http://www.thedalleschronicle.com/news/2014/may/13/taxpayers-foot-bill-resource-lawsuits/>

³⁶ ENDANGERED SPECIES ACT CONG. WORKING GROUP, *supra* note 6, at 31.

³⁷ Rob Gordon & Hans A. von Spakovsky, SCOTT PRUITT ENDS AN OBAMA ADMINISTRATION ABUSE OF POWER NATIONAL REVIEW (2017), <https://www.nationalreview.com/2017/10/scott-pruitt-ends-epa-sue-settle-scheme-obama-administration-abuse-power/> (last visited Sep 19, 2018).

³⁸ Millions of Taxpayer Dollars Spent on Endangered Species Act Litigation and Attorney Fees, HOUSE COMMITTEE ON NATURAL RESOURCES (2012), <https://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=299899> (last visited Sep 19, 2018).

³⁹ Order No. 3368, Promoting Transparency and Accountability in Consent Decrees and Settlement Agreements, U.S. DEP'T OF THE INTERIOR, Sept. 11, 2018, *available at* https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3368_promoting_transparency_and_accountability_in_consent_decree_and_settlement_agreements.pdf.

⁴⁰ 28 U.S.C. 2412.

⁴¹ 28 U.S.C. 2412(d)(2)(A).

⁴² *Id.* (For example, an attorney representing Center for Biological Diversity in a lawsuit to block construction of a San Diego elementary school based on the existence of a fairy shrimp argued that the "prevailing San Diego market rate" for his attorneys' fees was reasonable due to his special expertise in challenging ESA habitat conservation plans, vernal pools, and his skill in preparing documents. He charged more than \$400 per hour in the final six years of litigation, including \$450 per hour in the years that the project was delayed. With his own fees totaling over \$150,000, he and two other attorneys were granted \$650,000 in federal funds by the court. Similarly, in 2012 plaintiffs were awarded \$940,000 in legal fees for litigation between 2000 and 2004, and an additional \$950,000 for litigation between 2004 and 2008 for a case involving Salmon and dams operated by the Bonneville Power Administration. The plaintiffs' attorneys' fees included rates of \$200 to \$350 per hour, as well as \$100 per hour for interns helping with the case. In 2014, three of the same attorneys representing the involved plaintiffs filed a third

Previous Committee and House Activity and Legislation

On July 17, 2014, in the 113th Congress, the House Committee on Natural Resources favorably reported identical legislation, H.R. 4315, sponsored by Committee Chairman Doc Hastings (R-WA). Subsequently, the bill was passed by the House of Representatives on July 29, 2014.

Major Provisions of H.R. 3608

Section 2. Requirement to Publish on the Internet the Basis for Listings. Section 2 amends section 4 of the ESA to require the Secretary make the “best scientific and commercial data,” which is the basis for listing determinations, publicly available on the Internet. If a State determines publishing online is prohibited by State law, an exception may be made to withhold publishing on the Internet. Further, the Secretary of Defense may prohibit publishing on the Internet to prevent disclosing classified information.

Section 3. Decisional Transparency and Use of State, Tribal, and Local Information.

Section (a) Requiring Decisional Transparency with Affected States. Section (a) amends section 6 of the ESA to require the relevant Secretary to provide all data used in listing determinations to affected States.

Section (b) Ensuring Use of State, Tribal, and Local Information. Section (b) ensures FWS and NMFS’s use of State, tribal, and local information in listing decisions by clarifying that the term “best scientific and commercial data” includes all such data submitted by a State, tribal, or local governments.

Section 4. Disclosure of Expenditures Under Endangered Species Act of 1973.

Section (a) Requirement to Disclose. Section (a) amends section 13 of the ESA to require FWS and NMFS to submit to the House Natural Resources Committee and the Senate Energy and Natural Resources Committee an annual report outlining federal spending on lawsuits related to ESA. The report must document funds spent by the federal government in response to ESA lawsuits, the number of government employees involved in ESA litigation, and attorney fees paid by the federal government for litigations and settlements. It also requires this information be made available on the Internet.

Section 5. Award of Litigation Costs to Prevailing Parties in Accordance with Existing Law. Section 5 amends the ESA by limiting attorney fees to the \$125 per hour cap currently established the EAJA.

Cost

application for attorneys’ fees, this time arguing for attorneys’ fees at rates of \$500, \$475, and \$400 per hour. These requested rates more than doubled in just a few years’ time).

No current CBO score is available. However, in 2014, CBO estimated that an identical bill, H.R. 4315, would have a negligible effect on the federal budget and enacting H.R. 4315 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Administration Position

Unknown.

Anticipated Amendments

Unknown.

[Effect on Current Law \(Ramseyer\)](#)