

117TH CONGRESS
2D SESSION

H. R. 9108

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

SEPTEMBER 30, 2022

Mr. MCCLINTOCK (for himself, Mr. WESTERMAN, Mr. LAMALFA, Mr. STEWART, Ms. HERRELL, Mr. STAUBER, Mr. GOHMERT, Ms. CONWAY, Mr. GOSAR, and Mr. LAMBORN) introduced the following bill; which was referred to the Committee on Natural Resources

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 of 2022”.

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

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

6 “(9) The Secretary shall make publicly available on
7 the internet the best scientific and commercial data avail-
8 able that are the basis for each regulation, including each
9 proposed regulation, promulgated under subsection (a)(1),
10 except that—

11 “(A) at the request of a Governor, State agen-
12 cy, or legislature of a State, the Secretary shall not
13 make information available under this paragraph if
14 such State determines that public disclosure of such
15 information is prohibited by a law or regulation of
16 such State, including any law or regulation requiring
17 the protection of personal information; and

18 “(B) within 30 days after the date of the enact-
19 ment of this paragraph, the Secretary shall execute
20 an agreement with the Secretary of Defense that
21 prevents the disclosure of classified information per-
22 taining to Department of Defense personnel, facili-
23 ties, lands, or waters.”.

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

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

6 (1) by inserting “(1)” before the first sentence;

7 and

8 (2) by striking “Such cooperation shall include”

9 and inserting the following:

10 “(2) Such cooperation shall include—

11 “(A) before making a determination under

12 section 4(a), providing to States affected by

13 such determination all data that is the basis of

14 the determination; and

15 “(B)”.

16 (b) **ENSURING USE OF STATE, TRIBAL, AND LOCAL**
17 **INFORMATION.**—

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

20 (A) by redesignating paragraphs (2)

21 through (21) as paragraphs (3) through (22),

22 respectively; and

23 (B) by inserting after paragraph (1) the

24 following:

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

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

8 **SEC. 4. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
9 **GERED SPECIES ACT OF 1973.**

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

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

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

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

1 “(2) make publicly available through the inter-
2 net a searchable database, updated monthly, of the
3 information described in subsection (b).

4 “(b) INCLUDED INFORMATION.—The report shall in-
5 clude—

6 “(1) the case name and number of each covered
7 suit, and a hyperlink to the settlement decisions,
8 final decision, consent decrees, stipulations of dis-
9 missal, releases, interim decisions, motions to dis-
10 miss, partial motions for summary judgement, or re-
11 lated final documents;

12 “(2) a description of each claim or cause of ac-
13 tion in each covered suit;

14 “(3) the name of each covered agency whose ac-
15 tions give rise to any claim in a covered suit and
16 each plaintiff in such suit;

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

1 “(5) the number of full-time equivalent employ-
2 ees that participated in the activities described in
3 paragraph (4);

4 “(6) any information required to be published
5 under section 1304 of title 31, United States Code,
6 with respect to a covered suit;

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

14 “(8) any Federal funding used by a person or
15 a governmental or nongovernmental entity in bring-
16 ing a claim in a covered suit.

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

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

1 “(e) DEFINITIONS.—

2 “(1) COVERED AGENCY.—The term ‘covered
3 agency’ means any agency of the Department of the
4 Interior, the Forest Service, the Environmental Pro-
5 tection Agency, the National Marine Fisheries Serv-
6 ice, the Bonneville Power Administration, the West-
7 ern Area Power Administration, the Southwestern
8 Power Administration, or the Southeastern Power
9 Administration.

10 “(2) COVERED SUIT.—The term ‘covered suit’
11 means—

12 “(A) any civil action containing any claim
13 arising under this Act against the Federal Gov-
14 ernment and based on the action of a covered
15 agency; and

16 “(B) any administrative proceeding under
17 which the United States awards fees and other
18 expenses to a third party under section 504 of
19 title 5, United States Code.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 in the first section of such Act is amended by striking the
22 item relating to section 13 and inserting the following:

“Sec. 13. Disclosure of expenditures.”.

23 (c) PRIOR AMENDMENTS NOT AFFECTED.—This sec-
24 tion shall not be construed to affect the amendments made

1 by section 13 of such Act, as in effect before the enact-
2 ment of this Act.

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

5 Section 11(g)(4) of the Endangered Species Act of
6 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to
7 any” and all that follows through the end of the sentence
8 and inserting “in accordance with section 2412 of title 28,
9 United States Code and section 504 of title 5, United
10 States Code.”.

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