



Chairman Doc Hastings

H.R. 4315, *The Endangered Species Transparency & Reasonableness Act*

Improving the Endangered Species Act for Both Species and People

The Endangered Species Act (ESA) was created four decades ago in 1973 to preserve, protect, and recover key domestic species. Since that time, over 1,500 U.S. domestic species and sub-species have been listed. However, today the law is failing to achieve its primary purpose of species recovery and has only a 2 percent recovery rate.

Congress last renewed the ESA in 1988 - a time before iPhones, iPods, tablet computers, and the World Wide Web. This means it has been 26 years since any substantial updates have been made. There is strong support for conserving endangered species, yet there are key areas where improvements could be made to make the law more effective for both species and people in the 21st century. The Obama Administration's Director of the Fish and Wildlife Service even acknowledged that there could be "opportunities to make incremental improvements" to the ESA.

Excessive litigation has become one of the greatest obstacles to the success of the ESA. Instead of focusing on recovering endangered species, groups are using the ESA to file hundreds of lawsuits against the government – at taxpayers’ expense. In response, agencies have to spend time and financial resources addressing those lawsuits instead of species recovery.

In 2011, the Obama Administration negotiated, behind closed-doors, sweeping Endangered Species Act settlements with two litigious groups, greatly increasing ESA listings and habitat designations and impacting tens of thousands of acres and river miles across the country. The settlements require the Department of the Interior to decide by 2016 whether to list 779 species and designate critical habitat in all 50 states and Puerto Rico. These settlements shut out affected states, local governments, private property owners, and other stakeholders.



H.R. 4315, *the Endangered Species Transparency and Reasonableness Act*, is a common-sense bill that focuses on sensible, targeted updates to the Endangered Species Act in the areas of transparency and species recovery.

The bill is supported by all of the Members of the [ESA Congressional Working Group](#), representing districts across the nation, and is based on the recommendations and findings of their report and input from a broad array of stakeholders.

Section 2: Reflects the text of H.R. 4315, *the 21st Century Endangered Species Transparency Act*.

This legislation, sponsored by House Natural Resources Committee Chairman Doc Hastings, would require data used by federal agencies for ESA listing decisions to be made publicly available and accessible through the Internet. This is consistent with the Obama Administration's direction that federal agencies "create an unprecedented level of openness" through the regulations they make.

Despite the tremendous impact to people, communities, and species, federal agencies frequently are not making data and studies cited for key-listing decisions available or accessible, despite most of it being sponsored directly or indirectly through federal taxpayer-funded dollars. For example:

- The Fish and Wildlife Service, rather than using actual DNA data, based its decision to list a plant called the bladderpod largely on publicly inaccessible data from a 2006 "unpublished" manuscript.
- The federal government cited taxpayer-funded "studies" that conclude, without actual data, that listing the Greater Sage Grouse across 11 western states is warranted. Refusing to make taxpayer-funded data available to the American public flies in the face of transparency and good science.
- The Fish and Wildlife Service has proposed to list the Northern Long-Eared Bat (NLEB) as endangered in an area that covers portions of 39 states and the District of Columbia, despite data from many states showing increasing NLEB populations in many areas.

This common-sense improvement would allow the American people to actually see what science and data are being used to make key listing decisions. Posting data supporting key ESA decisions online will greatly enhance transparency, and is something that should have been done long ago.

Section 3: Reflects the text of H.R. 4317, *the State, Tribal, and Local Species Transparency and Recovery Act*.

This legislation, sponsored by Rep. Randy Neugebauer, would require the federal government to disclose to affected states all data used prior to any ESA listing decisions and require that the "best available scientific and commercial data" used by the federal government include data provided by affected states, tribes, and local governments.

Section 6 of the ESA requires the federal government to "cooperate to the maximum extent practicable with the States" in its implementation of the ESA. This bill clarifies section 6 by requiring the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to

disclose all data used in proposed and final species listings to states affected by such actions before any listing is final. This will ensure that states will be able to verify, dispute, or complement such information and encourage a stronger roles for states in species conservation policies affecting them.

The bill also ensures that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service do not ignore data and information provided to them by entities, such as states, local country governments, and tribal governments, that often have the most current and accurate information on-the-ground.

This legislation will enhance local, state, and tribal involvement in ESA listing decisions, and also ensure that the quality of data and science truly meets the best available scientific and commercial data standard required by the ESA.

Section 4: Reflects the text of H.R. 4316, *The Endangered Species Recovery Transparency Act*.

This legislation, sponsored by Rep. Cynthia Lummis, would require the U.S. Fish and Wildlife Service to track, report to Congress, and make available online:

- funds expended to respond to ESA lawsuits;
- the number of employees dedicated to litigation; and
- attorneys fees awarded in the course of ESA litigation and settlement agreements.

ESA policies have been increasingly driven by litigation, which has diverted attention and resources away from species recovery.

According to the Department of Justice, more than 500 ESA-related lawsuits were filed or opened against the federal government since 2009, and more than \$21 million has been awarded in taxpayer funded attorneys' fees to environmental lawyers through the Judgment Fund and the Equal Access to Justice Act. Some attorneys are paid as much as \$600 per hour for their efforts to sue under the ESA.

Yet the precise amount of money spent by federal agencies on ESA-related litigation, including the awarding of attorneys fees, is unattainable.

This bill focuses on increasing litigation transparency for public and congressional review. There should be a full and accurate accounting of how many tax dollars are funding lawsuits and lawyer fees instead of species recovery.

Section 5: Reflects the text of H.R. 4318, the *Endangered Species Litigation Reasonableness Act*.

This legislation, sponsored by Rep. Bill Huizenga (MI-02), would prioritize resources towards species protection by placing reasonable caps on attorneys' fees and making the ESA consistent with another federal law.

The Equal Access to Justice Act limits the hourly rate for prevailing attorney fees to \$125 per hour. However, no such fee cap currently exists under the ESA, and attorneys have often been awarded huge sums of taxpayer-funded money. This bill would put in place the same \$125 per hour cap on attorneys fees for suits filed under the ESA that currently exist under the Equal Access to Justice Act for Social Security disability, labor, veterans and other suits.

This bill makes government more efficient and more effective by helping focus ESA resources towards species protection and recovery instead of filling the pockets of lawyers.

Broad Support for H.R. 4315 - *The Endangered Species Transparency & Reasonableness Act*

This bill to improve and update the Endangered Species Act has been endorsed by over 25 organizations including:

<i>U.S. Chamber of Commerce</i>	<i>Recreational Off-Highway Vehicle Association</i>
<i>American Farm Bureau Federation</i>	<i>Specialty Equipment Market Association</i>
<i>Family Farm Alliance</i>	<i>Specialty Vehicle Institute of America</i>
<i>National Rural Electric Cooperatives Association</i>	<i>The Public Lands Council</i>
<i>National Endangered Species Act Reform Coalition</i>	<i>National Cattlemen's Beef Association</i>
<i>National Association of Conservation Districts</i>	<i>Washington Farm Bureau</i>
<i>National Association of Counties</i>	<i>Oregon Farm Bureau</i>
<i>Western Energy Alliance</i>	<i>Idaho Farm Bureau</i>
<i>American Logger's Council</i>	<i>Colorado Farm Bureau</i>
<i>Americans for Responsible Recreational Access</i>	<i>The Public Power Council</i>
<i>American Council of Snowmobile Associations</i>	<i>Northwest River Partners</i>
<i>BlueRibbon Coalition, Inc.</i>	<i>Wyoming County Commissioners Association</i>
<i>Motorcycle Industry Council</i>	<i>Wyoming Stock Growers Association</i>
<i>National Off-Highway Vehicle Conservation Council</i>	<i>Wyoming Association of Conservation Districts</i>
<i>Off-Road Business Association</i>	