



**Legislative Bulletin.....July 29, 2014**

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**H.R. 4315 - Endangered Species Transparency & Reasonableness Act**

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**H.R. 4315 - Endangered Species Transparency & Reasonableness Act —  
(Hastings, R-WA)**

**Order of Business:** [H.R. 4315](#) is scheduled to be considered on July 29, 2014, under a structured [rule](#) which provides for one hour of general debate equally divided, and makes in order four amendments found at the end of this bulletin.

**Summary:** This bill makes changes to the [Endangered Species Act](#) (ESA) and combines four bills passed out of the Natural Resources Committee.

Section 2: Requires the Secretary to make publicly available on the Internet the best scientific and commercial data that are the basis for each regulation and proposed regulation. The best scientific and commercial data includes all data submitted by a State, tribal, or county government. The only noted exception is at the request of a governor or state legislature, the Secretary shall not make available certain information which the State has determined public disclosure is prohibited by a State law due to the protection of personal information.

Section 3: Clarifies section 6(a) of the ESA to require the U.S. Fish and Wildlife Service and the National Marine Fisheries Service disclose all data used in proposed and final species listings to states affected before any listing is final.

Section 4: Requires the Secretary of the Interior, in consultation with the Commerce Secretary, to annually submit a report which details the federal government's expenditures for covered suits during the previous fiscal year. A covered suit is any civil action containing a claim against the federal government, in which the claim arises under the ESA and is based on the actions of a covered agency. A covered agency is defined as any agency of the Department of the Interior, the Forest Service, the National Marine Fisheries Service, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, or the Southeastern Power Administration.

The report is required to include:

- The case name and number of each covered suit, and a hyperlink to the record or decision for each covered suit (if available);
- A description of the claims in each covered suit;
- The name of each covered agency whose actions gave rise to a claim in a covered suit;
- Funds expended by each covered agency to respond, prepare, and negotiate a covered suit and the number of full-time equivalent employee that participated in the process; and
- Attorneys' fees and other expenses awarded in covered suits.

Section 5: Places the same cap (\$125 per hour) on the hourly rate of taxpayer-funded fees that may be awarded to attorneys that prevail in cases under the Equal Access to Justice Act to those cases filed under the citizen suit provision of the Endangered Species Act, making ESA consistent with current law.

**Additional Background:** This piece of legislation combines four bills, [H.R. 4315](#), [H.R. 4316](#), [H.R. 4317](#), and [H.R. 4318](#), with the goal of more transparency and cooperation between federal government and states with regard to the ESA.

In recent years, the number of listing petitions being processed by federal agencies implementing the ESA has risen drastically. The law requires that decisions to list species as threatened or endangered be made “solely on the basis of the best available scientific and commercial data.” However, according to the [committee report](#) for H.R. 4315, “the data and scientific information cited as support for federal ESA listing decisions, which often include unpublished studies or professional opinions rather than actual data, are frequently not made available or accessible to the public.” H.R. 4315 makes changes to the ESA to correct this problem and to require the public disclosure of data used to list species.

This bill also promotes the transparency of litigation costs relating to the ESA. Currently, there is no full accounting of ESA litigation costs borne by the taxpayer. In 2012, the [GAO](#) concluded the, “ESA was the third most expensive and litigious statute for the Agriculture Department (costing taxpayers \$1.63 million in attorneys’ fees and costs), and the most expensive and litigious statute for the entire Interior Department (costing the taxpayers \$22 million in attorneys’ fees and costs).” Section 4 of the bill is intended to give Congress and taxpayers a more accurate account of ESA litigation expenditures.

Finally, the bill [standardizes](#) the awarding of attorneys’ fees to prevailing parties against the federal government to limit the taxpayer-financed payouts in ESA lawsuits. The Equal Access to Justice Act limits attorney fees awards to \$125 per hour; however, the Natural Resources Committee has received testimony that attorneys under the current ESA’s citizen suit provision are being awarded, “upwards of \$400, \$500, and even \$700 or more per hour in taxpayer-funded fees.” This bill places the same cap on the hourly rate of fees that may be awarded under the Equal Access to Justice Act to those cases filed under the citizen suit provision of the ESA, making ESA consistent with current law.

**Committee Action:** All four bills which make up the amended version of H.R. 4315 were marked up and passed out of the Natural Resources Committee. Below is more information on each bill.

H.R. 4315 was introduced on March 27, 2014, by Representative Hastings. On April 8, 2014, the Committee on Natural Resources held a hearing on the bill, and on April 30, 2014, the Committee met to consider the bill which was adopted and favorably reported by a vote of [17-15](#).

H.R. 4316 was introduced on March 27, 2014, by Representative Lummis. On April 8, 2014, the Committee on Natural Resources held a hearing on the bill, and on April 30, 2014, the Committee met to consider the bill which was adopted and favorably reported by a vote of [22-16](#).

H.R. 4317 was introduced on March 27, 2014, by Representative Neugebauer. On April 8, 2014, the Committee on Natural Resources held a hearing on the bill, and on April 30, 2014, the Committee met to consider the bill which was adopted and favorably reported by a vote of [26-16](#).

H.R. 4318 was introduced on March 27, 2014, by Representative Huizenga. On April 8, 2014, the Committee on Natural Resources held a hearing on the bill, and on April 30, 2014, the Committee met to consider the bill which was adopted and favorably reported by a vote of [27-15](#).

**Amendments Made in Order:**

[Hastings \(R-WA\) #2](#)- Make two amendments to Section 2 of the bill to clarify the extent of disclosure policy as it relates to State law and to Department of Defense classified information.

[Defazio \(D-OR\) #1](#) - Excludes any data, study, or survey that has been published solely in an internal Department of the Interior publication from the term 'best scientific and commercial data available.' This amendment aims to limit the disclosure provisions of the bill.

[Holt \(D-NJ\), Huffman \(D-CA\) #3](#) - Strikes the section that deems data submitted by a State, tribal, or county government to be included in the term 'best scientific and commercial data available.' This amendment aims to limit the disclosure provisions of the bill.

[Duffy \(R-WI\) #4](#) - Includes any Federal funding used by a person or a governmental or non-governmental entity in bringing a claim in a covered suit to the reporting requirements found in Section 4.

**Outside Groups Support:** According to a list provided by the Natural Resources Committee:

American Council of Snowmobile  
Associations  
American Farm Bureau Federation  
American Forest Resource Council

American Loggers Council  
Americans for Responsible Recreational  
Access  
American Petroleum Institute

BlueRibbon Coalition, Inc.  
Colorado Farm Bureau  
Family Farm Alliance  
Idaho Farm Bureau  
Motorcycle Industry Council  
National Association of Conservation  
Districts  
National Association of Counties  
National Cattlemen’s Beef Association  
National Endangered Species Act Reform  
Coalition  
National Off-Highway Vehicle  
Conservation Council  
National Rural Electric Cooperatives  
Association  
Northwest River Partners

Off-Road Business Association  
Oregon Farm Bureau  
Recreational Off-Highway Vehicle  
Association  
Specialty Equipment Market Association  
Specialty Vehicle Institute of America  
The Public Lands Council  
The Public Power Council  
U.S. Chamber of Commerce  
Washington Farm Bureau  
Western Energy Alliance  
Wyoming Association of Conservation  
Districts  
Wyoming County Commissioners  
Association  
Wyoming Stock Growers Association

**Outside Groups Oppose:**  
[Environmental Group Coalition Letter](#)

**Administration Position:** “The Administration strongly opposes H.R. 4315, which is a bill that would rigidly constrain science, public input, and data in making Endangered Species Act (ESA) determinations. If the President were presented with H.R. 4315, his senior advisers would recommend that he veto the bill.”

**Cost to Taxpayers:** An updated CBO score was not available as of press time.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Constitutional Authority:** According to the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, clause 18 of the United States Constitution: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” Read the statement [here](#).

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