

H.R. 6345, the EMPOWERS Act

Rep. Steve Pearce (NM-02)

Boost the Flow of Information for Endangered Species Act Listing Decisions

Consultation with Governors of affected states will improve listing decisions

Dear Colleague:

The decision to list a species under the Endangered Species Act (ESA) is an extremely complex one involving intensive data collection, determination of species habitat ranges and populations, analysis of historical fluctuations and a final all-inclusive decision as to whether the listing is necessary to conserve the species.

The sheer number of factors that must be considered in order to arrive at a proper species listing decision means that no single entity can possibly gather and review the amount of required information without considering input from several other entities. Structurally speaking, the function of the agency responsible for making decisions as to a listing is just that – to make a decision. But it is widely acknowledged that this cannot be accomplished by performing all of the information-gathering “in-house”.

Public comment periods and other pipelines are effective mechanisms for outside entities to transfer important information concerning a listing to the Fish and Wildlife Service or the National Ocean and Atmospheric Administration. But for some kinds of outside entities, the presence of such a pipeline isn’t sufficient to ensure all relevant information is considered by those agencies when they make a decision.

The clearest example of such a non-decisionmaking entity that should, without question, be consulted when listing decisions are being made are impacted States. **It’s noncontroversial to say that under no circumstances should the information and counsel of States impact by a species listing not be considered by the decision-making agency.** Their privileged position with respect to data availability, individual State-level considerations that federal bureaucrats may not be privy to, and their routinely superior understanding of species range and population level history all point to the necessity for proper consultation of States by decision-makers.

While a pipeline under the Act exists for States to provide their input, the fact that the Act itself imposes no special requirement upon decision-makers to consult States has become, with the passage of time, a glaring omission. Such consultation requirements will ensure that no privileged or State-specific information slips through the cracks when listing decisions are made. Any burden this might impose as an extra step for decision-makers is clearly justified by improvements to the quality of listing decisions. The Ensuring Meaningful Petition Outreach While Enhancing Rights of States Act, also known as the EMPOWERS Act, aims to improve such consultation.

These noncontroversial principles are given statutory heft in this simple legislation by 1) Ensuring that agencies making decisions about Endangered Species Act listings consult States before so doing, and; 2) Requiring decision-making agencies to provide explanation when their decisions diverge from the findings or advice of States.

With questions or to support this bill, contact robert.macgregor@mail.house.gov (Pearce) and jeff.small@mail.house.gov (Western Caucus).

Sincerely,

Steve Pearce
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress