

Showing Current Law as Amended by H.R. 3608

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)

Section 4 (16 U.S.C. 1533)

§1533. Determination of endangered species and threatened species

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(b) Basis for determinations

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(9) The Secretary shall make publicly available on the Internet the best scientific and commercial data available that are the basis for each regulation, including each proposed regulation, promulgated under subsection (a)(1), except that, at the request of a Governor, State agency, or legislature of a State, the Secretary shall not make available under this paragraph information regarding which the State has determined public disclosure is prohibited by a law or regulation of that State, including any law or regulation requiring the protection of personal information; and except that within 30 days after the date of the enactment of this paragraph, the Secretary shall execute an agreement with the Secretary of Defense that prevents the disclosure of classified information pertaining to Department of Defense personnel, facilities, lands, or waters.

Section 6 (16 U.S.C. 1535)

§1535. Cooperation with States

(a) Generally

(1) In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the States.

(2) Such cooperation shall include—

(A) before making a determination under section 4(a), providing to States affected by such determination all data that is the basis of the determination; and

(B) consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

Section 3 (16 U.S.C. 1532)

§1532. Definitions

For the purposes of this chapter—

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

§1536. Interagency cooperation

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(n) Judicial review

Any person, as defined by [section 1532\(13\)](#) [section 3\(16\)](#) of this title, may obtain judicial review, under [chapter 7 of title 5](#), of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in [section 2112 of title 28](#). Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

Section 13 (not codified)

[Conforming Amendments – not indicated here because all have executed]

SEC. 13. DISCLOSURE OF EXPENDITURES.

(a) Requirement- The Secretary of the Interior, in consultation with the Secretary of Commerce, shall--

(1) not later than 90 days after the end of each fiscal year, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an annual report detailing Federal Government expenditures for covered suits during the preceding fiscal year (including the information described in subsection (b)); and

(2) make publicly available through the Internet a searchable database of the information described in subsection (b).

(b) Included Information- The report shall include--

(1) the case name and number of each covered suit, and a hyperlink to the record or decision for each covered suit (if available);

(2) a description of the claims in each covered suit;

(3) the name of each covered agency whose actions gave rise to a claim in a covered suit;

(4) funds expended by each covered agency (disaggregated by agency account) to receive and respond to notices referred to in [section 11\(g\)\(2\)](#) or to prepare for litigation of, litigate, negotiate a settlement agreement or consent decree in, or provide material, technical, or other assistance in relation to, a covered suit;

(5) the number of full-time equivalent employees that participated in the activities described in paragraph (4);

(6) attorneys fees and other expenses (disaggregated by agency account) awarded in covered suits, including any consent decrees or settlement agreements (regardless of whether a decree or settlement agreement is sealed or otherwise subject to nondisclosure provisions), including the bases for such awards; and

(7) any Federal funding used by a person or a governmental or nongovernmental entity in bringing a claim in a covered suit.

(c) Requirement To Provide Information- The head of each covered agency shall provide to the Secretary in a timely manner all information requested by the Secretary to comply with the requirements of this section.

(d) Limitation on Disclosure- Notwithstanding any other provision of this section, this section shall not affect any restriction in a consent decree or settlement agreement on the disclosure of information that is not described in subsection (b).

(e) Definitions-

(1) COVERED AGENCY- The term “covered agency” means 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.

(2) COVERED SUIT- The term “covered suit” means any civil action containing a claim against the Federal Government, in which the claim arises under this Act and is based on the action of a covered agency.

Section 11 (16 U.S.C. 1540)

§1540. Penalties and enforcement

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(g) Citizen suits

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf-

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to [section 1535\(g\)\(2\)\(B\)\(ii\) of this title](#), the prohibitions set forth in or authorized pursuant to [section 1533\(d\) or 1538\(a\)\(1\)\(B\) of this title](#) with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under [section 1533 of this title](#) which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section-

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section-

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under [section 1535\(g\)\(2\)\(B\)\(ii\) of this title](#) to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) [\[to any party, whenever the court determines such award is appropriate.\]](#) [to any prevailing party in accordance with section 2412 of title 28, United States Code.](#)

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).