

113th CONGRESS

1st Session

**H. R. 1314**

To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements.

**IN THE HOUSE OF REPRESENTATIVES**

**March 21, 2013**

Mr. FLORES (for himself, Mr. CARTER, Mr. CONAWAY, Mr. THORNBERRY, and Mr. PEARCE) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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**A BILL**

To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DEFINITIONS.**

Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended--

(1) by redesignating--

(A) paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) paragraphs (5) through (10) as paragraphs (7) through (12), respectively; and

(C) paragraphs (12) through (21) as paragraphs (13) through (22), respectively;

(2) by adding before paragraph (2) (as so redesignated) the following:

“(1) **AFFECTED PARTIES**- The term ‘affected party’ means any person, including a business entity, or any State, tribal government, or local subdivision the rights of which may be affected by a determination made under section 4(a) in a suit brought under section 11(g)(1)(C).’; and

(3) by adding after paragraph (5) (as so redesignated) the following:

`(6) COVERED SETTLEMENT- The term `covered settlement' means a consent decree or a settlement agreement in an action brought under section 11(g)(1)(C).'

## **SEC. 2. INTERVENTION; APPROVAL OF COVERED SETTLEMENT.**

Section 11(g) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended--

(1) in paragraph (3), by adding at the end the following:

`(C) PUBLISHING COMPLAINT; INTERVENTION-

`(i) PUBLISHING COMPLAINT-

`(I) IN GENERAL- Not later than 30 days after the date on which the plaintiff serves the defendant with the complaint in an action brought under paragraph (1)(C) in accordance with Rule 4 of the Federal Rules of Civil Procedure, the Secretary of the Interior shall publish the complaint in a readily accessible manner, including electronically.

`(II) FAILURE TO MEET DEADLINE- The failure of the Secretary to meet the 30-day deadline described in subclause (I) shall not be the basis for an action under paragraph (1)(C).

`(ii) MOTION TO INTERVENE-

`(I) IN GENERAL- After the end of the 30-day period described in clause (i), each affected party shall be given a reasonable opportunity to move to intervene in the action described in clause (i), until the end of which a party may not file a motion for a consent decree or to dismiss the case pursuant to a settlement agreement.

`(II) REBUTTABLE PRESUMPTION- In considering a motion to intervene by any affected party, the court shall presume, subject to rebuttal, that the interests of that party would not be represented adequately by the parties to the action described in clause (i).

`(iii) REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION- If the court grants a motion to intervene in the action, the court shall refer the action to facilitate settlement discussions to--

`(I) the mediation program of the court; or

`(II) a magistrate judge.

`(iv) PARTIES INCLUDED IN SETTLEMENT DISCUSSIONS- The settlement discussions described in clause (i) shall include each plaintiff, defendant agency, and intervenor.';

(2) by striking paragraph (4) and inserting the following:

`(4) LITIGATION COSTS-

`(A) IN GENERAL- Except as provided in subparagraph (B), the court, in issuing any final order in any suit brought under paragraph (1), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

`(B) COVERED SETTLEMENT-

`(i) CONSENT DECREES- The court shall not award costs of litigation in any proposed covered settlement that is a consent decree.

`(ii) OTHER COVERED SETTLEMENTS-

`(I) IN GENERAL- For a proposed covered settlement other than a consent decree, the court shall ensure that the covered settlement does not include payment to any plaintiff for the costs of litigation.

`(II) MOTIONS- The court shall not grant any motion, including a motion to dismiss, based on the proposed covered settlement described in subclause (I) if the covered settlement includes payment to any plaintiff for the costs of litigation.'; and

(3) by adding at the end the following:

`(6) APPROVAL OF COVERED SETTLEMENT-

`(A) DEFINITION OF SPECIES- In this paragraph, the term `species' means a species that is the subject of an action brought under paragraph (1)(C).

`(B) IN GENERAL-

`(i) CONSENT DECREES- The court shall not approve a proposed covered settlement that is a consent decree unless each State and county in which the Secretary of the Interior believes a species occurs approves the covered settlement.

`(ii) OTHER COVERED SETTLEMENTS-

`(I) IN GENERAL- For a proposed covered settlement other than a consent decree, the court shall ensure that the covered settlement is approved by each State and county in which the Secretary of the Interior believes a species occurs.

`(II) MOTIONS- The court shall not grant any motion, including a motion to dismiss, based on the proposed covered settlement described in subclause (I) unless the covered settlement is approved by each State and county in which the Secretary of the Interior believes a species occurs.

`(C) NOTICE-

`(i) IN GENERAL- The Secretary of the Interior shall provide each State and county in which the Secretary of the Interior believes a species occurs notice of a proposed covered settlement.

`(ii) DETERMINATION OF RELEVANT STATES AND COUNTIES- The defendant in a covered settlement shall consult with each State described in clause (i) to determine each county in which the Secretary of the Interior believes a species occurs.

`(D) FAILURE TO RESPOND- The court may approve a covered settlement or grant a motion described in subparagraph (B)(ii)(II) if, not later than 45 days after the date on which a State or county is notified under subparagraph (C)--

`(i)(I) a State or county fails to respond; and

`(II) of the States or counties that respond, each State or county approves the covered settlement; or

`(ii) all of the States and counties fail to respond.

`(E) PROOF OF APPROVAL- The defendant in a covered settlement shall prove any State or county approval described in this paragraph in a form--

`(i) acceptable to the State or county, as applicable; and

`(ii) signed by the State or county official authorized to approve the covered settlement.'

*END*