

## House committee advances on ESA reform

It's all a matter of perspective with endangered species and litigation. What for some is a bid for transparency is for others an attempt at radical destruction.

The House of Representatives' Natural Resources Committee voted to advance a quartet of bills seeking to amend the Endangered Species Act (ESA) and related activities to the full House. The four bills all seek to create greater transparency in the ESA, as well as limit excesses in lawsuits related to the ESA.

The four bills and their sponsors are as follows:

- H.R. 4315, 21st Century Endangered Species Transparency Act; Doc Hastings (R-WA4);
- H.R. 4316, Endangered Species Recovery Transparency Act; Cynthia Lummis (R-WY at large);
- H.R. 4317, State, Tribal, and Local Species Transparency and Recovery Act; Randy Neugebauer (R-TX19); and
- H.R. 4318, Endangered Species Litigation Reasonableness Act; Bill Huizenga (R-MI2).

All of the bills are tiny by usual governmental standards and overlap in content. Both H.R. 4315 and H.R. 4317 seek to amend the ESA to require the government to disclose information regarding listing decisions. H.R. 4315 would require that all information used in listing decisions be made public on the Internet, while H.R. 4317 would require the data used for listing decisions to be furnished to affected states, counties and tribes.

H.R. 4316 and H.R. 4318 focus on the lawsuits that often revolve around the ESA. Of the two, H.R. 4318 is the simplest, just seeking to amend the ESA to limit who can be awarded attorney fees from "any" to people and groups already listed in the U.S. Code. H.R. 4316, on the other hand, seeks to require the government to publish online the expenditures paid out to litigants regarding the ESA following each fiscal year. Though the Equal Access to Justice Act (EAJA) is not directly mentioned, the language of the bill is reminiscent of bills attempting to amend the EAJA.

All four bills passed the 47-person committee, though votes were on partisan lines with the Republican majority voting yes and Democrats voting no. The bills were reportedly based on the findings of the ESA Working Group.

"I am very pleased to see that our thorough investigation and thoughtful legislation is making headway to improve the ESA for both species and people," said Lummis, who chaired the ESA Working Group, in her announcement of the vote.

"These common sense bills that will soon be ready for consideration on the House floor are modest updates to the ESA."

She said the bills were "small but important steps" in bringing the ESA "into the 21st century."

Neugebauer voiced similar thoughts in his own response to the vote.

“With the recent threatened listing of the Lesser Prairie Chicken, the announcement that environmental activists are suing to make the listing even stricter, and growing complaints about federal government overreach on private and public lands, it’s never been more important to reform the Endangered Species Act (ESA).”

Neugebauer also sponsored another bill focused on the ESA—H.R. 4284, the ESA Improvement Act—but that has not yet been voted upon by the committee.

Of course, not everyone is happy that the four bills will move on to the full House, where they are expected to find a receptive audience.

Brett Hartl, Center for Biological Diversity’s Endangered Species Policy Director, denounced the bills as “radical changes” to the ESA and suggested politics and agenda was behind the votes in the group’s response.

“Rather than focus on what’s really needed— more funding to save endangered species—Rep. Hastings and other extreme Republicans have voted to hamstringing the Fish and Wildlife Service, whittle away at citizen participation in enforcing the act, and put imperiled species at greater risk of harm from poaching.”

Hartl asserted that the requirement to publicly publish all data and listing information online would result in greater poaching. The group asserted the requirement to list litigation expenditures was unnecessary, claiming information is already provided by the Department of Justice.

Also cited was a recent Government Accountability Office report on the topic of EAJA, which claimed litigation brought by environmental groups was not out of control. However, the report itself also noted that data presented was not complete and there was no requirement to track, let alone report, all litigation expenses.

Karen Budd-Falen, a land rights attorney out of Wyoming, told a meeting of ranchers earlier in the year that the goal of the EAJA was to allow “the little guy” to fight the government. However, the EAJA has limitations on just how little the little guy could be.

“When President Reagan signed that act, he said that there should be a \$7 million net worth cap so that if your net worth is over \$7 million you can’t even apply for attorney’s fees. So if you have a ranch or if you have a business and its worth over \$7 million, you can’t even apply for attorney’s fees even if you sue the federal government and the federal government’s a bully and you win. The problem is that does not apply to ‘non-profit public interest’ groups.”

She noted at the time that the Center for Biological Diversity’s net worth for 2010 was \$10 million and they regularly sue the federal government, which then reimburses their attorney fees at many times over that of private citizens.

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