

113TH CONGRESS  
1ST SESSION

# H. R. 1314

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

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## 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 juris-  
diction 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

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

6 (1) by redesignating—

7 (A) paragraphs (1) through (4) as para-  
8 graphs (2) through (5), respectively;

1 (B) paragraphs (5) through (10) as para-  
2 graphs (7) through (12), respectively; and

3 (C) paragraphs (12) through (21) as para-  
4 graphs (13) through (22), respectively;

5 (2) by adding before paragraph (2) (as so re-  
6 designated) the following:

7 “(1) AFFECTED PARTIES.—The term ‘affected  
8 party’ means any person, including a business enti-  
9 ty, or any State, tribal government, or local subdivi-  
10 sion the rights of which may be affected by a deter-  
11 mination made under section 4(a) in a suit brought  
12 under section 11(g)(1)(C).”;

13 (3) by adding after paragraph (5) (as so redesi-  
14 gnated) the following:

15 “(6) COVERED SETTLEMENT.—The term ‘cov-  
16 ered settlement’ means a consent decree or a settle-  
17 ment agreement in an action brought under section  
18 11(g)(1)(C).”.

19 **SEC. 2. INTERVENTION; APPROVAL OF COVERED SETTLE-**  
20 **MENT.**

21 Section 11(g) of the Endangered Species Act of 1973  
22 (16 U.S.C. 1540) is amended—

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

1                   “(C) PUBLISHING COMPLAINT; INTERVEN-  
2                   TION.—

3                   “(i) PUBLISHING COMPLAINT.—

4                                 “(I) IN GENERAL.—Not later  
5                                 than 30 days after the date on which  
6                                 the plaintiff serves the defendant with  
7                                 the complaint in an action brought  
8                                 under paragraph (1)(C) in accordance  
9                                 with Rule 4 of the Federal Rules of  
10                                 Civil Procedure, the Secretary of the  
11                                 Interior shall publish the complaint in  
12                                 a readily accessible manner, including  
13                                 electronically.

14                                 “(II) FAILURE TO MEET DEAD-  
15                                 LINE.—The failure of the Secretary to  
16                                 meet the 30-day deadline described in  
17                                 subclause (I) shall not be the basis for  
18                                 an action under paragraph (1)(C).

19                   “(ii) MOTION TO INTERVENE.—

20                                 “(I) IN GENERAL.—After the end  
21                                 of the 30-day period described in  
22                                 clause (i), each affected party shall be  
23                                 given a reasonable opportunity to  
24                                 move to intervene in the action de-  
25                                 scribed in clause (i), until the end of

1 which a party may not file a motion  
2 for a consent decree or to dismiss the  
3 case pursuant to a settlement agree-  
4 ment.

5 “(II) REBUTTABLE PRESUMP-  
6 TION.—In considering a motion to in-  
7 tervene by any affected party, the  
8 court shall presume, subject to rebut-  
9 tal, that the interests of that party  
10 would not be represented adequately  
11 by the parties to the action described  
12 in clause (i).

13 “(iii) REFERRAL TO ALTERNATIVE  
14 DISPUTE RESOLUTION.—If the court  
15 grants a motion to intervene in the action,  
16 the court shall refer the action to facilitate  
17 settlement discussions to—

18 “(I) the mediation program of  
19 the court; or

20 “(II) a magistrate judge.

21 “(iv) PARTIES INCLUDED IN SETTLE-  
22 MENT DISCUSSIONS.—The settlement dis-  
23 cussions described in clause (i) shall in-  
24 clude each plaintiff, defendant agency, and  
25 intervenor.”;

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

3           “(4) LITIGATION COSTS.—

4                   “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), the court, in issuing any  
6 final order in any suit brought under paragraph  
7 (1), may award costs of litigation (including  
8 reasonable attorney and expert witness fees) to  
9 any party, whenever the court determines such  
10 award is appropriate.

11                   “(B) COVERED SETTLEMENT.—

12                           “(i) CONSENT DECREES.—The court  
13 shall not award costs of litigation in any  
14 proposed covered settlement that is a con-  
15 sent decree.

16                           “(ii) OTHER COVERED SETTLE-  
17 MENTS.—

18                                   “(I) IN GENERAL.—For a pro-  
19 posed covered settlement other than a  
20 consent decree, the court shall ensure  
21 that the covered settlement does not  
22 include payment to any plaintiff for  
23 the costs of litigation.

24                                   “(II) MOTIONS.—The court shall  
25 not grant any motion, including a mo-

1                   tion to dismiss, based on the proposed  
2                   covered settlement described in sub-  
3                   clause (I) if the covered settlement in-  
4                   cludes payment to any plaintiff for the  
5                   costs of litigation.”; and

6                   (3) by adding at the end the following:

7                   “(6) APPROVAL OF COVERED SETTLEMENT.—

8                   “(A) DEFINITION OF SPECIES.—In this  
9                   paragraph, the term ‘species’ means a species  
10                  that is the subject of an action brought under  
11                  paragraph (1)(C).

12                  “(B) IN GENERAL.—

13                  “(i) CONSENT DECREES.—The court  
14                  shall not approve a proposed covered set-  
15                  tlement that is a consent decree unless  
16                  each State and county in which the Sec-  
17                  retary of the Interior believes a species oc-  
18                  curs approves the covered settlement.

19                  “(ii) OTHER COVERED SETTLE-  
20                  MENTS.—

21                  “(I) IN GENERAL.—For a pro-  
22                  posed covered settlement other than a  
23                  consent decree, the court shall ensure  
24                  that the covered settlement is ap-  
25                  proved by each State and county in

1                   which the Secretary of the Interior be-  
2                   lieves a species occurs.

3                   “(II) MOTIONS.—The court shall  
4                   not grant any motion, including a mo-  
5                   tion to dismiss, based on the proposed  
6                   covered settlement described in sub-  
7                   clause (I) unless the covered settle-  
8                   ment is approved by each State and  
9                   county in which the Secretary of the  
10                  Interior believes a species occurs.

11                  “(C) NOTICE.—

12                  “(i) IN GENERAL.—The Secretary of  
13                  the Interior shall provide each State and  
14                  county in which the Secretary of the Inte-  
15                  rior believes a species occurs notice of a  
16                  proposed covered settlement.

17                  “(ii) DETERMINATION OF RELEVANT  
18                  STATES AND COUNTIES.—The defendant in  
19                  a covered settlement shall consult with  
20                  each State described in clause (i) to deter-  
21                  mine each county in which the Secretary of  
22                  the Interior believes a species occurs.

23                  “(D) FAILURE TO RESPOND.—The court  
24                  may approve a covered settlement or grant a  
25                  motion described in subparagraph (B)(ii)(II) if,

1 not later than 45 days after the date on which  
2 a State or county is notified under subpara-  
3 graph (C)—

4 “(i)(I) a State or county fails to re-  
5 spond; and

6 “(II) of the States or counties that re-  
7 spond, each State or county approves the  
8 covered settlement; or

9 “(ii) all of the States and counties fail  
10 to respond.

11 “(E) PROOF OF APPROVAL.—The defend-  
12 ant in a covered settlement shall prove any  
13 State or county approval described in this para-  
14 graph in a form—

15 “(i) acceptable to the State or county,  
16 as applicable; and

17 “(ii) signed by the State or county of-  
18 ficial authorized to approve the covered  
19 settlement.”.

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