

## ENDANGERED SPECIES RECOVERY TRANSPARENCY ACT

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JULY 17, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 4316]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4316) to amend the Endangered Species Act of 1973 to improve the disclosure of certain expenditures under that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Endangered Species Recovery Transparency Act”.

#### SEC. 2. DISCLOSURE OF EXPENDITURES UNDER ENDANGERED SPECIES ACT OF 1973.

(a) REQUIREMENT TO DISCLOSE.—Section 13 of the Endangered Species Act of 1973 (87 Stat. 902; relating to conforming amendments which have executed) is amended to read as follows:

#### “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); and

“(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.

“(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.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking the item relating to such section and inserting the following:

“Sec. 13. Disclosure of expenditures.”.

(c) PRIOR AMENDMENTS NOT AFFECTED.—This section shall not be construed to affect the amendments made by section 13 of such Act, as in effect before the enactment of this Act.

## PURPOSE OF THE BILL

The purpose of H.R. 4316 is to amend the Endangered Species Act of 1973 to improve the disclosure of certain expenditures under that Act.

## BACKGROUND AND NEED FOR LEGISLATION

H.R. 4316, as amended, is intended to ensure public transparency of litigation costs paid by American taxpayers relating to the Endangered Species Act (ESA) by requiring the Secretary of the Interior to track and report to Congress and make available online: 1) the total funds expended to respond to ESA lawsuits; 2) the number of federal employees dedicated to ESA lawsuits; and 3) attorneys’ fees awarded in the course of ESA lawsuits and settlements.

The Natural Resources Committee, through multiple hearings over the past three years, has received testimony from numerous witnesses and direct evidence from the U.S. Department of Justice that ESA lawsuits and threats of lawsuits are distracting federal agencies from their mission of species conservation and recovery. Much of the litigation is over procedure, such as federal agencies missing statutory 90-day or 12-month deadlines in responding to a

rising number of petitions to list species as threatened or endangered.

In an April 20, 2011, New York Times article titled, “Wildlife at Risk Face Long Line at U.S. Agency,” the U.S. Fish and Wildlife Service (FWS) acknowledged the number of petitions to list has proliferated from an average of 20 petitions from 1994 to 2006 to more than 1,200 since 2009. At an August 1, 2013, hearing of the Natural Resources Committee, the current FWS Director, Mr. Dan Ashe, acknowledged that “when the Service is sued for missing deadlines, we have no defense.”

Mr. David Hayes, who served as Deputy Interior Secretary during both the Clinton and Obama Administrations, stated during a March 22, 2013, speech before the Environmental Law and Policy Annual Review in Washington, D.C. that: “My major concern is timing, resource needs, the fact that this has been fish-in-the-barrel litigation for folks, who because there’s a deadline, and we miss these deadlines, and so, we’ve been spending a huge amount of, in my mind, relatively unproductive time fending off lawsuits in this arena.”

While the actual total cost of ESA litigation remains elusive, isolated disclosures from the current Administration suggest that responding to ESA lawsuits consumes significant agency resources. For example, the FWS Fiscal Year 2013 budget allocated \$20.9 million for endangered species listings and critical habitat designations, and it acknowledged that 86 full time employees devoted their attention to complying with court orders or settlement agreements resulting from litigation.

In addition, the federal government is routinely awarding taxpayer-funded attorneys’ fees to plaintiffs in ESA lawsuits. According to a 2012 Government Accountability Office (GAO) report of cases filed against the Departments of the Interior and Agriculture between 2000 and 2010, the ESA was the third most expensive and litigious statute for the Agriculture Department (costing taxpayers \$1.63 million in attorneys’ fees and costs), and the most expensive and litigious statute for the entire Interior Department (costing the taxpayers \$22 million in attorneys’ fees and costs). In its Fiscal Year 2015 budget request for the Office of the Solicitor, the Interior Department voluntarily disclosed that it had paid over \$1.6 million in attorneys’ fees in Fiscal Year 2013.

Despite these piecemeal disclosures, there is no full accounting of ESA litigation costs borne by the taxpayer. According to the previously mentioned 2012 GAO report, most federal agencies within the Departments of the Interior and Agriculture do not keep detailed records of the litigation, including the cases where they are required to pay attorneys’ fees, or even the type of the cases that involve particular statutes such as the ESA. Former Interior Secretary Ken Salazar acknowledged at a 2012 budget hearing before the Natural Resources Committee that he could not identify how much money his agency spent on ESA-related litigation.

Prior to 1995, federal agencies, including the Department of the Interior, were required to report attorneys’ fees paid out as part of the Equal Access to Justice Act. The Department of the Interior has demonstrated the ability to track not just attorneys’ fees, but also the cost of staff hours devoted to specific activities. For example, during an April 3, 2014, hearing on the Interior Department’s

Fiscal Year 2015 budget, Interior Secretary Jewell was able to estimate how many tax dollars and staff hours have been devoted to responding to document requests by the Natural Resources Committee.

H.R. 4316 is intended to build on the Department's isolated instances of litigation disclosure to further the public's right to transparency, giving Congress and the federal taxpayer a complete and accessible accounting of expenditures on ESA litigation—expenditures that could otherwise be devoted to the core ESA mission of recovering species.

As amended at Committee, the bill also ensures that electricity ratepayers served by the Power Marketing Administrations (the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration and the Southeastern Power Administration) have a clear picture of how ESA costs are impacting their electricity rates. Though not comprehensively reported, some ESA-related costs incurred by the PMAs can be extraordinary. For example, the Bonneville Power Administration, which is one of the named defendants in long-standing ESA litigation on the operation of the Federal Columbia River Power System, has paid over \$1.5 million ratepayer dollars in attorneys' fees to the plaintiffs and spent hundreds of hours in federal district court that have not been measured in terms of costs to ratepayers.

H.R. 4316, as amended, makes no change to the citizen suit provision of ESA. It simply requires the agencies covered under the bill to provide transparent costs borne by the American public.

#### COMMITTEE ACTION

H.R. 4316 was introduced on March 27, 2014, by Congresswoman Cynthia M. Lummis (R-WY). The bill was referred to the Committee on Natural Resources. On April 8, 2014, the Committee held a hearing on the bill, and on April 30, 2014, the Committee met to consider the bill. Congresswoman Lummis offered an amendment designated .033 to the bill; the amendment was adopted by a roll call vote of 22 to 16, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

113th Congress

Date: April 30, 2014

Recorded Vote #: 2

Meeting on / Amendment on: **H.R. 4316 - Lummis.033**, was AGREED TO by a roll call vote of 22 yeas and 16 nays.

| MEMBERS                           | Yes | No | Pres | MEMBERS                    | Yes | No | Pres |
|-----------------------------------|-----|----|------|----------------------------|-----|----|------|
| <b>Mr. Hastings, WA, Chairman</b> | X   |    |      | <b>Mr. Duncan of SC</b>    | X   |    |      |
| <i>Mr. DeFazio, OR, Ranking</i>   |     | X  |      | <i>Mr. Cardenas, CA</i>    |     | X  |      |
| <b>Mr. Young, AK</b>              |     |    |      | <b>Mr. Tipton, CO</b>      | X   |    |      |
| <i>Mr. Faleomavaega, AS</i>       |     |    |      | <i>Mr. Huffman, CA</i>     |     | X  |      |
| <b>Mr. Gohmert, TX</b>            | X   |    |      | <b>Mr. Gosar, AZ</b>       | X   |    |      |
| <i>Mr. Pallone, NJ</i>            |     | X  |      | <i>Mr. Ruiz, CA</i>        |     | X  |      |
| <b>Mr. Bishop, UT</b>             | X   |    |      | <b>Mr. Labrador, ID</b>    | X   |    |      |
| <i>Mrs. Napolitano, CA</i>        |     | X  |      | <i>Ms. Shea-Porter, NH</i> |     | X  |      |
| <b>Mr. Lamborn, CO</b>            | X   |    |      | <b>Mr. Southerland, FL</b> |     |    |      |
| <i>Mr. Holt, NJ</i>               |     |    |      | <i>Mr. Lowenthal, CA</i>   |     | X  |      |
| <b>Mr. Wittman, VA</b>            | X   |    |      | <b>Mr. Flores, TX</b>      |     |    |      |
| <i>Mr. Grijalva, AZ</i>           |     | X  |      | <i>Mr. Garcia, FL</i>      |     |    |      |
| <b>Mr. Broun, GA</b>              | X   |    |      | <b>Mr. Runyan, NJ</b>      | X   |    |      |
| <i>Ms. Bordallo, GU</i>           |     | X  |      | <i>Mr. Cartwright, PA</i>  |     | X  |      |
| <b>Mr. Fleming, LA</b>            | X   |    |      | <b>Mr. Mullin, OK</b>      | X   |    |      |
| <i>Mr. Costa, CA</i>              |     | X  |      | <i>Ms. Clark, MA</i>       |     | X  |      |
| <b>Mr. McClintock, CA</b>         | X   |    |      | <b>Mr. Daines, MT</b>      | X   |    |      |
| <i>Mr. Sablan, CNMI</i>           |     | X  |      | <b>Mr. Cramer, ND</b>      | X   |    |      |
| <b>Mr. Thompson, PA</b>           | X   |    |      | <b>Mr. LaMalfa, CA</b>     | X   |    |      |
| <i>Ms. Tsongas, MA</i>            |     | X  |      | <b>Mr. Smith, MO</b>       | X   |    |      |
| <b>Mrs. Lummis, WY</b>            | X   |    |      | <b>Mr. McAllister, LA</b>  |     |    |      |
| <i>Mr. Pierluisi, PR</i>          |     |    |      | <b>Mr. Byrne, AL</b>       | X   |    |      |
| <b>Mr. Benishek, MI</b>           | X   |    |      | <i>Vacancy</i>             |     |    |      |
| <i>Ms. Hanabusa, HI</i>           |     | X  |      |                            |     |    |      |
|                                   |     |    |      |                            |     |    |      |
|                                   |     |    |      | <b>TOTALS</b>              | 22  | 16 |      |

No further amendments were offered, and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a roll call vote of 26 to 16, as follows:

### Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: April 30, 2014

Recorded Vote #: 3

Meeting on / Amendment on: **H.R. 4316 - TO REPORT**, Adopted and favorably reported to the House of Representatives, as amended, by a roll call vote of 26 yeas and 16 nays.

| MEMBERS                           | Yes | No | Pres | MEMBERS                    | Yes | No | Pres |
|-----------------------------------|-----|----|------|----------------------------|-----|----|------|
| <b>Mr. Hastings, WA, Chairman</b> | X   |    |      | <b>Mr. Duncan of SC</b>    | X   |    |      |
| <i>Mr. DeFazio, OR, Ranking</i>   |     | X  |      | <i>Mr. Cardenas, CA</i>    |     | X  |      |
| <b>Mr. Young, AK</b>              | X   |    |      | <b>Mr. Tipton, CO</b>      | X   |    |      |
| <i>Mr. Faleomavaega, AS</i>       |     |    |      | <i>Mr. Huffman, CA</i>     |     | X  |      |
| <b>Mr. Gohmert, TX</b>            | X   |    |      | <b>Mr. Gosar, AZ</b>       | X   |    |      |
| <i>Mr. Pallone, NJ</i>            |     | X  |      | <i>Mr. Ruiz, CA</i>        |     | X  |      |
| <b>Mr. Bishop, UT</b>             | X   |    |      | <b>Mr. Labrador, ID</b>    | X   |    |      |
| <i>Mrs. Napolitano, CA</i>        |     | X  |      | <i>Ms. Shea-Porter, NH</i> |     | X  |      |
| <b>Mr. Lamborn, CO</b>            | X   |    |      | <b>Mr. Southerland, FL</b> | X   |    |      |
| <i>Mr. Holt, NJ</i>               |     |    |      | <i>Mr. Lowenthal, CA</i>   |     | X  |      |
| <b>Mr. Wittman, VA</b>            | X   |    |      | <b>Mr. Flores, TX</b>      | X   |    |      |
| <i>Mr. Grijalva, AZ</i>           |     | X  |      | <i>Mr. Garcia, FL</i>      |     |    |      |
| <b>Mr. Broun, GA</b>              | X   |    |      | <b>Mr. Runyan, NJ</b>      | X   |    |      |
| <i>Ms. Bordallo, GU</i>           |     | X  |      | <i>Mr. Cartwright, PA</i>  |     | X  |      |
| <b>Mr. Fleming, LA</b>            | X   |    |      | <b>Mr. Mullin, OK</b>      | X   |    |      |
| <i>Mr. Costa, CA</i>              |     | X  |      | <i>Ms. Clark, MA</i>       |     | X  |      |
| <b>Mr. McClintock, CA</b>         | X   |    |      | <b>Mr. Daines, MT</b>      | X   |    |      |
| <i>Mr. Sablan, CNMI</i>           |     | X  |      | <b>Mr. Cramer, ND</b>      | X   |    |      |
| <b>Mr. Thompson, PA</b>           | X   |    |      | <b>Mr. LaMalfa, CA</b>     | X   |    |      |
| <i>Ms. Tsongas, MA</i>            |     | X  |      | <b>Mr. Smith, MO</b>       | X   |    |      |
| <b>Mrs. Lummis, WY</b>            | X   |    |      | <b>Mr. McAllister, LA</b>  | X   |    |      |
| <i>Mr. Pierluisi, PR</i>          |     |    |      | <b>Mr. Byrne, AL</b>       | X   |    |      |
| <b>Mr. Benishek, MI</b>           | X   |    |      | <i>Vacancy</i>             |     |    |      |
| <i>Ms. Hanabusa, HI</i>           |     | X  |      |                            |     |    |      |
|                                   |     |    |      |                            |     |    |      |
|                                   |     |    |      | <b>TOTALS</b>              | 26  | 16 |      |

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

#### *H.R. 4316—Endangered Species Recovery Transparency Act*

H.R. 4316 would require the Secretary of the Interior to submit a report to the Congress each year detailing federal government expenditures for lawsuits brought under the Endangered Species Act (ESA). The bill also would require the Secretary to create a publicly available database that would include information regarding each lawsuit brought under ESA.

Based on information from the Fish and Wildlife Service (USFWS) regarding the costs of similar activities, CBO estimates that preparing the annual report for the Congress would have no significant effect on the federal budget. CBO also estimates that constructing the database required under the bill would cost roughly \$150,000, based on information provided by USFWS, subject to the availability of appropriated funds. We estimate that any costs to update and maintain the database would be insignificant in any year.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4316 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that preparing the annual report for the Congress would have no significant effect on the federal budget. CBO also estimates that constructing the database required under the bill would cost roughly \$150,000, based on infor-

mation provided by USFWS, subject to the availability of appropriated funds.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Endangered Species Act of 1973 to improve the disclosure of certain expenditures under that Act.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule “RI of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is Shown in roman):

#### ENDANGERED SPECIES ACT OF 1973

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Sec. 2. Findings, purposes, and policy.

\* \* \* \* \*

**[Sec. 13. Conforming amendments.]**

*Sec. 13. Disclosure of expenditures.*

\* \* \* \* \*

#### CONFORMING AMENDMENTS

**[SEC. 13. (a)** Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd (c)), is further amended by revising the second sentence thereof to read as follows: “With the exception of

endangered-species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not evict pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system.”

[(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out “threatened with extinction,” and inverting in lieu thereof the following: “listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,”.

[(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9(a)(1)) is amended by striking out;

    [“THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.”

and inserting in lieu thereof the following:

    “ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants.”

[(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat 653, 16 U.S.C. 480k–1), is amended to read as follows:

    [“The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

        [(1) incidental fish and wildlife-oriented recreational development,

        [(2) the protection of natural resources,

        [(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

        [(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.”

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1107) is amended—

    [(1) by striking out “Endangered Species Conservation Act of 1969” in section 3(1)(B) thereof and inserting in lieu thereof the following: “Endangered Species Act of 1973”;

    [(2) by striking out “pursuant to the Endangered Species Conservation Act of 1969” in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: “or threatened species pursuant to the Endangered Species Act of 1973”;

    [(3) by striking out “endangered under the Endangered Species Conservation Act of 1969” in section 102(b)(3) thereof and inserting in lieu thereof the following: “an endangered species

or threatened species pursuant to the Endangered Species Act of 1973”; and

[(4) by striking out “of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,” in section 202(a)(6) thereof and inserting in lieu thereof the following : “such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973”.

[(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words “by the Secretary of the Interior under Public Law 91–135” and inserting in lieu thereof the words “or threatened by the Secretary pursuant to the Endangered Species Act of 1973”.]

**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); and*

(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 non-disclosure provisions), including the bases for such awards.*

(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.*

\* \* \* \* \*

## DISSENTING VIEWS

H.R. 4316 will do nothing to recover endangered species, despite including the word “recovery” in its title.

This bill is based on the false premise that environmental groups are getting rich filing lawsuits against the Federal government under the Endangered Species Act (ESA). Apparently, the Majority thinks requiring agencies to file detailed and onerous reports on ESA litigation will somehow address this alleged problem.

In reality, this burdensome reporting effort will divert already limited time and resources from species recovery efforts and, according to the Fish and Wildlife Service and National Marine Fisheries Service, will neither impact the manner in which they implement the ESA, nor the manner in which they address litigation.

Ironically, all federal agencies were previously required to report their litigation costs under the Equal Access to Justice Act (EAJA), but the Majority eliminated that reporting requirement in 1995 as one of their efforts to cut government “waste.” There has been no official accounting of EAJA payments since.

The Majority, which frequently supports “streamlining” environmental laws, actually supports creating more red tape, but only for the Fish and Wildlife Service, NMFS, and the Forest Service, and only for lawsuits filed under the ESA. In addition, as the result of an amendment adopted in Committee, the reporting requirement for ESA litigation will now apply to the Power Marketing Administrations (Bonneville, Western, Southwestern and Southeastern), increasing costs for the ratepayers in those regions.

If the Majority were truly concerned about agency budgets and diversion of resources, they should reevaluate their endless document demands and subpoenas which have cost millions of dollars and required thousands of staff-hours to address.

Because H.R. 4316 will make species recovery more difficult, we oppose this legislation.

PETER A. DEFazio.  
RAÚL M. GRIJALVA.  
GRACE F. NAPOLITANO.  
GREGORIO KILILI CAMACHO  
SABLAN.  
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