

American Bird Conservancy * American Rivers * Animal Legal Defense Fund *
Animal Welfare Institute * Audubon * Conservation Northwest *
Center for Biological Diversity * Center for Plant Conservation *
Defenders of Wildlife * Earthjustice * Endangered Species Coalition *
Epic-Environmental Protection Information Center * Greenpeace *
International Fund for Animal Welfare * League of Conservation Voters *
National Parks Conservation Association * Klamath Forest Alliance *
Natural Resources Defense Council * Northcoast Environmental Center *
Sierra Club * The Humane Society of the United States *
The Xerces Society for Invertebrate Conservation * Union of Concerned Scientists *
WildEarth Guardians * Wild Fish Conservancy * Wolves of the Rockies

RE: Oppose H.R. 4315, H.R. 4316, H.R. 4317, and H.R. 4318

June 10, 2014

Dear Representative,

On behalf of our millions of members and supporters nationwide, we urge you to oppose H.R. 4315, H.R. 4316, H.R. 4317, and H.R. 4318, which would undermine the essential protections of the Endangered Species Act (ESA) by obstructing the development and use of scientific research, squandering agency resources, and chilling citizen enforcement.

The ESA is one of America's most effective and important environmental laws, serving as a safety net for plants, fish, and wildlife on the brink of extinction. The ESA represents a commitment by the American people to protect and restore those species at risk of disappearing forever. Recent polling shows 84 percent of Americans support the Endangered Species Act, while 87 percent recognize that it has proven successful in protecting wildlife, plants, and fish from extinction.¹ No law has been more important in preventing species extinctions, including bald eagles, gray whales, and the peregrine falcon.

H.R. 4315, H.R. 4316, H.R. 4317, and H.R. 4318 are the first wave of legislative proposals to emerge from a recent report by Rep. Doc Hastings (R-WA) and a self-appointed, partisan "ESA Working Group"—a report that outlines a legislative strategy to weaken, or even eliminate, ESA protections and, ultimately, to increase the likelihood of future extinctions. These bills are damaging to the ESA and should be opposed.

H.R. 4315 ("21st Century Endangered Species Transparency Act") directs the Secretary of the Interior and Secretary of Commerce to post online the "best scientific and commercial data" underlying each proposed and final determination regarding the potential listing of a species. H.R. 4315 ignores the lack of agency resources to create such an online system involving massive amounts of data. Further, H.R. 4315 fails to account for real-world issues surrounding data sharing

¹ National poll conducted by Harris Interactive, February 2011, available at http://www.defenders.org/publications/endangered_species_act_poll.pdf

and thus would likely do more harm than good. For example, H.R. 4315 ignores situations in which public disclosure of data could further imperil the species at issue—by facilitating poaching, for example. H.R. 4315 could also undermine scientists’ work by requiring the release of some data before researchers have had their studies peer reviewed and published. Such a requirement would likely result in fewer scientists being willing to participate in the process of evaluating species’ status. All told, this bill will only create bureaucratic hurdles that would likely delay the process of protecting species and distract from legitimate conservation efforts.

H.R. 4316 (“Endangered Species Recovery Transparency Act”) would establish a burdensome set of reporting requirements that focus entirely on the costs of ESA enforcement cases without acknowledging or accounting for the important role citizen suits play in protecting species and holding federal agencies to the law. Rather than furthering transparency, H.R. 4316 would needlessly drain limited agency resources—all in the name of building a misleading case against citizen enforcement of the ESA. Despite repeated declarations by Rep. Hastings (R-WA) and others that enforcement actions have somehow derailed the ESA, the Director of the U.S. Fish and Wildlife Service has rejected such claims.² Indeed, researchers recently concluded that citizen enforcement of the ESA has proven essential to the effective implementation of the Act.³ The House Natural Resources Committee’s Republicans are already bombarding the Department of the Interior with document requests that have “significantly impacted the Department’s ability to accomplish its core mission for the American people.”⁴ H.R. 4316 would further squander agency resources and slow the ESA’s implementation.

H.R. 4317 (“State, Tribal, and Local Species Transparency Act”) directs that all data submitted by a state, tribal, or county government be deemed the “best scientific and commercial data available.” Thus H.R. 4317 directs federal wildlife agencies to utilize state, tribal, and county-provided data even if such data is not developed by scientists or of very poor quality. The “best scientific and commercial data available” *already* includes all state, tribal and county data, so long as it actually constitutes the best science available. H.R. 4317 also amends Section 6 of the ESA to direct federal wildlife agencies to provide all data used in listing decisions to states prior to making ESA listing decisions. This requirement is duplicative and unnecessary – Section 4 already requires the Secretaries of Interior and Commerce to give actual notice of any proposed listing determination to any affected state. Moreover, the federal wildlife agencies already work extensively with the states under Section 6 of the Act, which requires that the agencies “cooperate to the maximum extent practicable with the States.” H.R. 4317 does nothing to improve the science used in ESA decisions. To the contrary, this bill would mandate the use of deficient and less sound scientific information.

H.R. 4318 (“Endangered Species Litigation Reasonableness Act”) seeks to dissuade citizens from enforcing the Endangered Species Act by restricting their ability to recover litigation costs

² Laura Peterson, *Lawsuits Not Hurting Endangered Species Act – FWS Director*, GREENWIRE (July 5, 2012).

³ See, e.g., Berry Bosi & Eric Biber, *Citizen Involvement in the U.S. Endangered Species Act*, 337 *SCIENCE* 802, 802-03 (Aug. 2012) (“Citizen groups play a valuable role in identifying at-risk species for listing under the ESA.”).

⁴ Letter from Secretary Jewell to House Natural Resources Committee Chairman Rep. Doc Hastings, Jan. 15, 2014, available at http://www.eenews.net/assets/2014/01/16/document_daily_04.pdf

when they prevail in court. Under H.R. 4318, a prevailing citizen's request for reimbursement under the Endangered Species Act would be subject to the restrictions of the Equal Access to Justice Act (EAJA). EAJA affords a vital means of court access for citizens from across the political spectrum. EAJA's fee cap, however, can make it difficult for citizens to retain counsel. The cap on fees included in EAJA often falls well below market rates for attorneys. Further, H.R. 4318 would deny federal courts their existing authority under the ESA to ensure that any award of costs in ESA litigation is both "appropriate" and "reasonable" (Section 11). H.R. 4318 unnecessarily disrupts this judicial oversight and discretion. In subjecting ESA cases to EAJA's below-market cap on reimbursement, H.R. 4318 would make it more difficult for citizens from across the political spectrum to obtain counsel and challenge illegal government actions.

Please protect the Endangered Species Act, our nation's safety net for imperiled species, by opposing all of these harmful bills – H.R. 4315, H.R. 4316, H.R. 4317, and H.R. 4318.

Sincerely,

Marty Hayden
Vice President, Policy and Legislation
Earthjustice

Mary Beth Beetham
Director of Legislative Affairs
Defenders of Wildlife

Andrew A. Rosenberg, Ph.D.
Director, Center for Science and Democracy
Union of Concerned Scientists

Nicole Paquette
Vice President, Wildlife Protection
The Humane Society of the United States

Leda Huta
Executive Director
Endangered Species Coalition

Jeff Flocken
Regional Director, North America
International Fund for Animal Welfare

Brian Moore
Legislative Director
Audubon

Rick Hind
Legislative Director
Greenpeace

Sara Chieffo
Legislative Director
League of Conservation Voters

Scott Slesinger
Legislative Director
Natural Resources Defense Council

Melinda Pierce
Deputy Director, Federal Policy
Sierra Club

Brett Hartl
Endangered Species Policy Director
Center for Biological Diversity

Elise Liguori
Government Affairs Natural Resources Director
National Parks Conservation Association

Anne Law
Director of Government Relations
American Bird Conservancy

Erik Molvar
Sagebrush Sea Campaign Director
WildEarth Guardians

Cathy Liss
President
Animal Welfare Institute

Kathryn Kennedy, Ph.D.
President and Executive Director
Center for Plant Conservation

Stephen Wells
Executive Director
Animal Legal Defense Fund

Larry Glass
President
Northcoast Environmental Center

Scott Hoffman Black
Executive Director
The Xerces Society for Invertebrate Conservation

Kurt Beardslee
Executive Director
Wild Fish Conservancy

Jim Bradley
Senior Director of Government Relations
American Rivers

Dave Werntz
Science and Conservation Director
Conservation Northwest

Marc Cooke
President
Wolves of the Rockies

Gary Graham Hughes
Executive Director
Epic-Environmental Protection Information Center

Kimberly Baker
Executive Director
Klamath Forest Alliance