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# *NATIONAL ENDANGERED SPECIES ACT REFORM COALITION*

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1050 Thomas Jefferson Street, N.W., Sixth Floor, Washington, D.C. 20007  
Home Page: <http://www.nesarc.org>

Phone: 202-333-7481  
E-mail: [esa@nesarc.org](mailto:esa@nesarc.org)

The Honorable  
James A. McClure  
*Chairman*

The Honorable  
Glenn English  
*Vice Chairman*

## **A Side-by-Side Comparison:**

**H.R. 4840, the Sound Science for  
Endangered Species Act Planning Act of 2002;  
H.R. 2829, Sound Science for Endangered Species Act Planning Act of 2001  
H.R. 3705, Sound Science Saves Species Act of 2002;  
and the Current Endangered Species Act**

*June 6, 2002*

**H.R. 4840, H.R. 2829, H.R. 3705, and the Endangered Species Act: Side-by-Side Comparison**

| <p align="center"><b>H.R. 4840 Provisions<br/>(Chairman Hansen)</b></p>  | <p align="center"><b>H.R. 2829 Provisions<br/>(Rep. Walden)</b></p>  | <p align="center"><b>H.R. 3705 Provisions<br/>(Rep. Pombo)</b></p>   | <p align="center"><b>Current Law Under the ESA</b></p>   |
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| <b>Sound Science and ESA Actions</b>   |  |  |  |
| <p>Requires the Secretary to set standards for the scientific and commercial data that is used to take actions under the ESA.</p> <p>Requires the Secretary to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed.</p>   | <p>Requires the Secretary to set standards for the scientific and commercial data that is used to take actions under the ESA.</p> <p>Requires the Secretary to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed.</p> |  | <p>The ESA requires “the best scientific and commercial data available” for listings and other actions. However, this term is not defined, and there are no objective standards to ensure a uniformly high quality of scientific data.</p> |
| <b>Sound Science and the Listing Process</b>   |  |  |  |
| <p>Sets minimum standards for the content of listing petitions that will demonstrate by clear and convincing evidence that a listing is warranted.</p> <p>Listing actions <u>must</u> be supported by field data on the species.</p> <p>The listing agency <u>must</u> accept data on the species collected by landowners.</p> | <p>Sets minimum standards for the scientific and commercial data used in listing determinations.</p> <p>Listing actions <u>must</u> be supported by field data on the species.</p> <p>The listing agency <u>must</u> accept data on the species collected by landowners.</p>         | <p>Sets minimum standards for the content of listing petitions that will demonstrate by clear and convincing evidence that a listing is warranted.</p> <p>The Secretary must provide notice and solicit scientific data regarding a petition from interested parties.</p> <p>Requires the Secretary to give newspaper notice of a petition to list to potentially impacted landowners (and actual notice if the number of such landowners is less than 100)</p> <p>When a petition to list is denied, no other petition to list that species can be considered for one year.</p> | <p>The Secretary is given broad discretion in determining what listings, if any, will take place, with little to no constraints as to what data may or may not be used.</p>  |
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| H.R. 4840 Provisions<br>(Chairman Hansen)  | H.R. 2829 Provisions<br>(Rep. Walden)  | H.R. 3705 Provisions<br>(Rep. Pombo)  | Current Law Under the ESA  |
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| <b>Sound Science and Recovery Planning</b>   |  |   |  |
| <p>Agencies preparing recovery plans are <u>required</u> to identify, solicit, and accept scientific or commercial information that would assist in preparing a recovery plan.</p>   | <p>Agencies preparing recovery plans are <u>required</u> to identify, solicit, and accept scientific or commercial information that would assist in preparing a recovery plan.</p> |   | <p>The ESA gives the Secretary broad discretion in developing recovery plans. Public input is limited to an opportunity to comment on a draft recovery plan.</p> |
| <b>Sound Science and Peer Review</b>   |  |   |  |
| <p>Every proposed listing, delisting or recovery plan under the ESA would be subject to peer review by a panel of five non-biased scientists. The Governor of the impacted State selects two members of the panel, while the Secretary selects the remaining three panel members. The peer review team must be chosen by the Secretary or an agency official who is confirmed by the Senate.</p> <p>Consultations would be subject to peer review if the Secretary determines that the consultation is controversial or will result in significant economic impacts.</p> | <p>Every proposed listing, delisting, recovery plan, or consultation under the ESA would be reviewed by a peer review panel of three non-biased scientists.</p>                    | <p>For every listing or delisting petition, the Secretary shall appoint and convene an independent review board consisting of three non-biased qualified individuals to review the scientific data upon which the petition is based.</p> <p>Individuals can request that a determination by the Secretary to list or delist a species be reviewed by an independent review board of five qualified individuals.</p> | <p>The ESA does not require peer review of scientific information, nor does it establish any structure for a peer review process.</p>                            |
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| <b>Sound Science and the Consultation Process</b>   |   |   |  |
| <p>Requires the Secretary to solicit and consider information provided by the State.</p> <p>Allows an applicant to: (1) prior to the release of a draft biological opinion, submit and “discuss” with the Service and action agency information about the proposed action and possible reasonable and prudent alternatives; (2) obtain information used to develop the biological opinion and reasonable and prudent alternatives; and (3) provide comments prior to publication of the final biological opinion.</p> <p>The Service must include the applicant’s suggestions or explain why such suggestions were rejected. Comments and other information submitted shall be available to the public.</p> | <p>Requires the Secretary to solicit and consider information provided by the State.</p> <p>Allows an applicant to: (1) prior to the release of a draft biological opinion, submit and “discuss” with the Service and action agency information about the proposed action and possible reasonable and prudent alternatives; (2) obtain information used to develop the biological opinion and reasonable and prudent alternatives; and (3) provide comments prior to publication of the final biological opinion.</p> <p>The Service must include the applicant’s suggestions or explain why such suggestions were rejected. Comments and other information submitted shall be available to the public.</p> | <p>When the consultation process leads to a jeopardy finding, a person may request that such a finding be subject to review by an independent board consisting of five qualified individuals. The findings of the board are to be made available to the public.</p> | <p>The ESA requires the Secretary to cooperate with the States “to the maximum extent possible,” but largely leaves the implementation of such cooperation to the discretion of the Secretary.</p> <p>The Service is required to consult with Federal agencies to ensure that endangered/threatened species and critical habitat are not adversely affected. The ESA requires the Service generally to cooperate with an applicant for a federal permit during consultation, but the applicant is not provided a formal role in the process.</p> |