



DEFENDERS OF WILDLIFE – ENDANGERED SPECIES ACT POLICY PROGRAM
SUMMARY OF ENDANGERED SPECIES ACT BILLS AND LEGISLATIVE ATTACKS FROM 112TH CONGRESS

Sponsors Blue-Dem. Red-Rep.	Bill Title and Status	Summary of Bill
<p>Baca, Calvert, Cardoza, Costa, Cuellar, Lewis, Young, McClintock, and Miller</p>	<p>H.R. 1042. <i>Discredit Eternal Listing Inequality of Species Takings Act (DELIST Act)</i></p> <p>3/11: Introduced in House</p>	<p>The bill amends §4 of the ESA so that a species must be delisted and treated as extinct if it meets all three criteria:</p> <ol style="list-style-type: none"> (1) Is a “limited listed species,” which means an endangered species for which it is not “reasonably possible” to determine whether the species has been extirpated from its range that existed on the date the species was listed, because not “all individuals” of the species were identified at that time; (2) Has been listed as “endangered” for 15 or more years; and (3) The Service has <u>not</u> found: <ol style="list-style-type: none"> (i) A “substantial increase” in the species’ population during the 15 year period; and (ii) That continued listing of the species does not impose “any” economic hardship on communities in the species’ range.
<p>Costa and Cardoza</p>	<p>H.R. 1251. <i>More Water for Our Valley Act, 2011</i></p> <p>3/30: Introduced in House</p>	<p>First, the bill modifies the USFWS 12/12/2008 and National Marine Fisheries Service (NMFS) 6/4/2009 Biological Opinions (BiOps) for the Central Valley Project (CVP) and California State Water Project (SWP) as follows:</p> <ol style="list-style-type: none"> (1) <i>Reverse flow restriction.</i> The BiOps establish flow restrictions for the Old and Middle rivers to reduce the effects of reverse flows on delta smelt and salmonids. The bill modifies the BiOps by prohibiting the reduction of reverse flows in both rivers to below -5,000 ft³/sec. between Dec. 1st and June 30th. Exception: The bill’s prohibition can be modified only upon the recommendation of the Nat’l Research Council Committee on Sustainable Water and Enviro. Mgmt., provided that the modification will benefit the species covered in the BiOps and will not reduce the water delivery capability of the CVP and SWP more than that allowed under the prohibition. (2) <i>Control of pumping operations.</i> The NMFS BiOp curtails water exports from the Bay-Delta to protect salmonids. The bill, however, prohibits any reduction in water exports under the BiOp between April 1st and May 31st, except to comply with SWP Decision 1641 or a subsequent water rights decision. Exception: The same narrow exception that applies to reverse flow restrictions also applies here. (3) <i>Water salinity.</i> The USFWS BiOp recommends using freshwater to push saline water out of the Bay-Delta to create habitat for delta smelt. The distance from the Golden Gate Bridge to the point in the Bay-Delta where the salinity contour line is 2 parts/thousand, is known as X2. The BiOp proposes to maintain X2 in the fall of wet years at 74 km. The bill modifies the BiOp by providing



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		<p>that the monthly average X2 between Sept. 1 and Nov. 30 can be kept at 74 km <i>only if</i> it will not diminish the capability of the CVP and SWP to make water available for other authorized purposes of these projects.</p> <p>Second, the bill contains three measures to conserve fish: (1) establishes a fish hatchery program/refuge for delta smelt; (2) requires the Services to implement a habitat conservation program for at-risk and listed Bay-Delta species; and (3) requires installation of the Head of Old River Barrier during April-May pulse flow.</p> <p>Third, nothing in the bill is allowed to (1) reduce the water supply deliveries of the SWP to its contractors; (2) shift an existing obligation of the CVP or any other water project covered in the BiOps to any other person or entity; or (3) affect the San Joaquin River Restoration Settlement (SJRRS) or the SJRRS Act.</p> <p>Fourth, the bill broadly prohibits any state from implementing any requirement of the BiOps that is more restrictive than the requirements of the bill.</p> <p>Note that bill does not directly amend the text of the ESA; it would be a stand-alone law.</p>
<p>Bishop, Blackburn, Broun, Burton, Carter, Coffman, Duncan, Fleming, Gallegly, Harris, Heller, Herger, Huelskamp, Johnson, Landry, Latta, Lamborn, Lummis, McMorris Rodgers, Nunes, Pearce, Pence, Posey, Roe,</p>	<p>H.R. 1287. <i>3-D, Domestic Jobs, Domestic Energy, and Deficit Reduction Act of 2011</i></p> <p>3/31: Introduced in House 4/7: Referred to House subcommittee</p>	<p>First, § 306 of the bill directly modifies the ESA as follows:</p> <ol style="list-style-type: none"> (1) Modifies § 10 of the ESA so that when the governor of a state declares an emergency, the Services are required to temporarily exempt any action reasonably necessary to avoid or ameliorate the impact of the emergency, from the ESA’s prohibition on “take” and “adverse modification” of critical habitat; (2) Creates a § 19 of the ESA, which prohibits the Services from considering the impacts of greenhouse gas in implementing the ESA. <p>Second, § 308 of the bill prevents the Bureau of Reclamation and any California State agency from restricting the operations of any project under the CVP pursuant to any BiOp, if the restriction would reduce the level of water allocation to less than the historical maximum level of water allocation under the CVP.</p>



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<p>Simpson, Walberg, and Young</p>		
<p>Vitter, Barrasso, Blunt, Boozman, Coats, Coburn, Cochran, Cornyn, Crapo, DeMint, Ensign, Enzi, Graham, Hatch, Hutchison, Inhofe, Isakson, Johanns, Johnson, Kyl, Lee, Moran, Risch, Roberts, Sessions, Shelby, Wicker, Hoeven, and Rubio</p>	<p>S. 706. <i>3-D, Domestic Jobs, Domestic Energy, and Deficit Reduction Act of 2011</i></p> <p>3/31: Introduced in Senate 4/4: Read the second time and placed on calendar</p>	<p>All ESA-specific provisions identical to the House version of this bill, H.R. 1287 (see above).</p>
<p>Bishop, Canseco, Carter, Coffman, Hastings, King, Rehberg, and Smith</p>	<p>H.R. 1505. <i>National Security and Federal Lands Protection Act</i></p> <p>4/13: Introduced in House 5/4: Referred to the Subcommittee on Border and Maritime Security</p>	<p>The bill does not directly amend the ESA, but instead has three provisions that weaken the Act. First, the Secretaries of the Interior and Agriculture may not “impede, prohibit, or restrict” the activities of the Secretary of Homeland Security (SHS) on Interior and Agriculture lands, if those activities are needed to achieve “operational control” of the US border. “Operational control” means prevention of all unlawful entries into the US.</p> <p>Second, the SHS is given “immediate access” to any federal land needed to help secure the border. Covered activities include fence construction, vehicle patrol, and road access.</p> <p>Third, the SHS is explicitly exempt from complying with the ESA (and many other environmental laws) for all activities needed to help achieve “operational control” of the US border, provided that those activities occur within 100 miles of the border. Thus, the bill significantly expands the 470-mile waiver signed by the SHS in April 2008 under the REAL ID Act.</p>



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<p>Pearce, Neugebauer, Conaway, and Canseco</p>	<p>April 8, 2011 Letter to House requesting amendment to deny funding. <i>Amendment to Deny Funding for Listing of the Sand Dune Lizard and Lesser Prairie Chicken</i></p>	<p>Prohibits use of funds to pursue listing of the sand dune lizard or lesser prairie chicken under the ESA, but specifically allows for funding to enter into and implement candidate conservation agreements for these species.</p>
<p>McMorris Rodgers, Hastings, McClintock, Pearce, Jones, Walden, Hergert, Duncan, Lummis, and Bishop</p>	<p>H.R. 1719. <i>Endangered Species Compliance and Transparency Act of 2011</i></p> <p>5/4: Referred to House committee</p>	<p>The bill does not modify the ESA, but instead imposes two reporting requirements on several agencies. First, it requires the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration to include in its monthly bills to customers the costs (direct and indirect) to each customer of agency compliance with the ESA.</p> <p>Second, the bill requires each of these agencies to provide an annual report to Congress estimating the compliance costs.</p>
<p>Guinta</p>	<p>H.R. 1806 <i>Bluefin Tuna Fishermen Employment Preservation Act</i></p> <p>5/10: Introduced in House</p>	<p>Prevents the “Bluefin tuna” from being treated as a threatened or endangered species under the ESA.</p> <p>Note: the bill simply refers to “Bluefin tuna,” which can refer to all three subspecies of bluefin—Atlantic, Pacific, and Southern. Although Guinta is presumably interested in the Atlantic subspecies, his bill appears to apply to the other subspecies as well.</p>
<p>Nunes, McCarthy, and Denham</p>	<p>H.R. 1837. <i>San Joaquin Valley Water Reliability Act</i></p> <p>5/11: Referred to</p>	<p>The bill does not directly amend the ESA, but instead weakens it by providing that all ESA requirements are considered fully met for all species affected by the Central Valley Project (CVP) and California State Water Project (SWP), as long as the projects are consistent with the Dec. 1994 “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government.” Specifically, FWS and NMFS are required to issue biological opinions for both projects</p>



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	House committee	<p>that are no more restrictive than the provisions of the agreement, and these opinions can be modified only with the consent of the signatories to the agreement.</p> <p>The bill also prohibits California from adopting state regulations for ESA listed species that are more restrictive than the provisions of the bill.</p>
<p>Cornyn (#397) and Inhofe (#429)</p>	<p>Amendments no. 397 (for sand dunes lizard) and no. 429 (for lesser-prairie chicken) to S. 782, <i>Economic Revitalization Act of 2011</i></p> <p>6/7: Amendment #397 filed 6/8: Amendment #429 filed</p>	<p>No. 397 amends section 4 of the ESA to make the act inapplicable to the sand dune lizard. No. 429 makes the same amendment for the lesser-prairie chicken.</p>