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Comment: Today the Endangered Species Act (ESA) is failing to achieve its primary purpose of species recovery and instead has become a tool for litigation that drains resources away from real recovery efforts on the state, tribal and local level and blocks job-creating economic activities. original goal was to preserve and recover key domestic species from the brink of extinction. Recommends constructive changes in the following categories: 1. Ensuring Greater Transparency and Prioritization of ESA with a Focus on Species Recovery and De-Listing 2. Reducing ESA Litigation and Encouraging Settlement Reform . 3 Empowering States, Tribes, Local Governments and Private Landowners on ESA Decisions Affecting Them and Their Property. 4 Requiring More Transparency and Accountability of ESA Data and Science. The ESA, federal implementation of it, and seemingly never-ending litigation are creating increasing impediments towards reaching that goal. Only by removing these impediments can the ESA be improved for the benefit of saving species. Federal agencies that implement ESA should not list species unless and until they are able to identify actual recovery and numerical goals for healthy species populations upfrontbefore, or at the time of any proposed rule involving listing a species. Recovery plans should be drafted and completed and approved before listing or critical habitat is designated, not as an afterthought, years later, or not at all. Rather than basing decisions on vague trends showing decline or improvement or "professional opinions," ESA listing/delisting petitions should not be accepted by federal ESA implementing agencies unless based on actual data relating to species' condition. Data used for listing decisions should be made public, especially if the data and related studies are being financed by the taxpayer. Federal agencies should have discretion to extend 12 month or 90-day deadlines relating to species listing or critical habitat determinations, without fear of spurious litigation. Rather than force federal agencies to accept petition with equal weight no matter how lacking science and data. Agencies should allow to incorporate the best and most current data. Agencies' Listing Priority Guidance (48 Fed. Reg. 43098) should supersede any conflicting 12-month or 90-day deadline set by rule, settlement or other action. Several terms in the law have become magnets for misinterpretation, conflicting interpretations, or even litigation, and should be clarified, including, for example: "foreseeable future"; "significant portion of the range," "jeopardy" to a species, the technological and economic feasibility of "reasonable and prudent alternatives/measures," and "maximum extent practicable" relating to mitigation. Federal agencies should be required to disclose all details of consent decrees to Congress and an appropriate NEPA process should be applied for settlements to ensure public input in ESA decisions, and to ensure they include best scientific data. Litigious groups and plaintiffs should be discouraged from filing procedural challenges against agencies simply because they do not agree with the agency's decisions, (such as delisting determinations, findings of species listing not

	warranted). Litigants should be required to pay their own way to curb repeated litigation and foster court cases only on substantive matters. To discourage forum shopping by frequent ESA-litigation-plaintiffs, ESA lawsuits should not be permitted in federal courts other than in a state a species is primarily located. Hourly fees paid by the federal government to litigious attorneys for ESA litigation should be capped like other federal statutes to prevent lucrative payment of attorneys' fees. non-governmental organizations or individuals that file ESA-related lawsuits against the federal government should be barred from receiving federal taxpayer-funded grants. Since money is fungible, litigation should not be subsidized by taxpayers. Section 6(a) should be strengthened to ensure that states' roles in ESA policy provisions have meaning and are enforceable. To encourage voluntary Habitat Conservation Plans should be exempt from critical habitat designations. Secretaries of the Interior and Commerce should authorize certain circumstances to reevaluate, without judicial review, any critical habitat or listing decision where evidence shows significant economic harm . critical habitat economic analyses should be required at the time of any proposed listing . federal agencies should be required to justify why data relied upon for ESA decision is the "best available" and why such data is deemed "accurate" and "reliable." Data used by federal agencies for ESA decisions should be made publicly available . To ensure accountability, ESA-related peer reviews that do not comply with the Data Quality Act should be deemed "arbitrary and capricious *
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