

112TH CONGRESS
2D SESSION

S. _____

To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 Section 3 of the Endangered Species Act of 1973 (16
5 U.S.C. 1532) is amended—

6 (1) by redesignating—

7 (A) paragraphs (1) through (4) as para-
8 graphs (2) through (5), respectively;

9 (B) paragraphs (5) through (10) as para-
10 graphs (7) through (12), respectively; and

1 (C) paragraphs (12) through (21) as para-
2 graphs (13) through (22), respectively;

3 (2) by adding before paragraph (2) (as so re-
4 designated) the following:

5 “(1) AFFECTED PARTIES.—The term ‘affected
6 party’ means any person, including a business enti-
7 ty, or any State, tribal government, or local subdivi-
8 sion the rights of which may be affected by a deter-
9 mination made under section 4(a) in a suit brought
10 under section 11(g)(1)(C).”; and

11 (3) by adding after paragraph (5) (as so reded-
12 icated) the following:

13 “(6) COVERED SETTLEMENT.—The term ‘cov-
14 ered settlement’ means a consent decree or a settle-
15 ment agreement in an action brought under section
16 11(g)(1)(C).”.

17 **SEC. 2. INTERVENTION; APPROVAL OF COVERED SETTLE-**
18 **MENT.**

19 Section 11(g) of the Endangered Species Act of 1973
20 (16 U.S.C. 1540) is amended—

21 (1) in paragraph (3), by adding at the end the
22 following:

23 “(C) PUBLISHING COMPLAINT; INTERVEN-
24 TION.—

25 “(i) PUBLISHING COMPLAINT.—

1 “(I) IN GENERAL.—Not later
2 than 30 days after the date on which
3 the plaintiff serves the defendant with
4 the complaint in an action brought
5 under paragraph (1)(C) in accordance
6 with Rule 4 of the Federal Rules of
7 Civil Procedure, the Secretary of the
8 Interior shall publish the complaint in
9 a readily accessible manner, including
10 electronically.

11 “(II) FAILURE TO MEET DEAD-
12 LINE.—The failure of the Secretary to
13 meet the 30-day deadline described in
14 subclause (I) shall not be the basis for
15 an action under paragraph (1)(C).

16 “(ii) INTERVENTION.—

17 “(I) IN GENERAL.—After the end
18 of the 30-day period described in
19 clause (i), each affected party shall be
20 given a reasonable opportunity to
21 move to intervene in the action de-
22 scribed in clause (i), until the end of
23 which a party may not file a motion
24 for a consent decree or to dismiss the

1 case pursuant to a settlement agree-
2 ment.

3 “(II) REBUTTABLE PRESUMP-
4 TION.—In considering a motion to in-
5 tervene by any affected party, the
6 court shall presume, subject to rebut-
7 tal, that the interests of that party
8 would not be represented adequately
9 by the parties to the action described
10 in clause (i).

11 “(III) REFERRAL TO ALTER-
12 NATIVE DISPUTE RESOLUTION.—

13 “(aa) IN GENERAL.—If the
14 court grants a motion to inter-
15 vene in the action, the court shall
16 refer the action to facilitate set-
17 tlement discussions to—

18 “(AA) the mediation
19 program of the court; or

20 “(BB) a magistrate
21 judge.

22 “(bb) PARTIES INCLUDED IN
23 SETTLEMENT DISCUSSIONS.—
24 The settlement discussions de-

1 scribed in item (aa) shall include
2 each—

3 “(AA) plaintiff;

4 “(BB) defendant agen-
5 cy; and

6 “(CC) intervenor.”;

7 (2) by striking paragraph (4) and inserting the
8 following:

9 “(4) LITIGATION COSTS.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the court, in issuing any
12 final order in any suit brought under paragraph
13 (1), may award costs of litigation (including
14 reasonable attorney and expert witness fees) to
15 any party, whenever the court determines such
16 award is appropriate.

17 “(B) COVERED SETTLEMENT.—

18 “(i) CONSENT DECREES.—The court
19 shall not award costs of litigation in any
20 proposed covered settlement that is a con-
21 sent decree.

22 “(ii) OTHER COVERED SETTLE-
23 MENTS.—

24 “(I) IN GENERAL.—For a pro-
25 posed covered settlement other than a

1 consent decree, the court shall ensure
2 that the covered settlement does not
3 include payment to any plaintiff for
4 the costs of litigation.

5 “(II) MOTIONS.—The court shall
6 not grant any motion, including a mo-
7 tion to dismiss, based on the proposed
8 covered settlement described in sub-
9 clause (I) if the covered settlement in-
10 cludes payment to any plaintiff for the
11 costs of litigation.”.

12 (3) by adding at the end the following:

13 “(6) APPROVAL OF COVERED SETTLEMENT.—

14 “(A) DEFINITION OF SPECIES.—In this
15 paragraph, the term ‘species’ means a species
16 that is the subject of an action brought under
17 paragraph (1)(C).

18 “(B) IN GENERAL.—

19 “(i) CONSENT DECREES.—The court
20 shall not approve a proposed covered set-
21 tlement that is a consent decree unless
22 each State and county in which the Sec-
23 retary of the Interior believes a species oc-
24 curs approves the covered settlement.

1 “(ii) OTHER COVERED SETTLE-
2 MENTS.—

3 “(I) IN GENERAL.—For a pro-
4 posed covered settlement other than a
5 consent decree, the court shall ensure
6 that the covered settlement is ap-
7 proved by each State and county in
8 which the Secretary of the Interior be-
9 lieves a species occurs.

10 “(II) MOTIONS.—The court shall
11 not grant any motion, including a mo-
12 tion to dismiss, based on the proposed
13 covered settlement described in sub-
14 clause (I) unless the covered settle-
15 ment is approved by each State and
16 county in which the Secretary of the
17 Interior believes a species occurs.

18 “(C) NOTICE.—

19 “(i) IN GENERAL.—The Secretary of
20 the Interior shall provide each State and
21 county in which the Secretary of the Inte-
22 rior believes a species occurs notice of a
23 proposed covered settlement.

24 “(ii) DETERMINATION OF RELEVANT
25 STATES AND COUNTIES.—The defendant in

1 a covered settlement shall consult with
2 each State described in clause (i) to deter-
3 mine each county in which the Secretary of
4 the Interior believes a species occurs.

5 “(D) FAILURE TO RESPOND.—The court
6 may approve a covered settlement or grant a
7 motion described in subparagraph (B)(ii)(II) if,
8 not later than 45 days after the date on which
9 a State or county is notified under subpara-
10 graph (C)—

11 “(i)(I) a State or county fails to re-
12 spond; and

13 “(II) of the States or counties that re-
14 spond, each State or county approves the
15 covered settlement; or

16 “(ii) all of the States and counties fail
17 to respond.

18 “(E) PROOF OF APPROVAL.—The defend-
19 ant in a covered settlement shall prove any
20 State or county approval described in this para-
21 graph in a form—

22 “(i) acceptable to the State or county,
23 as applicable; and

1 “(ii) signed by the State or county of-
2 ficial authorized to approve the covered
3 settlement.”.