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112TH CONGRESS
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H. R. 1042

To amend the Endangered Species Act of 1973 to require that certain species be treated as extinct for purposes of that Act if there is not a substantial increase in the population of a species during the 15-year period beginning on the date the species is determined to be an endangered species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2011

Mr. BACA (for himself, Mr. CALVERT, Mr. CARDOZA, Mr. COSTA, Mr. CUELLAR, Mr. LEWIS of California, Mr. YOUNG of Alaska, Mr. MCCLINTOCK, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To amend the Endangered Species Act of 1973 to require that certain species be treated as extinct for purposes of that Act if there is not a substantial increase in the population of a species during the 15-year period beginning on the date the species is determined to be an endangered species, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Discredit Eternal Listing Inequality of Species Takings Act'' or the ''DELIST Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Delhi Sands Flower-loving Fly (Rhaphiomidas terminates abdominalis) was listed as an endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) on September 23, 1993 (58 Fed. Reg. 49881).

(2) Nineteen years have passed since the Delhi Sands Flower-loving Fly was listed as an endangered species.

(3) The Delhi Sands Flower-loving Fly's listing was based on a high degree of threat and a low potential for recovery for a listed subspecies that may be in conflict with construction or other development projects or other forms of economic activity.

(4) On September 14, 1997, a recovery plan was issued for the Delhi Sands Flower-loving Fly. The plan claimed that the resolution of current population data is too poor to effectively evaluate abundance trends or population distributions due to the cryptic nature and rarity of the Delhi Sands flower-

loving Fly. Thus, the recovery plan by definition could not establish delisting criteria.

(5) The United States Fish and Wildlife Service's report entitled ''Delhi Sands Flower-loving Fly (Rhaphiomidas terminatus abdominalis) 5-Year Review: Summary and Evaluation'' (March 2008; referred to in this section as the ''5-year review report'') establishes that down-listing criterion 2 cannot be evaluated with current knowledge of the Delhi Sands Flower-loving Fly.

(6) None of the Delhi Sands Flower-loving Fly conservation areas are currently managed to maintain perpetual sand supply. There is currently insufficient information to determine the extent or long-term importance of this impact to maintaining the dune ecosystem.

(7) The cryptic nature and low density of Delhi Sands Flower-loving Fly complicate efforts to effectively monitor population abundance.

(8) To date, it has proven difficult to conduct surveys that reliably quantify relevant population variables (e.g., density and relative abundance), and no populations are regularly surveyed with sufficient effort to effectively monitor population trends.

(9) Public support for conservation of the sand dune system upon which the Delhi Sands Flower-loving Fly depends is limited.

(10) The life history of the Delhi Sands Flower-loving Fly is largely unknown.

(11) The 5-year review report asserts that the Delhi Sands Flower-loving Fly was not used to explain larval stages of such fly because the population was too low. Instead, a comparison of entomologists observed several larvae of Rhaphiomidas trochilus, and because R. trochilus is closely related to the Delhi Sands Flower-loving Fly, these observations were used to understand larval biology of the Delhi Sands Flower-loving Fly.

(12) A commenter mentioned in the 5-year review report suggested that the Delhi Sands Flower-loving Fly may be non-native to the Riverside/San Bernardino area and may have been accidentally introduced by the early settlers.

(13) There is no new information in the scientific literature suggesting that the range of the Delhi Sands Flower-loving Fly is more extensive than initially identified.

(14) Although the area of potentially suitable habitat has expanded, no newly discovered occupied

site supports a major population of the Delhi Sands Flower-loving Fly that was not known at the time of the listing.

(15) Within the section of the 5-year review report relating to abundance, it stated that no clear trends emerge from the demographic data that have been generated since the listing of the Delhi Sands Flower-loving Fly. Due to the cryptic nature and rarity of the Delhi Sands flower loving fly, it is difficult to accurately estimate abundance or density for this subspecies.

(16) The 5-year review report claims range-wide surveys have not been attempted due to lack of funding and issues with access to privately owned properties.

(17) The 5-year review report indicated that United States Fish and Wildlife Service biologists initiated a study in 2004 designed to improve Delhi Sands Flower-loving Fly survey protocol recommendations. This study required the effort of 3 biologists working 6 days a week during the peak of the flight season, and the data were only marginally adequate to estimate abundance, density, and detection probability. This effort indicated that measurement of population demographic trends will likely re-

quire substantial effort unless new techniques prove effective.

(18) Because most Delhi Sands Flower-loving Fly habitat is in private ownership and no regulations are in place to address loss of unoccupied Delhi Sands Flower-loving Fly habitat, the permanent loss of potential and restorable Delhi Sands Flower-loving Fly habitat important to recovery often proceeds.

(19) Most of the existing Delhi Sands Flower-loving Fly conservation sites are likely too small and fragmented to sustain Delhi Sands Flower-loving Fly populations through time.

(20) In addition, while protected from development, most of the existing conservation areas remain susceptible to invasion by nonnative grasses, off-road vehicle use, and other disturbances.

(21) Most conservation areas do not have monitoring programs to track Delhi Sands flower-loving fly occupancy or habitat quality.

(22) With at least 90 percent loss of historical Delhi Soils, potential and suitable Delhi Sands Flower-loving Fly habitat available for conservation and restoration is extremely limited.

(23) At the time of listing in 1993, there were only five small, isolated, extant populations of Delhi Sands Flower-loving Fly.

(24) The 5-year review report states that recent observations, and the continued habitat loss and fragmentation, all suggest that population sizes of the Delhi Sands Flower-loving Fly are likely to be very small. Here, it is clear that the United States Fish and Wildlife Service does not know the size of the population. It may be possible that there is no longer a population to protect.

(25) It is commonly accepted in conservation biology that small populations have higher probabilities of extinction than larger populations because their low numbers make them susceptible to inbreeding, loss of genetic variation, high variability in age and sex ratios, demographic stochasticity, and random naturally occurring events such as wildfires, floods, droughts, or disease epidemics.

(26) Delhi Sands Flower-loving Fly populations were considered to be at risk at the time the subspecies was listed because of their small size and habitat fragmentation. We have no information suggesting that these threats have been ameliorated since the time of listing.

(27) Monitoring efforts since the time of listing, though limited, do not suggest population increases, and it is reasonable to believe that Delhi Sands Flower-loving Fly populations are likely to be very small.

(28) Together, small population size, isolation, populations in fragmented habitat, and increased vulnerability to introduced predators and competitors increase the risk of extirpation of the remaining Delhi Sands Flower-loving Fly populations.

(29) Continued listing of the Delhi Sands Flower-loving Fly as an endangered species is not based on the best scientific and commercial data available. The 5-year review report relied on research conducted in 1993 or 2002. The research is 19 and 9 years old, respectively. The 5-year review report has not shown that the Delhi Sands Flower-loving Fly exist nor has there been a substantial increase of population during the 19 years of protection by the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. TREATMENT OF CERTAIN SPECIES AS EXTINCT.

Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et sq.) is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF CERTAIN SPECIES AS EXTINCT.—(A) A limited listed species shall be treated as extinct for purposes of this Act upon the expiration of the 15-year period beginning on the date it is determined by the Secretary to be an endangered species, unless the Secretary publishes a finding that—

"(i) there has been a substantial increase in the population of the species during that period; or

"(ii) the continued listing of the species does not impose any economic hardship on communities located in the range of the species.

"(B) In this paragraph the term 'limited listed species' means any species that is listed under subsection (c) as an endangered species for which it is not reasonably possible to determine whether the species has been extirpated from the range of the species that existed on the date the species was listed because not all individuals of the species were identified at the time of such listing.".

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