

S. 2009. A bill to amend the Endangered Species Act of 1973 to require the Secretary of the Interior to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed, and for other purposes; to the Committee on Environment and Public Works.

Mr. SMITH. Mr. President, today as my first legislative action of the new session, I am introducing important legislation that would require a higher standard for the science used in administering the Endangered Species Act. The Sound Science for Endangered Species Act Planning Act of 2004 would require independent scientific peer review of certain actions taken by the regulatory agencies under the Endangered Species Act. In addition, it would require the Secretary of the Interior and the Secretary of Commerce to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed.

In recent years, we in the northwest have experienced a number of situations in which Federal agency scientists either demanded actions not supported by scientific data, or actually fabricated the data itself. In December 2001, it was revealed that Federal employees had submitted hairs from a captive Canada lynx as though they had been recovered during field surveys in several national forests to determine the range and habitat of this threatened species.

It was also revealed in an Oregon newspaper that a Forest Service biologist criticized his own agency for shoddy work. This employee called into question much of the information collected over 18 years on one national forest, claiming that determinations for projects were based on sketchy information that was not accomplished according to protocol, or not collected at all. Rather than denying these charges, the Forest Service acknowledged that they had some validity, and launched an investigation.

The most egregious example of decisions not based on scientific evidence, however, occurred in the Klamath Basin in 2001. As many of you may recall, I have come to the floor of the Senate on many occasions over the last several years to plead the case of the farmers and ranchers in the Klamath Basin. In 2001, field-level biologists with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service developed two separate biological opinions on the operation of the Klamath Project, as it related to suckers and coho salmon, respectively.

Taken together, these two biological opinions sought to both raise the lake of level of Upper Klamath Lake and increase flows in the Klamath River, at the time the basin was experiencing a severe drought. On April 6, 2001, the Bureau of Reclamation announced that the agency would deliver no water to most of the agricultural lands that had received irrigation water from the Federal project for almost 100 years.

I cannot begin to describe the human toll that these biological opinions exacted on the farmers and ranchers in the Klamath Basin. Those who still have their farms lost most of their farm income that year. Many depleted their life savings just to hold onto their land. Ranchers were forced to sell off livestock herds that year. Stable farm worker communities were decimated as families moved to find work.

The real tragedy is that none of this had to occur. Late last year, scientists with the National Research Council found that the two key decisions regarding the operation of the Klamath Project that deprived farmers of their water lacked "substantial scientific support."

This situation should never be repeated. Decisions of this magnitude under the Endangered Species Act must be peer reviewed, and some standard for the science used in these decisions must be established.

I was in Klamath Falls the day after the decision was made to cut off water to the farmers. I will never forget the anguish on the faces of the people I met with that day. Many were World War II veterans who received homesteads in this Basin after the war or their children, none of whom could believe that this action was being taken by a government "of the people, for the people, and by the people."

Our constituents deserve better from their Government. They will get it if this bill is enacted. There is an identical bill in the House that has bipartisan support, and 63 cosponsors. I urge my colleagues to join me in cosponsoring this reasonable bill to help restore sound science to agency decision-making.

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#### SUBMITTED RESOLUTIONS

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#### SENATE RESOLUTION 284—COMMEMORATING THE LIFE OF WILLIAM V. ROTH, JR., FORMER MEMBER OF THE UNITED STATES SENATE FROM THE STATE OF DELAWARE

Mr. BIDEN (for himself, Mr. CARPER, Mr. FRIST, Mr. DASCHLE, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BREAUX, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BYRD, Mr. CAMPBELL, Ms. CANTWELL, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FITZGERALD, Mr. GRAHAM of Florida, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mr. HOLLINGS, Mrs.

HUTCHISON, Mr. INHOFE, Mr. INOUE, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Mr. MILLER, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. PRYOR, Mr. REED, Mr. REID, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

#### S. RES. 284

Whereas William V. Roth, Jr. was born on July 22, 1921 in Great Falls, Montana, was raised in Helena, Montana, graduated from the University of Oregon, and earned law and business degrees from Harvard University;

Whereas William V. Roth, Jr. was decorated with a Bronze Star for meritorious service with Army military intelligence in the South Pacific during World War II;

Whereas William V. Roth, Jr. moved to Delaware in 1955 and resided in Delaware until his death;

Whereas William V. Roth, Jr. was elected to the House of Representatives in 1966, and served the State of Delaware with distinction until his election to the United States Senate in 1970;

Whereas William V. Roth, Jr. continued to serve the State of Delaware and the United States in the Senate from 1971 to 2001, where he personified the title "Honorable";

Whereas William V. Roth, Jr. championed tax and savings reforms and deficit reduction as Chairman and a member of the Senate Committee on Finance;

Whereas William V. Roth, Jr. worked tirelessly to control government spending as Chairman and a member of the Senate Committee on Governmental Affairs and to shape foreign policy as president of the North Atlantic Treaty Organization (NATO) Parliament Assembly and chairman of the Senate NATO Observer Group;

Whereas William V. Roth, Jr. was a man of integrity, decency, and character who was committed to his family and to the people of Delaware; and

Whereas William V. Roth, Jr. was a trusted friend and colleague and a dedicated public servant: Now, therefore, be it

*Resolved*, That—

(1) the Senate has learned with profound sorrow and deep regret of the death of the Honorable William V. Roth, Jr., formerly a Senator from the State of Delaware;

(2) the Secretary of the Senate shall communicate this resolution to the House of Representatives and transmit an enrolled copy of this resolution to the family of William V. Roth, Jr.; and

(3) upon adjournment today, the Senate shall stand adjourned as a further mark of respect to the memory of William V. Roth, Jr.

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#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2232. Mr. GRASSLEY (for himself, Mr. HATCH, Mr. LUGAR, Mr. MILLER, and Mr. SPECTER) submitted an amendment intended to be proposed by him to the bill S. 274, to

amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 2232.** Mr. GRASSLEY (for himself, Mr. HATCH, Mr. LUGAR, Mr. MILLER, and Mr. SPECTER) submitted an amendment intended to be proposed by him to the bill S. 274, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Class Action Fairness Act of 2003”.

(b) **REFERENCE.**—Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
- Sec. 4. Federal district court jurisdiction for interstate class actions.
- Sec. 5. Removal of interstate class actions to Federal district court.
- Sec. 6. Report on class action settlements.
- Sec. 7. Enactment of Judicial Conference recommendations.
- Sec. 8. Rulemaking authority of Supreme Court and Judicial Conference.
- Sec. 9. Effective date.

#### SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—Congress finds the following:

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and

(C) confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the fram-

ers of the United States Constitution, in that State and local courts are—

(A) keeping cases of national importance out of Federal court;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(b) **PURPOSES.**—The purposes of this Act are to—

(1) assure fair and prompt recoveries for class members with legitimate claims;

(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

(3) benefit society by encouraging innovation and lowering consumer prices.

#### SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) **IN GENERAL.**—Part V is amended by inserting after chapter 113 the following:

##### “CHAPTER 114—CLASS ACTIONS

“Sec.

“1711. Definitions.

“1712. Coupon settlements.

“1713. Protection against loss by class members.

“1714. Protection against discrimination based on geographic location.

“1715. Notifications to appropriate Federal and State officials.

##### “§ 1711. Definitions

“In this chapter:

“(1) **CLASS.**—The term ‘class’ means all of the class members in a class action.

“(2) **CLASS ACTION.**—The term ‘class action’ means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

“(3) **CLASS COUNSEL.**—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.

“(4) **CLASS MEMBERS.**—The term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

“(5) **PLAINTIFF CLASS ACTION.**—The term ‘plaintiff class action’ means a class action in which class members are plaintiffs.

“(6) **PROPOSED SETTLEMENT.**—The term ‘proposed settlement’ means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

##### “§ 1712. Coupon Settlements.

“(a) **CONTINGENT FEES IN COUPON SETTLEMENTS.**—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney’s fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

“(b) **OTHER ATTORNEY’S FEE AWARDS IN COUPON SETTLEMENTS.**—

“(1) **IN GENERAL.**—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney’s fee to be paid to class counsel, any attorney’s fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

“(2) **COURT APPROVAL.**—Any attorney’s fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney’s fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney’s fees.

“(c) **ATTORNEY’S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.**—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

“(1) that portion of the attorney’s fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

“(2) that portion of the attorney’s fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

“(d) **SETTLEMENT VALUATION EXPERTISE.**—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

“(e) **JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.**—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys’ fees under this section.

##### “§ 1713. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

##### “§ 1714. Protection against discrimination based on geographic location

“The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

##### “§ 1715. Notifications to appropriate Federal and State officials

“(a) **DEFINITIONS.**—

“(1) **APPROPRIATE FEDERAL OFFICIAL.**—In this section, the term ‘appropriate Federal official’ means—

“(A) the Attorney General of the United States; or

“(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some