

112TH CONGRESS
1ST SESSION

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Discredit Eternal List-
3 ing Inequality of Species Takings Act” or the “DELIST
4 Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

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

12 (2) Nineteen years have passed since the Delhi
13 Sands Flower-loving Fly was listed as an endan-
14 gered species.

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

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

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

3 (5) The United States Fish and Wildlife Serv-
4 ice’s report entitled “Delhi Sands Flower-loving Fly
5 (*Rhaphiomidas terminatus abdominalis*) 5-Year Re-
6 view: Summary and Evaluation” (March 2008; re-
7 ferred to in this section as the “5-year review re-
8 port”) establishes that down-listing criterion 2 can-
9 not be evaluated with current knowledge of the Delhi
10 Sands Flower-loving Fly.

11 (6) None of the Delhi Sands Flower-loving Fly
12 conservation areas are currently managed to main-
13 tain perpetual sand supply. There is currently insuf-
14 ficient information to determine the extent or long-
15 term importance of this impact to maintaining the
16 dune ecosystem.

17 (7) The cryptic nature and low density of Delhi
18 Sands Flower-loving Fly complicate efforts to effec-
19 tively monitor population abundance.

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

1 (9) Public support for conservation of the sand
2 dune system upon which the Delhi Sands Flower-lov-
3 ing Fly depends is limited.

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

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

15 (12) A commenter mentioned in the 5-year re-
16 view report suggested that the Delhi Sands Flower-
17 loving Fly may be non-native to the Riverside/San
18 Bernardino area and may have been accidentally in-
19 troduced by the early settlers.

20 (13) There is no new information in the sci-
21 entific literature suggesting that the range of the
22 Delhi Sands Flower-loving Fly is more extensive
23 than initially identified.

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

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

4 (15) Within the section of the 5-year review re-
5 port relating to abundance, it stated that no clear
6 trends emerge from the demographic data that have
7 been generated since the listing of the Delhi Sands
8 Flower-loving Fly. Due to the cryptic nature and
9 rarity of the Delhi Sands flower loving fly, it is dif-
10 ficult to accurately estimate abundance or density
11 for this subspecies.

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

16 (17) The 5-year review report indicated that
17 United States Fish and Wildlife Service biologists
18 initiated a study in 2004 designed to improve Delhi
19 Sands Flower-loving Fly survey protocol rec-
20 ommendations. This study required the effort of 3
21 biologists working 6 days a week during the peak of
22 the flight season, and the data were only marginally
23 adequate to estimate abundance, density, and detec-
24 tion probability. This effort indicated that measure-
25 ment of population demographic trends will likely re-

1 quire substantial effort unless new techniques prove
2 effective.

3 (18) Because most Delhi Sands Flower-loving
4 Fly habitat is in private ownership and no regula-
5 tions are in place to address loss of unoccupied
6 Delhi Sands Flower-loving Fly habitat, the perma-
7 nent loss of potential and restorable Delhi Sands
8 Flower-loving Fly habitat important to recovery
9 often proceeds.

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

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

18 (21) Most conservation areas do not have moni-
19 toring programs to track Delhi Sands flower-loving
20 fly occupancy or habitat quality.

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

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

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

12 (25) It is commonly accepted in conservation bi-
13 ology that small populations have higher prob-
14 abilities of extinction than larger populations be-
15 cause their low numbers make them susceptible to
16 inbreeding, loss of genetic variation, high variability
17 in age and sex ratios, demographic stochasticity, and
18 random naturally occurring events such as wildfires,
19 floods, droughts, or disease epidemics.

20 (26) Delhi Sands Flower-loving Fly populations
21 were considered to be at risk at the time the sub-
22 species was listed because of their small size and
23 habitat fragmentation. We have no information sug-
24 gesting that these threats have been ameliorated
25 since the time of listing.

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

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

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

22 **SEC. 3. TREATMENT OF CERTAIN SPECIES AS EXTINCT.**

23 Section 4(a) of the Endangered Species Act of 1973
24 (16 U.S.C. 1531 et sq.) is amended by adding at the end
25 the following new paragraph:

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

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

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

12 “(B) In this paragraph the term ‘limited listed spe-
13 cies’ means any species that is listed under subsection (c)
14 as an endangered species for which it is not reasonably
15 possible to determine whether the species has been extir-
16 pated from the range of the species that existed on the
17 date the species was listed because not all individuals of
18 the species were identified at the time of such listing.”.

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