

**Alliance for Justice * American Association for Justice *
Animal Welfare Institute * Center for Biological Diversity *
Center for Effective Government * Center for Food Safety *
Center for Justice & Democracy * Center for Science and Democracy at
the Union of Concerned Scientists * Defenders of Wildlife *
Earthjustice * Endangered Species Coalition * Environment America *
Friends of the Earth * League of Conservation Voters * National
Association of Consumer Advocates *
Natural Resources Defense Council * Public Citizen * Sierra Club**

RE: Oppose Amendments to “Keystone XL Pipeline Act” that undermine the Endangered Species Act (S.A. 33 and 34)

January 21, 2015

Dear Senator,

On behalf of our millions of members and supporters nationwide, we urge you to oppose Senate Amendments 33 and 34 (Lee (UT)) on S. 1 (“Keystone XL Pipeline Act”). These amendments would undermine the essential protections of the Endangered Species Act (ESA) by squandering agency resources and precluding the ability of citizens to hold the federal government accountable. We also urge you to oppose the underlying bill, S. 1, regardless of amendment outcomes.

The ESA is one of America’s most effective and important environmental laws, serving as a safety net for plants, fish and wildlife on the brink of extinction. The ESA represents a commitment by the American people to protect and restore those species at risk of disappearing forever. Recent polling shows 84 percent of Americans support the Endangered Species Act, while 87 percent recognize that it has proven successful in protecting wildlife, plants and fish from extinction.¹ No law has been more important in preventing species extinctions, including bald eagles, gray whales and the peregrine falcon. Both of the below-described amendments are damaging to the ESA and should be opposed.

S.A. 33 seeks to dissuade citizens from enforcing the Endangered Species Act by restricting their ability to recover litigation costs when they prevail in court. Under this amendment, a prevailing citizen’s request for reimbursement under the Endangered Species Act would be subject to the restrictions of the Equal Access to Justice Act (EAJA). EAJA affords a vital means of court access for citizens from across the political spectrum. EAJA’s fee cap, however, can make it difficult for citizens to retain counsel. The cap on fees included in EAJA often falls well below market rates for attorneys. Further, this amendment would deny federal courts their existing authority under the ESA to ensure that any award of costs in ESA litigation is both “appropriate” and “reasonable” (Section 11). This amendment unnecessarily disrupts this judicial oversight and discretion. In

¹ National poll conducted by Harris Interactive, February 2011, available at http://www.defenders.org/publications/endangered_species_act_poll.pdf

subjecting ESA cases to EAJA's below-market cap on reimbursement, this amendment would make it more difficult for citizens from across the political spectrum to obtain counsel and challenge illegal government actions.

S.A. 34 would establish a burdensome set of reporting requirements that focus entirely on the costs of ESA enforcement cases without acknowledging or accounting for the important role citizen suits play in protecting species and holding federal agencies to the law. Rather than furthering transparency, this amendment would needlessly drain limited agency resources—all in the name of building a misleading case against citizen enforcement of the ESA. Despite repeated declarations by opponents of the ESA that enforcement actions have somehow derailed the law, the Director of the U.S. Fish and Wildlife Service has rejected such claims.² Indeed, researchers recently concluded that citizen enforcement of the ESA has proven essential to the effective implementation of the Act.³ This amendment would further squander agency resources and slow the ESA's implementation.

Please protect the Endangered Species Act, our nation's safety net for imperiled species, by opposing these harmful amendments – Senate Amendments 33 and 34 to S. 1 (“Keystone XL Pipeline Act”). Please also oppose the underlying bill (S. 1).

Sincerely,

Earthjustice
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Public Citizen
League of Conservation Voters
National Association of Consumer Advocates
Defenders of Wildlife
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Natural Resources Defense Council
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Animal Welfare Institute

² Laura Peterson, *Lawsuits Not Hurting Endangered Species Act -- FWS Director*, GREENWIRE (July 5, 2012).

³ See, e.g., Berry Bosi & Eric Biber, *Citizen Involvement in the U.S. Endangered Species Act*, 337 *SCIENCE* 802, 802-03 (Aug. 2012) (“Citizen groups play a valuable role in identifying at-risk species for listing under the ESA.”).