

115TH CONGRESS
2D SESSION

H. R. 6356

To amend the Endangered Species Act of 1973 to provide for improved precision in the listing, delisting, and downlisting of endangered species and potentially endangered species.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2018

Mr. BIGGS (for himself, Mr. BISHOP of Utah, Mr. GOSAR, Mr. CRAMER, Mr. DUNCAN of South Carolina, Mr. GIANFORTE, Mr. MULLIN, Mr. NORMAN, Mr. PEARCE, Mr. SMITH of Texas, Mr. MARSHALL, Mr. ABRAHAM, Mr. LUETKEMEYER, Mr. SMITH of Missouri, Mr. BANKS of Indiana, Mr. STEWART, Mrs. NOEM, Mr. OLSON, Mr. COLLINS of Georgia, Mr. McCLINTOCK, Mr. ESTES of Kansas, Mr. GOHMERT, Mr. NEWHOUSE, and Mrs. LESKO) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Endangered Species Act of 1973 to provide for improved precision in the listing, delisting, and downlisting of endangered species and potentially endangered species.

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 “Less Imprecision in
3 Species Treatment Act of 2018” or the “LIST Act of
4 2018”.

5 **SEC. 2. REQUIREMENT TO INITIATE DELISTING.**

6 (a) REQUIREMENT IN CASE OF RECOVERY.—Section
7 4(b) of the Endangered Species Act of 1973 (16 U.S.C.
8 1533(b)) is amended by adding at the end the following:

9 “(9)(A) The Secretary shall initiate the procedures
10 in accordance with subsection (a)(1) to remove a species
11 from a list published under subsection (c) if—

12 “(i) the goals of a recovery plan for the species
13 developed under subsection (f) have been met; or

14 “(ii) the goals for recovery of the species have
15 not been developed under subsection (f), and the
16 Secretary determines that the species has recovered
17 sufficiently to no longer require the protection of the
18 Act.

19 “(B) Notwithstanding the requirement of subsection
20 (c)(2) that each determination under subparagraph (B) of
21 that subsection shall be made in accordance with the pro-
22 visions of subsections (a) and (b), the Secretary shall re-
23 move a species from any list published under subsection
24 (c) if the Department of the Interior has produced or re-
25 ceived substantial scientific or commercial information
26 demonstrating that the species is recovered or that recov-

1 ery goals set for the species under subsection (f) have been
2 met.

3 “(C) In the case of a species removed under subpara-
4 graph (A) from a list published under subsection (c), the
5 publication and notice under subsection (b)(5) shall con-
6 sist solely of a notice of such removal.”.

7 (b) REQUIREMENT IN CASE ERRONEOUSLY OR
8 WRONGFULLY LISTED.—Section 4(b)(3) of the Endan-
9 gered Species Act of 1973 (16 U.S.C. 1533(a)), as amend-
10 ed by subsection (a), is further amended by adding at the
11 end the following:

12 “(H)(i) Not later than 90 days after the date the De-
13 partment of the Interior receives or produces under this
14 subsection information described in clause (ii) regarding
15 a species included in a list under subsection (c), the Sec-
16 retary shall to the maximum extent practicable find
17 whether the inclusion of such species in such list was less
18 than likely to have occurred in the absence of the scientific
19 or commercial information referred to in clause (ii).

20 “(ii) Information referred to in clause (i) is any infor-
21 mation demonstrating that the listing was determined on
22 the basis of scientific or commercial information available
23 to, or received or produced by, the Department under
24 paragraphs (1) and (3) of subsection (b) that at the time

1 the scientific or commercial information was available to
2 or received or produced by the Department it was—

3 “(I) inaccurate beyond scientifically reasonable
4 margins of error;

5 “(II) fraudulent; or

6 “(III) misrepresentative.

7 “(iii) Notwithstanding the requirement under sub-
8 section (c)(2)(B) that each determination under subpara-
9 graph (B) shall be made in accordance with the provisions
10 of subsections (a) and (b), the Secretary shall—

11 “(I) remove from any list published under sub-
12 section (c) any species for which a positive finding
13 is made under clause (i); and

14 “(II) promptly publish in the Federal Register
15 notice of such finding that includes such information
16 as was received or produced by the Department
17 under such clause.

18 “(iv) Any positive finding by the Secretary under
19 clause (i) shall not be subject to judicial review.

20 “(v) Any negative finding by the Secretary under
21 clause (i) shall be subject to judicial review.

22 “(vi) In the case of a species removed under clause
23 (iii) from a list, the publication and notice under sub-
24 section (b)(5) shall consist solely of a notice of such re-
25 moval.

1 “(vii) If the Secretary finds that a person submitted
2 a petition that is the subject of a positive finding under
3 clause (i) knowing that it contained scientific or commer-
4 cial information described in clause (ii), then during the
5 10-year period beginning on the date of the finding under
6 this clause the person shall not be considered an interested
7 person for purposes of subparagraph (A) with respect to
8 any petition submitted by the person after the date the
9 person submitted such scientific or commercial informa-
10 tion.”.

11 **SEC. 3. EXPANDED CONSIDERATION DURING FIVE-YEAR**
12 **REVIEW.**

13 Section 4(c) (16 U.S.C. 1533(c)) is amended by add-
14 ing at the end the following:

15 “(3) Each determination under paragraph (2)(B)
16 shall consider one of the following:

17 “(A) Except as provided in subparagraph (B)
18 of this paragraph, the criteria required under sub-
19 section (f)(1)(B) in the recovery plan for the species.

20 “(B) If the objective, measurable criteria under
21 subsection (f)(1)(B)(ii) are not established, the fac-
22 tors for the determination that a species is an en-
23 dangered species or a threatened species set forth in
24 subsections (a)(1) and (b)(1).

1 “(C) A finding of error in the determination
2 that the species is an endangered species, a threat-
3 ened species, or extinct.

4 “(D) A determination that the species is no
5 longer an endangered species or threatened species
6 or in danger of extinction, based on an analysis of
7 the factors that are the basis for listing in sub-
8 sections (a)(1) and (b)(1).”.

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