

118TH CONGRESS
1ST SESSION

H. R. 99

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

JANUARY 9, 2023

Mr. BIGGS 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Less Imprecision in
5 Species Treatment Act of 2023” or the “LIST Act of
6 2023”.

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

2 (a) REQUIREMENT IN CASE OF RECOVERY.—Section
3 4(b) of the Endangered Species Act of 1973 (16 U.S.C.
4 1533(b)) is amended by adding at the end the following:

5 “(9)(A) The Secretary shall initiate the proce-
6 dures in accordance with subsection (a)(1) to remove
7 a species from a list published under subsection (c)
8 if—

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

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

17 “(B) Notwithstanding the requirement of sub-
18 section (c)(2) that each determination under sub-
19 paragraph (B) of that subsection shall be made in
20 accordance with the provisions of subsections (a)
21 and (b), the Secretary shall remove a species from
22 any list published under subsection (c) if the De-
23 partment of the Interior has produced or received
24 substantial scientific or commercial information
25 demonstrating that the species is recovered or that

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

3 “(C) In the case of a species removed under
4 subparagraph (A) from a list published under sub-
5 section (e), the publication and notice under sub-
6 section (b)(5) shall consist solely of a notice of such
7 removal.”.

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

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

23 “(ii) Information referred to in clause (i) is
24 any information demonstrating that the listing
25 was determined on the basis of scientific or

1 commercial information available to, or received
2 or produced by, the Department under para-
3 graphs (1) and (3) of subsection (b) that at the
4 time the scientific or commercial information
5 was available to or received or produced by the
6 Department it was—

7 “(I) inaccurate beyond scientifically
8 reasonable margins of error;

9 “(II) fraudulent; or

10 “(III) misrepresentative.

11 “(iii) Notwithstanding the requirement
12 under subsection (c)(2)(B) that each determina-
13 tion under subparagraph (B) shall be made in
14 accordance with the provisions of subsections
15 (a) and (b), the Secretary shall—

16 “(I) remove from any list published
17 under subsection (c) any species for which
18 a positive finding is made under clause (i);
19 and

20 “(II) promptly publish in the Federal
21 Register notice of such finding that in-
22 cludes such information as was received or
23 produced by the Department under such
24 clause.

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

4 “(v) Any negative finding by the Secretary
5 under clause (i) shall be subject to judicial re-
6 view.

7 “(vi) In the case of a species removed
8 under clause (iii) from a list, the publication
9 and notice under subsection (b)(5) shall consist
10 solely of a notice of such removal.

11 “(vii) If the Secretary finds that a person
12 submitted a petition that is the subject of a
13 positive finding under clause (i) knowing that it
14 contained scientific or commercial information
15 described in clause (ii), then during the 10-year
16 period beginning on the date of the finding
17 under this clause the person shall not be consid-
18 ered an interested person for purposes of sub-
19 paragraph (A) with respect to any petition sub-
20 mitted by the person after the date the person
21 submitted such scientific or commercial infor-
22 mation.”.

1 **SEC. 3. EXPANDED CONSIDERATION DURING FIVE-YEAR**
2 **REVIEW.**

3 Section 4(c) of the Endangered Species Act of 1973
4 (16 U.S.C. 1533(c)) is amended by adding at the end the
5 following:

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

8 “(A) Except as provided in subparagraph
9 (B) of this paragraph, the criteria required
10 under subsection (f)(1)(B) in the recovery plan
11 for the species.

12 “(B) If the objective, measurable criteria
13 under subsection (f)(1)(B)(ii) are not estab-
14 lished, the factors for the determination that a
15 species is an endangered species or a threatened
16 species set forth in subsections (a)(1) and
17 (b)(1).

18 “(C) A finding of error in the determina-
19 tion that the species is an endangered species,
20 a threatened species, or extinct.

21 “(D) A determination that the species is
22 no longer an endangered species or threatened
23 species or in danger of extinction, based on an
24 analysis of the factors that are the basis for
25 listing in subsections (a)(1) and (b)(1).”.