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

JUNE 17, 2021

Mr. Biggs (for himself, Mr. Perry, Mr. Rosendale, Mr. Stewart, Mr. McClintock, Mr. Mann, Mrs. Boebert, Mr. Gosar, Mr. Newhouse, and Ms. Cheney) 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 Representatives 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 Species Treatment Act of 2021” or the “LIST Act of 2021”.

5
SEC. 2. REQUIREMENT TO INITIATE DELISTING.

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

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

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

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

“(B) Notwithstanding the requirement of subsection (c)(2) that each determination under subparagraph (B) of that subsection shall be made in accordance with the provisions of subsections (a) and (b), the Secretary shall remove a species from any list published under subsection (c) if the Department of the Interior has produced or received substantial scientific or commercial information demonstrating that the species is recovered or that
recovery goals set for the species under subsection (f) have been met.

“(C) In the case of a species removed under subparagraph (A) from a list published under subsection (c), the publication and notice under subsection (b)(5) shall consist solely of a notice of such removal.”.

(b) Requirement in Case Erroneously or Wrongfully Listed.—Section 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)), as amended by subsection (a), is further amended by adding at the end the following:

“(H)(i) Not later than 90 days after the date the Department of the Interior receives or produces under this subsection information described in clause (ii) regarding a species included in a list under subsection (c), the Secretary shall to the maximum extent practicable find whether the inclusion of such species in such list was less than likely to have occurred in the absence of the scientific or commercial information referred to in clause (ii).

“(ii) Information referred to in clause (i) is any information demonstrating that the listing was determined on the basis of scientific or...
commercial information available to, or received
or produced by, the Department under para-
graphs (1) and (3) of subsection (b) that at the
time the scientific or commercial information
was available to or received or produced by the
Department it was—

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

“(II) fraudulent; or

“(III) misrepresentative.

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

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

“(II) promptly publish in the Federal
Register notice of such finding that in-
cludes such information as was received or
produced by the Department under such
clause.
“(iv) Any positive finding by the Secretary under clause (i) shall not be subject to judicial review.

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

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

“(vii) If the Secretary finds that a person submitted a petition that is the subject of a positive finding under clause (i) knowing that it contained scientific or commercial information described in clause (ii), then during the 10-year period beginning on the date of the finding under this clause the person shall not be considered an interested person for purposes of subparagraph (A) with respect to any petition submitted by the person after the date the person submitted such scientific or commercial information.”.
SEC. 3. EXPANDED CONSIDERATION DURING FIVE-YEAR REVIEW.

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

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

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

“(B) If the objective, measurable criteria under subsection (f)(1)(B)(ii) are not established, the factors for the determination that a species is an endangered species or a threatened species set forth in subsections (a)(1) and (b)(1).

“(C) A finding of error in the determination that the species is an endangered species, a threatened species, or extinct.

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

○