To amend the Endangered Species Act of 1973 to permit Governors of States to regulate intrastate endangered species and intrastate threatened species, to amend the Migratory Bird Treaty Act to permit the taking of certain black vultures and ravens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2021

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 to permit Governors of States to regulate intrastate endangered species and intrastate threatened species, to amend the Migratory Bird Treaty Act to permit the taking of certain black vultures and ravens, 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,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Endangered Species
5 Management Self-Determination Act”.

S. 668

117TH CONGRESS
1ST SESSION
SEC. 2. DEFINITION OF ESA.

In this Act, the term “ESA” means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. FINDINGS.

Congress finds that—

(1) the ESA was passed in 1973 as a means of protecting and recovering species and has not been substantially revised in over 25 years;

(2) the ESA has not achieved its stated goal of recovering threatened species or endangered species;

(3) of the species listed in accordance with the ESA, less than 1 percent of the total number of species in the United States have been recovered and removed from the list, largely due to data errors or other factors;

(4) there is—

(A) no comprehensive independent study of the costs or benefits of the ESA;

(B) no full accounting of how much the Federal Government and State and local governments spend to implement, enforce, and comply with the ESA; and

(C) no meaningful effort to account for the costs the ESA imposes on the private sector;
(5) the ESA effectively penalizes landowners for owning endangered species habitat by forcing them to bear the cost of conservation;

(6) the regulatory listing process under the ESA has become a tool for environmentalists to undermine, slow down, or halt construction of infrastructure projects, hampering economic growth and employment; and

(7) litigation stemming from the ESA and some resulting settlements between the litigants and the Federal Government have made the ESA even more unworkable, to the detriment of species.


(a) DETERMINATIONS OF ENDANGERED SPECIES AND THREATENED SPECIES.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting “, with the consent of the Governor of each State in which the endangered species or threatened species is present,” after “The Secretary”; and

(B) in paragraph (2)(A)(ii), by inserting “, with the consent of the Governor of each State
in which the endangered species or threatened
species is present,” after “, who’’;
(2) in subsection (b)—
(A) by striking paragraph (3);
(B) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), re-
spectively;
(C) in paragraph (3) (as so redesignated), by striking “paragraphs (5) and (6) of this sub-
section” and inserting “paragraphs (4) and (5)”;
(D) in paragraph (5)(A) (as so redesign-
ated), by striking “paragraph (5)(A)(i)” and inserting “paragraph (4)(A)(i)”;
(E) in paragraph (6) (as so redesignated), by striking “paragraph (4), (5), or (6) of this sub-
section” and inserting “paragraph (3), (4), or (5)”;
(F) by adding at the end the following:
“(8) DEFINITION OF BEST SCIENTIFIC AND
COMMERCIAL DATA.—In this subsection, the term ‘best scientific and commercial data’ includes any
scientific evidence made available to the Secretary by any State agency.”;
(3) by striking subsection (c) and inserting the following:

“(c) LISTS.—

“(1) DEFINITION OF JOINT RESOLUTION.—In this subsection, the term ‘joint resolution’ means only a joint resolution the matter after the resolving clause of which is as follows: ‘That Congress approves the lists relating to endangered species and threatened species submitted by the Secretary of the Interior on __________.’ (the blank space being appropriately filled in).

“(2) LISTS SUBMITTED TO CONGRESS.—The Secretary of the Interior shall submit to Congress—

“(A) a list of all species determined by the Secretary of the Interior or the Secretary of Commerce to be endangered species; and

“(B) a list of all species determined by the Secretary of the Interior or the Secretary of Commerce to be threatened species.

“(3) CONGRESSIONAL APPROVAL.—The lists described in paragraph (2) shall not take effect until a joint resolution described in paragraph (1) is enacted.

“(4) CONTENTS OF LISTS.—Each list described in paragraph (2) shall—
“(A) refer to the species included on the list by any scientific and common name; and

“(B) specify—

“(i) with respect to the species over what portion of the range of the species that the species is endangered or threatened; and

“(ii) any critical habitat within the range.

“(5) PUBLICATION.—The Secretary of the Interior shall publish in the Federal Register each list approved in accordance with paragraph (3).

“(6) AUTOMATIC REMOVAL.—

“(A) IN GENERAL.—On the date that is 5 years after the date on which a joint resolution is enacted in accordance with this subsection, each species listed on a list approved by the joint resolution shall be removed from the list.

“(B) PETITION FOR RELISTING.—

“(i) IN GENERAL.—The Secretary of the Interior, in consultation with the Governor of each State in which the endangered species or threatened species is present, may submit to Congress a list
that includes any species that was removed under subparagraph (A).

“(ii) CONGRESSIONAL APPROVAL.—

The list described in clause (i) shall not take effect until a joint resolution described in paragraph (1) is enacted.”;

(4) in subsection (d)—

(A) in the first sentence, by striking “Whenever any species” and inserting “Except as provided in subsection (j), whenever any species”; and

(B) in the second sentence, by striking “The Secretary may” and inserting “Except as provided in subsection (j), the Secretary may”;

(5) in subsection (f)(1), by striking “The Secretary shall” and inserting “Except as provided in subsection (j), the Secretary shall”;

(6) in subsection (g)—

(A) in paragraph (1), by striking “The Secretary shall” and inserting “Except as provided in subsection (j), the Secretary shall”; and

(B) in paragraph (2), by striking “paragraph 7 of subsection (b) of this section” and inserting “subsection (b)(6)”;
(7) in subsection (h)—

(A) in the matter preceding paragraph (1), by striking “The Secretary shall” and inserting “Except as provided in subsection (j), the Secretary shall”;

(B) by striking paragraphs (1) and (2); and

(C) by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively;

(8) in subsection (i)—

(A) by striking “subsection (b)(5)(A)(ii) of this section” and inserting “subsection (b)(4)(A)(ii)”;

(B) by striking “or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3),”; and

(C) by striking “or petition”; and

(9) by adding at the end the following:

“(j) INTRASTATE ENDANGERED SPECIES OR THREATENED SPECIES.—

“(1) DEFINITIONS.—In this subsection:

“(A) GOVERNOR OF A STATE.—The term ‘Governor of a State’ means the Governor of a
State in which an intrastate endangered species or intrastate threatened species is present.

“(B) INTRASTATE ENDANGERED SPECIES.—The term ‘intrastate endangered species’ means an endangered species that the Governor of a State determines is present only within the State.

“(C) INTRASTATE THREATENED SPECIES.—The term ‘intrastate threatened species’ means a threatened species that the Governor of a State determines is present only within the State.

“(2) CURRENTLY LISTED SPECIES.—

“(A) IN GENERAL.—The Governor of a State may regulate any intrastate endangered species or any intrastate threatened species listed under this section that is listed before the date of enactment of this subsection.

“(B) AUTHORITY OF GOVERNOR.—If the Governor of a State elects to regulate an intrastate endangered species or an intrastate threatened species under subparagraph (A), the Governor of the State shall, with respect to the management of the intrastate endangered species or intrastate threatened species on any
land within the State, have the exclusive au-

thority to, in accordance with the purposes and

policy of this Act—

“(i) promulgate or enforce any regula-

tion or guidance;

“(ii) designate a critical habitat;

“(iii) issue a permit or license;

“(iv) develop or implement a recovery

plan; and

“(v) establish any goal with respect to

the recovery plan.

“(C) APPLICABLE LAW.—The management

described in subparagraph (B) shall be subject
to the law of the State in which the land, in-
cluding public lands (as defined in section 103
of the Federal Land Policy and Management
Act of 1976 (43 U.S.C. 1702)), is located.

“(3) NEWLY LISTED SPECIES.—

“(A) IN GENERAL.—The Governor of a

State may, before the Secretary or any other

person, regulate any intrastate endangered spe-

cies or any intrastate threatened species listed

under this section that is listed on or after the
date of enactment of this subsection.
“(B) APPLICABILITY.—If the Governor of a State elects to regulate an intrastate endangered species or an intrastate threatened species under subparagraph (A), subparagraphs (B) and (C) of paragraph (2) shall apply.

“(C) JUDICIAL REVIEW.—Any action by the Governor of a State under this subsection shall not be subject to judicial review in any court of the United States or in any State court.”.

(b) COST ACCOUNTING.—The Endangered Species Act of 1973 is amended by inserting after section 12 (16 U.S.C. 1541) the following:

“SEC. 12A. COST ACCOUNTING REPORT.

“(a) DEFINITIONS.—In this section:

“(1) DIRECT COSTS.—The term ‘direct costs’ includes—

“(A) Federal agency obligations related to the cost of any study;

“(B) capital, operation, maintenance, and replacement costs; and

“(C) staffing costs.

“(2) INDIRECT COSTS.—The term ‘indirect costs’ includes foregone power generation costs and
replacement power costs, including the net costs of any transmission of power.

“(b) COST OF COMPLIANCE.—

“(1) IN GENERAL.—Except with respect to intrastate endangered species or intrastate threatened species regulated by a Governor of a State under section 4(j), the Administrator of the Bonneville Power Administration, the Administrator of the Southeastern Power Administration, the Administrator of the Southwestern Power Administration, and the Administrator of the Western Area Power Administration shall each include in a monthly billing statement submitted to each customer of the respective Administration the share of the direct and indirect costs to the customer incurred by the Administration related to complying with this Act.

“(2) ASSISTANCE IN IDENTIFYING COSTS.—The Director of the Bureau of Reclamation shall assist the administrators described in paragraph (1) with identifying the costs described in that paragraph.

“(c) REPORT.—Not later than January 30 of each year, each of the administrators described in subsection (b)(1), in coordination with the Director of the Bureau of Reclamation, shall submit to the Committee on Environment and Public Works of the Senate and the Com-
mittee on Natural Resources of the House of Representa-
tives a report estimating the costs described in subsection
(b)(1)—

“(1) with respect to the Western Area Power
Administration, on a project-by-project basis; and

“(2) with respect to each of the Administrations
described in subsection (b)(1) (except the Western
Power Administration), on a systemwide basis.

“SEC. 12B. PROPERTY RIGHTS.

“(a) DETERMINATION OF PROPOSED USE OF REAL
Property.—

“(1) In general.—Any owner or lessee of any
real property may submit to the Secretary of the In-
terior an application that includes any proposed use
of the real property.

“(2) Determination.—

“(A) In general.—Not later than 90
days after the date on which the application de-
scribed in paragraph (1) is submitted, the Sec-
retary of the Interior shall submit to the owner
or lessee in writing a determination as to
whether the proposed use will violate any provi-
sion of this Act.

“(B) Failure to respond.—If the Sec-
retary of the Interior fails to respond before the
expiration of the 90-day period described in
subparagraph (A), the proposed use shall be
considered to not violate any provision of this
Act.

“(3) Effect of determinations.—

“(A) Affirmative defense.—It is an af-
firmative defense to any civil penalty assessed
under section 11 or to any civil action, civil
suit, or prosecution brought under that section
that the owner or lessee of real property reason-
ably relied on a determination, including a de-
termination that resulted under paragraph
(2)(B), that a proposed use will not violate any
provision of this Act.

“(B) Compensation for unfavorable
determinations.—If the Secretary of the In-
terior determines that a proposed use will vio-
late a provision of this Act, the owner or lessee
of the real property may seek compensation in
accordance with subsection (b).

“(b) Compensation for agency actions.—

“(1) Definitions.—In this subsection:

“(A) Agency action.—

“(i) In general.—The term ‘agency
action’ means any action taken by the Di-
rector of the United States Fish and Wildlife Service in accordance with this Act that diminishes the fair market value of any real property by not less than 50 percent with respect to the intended use of the real property.

“(ii) EXCLUSION.—The term ‘agency action’ does not include any action taken with respect to intrastate endangered species or intrastate threatened species regulated by a Governor of a State under section 4(j).

“(B) LESSEE.—The term ‘lessee’ means a lessee of any real property affected by an agency action.

“(C) OWNER.—The term ‘owner’ means an owner of any real property affected by an agency action.

“(2) COMPENSATION.—Except as provided in paragraph (3)(B), not later than 180 days after the date on which an agency action takes place, the Secretary shall pay an owner or lessee an amount equal to 150 percent of the fair market value of the real property determined in accordance with paragraph (3).
“(3) Determination of fair market value.—

“(A) In general.—The fair market value described in paragraph (2) shall be determined by 2 licensed independent appraisers of whom—

“(i) one shall be chosen by the Secretary; and

“(ii) one shall be chosen by the owner or lessee.

“(B) Failure to agree on fair market value.—

“(i) In general.—If the appraisers chosen under subparagraph (A) fail to agree on the same fair market value, the Secretary and the owner shall jointly select an additional licensed independent appraiser to determine the fair market value.

“(ii) Extension of time to make determination.—The licensed independent appraiser described in clause (i) shall determine the fair market value not later than 270 days after the date on which the agency action takes place.

“(C) Costs.—The Secretary shall be responsible for all costs relating to the determina-
tion of fair market value made under this para-
graph.”.

(c) Penalties and Enforcement.—Section 11(g)(4) of the Endangered Species Act (16 U.S.C. 1540(g)(4)) is amended by striking “attorney and”.

(d) Conforming Amendment.—Section 6(d)(1) of the Endangered Species Act (16 U.S.C. 1535(d)(1)) is amended by striking “the status of candidate species pursu
ant to subparagraph (C) of section 4(b)(3) and”.

SEC. 5. AMENDMENT TO THE MIGRATORY BIRD TREATY ACT.

Section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) is amended by adding at the end the follow- ing:

“(c) Exception for Black Vultures.—Sub-
section (a) shall not apply to any black vulture (Coragyps atratus) that an individual reasonably believes to be en-
dangering any real or personal property, including—

“(1) livestock;

“(2) a vehicle; and

“(3) a building.

“(d) Exception for Ravens.—Subsection (a) shall not apply to any action relating to the population control of the raven (Corvus corax) in any area in which predation by a raven poses a risk, as determined by the applicable
State wildlife management agency, to an effort to recover a member of a species that is—

“(1) listed by the Secretary of the Interior as an endangered species or a threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); or

“(2) a candidate for listing as an endangered species or a threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).”.