

119TH CONGRESS
2D SESSION

S. _____

To amend the Endangered Species Act of 1973 to make improvements to that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. SCHIFF (for himself and Mr. RICKETTS) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Endangered Species Act of 1973 to make improvements to that Act, 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 “Improving Species Re-
5 covery Act”.

6 **SEC. 2. ESA AMENDMENTS.**

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

1 (1) in subsection (a), by adding at the end the
2 following:

3 “(4) CLEAR STANDARDS FOR CONSIDERING PRE-
4 LISTING CONSERVATION EFFORTS.—

5 “(A) IN GENERAL.—Prior to a determination
6 on whether to list a species as a threatened species
7 or an endangered species under paragraph (1), and
8 subject to the timeframes described in subsection
9 (b)(3) when a petition described in that subsection
10 is involved, the Secretary shall establish clear demo-
11 graphic standards and standards for determining
12 how much threats to the species must be alleviated,
13 including through conservation actions, in order for
14 the species to not meet the definition of a threatened
15 species or an endangered species under this Act if
16 the Secretary determines that doing so would en-
17 courage voluntary conservation actions with respect
18 to the species.

19 “(B) REQUIREMENT.—Standards established
20 under subparagraph (A) shall be based on the best
21 scientific and commercial data available.”;

22 (2) in subsection (b), by adding at the end the
23 following:

24 “(9) APPLYING CLEAR STANDARDS FOR CONSID-
25 ERING PRE-LISTING CONSERVATION EFFORTS.—As part

1 of applying the factors under paragraph (1) of subsection
2 (a) to determine whether to list a species as a threatened
3 species or an endangered species under that paragraph,
4 the Secretary shall consider any standards established
5 under paragraph (4) of that subsection, as applicable.

6 “(10) SPECIES BASELINE.—

7 “(A) IN GENERAL.—If the Secretary deter-
8 mines that a species is a threatened species or an
9 endangered species under subsection (a)(1), the Sec-
10 retary shall, as part of a final rule making a listing
11 decision, specify the baseline condition of the species
12 at the time of that determination, which shall in-
13 clude—

14 “(i) the data and assumptions used to es-
15 tablish that baseline condition; and

16 “(ii) any material data gaps or uncertain-
17 ties associated with that baseline condition.

18 “(B) BASELINE CONDITION DESCRIBED.—The
19 baseline condition of a species referred to in sub-
20 paragraph (A) is—

21 “(i) the status of the threat to the species;
22 and

23 “(ii) any demographic factors of the spe-
24 cies, including abundance, distribution, and
25 habitat condition.”;

1 (3) in subsection (c), in the undesignated mat-
2 ter following paragraph (2), by striking “Each deter-
3 mination” and all that follows through “(b).” and
4 inserting the following:

5 “(3) DETERMINATIONS.—A determination under
6 subparagraph (B) shall be made in accordance with sub-
7 sections (a) and (b).

8 “(4) DELISTING GUIDANCE.—

9 “(A) IN GENERAL.—To increase consistency in
10 how the Secretary considers voluntary conservation
11 actions in any determination on whether to remove
12 a species from the list of endangered species or
13 threatened species, not later than 3 years after the
14 date of enactment of this paragraph, the Secretary
15 shall promulgate regulations on how the Secretary
16 will consider those actions as part of such a deter-
17 mination.

18 “(B) INCLUSIONS.—The regulations promul-
19 gated under subparagraph (A) shall—

20 “(i) include how the Secretary will work
21 with States to implement conservation actions
22 in conjunction with private landowners or oth-
23 ers after a species has been removed from the
24 list of endangered species or threatened species,
25 if a decision is made to remove the species; and

1 “(ii) explain how the Secretary will deter-
2 mine whether any particular voluntary con-
3 servation action is durable and adequate to en-
4 sure the action—

5 “(I) continues to be implemented; and

6 “(II) is effective at conserving the
7 species into the foreseeable future.”;

8 (4) in subsection (d), by adding at the end the
9 following: “The Secretary shall, where prudent and
10 determinable, incorporate in regulations issued
11 under this subsection objective criteria, including
12 conservation milestones described in subsection
13 (f)(1)(B)(v), as triggers for additional flexibility (in-
14 cluding reducing the scope of the requirements in
15 the regulation) when those criteria are met.”; and

16 (5) in subsection (f)—

17 (A) in paragraph (1)—

18 (i) in subparagraph (A), by adding
19 “and” at the end; and

20 (ii) in subparagraph (B)—

21 (I) in clause (ii), by striking
22 “and” at the end;

23 (II) in clause (iii), by striking the
24 period at the end and inserting a
25 semicolon; and

1 (III) by adding at the end the
2 following:

3 “(iv) the identification of the highest
4 priority science and research questions or
5 data gaps to pursue, as may be necessary,
6 to achieve the goal of the plan for the con-
7 servation and survival of the species; and

8 “(v) the identification of conservation
9 milestones to track and measure the
10 progress of a species towards the point of
11 no longer meeting the definition of a
12 threatened species or an endangered spe-
13 cies under this Act, which shall be estab-
14 lished in accordance with—

15 “(I) the factors described in sub-
16 paragraphs (A) through (E) of sub-
17 section (a)(1); and

18 “(II) the best available science.”;

19 (B) by striking paragraph (3) and insert-
20 ing the following:

21 “(3) PERIODIC REPORTS.—

22 “(A) IN GENERAL.—Not less frequently
23 than once every 3 years, the Secretary shall
24 submit to the Committee on Environment and
25 Public Works of the Senate and the Committee

1 on Natural Resources of the House of Rep-
2 resentatives a report on—

3 “(i) the status of efforts to develop
4 and implement recovery plans for all spe-
5 cies listed pursuant to this section; and

6 “(ii) the status of all species for which
7 such recovery plans have been developed.

8 “(B) REQUIREMENTS.—A report under
9 subparagraph (A) shall include brief, summa-
10 rized information on each species listed pursu-
11 ant to this section, which shall be based on in-
12 formation in the most recent 5-year status re-
13 view under subsection (c)(2)(A), including—

14 “(i) the current and expected future
15 demographic status of the species, includ-
16 ing the abundance and distribution of the
17 species;

18 “(ii) the extent to which the threat
19 factors described in subparagraphs (A)
20 through (E) of subsection (a)(1) have been
21 alleviated or changed;

22 “(iii) whether the status of the species
23 overall is improving, stable, or declining;

1 “(iv) the extent to which the species
2 has met any of its conservation milestones,
3 as described in paragraph (1)(B)(v);

4 “(v) the efficacy of voluntary con-
5 servation measures that have been imple-
6 mented for the species; and

7 “(vi) identification of any gaps in data
8 that inhibit the inclusion of any informa-
9 tion described in clauses (i) through (v).

10 “(C) PUBLIC AVAILABILITY.—With respect
11 to each species listed pursuant to this section,
12 the Secretary shall make the information de-
13 scribed in subparagraph (B) publicly available
14 on the website of the United States Fish and
15 Wildlife Service.”; and

16 (C) by adding at the end the following:

17 “(6) CONSERVATION MILESTONES.—

18 “(A) IN GENERAL.—As determined necessary
19 and advisable by the Secretary to provide for the
20 conservation of any species listed pursuant to this
21 section, the Secretary may incorporate the conserva-
22 tion milestones described in paragraph (1)(B)(v)
23 into any regulation issued under subsection (d), any
24 reasonable and prudent measures described in sec-
25 tion 7(b)(3)(A), and any permit issued under section

1 10(a) as triggers for increased flexibility in the oper-
2 ation of the regulation, measure, or permit, as appli-
3 cable.

4 “(B) CONSERVATION ACTIONS.—Any species
5 listed pursuant to this section for which conservation
6 milestones described in paragraph (1)(B)(v) for the
7 species have been met may be prioritized in the allo-
8 cation of funds for conservation actions under sec-
9 tion 5 or 6.”.

10 (b) INTERAGENCY COOPERATION.—Section 7 of the
11 Endangered Species Act of 1973 (16 U.S.C. 1536) is
12 amended by adding at the end the following:

13 “(q) ONLINE TOOL TO EXPEDITE INTERAGENCY CO-
14 OPERATION.—

15 “(1) DEFINITION OF DETERMINATION KEY.—In
16 this subsection, the term ‘determination key’ means
17 a logically structured set of questions designed to as-
18 sist users in determining if an agency action quali-
19 fies for a pre-determined consultation outcome based
20 on an existing programmatic consultation.

21 “(2) IPAC.—The Secretary shall expand the
22 application of the Information for Planning and
23 Consultation digital tool of the United States Fish
24 and Wildlife Service (referred to in this subsection
25 as ‘IPaC’) to expedite consultations under subsection

1 (a)(2), including by, subject to the availability of ap-
2 propriations, identifying and producing more deter-
3 mination keys as may be necessary to enable the use
4 of digital tools, such as IPaC, for more categories of
5 agency actions under this section.

6 “(3) STUDY; REPORT.—

7 “(A) IN GENERAL.—Not later than 1 year
8 after the date of enactment of this subsection,
9 the Secretary shall carry out a study to identify
10 other processes, reviews, or consultations re-
11 quired under this Act that may be expedited or
12 automated using digital technology or artificial
13 intelligence while maintaining adherence to all
14 requirements under this Act.

15 “(B) REPORT.—On completion of the
16 study required under subparagraph (A), the
17 Secretary shall submit to Congress a report on
18 the results of that study, which shall include
19 any identified processes, reviews, or consulta-
20 tions described in that subparagraph.”.