

H.R. 6356, the LIST Act
Rep. Andy Biggs (AZ-05)
Prevent Abundant Species from Wrongfully Receiving Protections
The Endangered Species Act routinely fails to de-list species that are recovered

Dear Colleague:

While many species that are listed under the Endangered Species Act reach population and habitat conditions that indicate full recovery, several of the bureaucratic processes involved in de-listing recovered species have broken down or failed entirely. **For how many species are actually recovered or wrongfully listed, the de-listing rate is extremely low – just three percent of species that have been designated have been de-listed.** Species languish on the list for decades, long after robust habitat conservation measures of the Act have been implemented to rehabilitate the species.

ESA listing was meant to be a medium-term support for species recovery – not a *permanent classification* for *already-recovered species*. But unforeseen statutory inefficiencies incentivize the U.S. Fish and Wildlife Services' (USFWS') tendency to pour its resources into listing *new* species rather than evaluating already-listed ones. De-listing safeguards in the Act such as 5-year reviews have broken down. These are obvious and enduring – but soluble – statutory deficiencies which require Congressional intervention.

The Less Imprecision in Species Treatment Act, also known as the LIST Act, makes a number of improvements to help bring the ESA up-to-date. Notably, this legislation authorizes the Secretary of the Interior to de-list species when he receives objective, measurable scientific study demonstrating a species is recovered. Though USFWS has been less than attentive to its statutory duty to conduct five-year reviews, the Secretary can still be made to delist eligible species with this provision. These measures will also facilitate states, academic researchers and outside groups in monitoring species recovery and notifying USFWS when recovery has occurred.

Besides bureaucratic delays in de-listing recovered species, another major issue to emerge in the past decades is wrongful listings. Often, newly-discovered or poorly-understood species receive protections even though they later turn out to be ecologically abundant. This bill creates a straightforward mechanism for USFWS to promptly act on information they receive that demonstrates a species was wrongfully listed in this manner, rather than letting the problem gather dust on the bureaucratic backburner as often happens now.

Finally, the bill allows for those who are demonstrated in a civil lawsuit to have intentionally submitted false or fraudulent species data in order to cause a species listing to be prevented from submitting petitions for a period of ten years. **Those who would intentionally defraud the listing process should not be allowed to continually submit petitions after their malfeasance is uncovered** – but alarmingly, there exists no mechanism in the Act as written to ‘disbar’ fraudsters.

Listing a species is a big deal, and actually protecting a species imposes substantial costs. Such actions impose costly measures on private landowners and federal agencies as well as limitations and requirements on project proposals both public and private, and huge governmental and bureaucratic exertions. Accordingly, we need to make absolutely certain that species listed as ‘endangered’ actually are in danger of extinction. Thus far, the government has done a poor job in doing so due to structural gaps in the original statute. This bill gives USFWS the tools and authorities needed to delist species when they are clearly recovered, or clearly wrongfully listed.

With questions or to support this bill, contact cesar.ybarra@mail.house.gov (Biggs) and jeff.small@mail.house.gov (Western Caucus).

Sincerely,

Andy Biggs
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress