

118TH CONGRESS
2D SESSION

S. 4985

To reform the process for listing a species as threatened or endangered under the Endangered Species Act of 1973, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2024

Mr. LANKFORD (for himself, Mr. BARRASSO, and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To reform the process for listing a species as threatened or endangered under the Endangered Species Act of 1973, 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 “21st Century Wildlife
5 Enhancement and Partnership Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) CANDIDATE CONSERVATION AGREEMENT.—

9 The term “Candidate Conservation Agreement”

1 means a formal, voluntary agreement between the
2 Service and 1 or more parties to address the con-
3 servation needs of—

4 (A) a candidate species; or

5 (B) a species that may become a candidate
6 species in the near future.

7 (2) CANDIDATE CONSERVATION AGREEMENT
8 WITH ASSURANCES.—The term “Candidate Con-
9 servation Agreement with Assurances” means a
10 Candidate Conservation Agreement that provides in-
11 centives for persons that are parties to the Can-
12 didate Conservation Agreement to engage in the vol-
13 untary conservation activities described in the Can-
14 didate Conservation Agreement.

15 (3) CANDIDATE SPECIES.—The term “can-
16 didate species” means a species that is under consid-
17 eration for listing as threatened or endangered
18 under the Endangered Species Act of 1973 (16
19 U.S.C. 1531 et seq.).

20 (4) CONSERVATION BENEFIT AGREEMENT.—
21 The term “Conservation Benefit Agreement” means
22 a conservation benefit agreement described in the
23 final rule of the Service entitled “Endangered and
24 Threatened Wildlife and Plants; Enhancement of

1 Survival and Incidental Take Permits” (89 Fed.
2 Reg. 26070 (April 12, 2024)).

3 (5) ESTABLISHED CONSORTIUM.—The term
4 “established consortium” means a State-based or
5 multi-State-based group of individuals or organiza-
6 tions that—

7 (A) is established as of the date of enact-
8 ment of this Act;

9 (B) operates under a functioning, as deter-
10 mined by the individuals or organizations that
11 are parties to that consortium—

12 (i) conservation or recovery plan; or

13 (ii) conservation, recovery, or planning
14 documents; and

15 (C) is an ongoing partnership organized
16 principally for the conservation of a species that
17 is not listed, or a species that is proposed to be
18 listed, under the Endangered Species Act of
19 1973 (16 U.S.C. 1531 et seq.).

20 (6) SECRETARY.—The term “Secretary” means
21 the Secretary of the Interior.

22 (7) SERVICE.—The term “Service” means the
23 United States Fish and Wildlife Service.

1 (8) SPECIES.—The term “species” has the
2 meaning given the term in section 3 of the Endan-
3 gered Species Act of 1973 (16 U.S.C. 1532).

4 (9) THIRD-PARTY EVALUATOR TEAM.—The
5 term “third-party evaluator team” means an inde-
6 pendent entity empaneled under section 3(a).

7 **SEC. 3. INDEPENDENT REVIEW OF PROPOSED LISTINGS.**

8 (a) THIRD-PARTY EVALUATOR TEAMS.—

9 (1) IN GENERAL.—Not later than 90 days after
10 the date on which an established consortium re-
11 quests that a third-party evaluator team be
12 empaneled under subsection (b)(1)(B), the Secretary
13 shall empanel a third-party evaluator team to review,
14 evaluate, and determine the sufficiency of a proposed
15 listing as threatened or endangered under the En-
16 dangered Species Act of 1973 (16 U.S.C. 1531 et
17 seq.) by the Service of a species that is managed by
18 the established consortium that objects to that pro-
19 posed listing.

20 (2) MEMBERSHIP; STRUCTURE.—

21 (A) IN GENERAL.—The structure and
22 membership of a third-party evaluator team
23 shall be established by the Secretary, in con-
24 sultation with Congress, subject to the condi-
25 tion that the Secretary shall have the final de-

1 termination on the structure, membership, and
2 scope of review of a third-party evaluator team.

3 (B) GUIDELINES AND REQUIREMENTS FOR
4 MEMBERSHIP.—In establishing the membership
5 of a third-party evaluator team under subpara-
6 graph (A), the Secretary shall adhere to the fol-
7 lowing requirements:

8 (i) Not fewer than 5, but not greater
9 than 9, individuals selected to serve on the
10 third-party evaluator team shall have ex-
11 pertise in the following:

12 (I) Science or academic back-
13 ground necessary to render an expert
14 opinion on the scientific studies and
15 related materials submitted for review
16 under paragraphs (5) and (6)(C) of
17 subsection (b).

18 (II) Ability to provide economic
19 analysis and economic impacts of a
20 threatened or endangered species list-
21 ing on local and regional economies,
22 with a particular expertise on impacts
23 on private landowners and small busi-
24 nesses.

1 (III) Voluntary conservation
2 partnerships.

3 (IV) Natural resource-related in-
4 dustries, including oil and gas, min-
5 ing, forestry, ranching, agriculture,
6 and grazing.

7 (ii) No current or former employee of
8 the Service shall be eligible to serve on the
9 third-party evaluator team.

10 (C) CHAIR.—The Chair of a third-party
11 evaluator team shall be determined by the mem-
12 bers of the third-party evaluator team.

13 (D) PUBLICATION.—Not later than 10
14 days before the date on which a third-party
15 evaluator team has its first meeting, the Sec-
16 retary shall publish, by Secretarial Order in the
17 Federal Register, the structure, membership,
18 and scope of review of the third-party evaluator
19 team.

20 (3) ADMINISTRATION; VOTING.—

21 (A) IN GENERAL.—A third-party evaluator
22 team shall determine the process for reviewing
23 documents, requesting information, drafting the
24 final report under subsection (b)(7), and other
25 related actions.

1 (B) VOTING.—

2 (i) IN GENERAL.—Each member of a
3 third-party evaluator team shall have an
4 equal vote.

5 (ii) VOTE TO PROCEED.—

6 (I) IN GENERAL.—A determina-
7 tion on proceeding by a third-party
8 evaluator team shall be by majority
9 vote.

10 (II) TIE.—For purposes of pre-
11 paring and submitting a final report
12 and determination under subsection
13 (b)(7), a vote of a third-party eval-
14 uator team that results in a tie shall
15 result in the proposed listing that is
16 the subject of that final report and
17 determination to be terminated.

18 (4) COMPENSATION OF MEMBERS.—A member
19 of a third-party evaluator team who is not an officer
20 or employee of the Federal Government shall be
21 compensated at a rate equal to the daily equivalent
22 of the annual rate of basic pay prescribed for level
23 IV of the Executive Schedule under section 5315 of
24 title 5, United States Code, for each day (including
25 travel time) during which the member is engaged in

1 the performance of the duties of the third-party
2 evaluator team.

3 (5) TRAVEL EXPENSES.—A member of a third-
4 party evaluator team shall be allowed travel ex-
5 penses, including per diem in lieu of subsistence, at
6 rates authorized for employees of agencies under
7 subchapter I of chapter 57 of title 5, United States
8 Code, while away from their homes or regular places
9 of business in the performance of services for the
10 third-party evaluator team.

11 (b) PROCESS.—

12 (1) IN GENERAL.—Not later than 21 days after
13 the date on which the Secretary publishes a notice
14 of a proposed listing of a species as threatened or
15 endangered under the Endangered Species Act of
16 1973 (16 U.S.C. 1531 et seq.), an established con-
17 sortium may—

18 (A) submit to the Secretary a letter object-
19 ing to the proposed listing; and

20 (B) request that a third-party evaluator
21 team be empaneled.

22 (2) CEASE OF FEDERAL ACTION.—On receipt of
23 an objection letter from an established consortium
24 under paragraph (1)(A), the Secretary shall cease all
25 action with respect to the proposed listing.

1 (3) RESPONSE BY SECRETARY.—Not later than
2 45 days after the date on which the Secretary re-
3 ceives an objection letter from an established consor-
4 tium under paragraph (1)(A), the Secretary shall
5 refer the matter to the third-party evaluator team.

6 (4) FIRST MEETING.—Not later than 14 days
7 after the date on which the Secretary refers an ob-
8 jection to the third-party evaluator team under para-
9 graph (3), the third-party evaluator shall hold its
10 first meeting.

11 (5) SUBMISSION OF INFORMATION.—At such
12 time and in such manner as the third-party eval-
13 uator team determines appropriate, the Service and
14 the established consortium shall submit to the third-
15 party evaluator team the scientific data, or any
16 other material, that the Service and the established
17 consortium, respectively, believes supports its posi-
18 tion in opposition to, or support for, the proposed
19 listing.

20 (6) REVIEW.—

21 (A) IN GENERAL.—Not later than 90 days
22 after the date on which the third-party eval-
23 uator team receives the information submitted
24 under paragraph (5), the third-party evaluator
25 team—

1 (i) shall conduct an initial review of
2 the assertions made by the Service and the
3 established consortium; and

4 (ii) may, as applicable, request addi-
5 tional information from—

6 (I) the Service or the established
7 consortium; or

8 (II) outside parties, including the
9 public, experts, or any other party, as
10 determined by the third-party eval-
11 uator team.

12 (B) CONSIDERATIONS.—In conducting an
13 initial review under subparagraph (A)(i), the
14 third-party evaluator team shall consider, in ad-
15 dition to the information submitted under para-
16 graph (5)—

17 (i) the current management plans in
18 place for the applicable candidate species;

19 (ii) opportunities for achieving, or
20 continuing, protection of the applicable
21 species through the current, or enhanced,
22 voluntary conservation actions;

23 (iii) the economic impacts of the pro-
24 posed listing; and

1 (iv) such other factors, as determined
2 by the third-party evaluator team.

3 (C) RESPONSE TO REQUEST.—If the third-
4 party evaluator team requests additional infor-
5 mation from the Service, the established consor-
6 tium, or an outside party under subparagraph
7 (A)(ii), the Service, established consortium, or
8 outside party, as applicable, shall have 30 days
9 to respond to that request.

10 (7) FINAL DECISION AND REPORT.—

11 (A) IN GENERAL.—Not later than 180
12 days after the later of the date on which the
13 third-party evaluator team conducts an initial
14 review under subparagraph (A)(i) of paragraph
15 (6) and the date on which the third-party eval-
16 uator team receives additional information
17 under subparagraph (C) of that paragraph, the
18 third-party evaluator team shall review the ad-
19 ditional information, if applicable, and provide
20 to the Secretary a final report that contains a
21 binding determination describing whether the
22 proposed listing shall—

23 (i) proceed;

24 (ii) be terminated; or

1 (iii) be remanded back to the Service
2 for further action, in accordance with that
3 determination.

4 (B) REQUIREMENT.—A final report sub-
5 mitted under subparagraph (A) shall be made
6 publicly available and of sufficient length and
7 detail to provide members of the public with a
8 clear and basic understanding of the decision
9 and why the decision was rendered.

10 (C) DISSENTS.—Any member of the third-
11 party evaluator team that disagrees with the
12 final report submitted under subparagraph (A)
13 may submit, to the Secretary in accordance
14 with that subparagraph, a dissent.

15 (8) FINAL AGENCY ACTION.—A determination
16 made by the third-party evaluator team under para-
17 graph (7)(A) shall constitute a final agency action
18 (as defined in section 551 of title 5, United States
19 Code).

20 **SEC. 4. ENHANCING THE TRANSPARENCY OF THE LISTING**
21 **PROCESS.**

22 (a) IN GENERAL.—In accordance with subchapter II
23 of chapter 5, and chapter 7, of title 5, United States Code
24 (commonly known as the “Administrative Procedure

1 Act”), each Species Status Assessment shall be subject to
2 notice and comment.

3 (b) REQUIREMENTS.—Each Species Status Assess-
4 ment shall include—

5 (1) the names of all peer reviewers;

6 (2) a biography of each peer reviewer;

7 (3) the selection process for the members of the
8 peer review team;

9 (4) a detailed description of all previous Species
10 Status Assessments that the peer review team has
11 reviewed and the role of each member of the peer re-
12 view team in those reviews;

13 (5) a list of published papers the peer reviewers
14 have produced, including the subject of the Species
15 Status Assessment and methodologies and expertise
16 related to information included the Species Status
17 Assessment;

18 (6) an annotated bibliography of all reports,
19 academic papers, and related material considered
20 but excluded from the final Species Status Assess-
21 ment and an explanation of why that information
22 was excluded;

23 (7) an annotated bibliography of all reports,
24 academic papers, and related material considered
25 and included in the final Species Status Assessment

1 and an explanation of why that information was in-
2 cluded; and

3 (8) an explanation of how the Service inter-
4 preted the genetic data and information in the Spe-
5 cies Status Assessment and, to the extent the peer
6 review team use data sets, the given assumptions in
7 the interpretation of those data sets.

8 **SEC. 5. CODIFICATION OF PARTNERSHIPS.**

9 (a) CANDIDATE CONSERVATION AGREEMENTS; CAN-
10 DIDATE CONSERVATION AGREEMENTS WITH ASSUR-
11 ANCES.—Each Candidate Conservation Agreement and
12 Candidate Conservation Agreement with Assurances in ef-
13 fect as of the date of enactment of this Act shall have
14 the force and effect of law beginning on the date of enact-
15 ment of this Act until such time as the parties to the appli-
16 cable Candidate Conservation Agreement or Candidate
17 Conservation Agreement with Assurances mutually agree
18 not to renew the Candidate Conservation Agreement or
19 Candidate Conservation Agreement with Assurances, as
20 applicable.

21 (b) PARTNERS FOR FISH AND WILDLIFE PRO-
22 GRAM.—

23 (1) IN GENERAL.—Pursuant to the Partners
24 for Fish and Wildlife Program of the Service author-
25 ized by section 4 of the Partners for Fish and Wild-

1 life Act (16 U.S.C. 3773) (referred to in this sub-
2 section as the “Program”), the Secretary shall enter
3 into voluntary and customized partnerships with pri-
4 vate landowners to improve conditions for wildlife.

5 (2) DUTIES.—In carrying out the Program, the
6 Secretary shall provide technical and financial assist-
7 ance to private landowners who enter into a partner-
8 ship with the Service under paragraph (1) to plan,
9 design, supervise, and monitor customized habitat
10 restoration projects.

11 **SEC. 6. CONSERVATION PARTNERSHIP OPTIONS.**

12 (a) IN GENERAL.—Notwithstanding any other provi-
13 sion of law, it shall be at the sole discretion of a non-
14 Federal property owner to determine which conservation
15 agreement described in subsection (b) to enter into with
16 the Service for the conservation of a species.

17 (b) CONSERVATION AGREEMENTS DESCRIBED.—A
18 conservation agreement referred to in subsection (a) is any
19 of the following:

- 20 (1) A Conservation Benefit Agreement.
21 (2) A Candidate Conservation Agreement.
22 (3) A Candidate Conservation Agreement with
23 Assurances.

1 **SEC. 7. ENSURING TRUE CRITICAL HABITAT.**

2 The final rule of the Service and the National Marine
3 Fisheries Service entitled “Endangered and Threatened
4 Wildlife and Plants; Regulations for Listing Species and
5 Designating Critical Habitat” (84 Fed. Reg. 45020 (Au-
6 gust 27, 2019)) is enacted into law.

○