



REPORT ON LEGISLATION BY THE ANIMAL LAW COMMITTEE

S.2070

Sen. Lee

A BILL to clarify that noncommercial species found entirely within the borders of a single State are not in interstate commerce or subject to regulation under the Endangered Species Act of 1973 or any other provision of law enacted as an exercise of the power of Congress to regulate interstate commerce.

Native Species Protection Act

THIS LEGISLATION IS OPPOSED

I. SUMMARY OF PROPOSED LAW

Senate Bill No. 2070, the Native Species Protection Act (the “Bill”), would remove “intrastate species” from the scope of the Endangered Species Act (“ESA”) of 1973, or any other provision of law under which regulatory authority is based on the power of Congress to regulate interstate commerce under the Commerce Clause. The Bill would also provide that an intrastate species shall not be considered to be in interstate commerce. The Bill defines an “intrastate species” as any species of plant or fish or wildlife that is “found entirely within the borders of a single State”¹ and that is “not part of a national market for any commodity.”²

Despite its name, the Native Species Protection Act does not protect native species; instead, by undermining the protections of the ESA, it puts intrastate species at risk and may have a devastating effect on biodiversity, thus impacting interstate species.³ If the Bill passes, roughly

¹ The ESA defines “State” as “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.” 16 U.S. Code § 1532(17). Throughout this report, the lowercase word “state” means “State” in the ESA.

² S. 2020, §§ 1-2. The Bill is available on Congress’s website at <https://tinyurl.com/42put8ct>. All websites cited were last visited on January 9, 2022.

³ E.g., Daniel Fors, *The Native Species Protection Act: A Deceptively-Named Measure to Destroy the Endangered Species Act*, 29 VILL. ENVTL. L.J. 177, 192-93 (2018) (discussing the Bill’s potential impact on endangered

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350 animal species that exist purely within one state,⁴ such as the Nashville crayfish and the Utah prairie dog,⁵ will no longer be protected by the ESA.

This report discusses the reasons why the Bill should not be enacted into law: (i) the Bill undermines the goals of the ESA; (ii) its reach is vaguely stated and it is unclear which species it would cover; (iii) it would frustrate the United States' obligations under the Convention on International Trade in Endangered Species of Flora and Fauna (CITES); (iv) it would deprive states of potential federal support, disproportionately affecting states including Alabama, Florida, and Texas; and (v) it would imperil the survival of endangered and threatened species because many states' current laws do not effectively protect those species.

II. JUSTIFICATION

A. The Bill Undermines the Goals of the Endangered Species Act.

The ESA was enacted almost fifty years ago with the goal of conserving plant and animal species that may become extinct without government protection.⁶ It establishes a broad federal regulatory scheme that protects these species and, significantly, does so without distinguishing between species that cross state borders and species that do not.⁷ Such species include those whose natural distribution is within only one state, those that are distributed in multiple states and/or foreign countries, those that live in oceans, and those whose natural distribution is only in foreign

interstate species that rely on certain intrastate species for food),
<https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1408&context=elj>.

⁴ See Exhibit A. This report focuses only on the animal species that will be affected by the Bill. In total 2,276 plant and animal species are listed as endangered or threatened (including emergency listings) under the ESA as of December 9, 2021. We calculated this number by using the U.S. Fish & Wildlife Service's ECOS Environmental Conservation On-Line Search Tool and generating a "species list." We determined that roughly 350 animal species would be covered by the Bill by running a report of all endangered and threatened animal species on the U.S. Fish & Wildlife Service's ECOS Environmental Conservation On-Line Search Tool. If the animal's "current distribution" was limited to only one U.S. state or territory in the report, we included it in the table in Exhibit A. We acknowledge that the table in Exhibit A may be over- or under-inclusive by a few species, but we have not been able to find a current count of all intrastate animal species from another source.

⁵ Exhibit A lists the diverse range of animal species that would be affected by the Bill, including mammals such as the Key deer in Florida; birds such as the Puerto Rican parrot in Puerto Rico; fish such as Devils Hole pupfish in Nevada; reptiles such as the Plymouth Redbelly Turtle in Massachusetts; amphibians such as Red Hills salamander in Alabama; mollusks such as the Chittenango ovate amber snail in New York; arachnids such as the Tooth Cave Spider in Texas; and insects, such as the El Segundo blue butterfly in California.

⁶ Among other goals. See ESA, § 2(b), <https://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf> ("The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species[.]"); see also U.S. Fish & Wildlife Service, Endangered Species Act | Overview, <https://www.fws.gov/endangered/laws-policies/> ("The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend.").

⁷ See generally ESA.

countries.⁸ That lack of distinction makes sense: if the purpose of the ESA is to conserve endangered or threatened species, it should not matter where the species may be found.

The ESA's protections of endangered or threatened species consist in bans of their (i) "take";⁹ (ii) sale, possession, delivery, carrying, transport, or shipment in interstate or foreign commerce;¹⁰ (iii) export from the United States;¹¹ (iv) delivery, receipt, carry, transport, or shipment in interstate or foreign commerce in the course of a commercial activity;¹² and (v) sale or offering for sale in interstate or foreign commerce.¹³ The ESA authorizes the Secretary of the Interior to make exceptions to these prohibitions.¹⁴ The Secretary may, for example, issue a permit authorizing the incidental "take" of an endangered or threatened animal in connection with an otherwise lawful activity,¹⁵ such as the erection of a bridge or a real estate development.¹⁶ The ESA also provides federal funding to states to help them protect endangered and threatened species.¹⁷ The ESA's protections have been effective at protecting at-risk species. The ESA has saved several animal species from the brink of extinction, including the bald eagle, the American alligator, the peregrine falcon, and the brown pelican.¹⁸ Scientists believe that without the ESA's protections, 291 species would have gone extinct.¹⁹

⁸ The ESA protects endangered and threatened plant and animal species listed by the U.S. Fish & Wildlife Service and National Oceanic and Atmospheric Administration.

⁹ 16 USC § 1538(a)(1)(C).

¹⁰ 16 USC § 1538(a)(1)(D).

¹¹ 16 USC § 1538(a)(1)(A).

¹² 16 USC § 1538(a)(1)(E).

¹³ 16 USC § 1538(a)(1)(F).

¹⁴ 16 USC § 1539. (On August 27, 2019, the Fish & Wildlife Service promulgated a rule withdrawing its "blanket 4(d) rule," which automatically applied the "take" prohibitions in the Endangered Species Act section 9 to *threatened* species, and adopting a species-specific approach to applying the take prohibitions to threatened species. [84 Fed. Reg. 44,753](https://www.federalregister.gov/documents/2019/08/27/2019-17041/endangered-species-act). The Animal Law Committee issued a report opposing the withdrawal of the blanket 4(d) rule (<https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/endangered-species-act-opposition-to-proposed-rule-changes>), and we understand from numerous reports that the Biden Administration plans to reinstate the blanket 4(d) rule.)

¹⁵ 16 USC § 1539(a)(1)(B).

¹⁶ The increased urbanization, development, and farming of land in the United States are causes that substantially decrease genetic variation of species in the United States and thus threaten endangered and threatened species. Thus federal management of development under the ESA is critical to ensure the survival of these species. *See, e.g.,* Nicholas Primo, *Federal v. State Effectiveness: An Analysis of the Endangered Species Act and Current Potential Attempts at Reform*, PEPPERDINE POLICY R. (2014) <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1110&context=ppr>.

¹⁷ 16 U.S. Code § 1535(d).

¹⁸ Alina Bradford, *Facts About the Endangered Species Act of 1973*, LIVE SCIENCE (May 11, 2016), <https://www.livescience.com/54707-endangered-species-act.html>.

¹⁹ Noah Greenwald, et al., *Extinction and the U.S. Endangered Species Act*; PeerJ (Apr. 22, 2019), <https://peerj.com/articles/6803>.

Stating that the purpose of the bill is “to clarify” suggests there is ambiguity as to whether noncommercial, intrastate species are protected under the ESA. This is a misleading suggestion. The application of the ESA to intrastate species is a valid exercise of federal legislative authority under the Commerce Clause—this has been the conclusion of every federal appeals court that has faced the issue.²⁰ In *Alabama-Tombigbee Rivers Coalition v. Kempthorne*, for instance, the Eleventh Circuit found that the ESA applied to the Alabama sturgeon—an entirely intrastate species with little commercial value—because “a species’ scientific or other commercial value is not dependent on whether its habitat straddles a state line.”²¹ Similarly, in *GDF Realty Investments, Ltd. v. Norton*, the Fifth Circuit held that applying the ESA to species found in only two Texas counties was constitutionally sound, as the intrastate regulation was an “essential part” of ESA’s broader economic regulatory scheme.²² The Fourth Circuit reached a similar conclusion with respect to the North Carolina red wolf,²³ noting further that finding otherwise “would place in peril the entire federal regulatory scheme for wildlife and natural resource.”²⁴

That is precisely what this Bill does: it compromises the ESA’s broader regulatory scheme by stripping legal protections from a large number of the species currently protected by the ESA, which in turn undermines the ESA’s goal of conserving endangered and threatened species.²⁵ Not surprisingly, several organizations oppose the Bill, including the Humane Society of the U.S.,²⁶ Defenders of Wildlife,²⁷ Union of Concerned Scientists²⁸ and the Center for Biological Diversity.²⁹

²⁰ *People for Ethical Treatment of Prop. Owners v. U.S. Fish & Wildlife Serv.*, 852 F.3d 990, 1007 (10th Cir. 2017) (“Every one of our sister circuits that has addressed this issue has agreed that regulation of purely intrastate species is an essential part of the ESA’s regulatory scheme.”). For a succinct overview the interaction of the ESA and Commerce Clause that predates *PETPO v. FWS*, see Eric Biber, *The ESA and the Commerce Clause*, LegalPlanet (Nov. 18, 2014), <http://legal-planet.org/2014/11/18/the-esa-and-the-commerce-clause/>.

²¹ *Ala.-Tombigbee Rivers Coal. v. Kempthorne*, 477 F.3d 1250, 1275 (11th Cir. 2007).

²² *GDF Realty Investments, Ltd. v. Norton*, 326 F.3d 622, 640-41 (5th Cir 2003).

²³ *Gibbs v. Babbitt*, 214 F.3d 483, 497 (4th Cir. 2000) (“This regulation is also sustainable as ‘an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.’” (quoting *Lopez*, 514 U.S. 549, 561 (1995))).

²⁴ *Id.* at 504.

²⁵ See ESA, § 2(b); Fors, *supra* note 3.

²⁶ Humane Society of the U.S., Blog: Threats to Endangered Species Act Gain Speed in Congress (Oct. 23, 2017), <https://blog.humanesociety.org/2017/10/congress-mounts-unprecedented-attacks-endangered-species.html>.

²⁷ Defenders of Wildlife, Summary of Legislative Attacks on the Endangered Species Act in the 115th Congress (Dec. 29, 2017), <https://defenders.org/publications/chart-of-esa-attacks-in-115th-congress.pdf>.

²⁸ Michael Halpern, Union of Concerned Scientists, Blog: Your Handy Guide to Attacks on How the Endangered Species Act Uses Science (May 6, 2015), http://blog.ucsusa.org/michael-halpern/your-handy-guide-to-attacks-on-how-the-endangered-species-act-uses-science-726?_ga=2.104931523.1769459149.1522433375-403494641.1522433375.

²⁹ Center for Biological Diversity, Press Release: Senate Bill Aims to Strip Protections from Nearly 1,100 Endangered Species (Sept. 28, 2017), https://www.biologicaldiversity.org/news/press_releases/2017/endangered-species-09-28-2017.php.

B. The Bill's Reach Is Vaguely Stated and It Is Unclear What Species It Would Cover.

The Bill defines an “intrastate species” as any species of plant or fish or wildlife that meets these two criteria: (i) it is found entirely within the borders of a single state³⁰ and (ii) it is not part of a national market for any commodity.³¹

While the first criterion may be straightforward, the second criterion is vague. At present, all species found entirely within the borders of a single state would meet the second criterion—that is, they would not be part of a national market for any commodity—because the ESA bans all trade in endangered and threatened species.³² If the Bill became law, however, it is not clear how the law would be applied or how much interstate trade would be required before a species is considered to be “part of a national market for any commodity.” Indeed, it is not obvious what “*part of a national market*” means or what a “commodity” would be in this context. For example, some species of crayfish are sold to restaurants located throughout the United States. Is this enough to bring the four species of endangered crayfish under the purview of this second criterion? Is the fact that turtles are sold in the national pet trade enough to cover all endangered and threatened reptiles in their order?³³ Is the fact that fish are sold as food to restaurants enough to cover all endangered and threatened species within the fish phylum?³⁴ These are just some questions raised by the Bill.

Another area of confusion is whether a “national market” under the Bill includes illegal trade.³⁵ For example, the population of the endangered Puerto Rican parrot (which was nearly wiped out after Hurricanes Irma and Maria in 2017) had been driven close to extinction in the 1970s in part due to the illegal pet trade.

Yet another issue is how much trade would be required to render a species part of a “national market”—whether a few interstate trades would qualify or if more significant trade would be required. Notably, the species listed under the ESA are so listed because their populations are threatened, and in some cases, very small in number. If a substantial amount of interstate trade

³⁰ The ESA defines “State” as “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.” 16 U.S. Code § 1532(17). Throughout this report, the lowercase word “state” means “State” in the ESA.

³¹ S. 1863, §§ 1-2.

³² 16 USC § 1538(a)(1)(F).

³³ Turtles belong to the order Testudines.

³⁴ Fish belong to the phylum Chordata.

³⁵ Removing ESA protection from a species found only within a state may in fact lead to trade of that species beyond the state, as endangered and threatened species are often trafficked, which the ESA prohibits. *See, e.g.,* Alice Catherine Hughes, *Trading in Extinction: How the Pet Trade Is Killing Off Many Animal Species*, THE CONVERSATION (Feb. 7, 2017) (“Due to collector demand for new and rare species, entire populations can be collected using academic publications to target animals as soon as they are scientifically described. At least 21 reptile species have been targeted this way”), <http://theconversation.com/trading-in-extinction-how-the-pet-trade-is-killing-off-many-animal-species-71571>.

in a species is required before the species may be covered by the ESA, the species might be practically foreclosed from such protection—or it may well be too late to save the species.

Also, we note that the Bill’s definition does not mention international trade. So, perversely, while there may be an *international* market for the sales of an intrastate species, this species might still not qualify for protection under the ESA because a “national” market does not exist. See the discussion of CITES that follows.

C. The Bill Would Frustrate the United States’ Obligations Under CITES.

Under the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), the federal government has an obligation to the international community to protect certain endangered or threatened species. Yet if the federal government were to lack jurisdiction over the CITES-covered species that exist purely within one state’s borders—as would be the case under the Bill—the United States’ efforts to comply with CITES would be frustrated.

CITES³⁶ is an international agreement between 183 member nations—including the United States—that protects endangered nonnative species from international wildlife trafficking. Significantly, CITES covers some species that would be covered by the Bill’s definition of “intrastate species”—for example, the Puerto Rican parrot, the Hawaiian monk seal, the Hawaiian Laysan duck, and Oahu tree snail (all listed in CITES Appendix I),³⁷ as well as the Attwater’s greater prairie-chicken (listed in CITES Appendix II).³⁸

Article IX of CITES requires that each member nation designate a national Management Authority and a national Scientific Authority—in the United States, the Secretary of the Interior.³⁹ Management Authorities and Scientific Authorities have several duties under CITES. As one example, when the CITES Secretariat notifies a member nation (through its Management Authority) that a species listed in a CITES Appendix is adversely affected by trade or that the nation is not effectively implementing the Convention, the Management Authority must propose a remedial plan.⁴⁰ If the federal government were to lack jurisdiction over some of the species protected by CITES, however, it is unclear how the United States could meet this duty under CITES.

³⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Mar. 3, 1973, app. II, 993 U.N.T.S. 243, 264.

³⁷ CITES Appendices I, II and III (valid from June 22, 2021), <https://cites.org/eng/app/appendices.php>.

³⁸ *Id.*

³⁹ 16 U.S. Code § 1537a.

⁴⁰ CITES, Art. XIII.

D. The Bill Would Deprive States of Potential Federal Support, Disproportionately Affecting States including Alabama, Florida, and Texas.

If the federal government cut funding to protect endangered and threatened intrastate species—which would effectively happen as a result of the Bill—then most states would lack financial resources to protect those species.⁴¹

The ESA authorizes the Secretary of the Interior to provide federal funds and other support to states to help them protect endangered and threatened species listed under the ESA regulations.⁴² Much innovative environmental activity by states has been partly funded by federal grants. Indeed, federal grants generally provide a quarter to a third of funding for state environmental programs (and up to 70% at the highest level).⁴³ Yet under the Bill such funding would no longer be available to assist in development of programs for the conservation of endangered and threatened intrastate species. Nor would funding be on hand to assist in monitoring the status of those intrastate species that are candidates for protection under the ESA.

Moreover, this loss of federal funding would unevenly affect states. New York State, for example, would likely feel little impact because it has only one endangered or threatened animal species located solely within its borders: the Chittenango ovate amber snail. New York has received support from the U.S. Fish & Wildlife Service to protect these snails, which number fewer than 100 in the wild.⁴⁴ The remaining 14 ESA protected endangered or threatened animal species in New York State also live in other states, and so New York could continue to receive federal support to aid in the conservation of such “interstate” species.

But certain states—including Alabama, Florida, Texas, California, and Hawaii (which have, respectively, 23, 26, 41, 64, and 74 endangered or threatened animal species strictly within their state borders—would lose the potential to receive federal funding to support these species. This would particularly harm Alabama, which has relatively low state spending on endangered species⁴⁵ and has lost more species to extinction than any other state except Hawaii,⁴⁶ and receives

⁴¹ Alejandro E. Camacho *et al.*, *Assessing State Laws and Resources for Endangered Species Protection*, 47 ENV'T L. R. 10843 (Oct. 2017), <https://www.law.uci.edu/academics/centers/cleanr/images/cleanr-esa-report.pdf>.

⁴² 16 U.S. Code § 1535(d).

⁴³ Barry G. Rabe, *Racing to the Top, Bottom, or the Middle of the Pack? The Evolving State Government Role in Environmental Protection*, *Environmental Policy: New Directions for the Twenty-First Century* 45-46 (Norman J. Vig, Michael E. Kraft, eds., 8th ed. 2013), https://uk.sagepub.com/sites/default/files/upm-binaries/71528_VIG_9e_Chapter_2.pdf.

⁴⁴ N.Y. Dept. of Parks, Recreation & Historic Preservation, *Help Brewing for Rare “Chitt” Snail at State Parks* (Oct. 27, 2020) (the article describes a captive breeding program that is attempting to prevent the snail from becoming extinct), <https://nystateparks.blog/2020/10/27/help-brewing-for-rare-chitt-snail-at-state-parks>.

⁴⁵ In 2013, Alabama spent only \$96,600 of state funds on endangered species. In comparison, New York spent \$668,658 and Washington State spent \$32 million in state dollars. Camacho, *supra* note 43, at 10844.

⁴⁶ ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES DIVISION OF WILDLIFE AND FRESHWATER FISHERIES, *ALABAMA’S WILDLIFE ACTION PLAN 2015-2025* at 3 (Sept. 2015), https://www.outdooralabama.com/sites/default/files/Research/SWCS/AL_SWAP_FINAL%20June2017.pdf.

significant federal funding.⁴⁷ (For example, in 2020, the Fish and Wildlife Service awarded a grant of \$9 million to Alabama to advance the recovery of the Red Hills salamander.⁴⁸) And it would similarly hurt Puerto Rico, which has 15 such species and is currently in bankruptcy and struggles to balance its budget each year.⁴⁹ Without federal funds, these states and territory would have to divert more of their taxes from other programs to ensure the survival of their intrastate species.

In addition to losing grant funds and other federal support resources, states would unevenly be affected by the lack of federal law enforcement resources. The ESA is enforced by the U.S. Fish & Wildlife Service, which has the authority to investigate wildlife crimes and to refer violations of the law to the U.S. Attorney's Office for prosecution. By removing species found within a single state from the ESA's purview, states would no longer benefit from the federal government's robust law enforcement resources with respect to those species.

E. The Survival of Endangered and Threatened Species Would Be Imperiled Because Many States' Current Laws Do Not Effectively Protect Those Species.

The Bill opens the door to a wave of commercial activity flowing to states with lax environmental and endangered species laws.⁵⁰ Indeed, the D.C. Circuit noted as much in upholding the ESA's application to an insect found solely in California: "Congress passed the [ESA] in part to prevent states from gaining a competitive advantage by enacting lower regulatory standards than other states."⁵¹

⁴⁷ In 2021, the U.S. Fish & Wildlife Service provided almost \$55 million in State Wildlife Grant program funds authorized under the FY 2021 Omnibus and COVID Relief and Response Act, 2020, PL 116-260; *see* Fish & Wildlife Svc., letter to states and territories (Feb. 2, 2021), <https://www.fws.gov/wsfrprograms/subpages/grantprograms/swg/SWG2021Apportionment.pdf>.

⁴⁸ U.S. Fish & Wildlife Svc., *U.S. Fish and Wildlife Service and Alabama Department of Conservation and Natural Resources Conserve Salamander Habitat* (Dec. 10, 2020), <https://www.fws.gov/southeast/news/2020/12/us-fish-and-wildlife-service-and-alabama-department-of-conservation-and-natural-resources- conserve-salamander-habitat>.

⁴⁹ Michelle Kaske, *Puerto Rico Bankruptcy-Exit Plan Offers Island a Fresh Start*, BLOOMBERG (Dec. 15, 2021), <https://www.bloomberg.com/news/articles/2021-12-15/puerto-rico-s-bankruptcy-exit-plan-offers-island-a-fresh-start>.

⁵⁰ *See, e.g.*, Jonathan H. Adler, *When Is Two a Crowd? The Impact of Federal Action on State Environmental Regulation*, HARVARD ENV'T L. REV. 79 (2007) ("There is evidence that state policy-makers consider the impact of environmental regulations on their states' economic competitiveness."), http://www.law.harvard.edu/students/orgs/elr/vol31_1/adler.pdf; Fors, *supra* note 3.

⁵¹ *National Ass'n of Home Builders v. Babbitt*, 130 F.3d at 1056-57; *see also id.* at 1059 ("Given the interconnectedness of species and ecosystems, it is reasonable to conclude that the extinction of one species affects others and their ecosystems and that the protection of a purely intrastate species (like the Delhi Sands Flower-Loving Fly) will therefore substantially affect land and objects that are involved in interstate commerce.").

State laws that protect endangered and threatened animal species vary widely,⁵² with most states' laws and state-level experience inadequate to protect such species.⁵³ For instance, Utah,⁵⁴ West Virginia,⁵⁵ and Wyoming⁵⁶ have no state endangered species acts and rely on the federal ESA or nongame conservation programs to protect endangered or threatened species.⁵⁷ Alabama⁵⁸ and Arkansas⁵⁹ have regulations listing endangered and protected species, but have no programs of protection except for their nongame programs.⁶⁰ Thirty-eight states provide no legal authority to protect the habitats where endangered or threatened species live (known as "critical habitats" or "essential habitats").⁶¹

The costs to these states to pass new laws to protect their intrastate endangered and threatened species are significant. They include (i) developing, drafting, and passing legislation; (ii) creating new policy programs; (iii) drafting, and implementing regulations; (iv) defending the new statutes and regulations from legal challenges; (v) educating the public; and (vi) monitoring, and enforcing regulatory compliance, to name a few.⁶² As noted above, these costs would divert state resources from programs currently in place.⁶³ These significant costs could stymie any new efforts to protect intrastate species that would lose ESA protection under the Bill.

In addition, the federal government has the ability and resources to create comprehensive species recovery plans. Most states are unfamiliar with creating these plans themselves and currently lack the ability to do so.⁶⁴

⁵² Susan George & William J. Snape III, *State Endangered Species Acts, Endangered Species Act Law, Policy, and Perspectives* 345 (Donald C. Baur & Wm. Robert Irvin, eds., 2nd ed. 2010), <https://www.biologicaldiversity.org/publications/papers/StateEndangeredSpeciesActs.pdf>.

⁵³ Camacho, *supra* note 43, at 10837. *See also* George & Snape, *supra* note 54 at 346 (noting most states "lack all but the most basic elements of a legislative scheme to protect a state's imperiled species").

⁵⁴ *See* UTAH CODE, Title 3.

⁵⁵ *See* W. VA. CODE, Title 20.

⁵⁶ *See* WYO. STAT., Title 23.

⁵⁷ George & Snape, *supra* note 54 at 354.

⁵⁸ *See* ALA. CODE, Title 9.

⁵⁹ *See* ARK. CODE, Title 15, Subtitle 4.

⁶⁰ George & Snape, *supra* note 54 at 354.

⁶¹ Camacho, *supra* note 43, at 10840. The ESA considers modification of critical habitat that could harm an endangered or threatened species to be an illegal "take," whereas only five states do so. *Id.* at 10841. For an explanation of the ESA's prohibition on take and critical habitat modification, see U.S. Fish & Wildlife Services, *ESA Basics*, https://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf.

⁶² Adler, *supra* note 52, at 99.

⁶³ *Id.*

⁶⁴ Fors, *supra* note 3 at 176-77.

III. OPPOSING ARGUMENTS

Proponents of the Bill claim it simply seeks to limit “federal mismanagement of numerous species,” instead “authoriz[ing] state wildlife management authorities, in cooperation with local communities, to develop balanced conservation plans that meet the needs of state-specific species and affected areas.”⁶⁵

We agree that states have an enormous and critical wealth of local knowledge about the species within their state borders and their habitat and that they therefore should be involved in conservation plans.⁶⁶ But for the reasons explained above, states need complementary federal resources to effectively protect endangered and threatened species within their borders. Although we disagree that there is significant “federal mismanagement” in protecting species, we do think that certain improvements in the actual administration of the law could be made. For instance, Congress could be more helpful by better funding federal efforts to implement the ESA, as such efforts have been underfunded for decades.⁶⁷ But by altogether withdrawing federal law and resources through this Bill, Congress would only further imperil intrastate species that are already on the brink of extinction.

IV. CONCLUSION

For the reasons above, the Committee opposes the proposed legislation.

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Updated and Reissued February 2022*

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* This report was first issued by the Animal Law Committee in May 2018, during the term of chair Lori Barrett-Peterson.

⁶⁵ Mike Lee, U.S. Senator for Utah, Press Release: Sen. Lee Introduces Native Species Protection Act, (June 13, 2019) <https://www.lee.senate.gov/2019/6/sen-lee-introduces-native-species-protection-act>.

⁶⁶ See Adler, *supra* note 52 at 77 & 93 (“[M]uch of the information required for effective environmental protection is local in nature . . .”).

⁶⁷ Jim Lyons, Center for American Progress, *Under Threat: The Endangered Species and Wildlife It Protects* (Nov. 28, 2017), <https://www.americanprogress.org/issues/green/reports/2017/11/28/443265/under-threat/>.

EXHIBIT A

The following is a list of the animal species that would meet the first criterion in the Bill's definition of an "intrastate species" because they are found "entirely within the borders of a single State." We assume that all such animal species currently meet the definition's second criterion that they not be "part of a national market for any commodity" because the ESA prohibits trade in endangered and threatened species.⁶⁸

1.	<i>Enhydra lutris kenyonii</i>	Northern Sea Otter	AK; Coastal waters and shoreline from west side of Cook Inlet west throughout the Kodiak Archipelago, Alaska Peninsula and Aleutian Islands, north to Egegik Bay; Southwest Alaska, from Attu Island to Western Cook Inlet, including Bristol Bay, the Kodiak Archipelago, and the Barren Islands	Threatened
2.	<i>Cambarus cracens</i>	Slenderclaw crayfish	AL	Endangered
3.	<i>Elassoma alabamiae</i>	Spring pygmy sunfish	AL	Threatened
4.	<i>Necturus alabamensis</i>	Black warrior (=Sipsey Fork) Waterdog	AL	Endangered
5.	<i>Sternotherus depressus</i>	Flattened musk turtle	AL; Black Warrior R. system upstream from Bankhead Dam	Threatened
6.	<i>Campelema decampi</i>	Slender campeloma	AL	Endangered
7.	<i>Cottus paulus</i> (=pygmaeus)	Pygmy Sculpin	AL	Threatened
8.	<i>Elimia crenatella</i>	Lacy elimia (snail)	AL	Threatened
9.	<i>Etheostoma chermocki</i>	Vermilion darter	AL	Endangered
10.	<i>Etheostoma nuchale</i>	Watercress darter	AL	Endangered
11.	<i>Etheostoma phytophilum</i>	Rush Darter	AL	Endangered
12.	<i>Leptoxis ampla</i>	Round rocksnail	AL	Threatened
13.	<i>Leptoxis plicata</i>	Plicate rocksnail	AL	Endangered
14.	<i>Leptoxis taeniata</i>	Painted rocksnail	AL	Threatened
15.	<i>Lepyrium showalteri</i>	Flat pebblesnail	AL	Endangered
16.	<i>Margaritifera marrianae</i>	Alabama pearlshell	AL	Endangered
17.	<i>Notropis cahabae</i>	Cahaba shiner	AL	Endangered
18.	<i>Palaemonias alabamiae</i>	Alabama cave shrimp	AL	Endangered
19.	<i>Phaeognathus hubrichti</i>	Red Hills salamander	AL	Threatened

⁶⁸ 16 U.S. Code § 1538(a)(1)(F) provides that it is unlawful "to sell or offer for sale in interstate or foreign commerce any such [endangered or threatened species]."

20.	<i>Pleurobema furvum</i>	Dark pigtoe	AL	Endangered
21.	<i>Pleurocera foremani</i>	Rough hornsnail	AL	Endangered
22.	<i>Pyrgulopsis (=Marstonia) pachyta</i>	Armored snail	AL	Endangered
23.	<i>Speoplatyrhinus poulsoni</i>	Alabama cavefish	AL	Endangered
24.	<i>Tulotoma magnifica</i>	Tulotoma snail	AL	Threatened
25.	<i>Peromyscus polionotus ammobates</i>	Alabama beach mouse	AL	Endangered
26.	<i>Lampsilis streckeri</i>	Speckled pocketbook	AR; Little Red River watershed, Arkansas; U.S.A. (AR) Endemic to Little Red River system in Boston Mountain region of north central Arkansas. Extant populations are known from the South, Archey, Middle, Beech, and Devils Forks of the Little Red River and Turkey Creek and Big Creek.	Endangered
27.	<i>Cambarus zophonastes</i>	Hell Creek Cave crayfish	AR	Endangered
28.	<i>Etheostoma moorei</i>	Yellowcheek Darter	AR	Endangered
29.	<i>Lampsilis powellii</i>	Arkansas fatmucket	AR	Threatened
30.	<i>Eua zebrina</i>	Snail [no common name]	AS	Endangered
31.	<i>Ostodes strigatus</i>	Snail [no common name]	AS	Endangered
32.	<i>Gallicolumba stairi</i>	Friendly Ground-Dove	AS	Endangered
33.	<i>Kinosternon sonoriense longifemorale</i>	Sonoyta mud turtle	AZ	Endangered
34.	<i>Lepidomeda vittata</i>	Little Colorado spinedace	AZ	Threatened
35.	<i>Oncorhynchus apache</i>	Apache trout	AZ	Threatened
36.	<i>Pyrgulopsis trivialis</i>	Three Forks Springsnail	AZ	Endangered
37.	<i>Tamiasciurus hudsonicus grahamensis</i>	Mount Graham red squirrel	AZ	Endangered
38.	<i>Pipilo crissalis eremophilus</i>	Inyo California towhee	CA	Threatened
39.	<i>Rana muscosa</i>	Mountain yellow-legged frog	CA	Endangered
40.	<i>Hypomesus transpacificus</i>	Delta smelt	CA; Delta smelt are found within the defined "legal" delta of the Sacramento and San Joaquin Rivers and the waterways of the Suisun	Threatened

			Marsh Complex. Their range extends east of the Carquinez Bridge near Vallejo, south of the I Street Bridge in Sacramento and north of the convergence of the Stanislaus and San Joaquin Rivers	
41.	<i>Urocyon littoralis catalinae</i>	Santa Catalina Island Fox	CA	Threatened
42.	<i>Ambystoma californiense</i>	California tiger Salamander	CA	Endangered/Threatened
43.	<i>Ambystoma macrodactylum croceum</i>	Santa Cruz long-toed salamander	CA	Endangered
44.	<i>Amphispiza belli clementeae</i>	San Clemente sage sparrow	CA	Threatened
45.	<i>Apodemia mormo langei</i>	Lange's metalmark butterfly	CA	Endangered
46.	<i>Batrachoseps aridus</i>	Desert slender salamander	CA	Endangered
47.	<i>Branchinecta conservatio</i>	Conservancy fairy shrimp	CA	Endangered
48.	<i>Branchinecta longiantenna</i>	Longhorn fairy shrimp	CA	Endangered
49.	<i>Branchinecta sandiegonensis</i>	San Diego fairy shrimp	CA	Endangered
50.	<i>Callophrys mossii bayensis</i>	San Bruno elfin butterfly	CA	Endangered
51.	<i>Catostomus santaanae</i>	Santa Ana sucker	CA	Threatened
52.	<i>Cicindela ohlone</i>	Ohlone tiger beetle	CA	Endangered
53.	<i>Cyprinodon radiosus</i>	Owens pupfish	CA	Endangered
54.	<i>Desmocerus californicus dimorphus</i>	Valley elderberry longhorn beetle	CA	Threatened
55.	<i>Dinacoma caseyi</i>	Casey's June Beetle	CA	Endangered
56.	<i>Elaphrus viridis</i>	Delta green ground beetle	CA	Threatened
57.	<i>Euphilotes battoides allyni</i>	El Segundo blue butterfly	CA	Endangered
58.	<i>Euphilotes enoptes smithi</i>	Smith's blue butterfly	CA	Endangered
59.	<i>Euphydryas editha bayensis</i>	Bay checkerspot butterfly	CA	Threatened
60.	<i>Euproserpinus euterpe</i>	Kern primrose sphinx moth	CA	Threatened
61.	<i>Gambelia silus</i>	Blunt-nosed leopard lizard	CA	Endangered
62.	<i>Gasterosteus aculeatus williamsoni</i>	Unarmored threespine stickleback	CA	Endangered

63.	<i>Gila bicolor ssp. mohavensis</i>	Mohave tui chub	CA	Endangered
64.	<i>Gila bicolor ssp. snyderi</i>	Owens Tui Chub	CA	Endangered
65.	<i>Glaucopsyche lygdamus palosverdesensis</i>	Palos Verdes blue butterfly	CA	Endangered
66.	<i>Helminthoglypta walkeriana</i>	Morro shoulderband (=Banded dune) snail	CA	Endangered
67.	<i>Icaricia icarioides missionensis</i>	Mission blue butterfly	CA	Endangered
68.	<i>Lanius ludovicianus mearnsi</i>	San Clemente loggerhead shrike	CA	Endangered
69.	<i>Lycaeides argyrognomon lotis</i>	Lotis blue butterfly	CA	Endangered
70.	<i>Masticophis lateralis euryxanthus</i>	Alameda whipsnake (=striped racer)	CA	Threatened
71.	<i>Microtus californicus scirpensis</i>	Amargosa vole	CA	Endangered
72.	<i>Neotoma fuscipes riparia</i>	Riparian woodrat (=San Joaquin Valley)	CA	Endangered
73.	<i>Oncorhynchus aguabonita whitei</i>	Little Kern golden trout	CA	Threatened
74.	<i>Oncorhynchus clarkii seleniris</i>	Paiute cutthroat trout	CA	Threatened
75.	<i>Pacifastacus fortis</i>	Shasta crayfish	CA	Endangered
76.	<i>Polyphylla barbata</i>	Mount Hermon June beetle	CA	Endangered
77.	<i>Pyrgus ruralis lagunae</i>	Laguna Mountains skipper	CA	Endangered
78.	<i>Rallus longirostris obsoletus</i>	California clapper rail	CA	Endangered
79.	<i>Rhaphiomidas terminatus abdominalis</i>	Delhi Sands flower-loving fly	CA	Endangered
80.	<i>Sorex ornatus relictus</i>	Buena Vista Lake ornate Shrew	CA	Endangered
81.	<i>Speyeria callippe callippe</i>	Callippe silverspot butterfly	CA	Endangered
82.	<i>Speyeria zerene behrensii</i>	Behren's silverspot butterfly	CA	Endangered
83.	<i>Speyeria zerene myrtleae</i>	Myrtle's silverspot butterfly	CA	Endangered
84.	<i>Streptocephalus woottoni</i>	Riverside fairy shrimp	CA	Endangered

85.	<i>Sylvilagus bachmani riparius</i>	Riparian brush rabbit	CA	Endangered
86.	<i>Syncaris pacifica</i>	California freshwater shrimp	CA	Endangered
87.	<i>Thamnophis gigas</i>	Giant garter snake	CA	Threatened
88.	<i>Thamnophis sirtalis tetrataenia</i>	San Francisco garter snake	CA	Endangered
89.	<i>Trimerotropis infantilis</i>	Zayante band-winged grasshopper	CA	Endangered
90.	<i>Uma inornata</i>	Coachella Valley fringe-toed lizard	CA	Threatened
91.	<i>Ovis canadensis nelsoni</i>	Peninsular bighorn sheep	CA	Endangered
92.	<i>Ovis canadensis sierrae</i>	Sierra Nevada bighorn sheep	CA	Endangered
93.	<i>Aplodontia rufa nigra</i>	Point Arena mountain beaver	CA	Endangered
94.	<i>Dipodomys heermanni morroensis</i>	Morro Bay kangaroo rat	CA	Endangered
95.	<i>Dipodomys ingens</i>	Giant kangaroo rat	CA	Endangered
96.	<i>Dipodomys merriami parvus</i>	San Bernardino Merriam's kangaroo rat	CA	Endangered
97.	<i>Dipodomys nitratooides exilis</i>	Fresno kangaroo rat	CA	Endangered
98.	<i>Dipodomys nitratooides nitratooides</i>	Tipton kangaroo rat	CA	Endangered
99.	<i>Dipodomys stephensi</i> (incl. <i>D. cascus</i>)	Stephens' kangaroo rat	CA	Endangered
100.	<i>Perognathus longimembris pacificus</i>	Pacific pocket mouse	CA	Endangered
101.	<i>Reithrodontomys raviventris</i>	Salt marsh harvest mouse	CA	Endangered
102.	<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	CA	Endangered
103.	<i>Boloria acrocneuma</i>	Uncompahgre fritillary butterfly	CO	Endangered
104.	<i>Hesperia leonardus montana</i>	Pawnee montane skipper	CO	Threatened
105.	<i>Anaea troglodyta floralis</i>	Florida leafwing Butterfly	FL	Endangered
106.	<i>Cicindelia floridana</i>	Miami tiger beetle	FL	Endangered

107.	<i>Odocoileus virginianus clavium</i>	Key deer	FL; Entire	Endangered
108.	<i>Strymon acis bartrami</i>	Bartram's hairstreak Butterfly	FL	Endangered
109.	<i>Procambarus econfinae</i>	Panama City crayfish	FL	Threatened
110.	<i>Polyborus plancus audubonii</i>	Audubon's crested caracara	FL	Threatened
111.	<i>Eumops floridanus</i>	Florida bonneted bat	FL; Includes all of Charlotte, Collier, Glades, Highlands, Lee, and Miami-Dade Counties, and portions of Broward, De Soto, Hardee, Hendry, Okeechobee, Osceola, Palm Beach, Polk, Sarasota, and Monroe Counties.	Endangered
112.	<i>Canis rufus</i>	Red wolf	FL; Presumed extinct in wild except experimental populations in NC & TN	Endangered
113.	<i>Peromyscus polionotus niveiventris</i>	Southeastern beach mouse	FL; Range includes the beach and coastal scrub found in Brevard, Indian River, and Volusia Counties in Florida.	Threatened
114.	<i>Peromyscus polionotus phasma</i>	Anastasia Island beach mouse	FL; Range includes the coastal areas in St. Johns County, Florida. Mainly found at Anastasia State Park and Ft. Matanzas National Monument.	Endangered
115.	<i>Nerodia clarkii taeniata</i>	Atlantic salt marsh snake	FL; The Atlantic Salt Marsh Snake Recovery Plan (1993) and the South Florida Multi Species Recovery Plan (1999) indicate the Atlantic Salt Marsh Snake's range may be more restricted than thought at the time of listing (1977). The zone of intergradation appears to coincide with the increasing dominance of mangroves swamps in Brevard County. Thus, the brackish, coastal marshes of Volusia County, from the Halifax River south to the northern portions of the Indian River are where the ASMS likely occurs (Service 1993 and 1999).	Threatened
116.	<i>Microtus pennsylvanicus dukecampbelli</i>	Florida salt marsh vole	FL; The Florida Salt Marsh Vole is an endemic to the coastal salt marsh of the central Gulf coast of Florida. Until 2004, it was known to occur only from the type locality along the shore of Waccasassa Bay, east of Cedar Key, Levy County, Florida. In 2004, Lower Suwannee NWR staff documented the presence of the Florida Salt Marsh Vole five miles northwest of the type locality on the southern section of the refuge.	Endangered

117.	<i>Etheostoma okaloosae</i>	Okaloosa darter	FL; The Okaloosa darter is known only from six small basins (467 km2 total area) that drain into Boggy Bayou and Rocky Bayou of Choctawhatchee Bay: Toms, Turkey, Mill, Swift, East Turkey, and Rocky creeks.	Threatened
118.	<i>Palaemonetes cummingi</i>	Squirrel Chimney Cave shrimp	FL; The Squirrel Chimney Cave Shrimp is only known from the Squirrel Chimney near Haile, Alachua County, Florida. This small, deep sinkhole that leads to a flooded cave system formed within the Crystal River Formation of the Ocala Group limestone. This formation underlies the Newberry Limestone Plain and is characteristic of karst topography. This relatively flat karst plain has numerous sinks and caves and connections between underground features do occur. Caves in this area support a variety of terrestrial and aquatic habitats. Several of the sink and cave systems within 5 miles are ecologically similar to Squirrel Chimney. There are similar assemblages of cavern dwelling species in these nearby underground sites, but no Squirrel Chimney Cave Shrimp have been documented.	Threatened
119.	<i>Aphelocoma coerulescens</i>	Florida scrub-jay	FL; treeless or nearly treeless xeric vegetative communities throughout peninsular Florida.	Threatened
120.	<i>Ammodramus maritimus mirabilis</i>	Cape Sable seaside sparrow	FL	Endangered
121.	<i>Ammodramus savannarum floridanus</i>	Florida grasshopper sparrow	FL	Endangered
122.	<i>Eumeces egregius lividus</i>	Bluetail mole skink	FL	Threatened
123.	<i>Heraclides aristodemus ponceanus</i>	Schaus swallowtail butterfly	FL	Endangered
124.	<i>Neoseps reynoldsi</i>	Sand skink	FL	Threatened
125.	<i>Neotoma floridana smalli</i>	Key Largo woodrat	FL	Endangered
126.	<i>Orthalicus reses</i> (not incl. <i>nesodryas</i>)	Stock Island tree snail	FL	Threatened
127.	<i>Oryzomys palustris natator</i>	Silver rice rat	FL	Endangered
128.	<i>Sylvilagus palustris hefneri</i>	Lower Keys marsh rabbit	FL	Endangered

129.	<i>Peromyscus gossypinus allapaticola</i>	Key Largo cotton mouse	FL	Endangered
130.	<i>Peromyscus polionotus allophrys</i>	Choctawhatchee beach mouse	FL	Endangered
131.	<i>Peromyscus polionotus peninsularis</i>	St. Andrew beach mouse	FL	Endangered
132.	<i>Elliptio spinosa</i>	Altamaha Spinymussel	GA	Endangered
133.	<i>Etheostoma etowahae</i>	Etowah darter	GA	Endangered
134.	<i>Etheostoma scotti</i>	Cherokee darter	GA	Threatened
135.	<i>Partula radiolata</i>	Guam tree snail	GU	Endangered
136.	<i>Pteropus tokudae</i>	Little Mariana fruit Bat	GU; Entire; Possibly extinct, not reported since 1968	Endangered
137.	<i>Rallus owstoni</i>	Guam rail	GU; Western Pacific Ocean-U.S.A. (Guam)	Endangered
138.	<i>Drepanis coccinea</i>	ʻTiwi	HI	Threatened
139.	<i>Drosophila digressa</i>	Hawaiian picture-wing fly	HI	Endangered
140.	<i>Hemignathus affinis</i>	Maui nukupuu	HI	Endangered
141.	<i>Himantopus mexicanus knudseni</i>	Hawaiian stilt	HI	Endangered
142.	<i>Hylaeus kuakea</i>	Hawaiian yellow-faced bee	HI	Endangered
143.	<i>Hylaeus mana</i>	Hawaiian yellow-faced bee	HI	Endangered
144.	<i>Megalagrion xanthomelas</i>	Orangeblack Hawaiian damselfly	HI	Endangered
145.	<i>Myadestes lanaiensis rutha</i>	Molokai thrush	HI	Endangered
146.	<i>Myadestes myadestinus</i>	Large Kauai (=kamao) Thrush	HI	Endangered
147.	<i>Myadestes palmeri</i>	Small Kauai (=puaiohi) Thrush	HI	Endangered
148.	<i>Newcombia cumingi</i>	Newcomb's Tree snail	HI	Endangered
149.	<i>Partulina semicarinata</i>	Lanai tree snail	HI	Endangered
150.	<i>Partulina variabilis</i>	Lanai tree snail	HI	Endangered
151.	<i>Vetericaris chaceorum</i>	Anchialine pool shrimp	HI	Endangered
152.	<i>Procaris hawaiana</i>	Anchialine pool Shrimp	HI; Currently in the state of Hawaii, there are estimated to be over 650 anchialine pools, approximately 90 percent of which occur on the island of Hawaii (Brock 2004, p. i). Of the	Endangered

			approximately 585 anchialine pools found on the island of Hawaii, only 15 pools are known to contain <i>Procaris hawaiiiana</i> . There are 12 pools at Manuka NAR (T. Sakihara, Division of Aquatic Resources (DAR), in litt., 2010) and 1 located at Lua o Palahemo, where <i>P. hawaiiiana</i> co-occurs with <i>Vetericaris chaceorum</i> (Holthuis 1973, pp. 12-19; Maciolek 1983, pp. 607-614; Brock 2004, pp. 30-57), another candidate species. On Maui, <i>Procaris hawaiiiana</i> occurs in two pools at Ahihi-Kinau NAR (Holthuis 1973, pp. 12-19; Maciolek 1983, pp. 607-614; Brock 2004, pp. 30-57).	
153.	<i>Akialoa stejnegeri</i>	Kauai akialoa (honeycreeper)	HI	Endangered
154.	<i>Puffinus auricularis newelli</i>	Newell's Townsend's shearwater	HI	Threatened
155.	<i>Oceanodroma castro</i>	Band-rumped storm-petrel	HI	Endangered
156.	<i>Hylaeus hiliaris</i>	Hilaris yellow-faced bee	HI; Believed to be extinct; Believed to be extinct.	Endangered
157.	<i>Adelocosa anops</i>	Kauai cave wolf or pe'e pe'e maka 'ole spider	HI; Entire	Endangered
158.	<i>Lasiurus cinereus semotus</i>	Hawaiian hoary bat	HI; Entire	Endangered
159.	<i>Hylaeus assimulans</i>	Assimulans yellow-faced bee	HI; Possibly extinct, not reported since 1965.; Possibly extinct,not reported since 1965	Endangered
160.	<i>Hylaeus facilis</i>	Easy yellow-faced bee	HI; Possibly extinct, not reported since 1965.; Possibly extinct,not reported since 1965	Endangered
161.	<i>Hylaeus longiceps</i>	Hawaiian yellow-faced bee	HI; Possibly extinct, not reported since 1965.; Possibly extinct,not reported since 1965	Endangered
162.	<i>Hylaeus anthracinus</i>	Anthracinan yellow-faced bee	HI; Possibly extinct, not reported since 1965; Possibly extinct, not reported since 1965.; Possibly extinct,not reported since 1965	Endangered
163.	<i>Achatinella spp.</i>	Oahu tree snails	HI	Endangered
164.	<i>Acrocephalus familiaris kingi</i>	Nihoa millerbird (old world warbler)	HI	Endangered
165.	<i>Anas laysanensis</i>	Laysan duck	HI	Endangered
166.	<i>Anas wyvilliana</i>	Hawaiian (=koloa) Duck	HI	Endangered
167.	<i>Branta (=Nesochen) sandvicensis</i>	Hawaiian goose	HI	Endangered
168.	<i>Buteo solitarius</i>	Hawaiian (=lo) Hawk	HI	Endangered

169.	<i>Chasiempis ibidis</i>	Oahu elepaio	HI	Endangered
170.	<i>Corvus hawaiiensis</i>	Hawaiian (=‘alala) Crow	HI	Endangered
171.	<i>Drosophila aglaia</i>	Hawaiian picture-wing fly	HI	Endangered
172.	<i>Drosophila differens</i>	Hawaiian picture-wing fly	HI	Endangered
173.	<i>Drosophila hemipeza</i>	Hawaiian picture-wing fly	HI	Endangered
174.	<i>Drosophila heteroneura</i>	Hawaiian picture-wing fly	HI	Endangered
175.	<i>Drosophila montgomeryi</i>	Hawaiian picture-wing fly	HI	Endangered
176.	<i>Drosophila muli</i>	Hawaiian picture-wing fly	HI	Threatened
177.	<i>Drosophila musaphilia</i>	Hawaiian picture-wing fly	HI	Endangered
178.	<i>Drosophila neoclavissetae</i>	Hawaiian picture-wing fly	HI	Endangered
179.	<i>Drosophila obatai</i>	Hawaiian picture-wing fly	HI	Endangered
180.	<i>Drosophila ochrobasis</i>	Hawaiian picture-wing fly	HI	Endangered
181.	<i>Drosophila sharpi</i>	Hawaiian picture-wing fly	HI	Endangered
182.	<i>Drosophila substenoptera</i>	Hawaiian picture-wing fly	HI	Endangered
183.	<i>Drosophila tarphytrichia</i>	Hawaiian picture-wing fly	HI	Endangered
184.	<i>Erinna newcombi</i>	Newcomb’s snail	HI	Threatened
185.	<i>Fulica americana alai</i>	Hawaiian coot	HI	Endangered
186.	<i>Gallinula galeata sandvicensis</i>	Hawaiian common gallinule	HI	Endangered
187.	<i>Hemignathus hanapepe</i>	Kauai nukupuu	HI	Endangered
188.	<i>Hemignathus wilsoni</i>	akiapolau	HI	Endangered
189.	<i>Loxioides bailleui</i>	Palila (honeycreeper)	HI	Endangered
190.	<i>Loxops caeruleirostris</i>	Akekee	HI	Endangered
191.	<i>Loxops coccineus</i>	Hawaii akepa	HI	Endangered
192.	<i>Loxops ochraceus</i>	Maui akepa	HI	Endangered
193.	<i>Manduca blackburni</i>	Blackburn’s sphinx moth	HI	Endangered
194.	<i>Megalagrion leptodemas</i>	Crimson Hawaiian damselfly	HI	Endangered
195.	<i>Megalagrion nesiotes</i>	Flying earwig Hawaiian damselfly	HI	Endangered

196.	<i>Megalagrion nigrohamatum nigrolineatum</i>	Blackline Hawaiian damselfly	HI	Endangered
197.	<i>Megalagrion oceanicum</i>	Oceanic Hawaiian damselfly	HI	Endangered
198.	<i>Megalagrion pacificum</i>	Pacific Hawaiian damselfly	HI	Endangered
199.	<i>Melamprosops phaeosoma</i>	Po'ouli (honeycreeper)	HI	Endangered
200.	<i>Moho braccatus</i>	Kauai `o`o (honeyeater)	HI	Endangered
201.	<i>Monachus schauinslandi</i>	Hawaiian monk seal	HI	Endangered
202.	<i>Oreomystis bairdi</i>	Akikiki	HI	Endangered
203.	<i>Oreomystis mana</i>	Hawaii creeper	HI	Endangered
204.	<i>Palmeria dolei</i>	crested honeycreeper (Akohekohe)	HI	Endangered
205.	<i>Paroreomyza flammea</i>	Molokai creeper	HI	Endangered
206.	<i>Paroreomyza maculata</i>	Oahu creeper	HI	Endangered
207.	<i>Pseudonestor xanthophrys</i>	Maui parrotbill (Kiwikiu)	HI	Endangered
208.	<i>Psittirostra psittacea</i>	`O`u (honeycreeper)	HI	Endangered
209.	<i>Pterodroma sandwichensis</i>	Hawaiian petrel	HI	Endangered
210.	<i>Spelaeorchestia koloana</i>	Kauai cave amphipod	HI	Endangered
211.	<i>Telespyza cantans</i>	Laysan finch (honeycreeper)	HI	Endangered
212.	<i>Telespyza ultima</i>	Nihoa finch (honeycreeper)	HI	Endangered
213.	<i>Lanx sp.</i>	Banbury Springs limpet	ID	Endangered
214.	<i>Pyrgulopsis bruneauensis</i>	Bruneau Hot springsnail	ID	Endangered
215.	<i>Taylorconcha serpenticola</i>	Bliss Rapids snail	ID	Threatened
216.	<i>Urocitellus brunneus</i>	Northern Idaho Ground Squirrel	ID	Threatened
217.	<i>Gammarus acherondytes</i>	Gammarus acherondytes	IL	Endangered
218.	<i>Etheostoma spilotum</i>	Kentucky arrow darter	KY	Threatened
219.	<i>Palaemonias ganteri</i>	Kentucky cave shrimp	KY	Endangered
220.	<i>Etheostoma chienense</i>	Relict darter	KY; Upper Bayou du Chien system in western Kentucky	Endangered

221.	<i>Pseudemys rubriventris bangsi</i>	Plymouth Redbelly Turtle	MA	Endangered
222.	<i>Etheostoma sellare</i>	Maryland darter	MD; Possibly extinct	Endangered
223.	<i>Cottus specus</i>	Grotto Sculpin	MO	Endangered
224.	<i>Antrobia culveri</i>	Tumbling Creek cavesnail	MO	Endangered
225.	<i>Etheostoma nianguae</i>	Niangua darter	MO	Threatened
226.	<i>Emballonura semicaudata rotensis</i>	Pacific sheath-tailed Bat	MP	Endangered
227.	<i>Ischnura luta</i>	Rota blue damselfly	MP	Endangered
228.	<i>Partula langfordi</i>	Langford's tree snail	MP	Endangered
229.	<i>Percina aurora</i>	Pearl darter	MS;	Threatened
230.	<i>Etheostoma rubrum</i>	Bayou darter	MS	Threatened
231.	<i>Graptemys flavimaculata</i>	Yellow-blotched map turtle	MS	Threatened
232.	<i>Neonympha mitchellii francisci</i>	Saint Francis' satyr butterfly	NC	Endangered
233.	<i>Necturus lewisi</i>	Neuse River waterdog	NC	Threatened
234.	<i>Elliptio steinstansana</i>	Tar River spinymussel	NC	Endangered
235.	<i>Menidia extensa</i>	Waccamaw silverside	NC	Threatened
236.	<i>Mesodon clarki nantahala</i>	noonday snail	NC	Threatened
237.	<i>Notropis mekistocholas</i>	Cape Fear shiner	NC	Endangered
238.	<i>Cicindela nevadica lincolni</i>	Salt Creek Tiger beetle	NE	Endangered
239.	<i>Plethodon neomexicanus</i>	Jemez Mountains salamander	NM	Endangered
240.	<i>Gammarus desperatus</i>	Noel's Amphipod	NM	Endangered
241.	<i>Juturnia kosteri</i>	Koster's springsnail	NM	Endangered
242.	<i>Notropis simus pecosensis</i>	Pecos bluntnose shiner	NM	Threatened
243.	<i>Pyrgulopsis chupaderae</i>	Chupadera springsnail	NM	Endangered
244.	<i>Pyrgulopsis neomexicana</i>	Socorro springsnail	NM	Endangered
245.	<i>Pyrgulopsis roswellensis</i>	Roswell springsnail	NM	Endangered
246.	<i>Thermosphaeroma thermophilus</i>	Socorro isopod	NM	Endangered
247.	<i>Tryonia alamosae</i>	Alamosa springsnail	NM	Endangered

248.	<i>Icaricia (Plebejus) shasta charlestonensis</i>	Mount Charleston blue butterfly	NV	Endangered
249.	<i>Ambrysus amargosus</i>	Ash Meadows naucorid	NV	Threatened
250.	<i>Crenichthys baileyi baileyi</i>	White River springfish	NV	Endangered
251.	<i>Crenichthys baileyi grandis</i>	Hiko White River springfish	NV	Endangered
252.	<i>Crenichthys nevadae</i>	Railroad Valley springfish	NV	Threatened
253.	<i>Cyprinodon diabolis</i>	Devils Hole pupfish	NV	Endangered
254.	<i>Cyprinodon nevadensis mionectes</i>	Ash Meadows Amargosa pupfish	NV	Endangered
255.	<i>Cyprinodon nevadensis pectoralis</i>	Warm Springs pupfish	NV	Endangered
256.	<i>Empetrichthys latos</i>	Pahrump poolfish	NV	Endangered
257.	<i>Eremichthys acros</i>	Desert dace	NV	Threatened
258.	<i>Gila robusta jordani</i>	Pahrnagat roundtail chub	NV	Endangered
259.	<i>Lepidomeda albivallis</i>	White River spinedace	NV	Endangered
260.	<i>Lepidomeda mollispinis pratensis</i>	Big Spring spinedace	NV	Threatened
261.	<i>Moapa coriacea</i>	Moapa dace	NV	Endangered
262.	<i>Rhinichthys osculus lethoporus</i>	Independence Valley speckled dace	NV	Endangered
263.	<i>Rhinichthys osculus nevadensis</i>	Ash Meadows speckled dace	NV	Endangered
264.	<i>Rhinichthys osculus oligoporus</i>	Clover Valley speckled dace	NV	Endangered
265.	<i>Succinea chittenangoensis</i>	Chittenango ovate amber snail	NY; Chittenango Falls State Park; U.S.A. (NY)	Threatened
266.	<i>Noturus trautmani</i>	Scioto madtom	OH; Possibly extinct; U.S.A. (OH)	Endangered (delisting proposed)
267.	<i>Gila bicolor ssp.</i>	Hutton tui chub	OR	Threatened
268.	<i>Icaricia icarioides fenderi</i>	Fender's blue butterfly	OR	Endangered
269.	<i>Setophaga angelae</i>	Elfin-woods warbler	PR;	Threatened
270.	<i>Anolis roosevelti</i>	Culebra Island giant anole	PR	Endangered

271.	<i>Buteo platypterus brunnescens</i>	Puerto Rican broad-winged hawk	PR	Endangered
272.	<i>Caprimulgus noctitherus</i>	Puerto Rican nightjar	PR	Endangered
273.	<i>Columba inornata wetmorei</i>	Puerto Rican plain Pigeon	PR	Endangered
274.	<i>Amazona vittata</i>	Puerto Rican parrot	PR; Canovanas, Ceiba, Fajardo, Juncos, Las Piedras, Luquillo, Naguabo, Rio Grande, Utuado, Adjuntas, and Arecibo	Endangered
275.	<i>Epicrates monensis monensis</i>	Mona boa	PR; Endemic to Mona Island	Threatened
276.	<i>Cyclura stejnegeri</i>	Mona ground	PR; Endemic to Mona Island; U.S.A. (PR-Mona Island)	Threatened
277.	<i>Accipiter striatus venator</i>	Puerto Rican sharp-shinned hawk	PR; Endemic to Puerto Rico	Endangered
278.	<i>Agelaius xanthomus</i>	Yellow-shouldered blackbird	PR; Endemic to Puerto Rico	Endangered
279.	<i>Eleutherodactylus cooki</i>	Guajon	PR; Endemic to Puerto Rico	Threatened
280.	<i>Eleutherodactylus jasperi</i>	Golden coqui	PR; Endemic to Puerto Rico	Threatened
281.	<i>Epicrates inornatus</i>	Puerto Rican boa	PR; Endemic to Puerto Rico	Endangered
282.	<i>Peltophryne lemur</i>	Puerto Rican crested toad	PR; Puerto Rico and Virgin Gorda; The Puerto Rican crested toad is now exclusively found in (endemic to) Puerto Rico since the species has been never collected from US Virgin Islands and is considered extirpated from the British Virgin Islands.	Threatened
283.	<i>Eleutherodactylus juanariveroi</i>	Llanero Coqui	PR	Endangered
284.	<i>Anolis roosevelti</i>	Culebra Island giant anole	PR; U.S.A. (PR-Culebra Island)	Endangered
285.	<i>Fundulus julisia</i>	Barrens top minnow	TN	Endangered
286.	<i>Epioblasma florentina florentina</i>	Yellow blossom (pearlymussel)	TN	Endangered
287.	<i>Anguispira picta</i>	Painted snake coiled forest snail	TN	Threatened
288.	<i>Chrosomus saylori</i>	Laurel dace	TN	Endangered
289.	<i>Etheostoma akatulo</i>	bluemask darter	TN	Endangered
290.	<i>Noturus crypticus</i>	Chucky Madtom	TN	Endangered
291.	<i>Noturus stanauli</i>	Pygmy madtom	TN	Endangered
292.	<i>Orconectes shoupi</i>	Nashville crayfish	TN	Endangered
293.	<i>Pleurobema gibberum</i>	Cumberland pigtoe	TN	Endangered

294.	<i>Pyrgulopsis ogmorhapse</i>	Royal marstonia (snail)	TN	Endangered
295.	<i>Eurycea chisholmensis</i>	Salado Salamander	TX	Threatened
296.	<i>Eurycea naufragia</i>	Georgetown Salamander	TX	Threatened
297.	<i>Eurycea tonkawae</i>	Jollyville Plateau Salamander	TX	Threatened
298.	<i>Eurycea waterlooensis</i>	Austin blind Salamander	TX	Endangered
299.	<i>Gammarus hyalleloides</i>	Diminutive Amphipod	TX	Endangered
300.	<i>Gammarus pecos</i>	Pecos amphipod	TX	Endangered
301.	<i>Notropis buccula</i>	Smalleye Shiner	TX	Endangered
302.	<i>Notropis oxyrhynchus</i>	Sharpnose Shiner	TX	Endangered
303.	<i>Pseudotryonia adamantina</i>	Diamond Tryonia	TX	Endangered
304.	<i>Pyrgulopsis texana</i>	Phantom Springsnail	TX	Endangered
305.	<i>Tryonia cheatumi</i>	Phantom Tryonia	TX	Endangered
306.	<i>Tryonia circumstriata</i> (=stocktonensis)	Gonzales tryonia	TX	Endangered
307.	<i>Gambusia georgei</i>	San Marcos gambusia	TX; Possibly extinct	Endangered (proposed for delisting)
308.	<i>Batrisesodes texanus</i>	Coffin Cave mold beetle	TX	Endangered
309.	<i>Batrisesodes venyivi</i>	Helotes mold beetle	TX	Endangered
310.	<i>Bufo houstonensis</i>	Houston toad	TX	Endangered
311.	<i>Cicurina baronia</i>	Robber Baron Cave Meshweaver	TX	Endangered
312.	<i>Cicurina madla</i>	Madla's Cave Meshweaver	TX	Endangered
313.	<i>Cicurina venii</i>	Braken Bat Cave Meshweaver	TX	Endangered
314.	<i>Cicurina vespera</i>	Government Canyon Bat Cave Meshweaver	TX	Endangered
315.	<i>Cyprinodon bovinus</i>	Leon Springs pupfish	TX	Endangered
316.	<i>Cyprinodon elegans</i>	Comanche Springs pupfish	TX	Endangered
317.	<i>Etheostoma fonticola</i>	Fountain darter	TX	Endangered
318.	<i>Eurycea nana</i>	San Marcos salamander	TX	Threatened
319.	<i>Eurycea sosorum</i>	Barton Springs salamander	TX	Endangered
320.	<i>Gambusia gaigei</i>	Big Bend gambusia	TX	Endangered

321.	<i>Gambusia heterochir</i>	Clear Creek gambusia	TX	Endangered
322.	<i>Heterelmis comalensis</i>	Comal Springs riffle beetle	TX	Endangered
323.	<i>Neoleptoneta microps</i>	Government Canyon Bat Cave Spider	TX	Endangered
324.	<i>Neoleptoneta myopica</i>	Tooth Cave Spider	TX	Endangered
325.	<i>Rhadine exilis</i>	[no common name] Beetle	TX	Endangered
326.	<i>Rhadine infernalis</i>	[no common name] Beetle	TX	Endangered
327.	<i>Rhadine persephone</i>	Tooth Cave ground beetle	TX	Endangered
328.	<i>Stygobromus</i> (= <i>Stygonectes</i>) <i>pecki</i>	Peck's cave amphipod	TX	Endangered
329.	<i>Stygoparnus comalensis</i>	Comal Springs dryopid beetle	TX	Endangered
330.	<i>Tartarocreagris texana</i>	Tooth Cave pseudoscorpion	TX	Endangered
331.	<i>Texamaurops reddelli</i>	Kretschmarr Cave mold beetle	TX	Endangered
332.	<i>Texella cokendolpheri</i>	Cokendolpher Cave Harvestman	TX	Endangered
333.	<i>Texella reddelli</i>	Bee Creek Cave harvestman	TX	Endangered
334.	<i>Texella reyesi</i>	Bone Cave harvestman	TX	Endangered
335.	<i>Tympanuchus cupido attwateri</i>	Attwater's greater prairie-chicken	TX	Endangered
336.	<i>Typhlomolge rathbuni</i>	Texas blind salamander	TX	Endangered
337.	<i>Chasmistes liorus</i>	June sucker	UT	Threatened
338.	<i>Cynomys parvidens</i>	Utah prairie dog	UT; U.S.A.(UT); Utah prairie dogs are limited to the central and southwestern quarter of Utah in Iron, Beaver, Garfield, Wayne, Piute, Sevier, and Kane, counties. They occur at 6200 ft (1890 m) to 9180 ft (2800 m) above sea level (McDonald 1993).	Threatened
339.	<i>Lirceus usdagalun</i>	Lee County cave isopod	VA	Endangered
340.	<i>Plethodon shenandoah</i>	Shenandoah salamander	VA	Endangered
341.	<i>Polygyriscus virginianus</i>	Virginia fringed mountain snail	VA	Endangered
342.	<i>Ameiva polops</i>	St. Croix ground lizard	VI	Endangered
343.	<i>Thomomys mazama glacialis</i>	Roy Prairie pocket gopher	WA	Threatened
344.	<i>Thomomys mazama tumuli</i>	Tenino pocket gopher	WA	Threatened

345.	<i>Thomomys mazama yelmensis</i>	Yelm pocket gopher	WA	Threatened
346.	<i>Thomomys mazama pugetensis</i>	Olympia pocket gopher	WA	Threatened
347.	<i>Brachylagus idahoensis</i>	Columbia Basin Pygmy Rabbit	WA; U.S.A. (WA - Douglas, Grant, Lincoln, Adams, Benton Counties)	Endangered
348.	<i>Cambarus veteranus</i>	Guyandotte River crayfish	WV; U.S.A. (WV); upper Guyandotte River watershed	Endangered
349.	<i>Plethodon nettingi</i>	Cheat Mountain salamander	WV	Threatened
350.	<i>Triodopsis platysayoides</i>	Flat-spined three-toothed Snail	WV	Threatened
351.	<i>Bufo hemiophrys baxteri</i>	Wyoming Toad	WY	Endangered
352.	<i>Rhinichthys osculus thermalis</i>	Kendall Warm Springs dace	WY	Endangered