May XX, 2023

**Re: Vote NO on Legislation Providing for Congressional Disapproval of the Final Rules Protecting the Northern Long-Eared Bat and Rescinding the Definition of “Habitat” under the Endangered Species Act**

Dear Senator,

On behalf of our XX organizations and our millions of members and supporters, we write to express our strong opposition to S.J. Res. 24, which would nullify the final rule issued by U.S. Fish and Wildlife Service in November 2022 protecting the northern long-eared bat under the Endangered Species Act, and S.J. Res. 23, which would nullify the final rule issued jointly by the Service and the National Marine Fisheries Service rescinding the definition of “habitat” under the Act.

Using the Congressional Review Act to rescind protections for the northern long-eared bat or any other endangered wildlife or plant could have disastrous consequences. The Congressional Review Act is a blunt instrument with far reaching impacts. Upon enactment of a CRA resolution, the underlying rule becomes void and an agency is prevented from future issuance of a rule that is “substantially the same” without an act of Congress. For an endangered species, use of the CRA could prevent the Fish and Wildlife Service from ever protecting the northern long-eared bat under the Endangered Species Act in the future, even if its populations collapsed or just a handful of individual bats remained. Simply put, a vote to approve a CRA resolution for an endangered species is a vote to condemn that species to extinction.

Alarmingly, 50 Senators voted to pass a CRA resolution last week ending federal protections for the critically imperiled lesser prairie-chicken. This was the first time in the CRA’s 30-year history that Congress has attempted to use this law to rescind Endangered Species Act protections for an individual species. While President Biden plans to veto the resolution, its passage sends a strong signal to the American public that these 50 senators care more about the short-term profits of industry than protecting our natural heritage.

President Reagan signed into law the Endangered Species Act Amendments of 1982, which made clear that all decisions regarding the listing of species as threatened or endangered were to be made “*solely* on the basis of the best scientific and commercial data available.”[[1]](#footnote-1) The reason for this important clarification in the law is simple. Whether or not a species is facing extinction is a scientific question only. The Endangered Species Act contains numerous provisions to provide flexibility and address any hardships that might arise after a species is listed, but short-term political expediency and purported economic costs should not influence listing decisions themselves.

The listing process under the Endangered Species Act requires that the Service consider all relevant science and data regarding any decision to list a species. State fish and wildlife agencies are given special additional procedural privileges to ensure their scientific assessments are fully considered.[[2]](#footnote-2) Every listing decision undergoes scientific peer review and public notice and comment. In contrast, the CRA ignores all of these rigorous and transparent processes, sidelines all meaningful debate, and provides only an unnuanced yes or no choice about any federal agency decision.

Northern long-eared bats have declined by 99% in a span of just two decades. White-nose syndrome, caused by an exotic fungus originating in Europe, has devastated bat populations across their entire range. Biologists consider the fungus to be the most severe wildlife disease outbreak in history. However, human activities have also played a major role in the bats’ catastrophic decline. Northern long-eared bats live in large blocks of mature forests and forage along wooded hillsides and ridgelines, so forest fragmentation, logging, and habitat conversion —clearing trees for agriculture and development — are major ongoing threats to the species, as well as oil and gas drilling, contamination from pesticides, and poorly mitigated wind energy projects. The Fish and Wildlife Service listed the bat as endangered in November 2022 after finding that its previous “threatened” status was not sufficiently protective to keep the bat from slipping further toward extinction. In its final listing rule, the Service found that the bat “continues to experience the catastrophic effects of [white nose syndrome] and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions.”[[3]](#footnote-3)

Finally, S.J. Res. 23 would overturn the Biden administration’s final rule rescinding the regulatory definition of “habitat” and restore the pro-polluter Trump-era regulation that severely curtailed when lands or waters could be designated as “critical habitat” for imperiled species. This unnecessary and short-sighted Trump rule limited protections to only those areas that could *currently* support the species, while it excluded areas that were previously occupied and could be restored, or that would have provided additional habitat for future recovery as climate change shifts where species can live. In rescinding the rule, the Services explained that the Trump-era regulation was “unclear and confusing and inconsistent with the conservation purposes of the Act…”[[4]](#footnote-4) and that it is more appropriate and more consistent with the Endangered Species Act to “determine what areas qualify as habitat for a given species on a case-by-case basis using the best scientific data available for a particular species.”[[5]](#footnote-5)

The Congressional Review Act is an extreme law that has been abused by anti-environmental members of Congress who want to permanently strip away protections for our environment, wildlife and natural heritage. Invoking the CRA here would set an extremely dangerous precedent and would put some of our most iconic species at risk of disappearing forever.

For these reasons, we urge you to oppose S.J. Res. 23 and S.J. Res. 24 when they come to the floor.

Sincerely,

Center for Biological Diversity

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1. Pub. Law 97-304, Oct. 13, 1982, 96 Stat 1411. [↑](#footnote-ref-1)
2. 16 U.S.C. 1533(b)(5)(A)(ii). [↑](#footnote-ref-2)
3. 87 Fed. Reg. 73488, 73501, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, *available at*: <https://www.govinfo.gov/content/pkg/FR-2022-11-30/pdf/2022-25998.pdf>. [↑](#footnote-ref-3)
4. Fed. Reg. 37757, 37757, Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, *available at*: https://www.govinfo.gov/content/pkg/FR-2022-06-24/pdf/2022-13368.pdf. [↑](#footnote-ref-4)
5. *Id.* at 37758. [↑](#footnote-ref-5)