



PO Box 2087

Long Beach Township, NJ, 08008

www.SaveLBI.org/Save-LBI-Advocacy

Endangered Species Act Amendments- Save LBI Advocacy Issue Paper

The House is ready to vote on a bill, H.R.1897, that would make major changes to the Endangered Species Act (ESA) after limited debate of one hour in the Natural Resources Committee. The key concerns Save Long Beach Island Advocacy (SLBIA) identified with the bill as they relate to offshore wind projects are summarized below:

1. Proposed Section 503 – “Clarifying Jeopardy”

- Raises the bar for ESA consultation from current ESA’s “may jeopardize” standard to requiring “clear and substantial information” and effects “reasonably certain to occur.”
- Limits review to effects directly caused by the action and excludes those:
 - More remote in time or space,
 - Involving longer causal chains,
 - Beyond the control of the Agency seeking ESA approval.
- For offshore wind, this would:
 - Make it much harder to address underwater noise impacts to marine mammals, which inherently involve uncertainty and modeling future predictions.
 - Undercut consideration of long-term and far-field noise impacts (noise extending miles from the facility and persisting for years).
- Net effect: Easier for agencies and developers to dismiss or downplay later, farther-field, cumulative, indirect, modeled, and uncertain harms to listed species and modifications to critical habitat.

2. Proposed Section 504 – “Clarifying Action Area”

- Narrows ESA review to the “area directly affected by the agency action” instead of the broader “action area.”
- Requires reasonable and prudent alternatives that impose the **fewest economic and other costs** on the applicant.
- For offshore wind, this would:
 - Ignore that elevated underwater noise from surveys, construction, and turbine operation extends far beyond the turbine complex footprint.

- Undermine robust mitigation by limiting such to lowest-cost measures versus those that actually reduce harm.
- Make it harder to address indirect effects of noise on marine mammals (behavioral disruption, and disorientation leading to strandings, vessel strikes, impaired migration, lost feeding opportunities at a later time and another place).
- Effectively legitimize the flawed noise-exposure modeling that is already a core issue in litigation.

3. Sections 201–203 – Conservation Benefit Agreements and Plans

- Section 201:

- Let's developers secure early agreements so that if a covered species is later listed, no additional conservation measures or new restrictions can be imposed.
- Exempts approval of such agreements from ESA Section 7(a)(2) consultation and from National Environmental Policy Act (NEPA) review.

- Section 202:

- Bars the Secretary from seeking additional mitigation through other federal, state, or local processes for actions covered by the agreement/permit.

- Section 203:

- States that issuing an incidental take permit is **not** a major federal action under NEPA even though such permits can result in significant environmental impact, including that to marine mammals.

- For offshore wind, these provisions would:

- “Crystallize” developer assurances at the outset and shield them from new mitigation or restrictions over a 30-year project life.
- Remove two key legal oversight tools (ESA consultation and NEPA review) from long-lived offshore wind turbine complexes, despite undisclosed operational noise levels, and unverified assumptions made for approvals such as exceptionally high noise transmission loss rates.
- Create substantial, long-term risk to marine species and habitats.

4. Overall conclusions

- SLBIA believes these changes would significantly weaken the ESA’s ability to protect species from offshore wind project impacts by:

- Narrowing what effects can be considered;
- Shrinking the geographic/action area;
- Weakening mitigation requirements;
- Locking in powerful shields for developers against future environmental safeguards.

- SLBIA emphasizes that:

- The ESA is not currently an onerous law; it uses general criteria, provides agency discretion, and has an exemption process.

- The bill would likely increase complexity and delay rather than streamline project reviews..
- The bill appears designed to address very specific difficulties encountered in a few instances.
- The need for such “dramatic changes” to this long-lived, landmark environmental statute to expedite projects generally has not been justified in the public record.