

ESA AMENDMENTS ACT OF 2024

DECEMBER 16, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 9533]

The Committee on Natural Resources, to whom was referred the bill (H.R. 9533) to amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to recover listed species, create greater transparency and accountability in recovering listed species, and limit reasonable and prudent measures, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “ESA Amendments Act of 2024”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Endangered Species Act of 1973 definitions.
Sec. 3. Authorization of appropriations.
Sec. 4. Rule of construction.

TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

Sec. 101. Prioritization of listing petitions, reviews, and determinations.

TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

Sec. 201. Candidate Conservation Agreements with Assurances.
Sec. 202. Designation of critical habitat.

TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER LISTED SPECIES

Sec. 301. Protective regulations under Endangered Species Act of 1973.
Sec. 302. 5-year review determinations.

Sec. 303. Judicial review during monitoring period.
 Sec. 304. Codification of regulation.

TITLE IV—CREATING GREATER TRANSPARENCY AND ACCOUNTABILITY IN RECOVERING LISTED SPECIES

Sec. 401. Requirement to publish basis for listings on Internet.
 Sec. 402. Decisional transparency and use of State, Tribal, and local information.
 Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.
 Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law.
 Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status.

TITLE V—LIMITATION ON REASONABLE AND PRUDENT MEASURES

Sec. 501. Limitation on reasonable and prudent measures.

SEC. 2. ENDANGERED SPECIES ACT OF 1973 DEFINITIONS.

(a) **FORESEEABLE FUTURE.**—The final rule titled “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat” (84 Fed. Reg. 45020; published August 27, 2019) shall have the force and effect of law with respect to the use of the term “foreseeable future”.

(b) **HABITAT.**—Section 3(5) of the Endangered Species Act of 1973 (16 U.S.C. 1532(5)) is amended by adding at the end the following:

“(D) For the purposes of designating critical habitat under this Act, the term ‘habitat’ means the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support 1 or more life processes of a species.”.

(c) **ENVIRONMENTAL BASELINE.**—Section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)) is amended by adding at the end the following:

“(5) For the purposes of carrying out a consultation under this section with respect to a threatened species or an endangered species, the term ‘environmental baseline’—

“(A) means the condition of the species or the critical habitat of the species in the action area, without the consequences to the species or the critical habitat of the species caused by the proposed action; and

“(B) includes—

“(i) the past and present effects of all Federal, State, and private actions and other human activities in the action area;

“(ii) the anticipated effects of each proposed Federal project within the action area for which a consultation under this section has been completed;

“(iii) the effects of State and private actions that are contemporaneous with the consultation in process; and

“(iv) the ongoing impacts to listed species or designated critical habitat from existing facilities or activities that are not caused by the proposed action or that are not within the discretion of the Federal action agency to modify.”.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) in subsection (a)—

(A) by striking “subsection (b), (c), and (d)” and inserting “subsections (b) and (c)”;

(B) in paragraph (1)—

(i) by striking “and” after “fiscal year 1991,”; and

(ii) by inserting “, and \$302,025,000 for each of fiscal years 2025 through 2030” after “fiscal year 1992”;

(C) in paragraph (2)—

(i) by striking “and” after “fiscal years 1989 and 1990,”; and

(ii) by inserting “, and \$116,630,000 for each of fiscal years 2025 through 2030” after “fiscal years 1991 and 1992”; and

(D) in paragraph (3)—

(i) by striking “and” after “fiscal years 1989 and 1990,”; and

(ii) by inserting “and \$2,600,000 for each of fiscal years 2025 through 2030” after “fiscal years 1991 and 1992.”;

(2) in subsection (b), by inserting “and \$600,000 for each of fiscal years 2025 through 2030” after “1992”; and

(3) in subsection (c)—

(A) by striking “and” after “fiscal years 1988, 1989, and 1990,”; and

(B) by inserting “and \$9,900,000 for each of fiscal years 2025 through 2030,” after “fiscal years 1991 and 1992.”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act may be construed to enlarge or diminish the authority, jurisdiction, or responsibility of a State (as that term is defined in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532))

to manage, control, or regulate fish and wildlife on lands and waters, including Federal lands and waters, within the State.

TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

SECTION 101. PRIORITIZATION OF LISTING PETITIONS, REVIEWS, AND DETERMINATIONS.

(a) IN GENERAL.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding at the end the following:

“(j) NATIONAL LISTING WORK PLAN.—

“(1) IN GENERAL.—Not later than the date described in paragraph (2), the Secretary shall submit to Congress a national listing work plan that establishes, for each covered species, a schedule for the completion during the 5-fiscal year period beginning on October 1 of the first fiscal year after the date of the submission of the work plan of—

“(A) findings as described in subsection (b)(3)(B) for each such covered species;

“(B) proposed and final determinations regarding listing each such covered species under this section; and

“(C) proposed and final critical habitat designations under subsection (a)(3) relating to each such covered species.

“(2) SUBMISSION TO CONGRESS.—

“(A) IN GENERAL.—The Secretary shall submit to Congress—

“(i) together with the budget request of the Secretary for the first fiscal year that begins not less than 365 days after the date of the enactment of this subsection, the initial work plan required under paragraph (1); and

“(ii) together with the budget request of the Secretary for each fiscal year thereafter, an updated work plan under paragraph (1).

“(B) ADDITIONAL INCLUSIONS.—The Secretary shall include with each budget request referred to in subparagraph (A) a description of the amounts to be requested to carry out the work plan for the fiscal year covered by the budget request, including any amounts requested to address emergency listings if the Secretary identifies any emergency posing a significant risk to the well-being of any species of fish or wildlife or plant.

“(3) PRIORITY.—

“(A) IN GENERAL.—In developing a work plan under this subsection, the Secretary shall assign to each species included in the work plan a priority classification of Priority 1 through Priority 5, such that, as determined by the Secretary, the following apply:

“(i) Priority 1 represents species of the highest priority, to be designated as critically imperiled and in need of immediate action.

“(ii) Priority 2 represents species with respect to which the best scientific and commercial data available support a clear decision regarding the status of the species.

“(iii) Priority 3 represents species with respect to which studies regarding the status of the species are being carried out—

“(I) to answer key questions that may influence the findings of a petition to list the species submitted under subsection (b)(3); and

“(II) to resolve any uncertainty regarding the status of the species within a reasonable timeframe.

“(iv) Priority 4 represents species for which proactive conservation efforts likely to reduce threats to the species are being developed or carried out, within a reasonable timeframe and in an organized manner, by Federal agencies, States, landowners, or other stakeholders.

“(v) Priority 5 represents species—

“(I) for which there exists little information regarding—

“(aa) threats to the species; or

“(bb) the status of the species; or

“(II) that would receive limited conservation benefit in the foreseeable future by listing the species as a threatened species or endangered species under this section.

“(B) USE OF METHODOLOGY.—The Secretary shall establish and assign priority classifications under subparagraph (A) in accordance with the notice of the Director of the United States Fish and Wildlife Service titled ‘Methodology for Prioritizing Status Reviews and Accompanying 12-Month

Findings on Petitions for Listing Under the Endangered Species Act' (81 Fed. Reg. 49248; published July 27, 2016).

“(C) EXTENSIONS FOR CERTAIN PRIORITY CLASSIFICATIONS.—

“(i) PRIORITY 3.—With respect to a species classified as Priority 3 under subparagraph (A)(iii), if the Secretary determines that additional time would allow for more complete data collection or the completion of studies relating to the species, the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

“(ii) PRIORITY 4.—With respect to a species classified as Priority 4 under subparagraph (A)(iv), if the Secretary determines that existing conservation efforts continue to meet the conservation needs of the species, the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

“(iii) PRIORITY 5.—With respect to a species classified as Priority 5 under subparagraph (A)(v), the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

“(D) REVISION OF PRIORITY CLASSIFICATION.—The Secretary may revise, in accordance with subparagraph (A), the assignment to a priority classification of a species included in a work plan at any time during the fiscal years to which the work plan applies.

“(E) EFFECT OF PRIORITY CLASSIFICATION.—The assignment of a priority classification to a species included in a work plan is not a final agency action.

“(4) DEADLINE.—The Secretary shall act on any petition to add a species to a list published under subsection (c) submitted under subsection (b)(3) not later than the last day of the fiscal year specified for that petition in the most recent work plan.

“(5) REGULATIONS.—The Secretary may issue such regulations as the Secretary determines appropriate to carry out this subsection.

“(6) EFFECT OF SUBSECTION.—Nothing in this subsection may be construed to preclude or otherwise affect the emergency listing authority of the Secretary under subsection (b)(7).

“(7) DEFINITIONS.—In this subsection:

“(A) COVERED SPECIES.—The term ‘covered species’ means a species that is not included on a list published under subsection (c)—

“(i) for which a petition to add the species to such a list has been submitted under subsection (b)(3); or

“(ii) that is otherwise under consideration by the Secretary for addition to such a list.

“(B) WORK PLAN.—The term ‘work plan’ means the national listing work plan submitted by the Secretary under paragraph (1).”.

(b) CONFORMING AMENDMENTS.—Section 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)) is amended—

(1) in subparagraph (B), by striking “Within 12 months” and inserting “In accordance with the national listing work plan submitted under subsection (j).”; and

(2) in subparagraph (C), to read as follows:

“(C) JUDICIAL REVIEW.—Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i)(I) shall be subject to judicial review.”.

TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

SECTION 201. CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.

(a) LISTING DETERMINATIONS.—Section 4(b)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(1)) is amended by adding at the end the following:

“(C) CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.—In making a determination under subsection (a)(1) with respect to a species, the Secretary shall take into account and document the effect of any net conservation benefit (as that term is defined in subsection (k) of section 10) of any Candidate Conservation Agreement with Assurances or any programmatic Candidate Conservation Agreement with Assurances (as those terms are defined in that subsection) relating to such species.”.

(b) CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.—Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end the following:

“(k) CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.—

“(1) PROPOSED AGREEMENT.—A covered party may submit a proposed Agreement to the Secretary.

“(2) APPROVAL.—Not later than 120 days after the date of the receipt of a proposed Agreement under paragraph (1), the Secretary shall approve the proposed Agreement if the Secretary determines that the proposed Agreement—

“(A) sets forth specific management activities that the covered party will undertake to conserve the covered species;

“(B) provides a positive estimate of the net conservation benefit of such management activities to the covered species;

“(C) describes, to the maximum extent practicable, the existing population levels of the covered species or the existing quality of habitat;

“(D) includes a monitoring plan to be carried out by the parties to the Agreement; and

“(E) provides assurances to the covered party that no additional conservation measures will be required and additional land, water, or resource use restrictions will not be imposed on the covered party if the covered species becomes listed after the effective date of such Agreement.

“(3) DENIAL.—Not later than 120 days after the date of the receipt of a proposed Agreement under paragraph (1), the Secretary shall—

“(A) deny the proposed Agreement if the Secretary determines that the proposed Agreement does not meet the requirements described in paragraph (2); and

“(B) provide the submitting covered party a written explanation for such determination and the adjustments required for the Secretary to approve such proposed Agreement.

“(4) PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES.—

“(A) IN GENERAL.—The Secretary may enter into a Candidate Conservation Agreement with Assurances with a covered party that authorizes such covered party—

“(i) to administer such Candidate Conservation Agreement with Assurances;

“(ii) to hold any permit issued under this section with regard to such Candidate Conservation Agreement with Assurances;

“(iii) to enroll other covered parties within the area covered by such Candidate Conservation Agreement with Assurances in such Candidate Conservation Agreement with Assurances; and

“(iv) to convey any permit authorization held by such covered party under clause (ii) to each covered party enrolled under clause (iii).

“(B) PUBLICATION.—Upon receipt of a proposed programmatic Candidate Conservation Agreement with Assurances under paragraph (1) and before approving or denying such a proposed programmatic Candidate Conservation Agreement with Assurances under paragraph (2) or (3), respectively, the Secretary shall—

“(i) not later than 30 days after the date of such receipt, publish the proposed programmatic Candidate Conservation Agreement with Assurances in the Federal Register for public comment for a period of not less than 60 days;

“(ii) review any comments received under clause (i); and

“(iii) after the close of the public comment period for the proposed programmatic Candidate Conservation Agreement with Assurances, publish in the Federal Register—

“(I) any comments received under clause (i); and

“(II) the approval or denial of the proposed programmatic Candidate Conservation Agreement with Assurances under paragraph (2) or (3), respectively.

“(5) INCIDENTAL TAKE AUTHORIZATION.—If a covered species is listed under section 4, the Secretary shall issue a permit to the relevant covered party under this section allowing incidental take of and modification to the habitat of such covered species consistent with the Agreement.

“(6) TECHNICAL ASSISTANCE.—The Secretary shall, upon request, provide a covered party with technical assistance in developing a proposed Agreement.

“(7) APPLICABILITY TO FEDERAL LAND.—An Agreement may apply to a covered party that conducts activities on land administered by any Federal agency pursuant to a permit or lease issued to the covered party by that Federal agency.

“(8) EXEMPTION FROM CONSULTATION REQUIREMENT.—An Agreement approved under this subsection shall be deemed to have been granted an exemption under section 7(h) for the purposes of that section.

“(9) EXEMPTION FROM DISCLOSURE.—Information submitted by a private party to the Secretary under this subsection shall be exempt from disclosure under section 552(b)(3)(B) of title 5, United States Code.

“(10) DEFINITIONS.—In this subsection:

“(A) AGREEMENT.—The term ‘Agreement’ means—

“(i) a Candidate Conservation Agreement with Assurances; or

“(ii) a programmatic Candidate Conservation Agreement with Assurances.

“(B) CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES.—The term ‘Candidate Conservation Agreement with Assurances’ means any voluntary agreement, including a conservation benefit agreement, between the Secretary and a covered party in which—

“(i) the covered party commits to implementing mutually agreed upon conservation measures for a candidate species; and

“(ii) the Secretary provides assurances that, if such candidate species is listed pursuant to section 4—

“(I) the covered party shall incur no additional obligations beyond actions agreed to in the agreement with respect to conservation activities required under this Act; and

“(II) no additional land, water, or resource use restrictions shall be imposed on the covered party beyond those included in the agreement.

“(C) CANDIDATE SPECIES.—The term ‘candidate species’ means a species—

“(i) designated by the Secretary as a candidate species under this Act; or

“(ii) proposed to be listed pursuant to section 4.

“(D) COVERED PARTY.—The term ‘covered party’ means a—

“(i) party that conducts activities on land administered by a Federal agency pursuant to a permit or lease issued to the party;

“(ii) private property owner;

“(iii) county;

“(iv) State or State agency; or

“(v) Tribal government.

“(E) COVERED SPECIES.—The term ‘covered species’ means, with respect to an Agreement, the species that is the subject of such Agreement.

“(F) NET CONSERVATION BENEFIT.—The term ‘net conservation benefit’ means the net effect of an Agreement, determined by comparing the existing situation of the candidate species without the Agreement in effect and a situation in which the Agreement is in effect, on a candidate species, including—

“(i) the net effect on threats to such species;

“(ii) the net effect on the number of individuals of such species; or

“(iii) the net effect on the habitat of such species.

“(G) PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES.—The term ‘programmatic Candidate Conservation Agreement with Assurances’ means a Candidate Conservation Agreement with Assurances described in paragraph (4)(A).”.

SEC. 202. DESIGNATION OF CRITICAL HABITAT.

(a) PRIVATELY OWNED OR CONTROLLED LAND.—Section 4(a)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)(3)) is amended by adding at the end the following:

“(C) PRIVATELY OWNED OR CONTROLLED LAND.—The Secretary may not designate as critical habitat under subparagraph (A) any privately owned or controlled land or other geographical area that is subject to a land management plan that—

“(i) the Secretary determines is similar in nature to an integrated natural resources management plan described in section 101 of the Sikes Act (16 U.S.C. 670a);

“(ii)(I) is prepared in cooperation with the Secretary and the head of each applicable State fish and wildlife agency of each State in which such land or other geographical area is located; or

“(II) is submitted to the Secretary in a manner that is similar to the manner in which an applicant submits a conservation plan to the Secretary under section 10(a)(2)(A);

“(iii) includes an activity or a limitation on an activity that the Secretary determines will likely conserve the species concerned;

“(iv) the Secretary determines will result in—

“(I) an increase in the population of the species concerned above the population of such species on the date that such species is listed as a threatened species or an endangered species; or

“(II) maintaining the same population of such species on the land or other geographical area as the population that would likely occur if such land or other geographical area is designated as critical habitat; and

“(v) to the maximum extent practicable, will minimize and mitigate the impacts of any activity that will likely result in an incidental taking of the species concerned.”.

(b) DESIGNATION CONSIDERATIONS.—Section 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(2)) is amended in the first sentence by inserting “the impact on existing efforts of private landowners to conserve the species,” after “impact on national security,”.

TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER LISTED SPECIES

SEC. 301. PROTECTIVE REGULATIONS UNDER ENDANGERED SPECIES ACT OF 1973.

(a) AMENDMENT TO DEFINITION.—Section 3(3) of the Endangered Species Act of 1973 (16 U.S.C. 1532(3)) is amended by striking “and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include” and inserting “transplantation, and, at the discretion of the Secretary,”.

(b) PROTECTIVE REGULATIONS.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) in subsection (d), to read as follows:

“(d) PROTECTIVE REGULATIONS.—

“(1) IN GENERAL.—Whenever any species is listed as a threatened species pursuant to subsection (c), the Secretary shall issue such regulations as are necessary and advisable to provide for the conservation of that species.

“(2) RECOVERY GOALS.—If the Secretary issues a regulation under paragraph (1) that prohibits an act described in section 9(a), the Secretary shall, with respect to the species that is the subject of such regulation—

“(A) establish objective, incremental recovery goals;

“(B) provide for the stringency of such regulation to decrease as such recovery goals are met; and

“(C) provide for State management within such State, if such State is willing to take on such management, beginning on the date on which the Secretary determines all such recovery goals are met and, if such recovery goals remain met, continuing until such species is removed from the list of threatened species published pursuant to subsection (c).

“(3) COOPERATIVE AGREEMENT.—A regulation issued under paragraph (1) that prohibits an act described in section 9(a) with respect to a resident species shall apply with respect to a State that has entered into a cooperative agreement with the Secretary pursuant to section 6(c) only to the extent that such regulation is adopted by such State.

“(4) STATE RECOVERY STRATEGY.—

“(A) IN GENERAL.—A State may develop a recovery strategy for a threatened species or a candidate species and submit to the Secretary a petition for the Secretary to use such recovery strategy as the basis for any regulation issued under paragraph (1) with respect to such species within such State.

“(B) APPROVAL OR DENIAL OF PETITION.—Not later than 120 days after the date on which the Secretary receives a petition submitted under subparagraph (A), the Secretary shall—

“(i) approve such petition if the Secretary determines the recovery strategy is reasonably certain to be implemented by the petitioning State and to be effective in conserving the species that is the subject of such recovery strategy; or

“(ii) deny such petition if the requirements described in clause (i) are not met.

“(C) PUBLICATION.—Not later than 30 days after the date on which the Secretary approves or denies a petition under subparagraph (B), the Secretary shall publish such approval or denial in the Federal Register.

“(D) DENIAL OF PETITION.—

“(i) WRITTEN EXPLANATION.—If the Secretary denies a petition under subparagraph (B), the Secretary shall include in such denial a written explanation for such denial, including a description of the changes to such petition that are necessary for the Secretary to approve such petition.

“(ii) RESUBMISSION OF DENIED PETITION.—A State may resubmit a petition that is denied under subparagraph (B).

“(E) USE IN PROTECTIVE REGULATIONS.—If the Secretary approves a petition under subparagraph (B), the Secretary shall—

“(i) issue a regulation under paragraph (1) that adopts the recovery strategy as such regulation with respect to the species that is the subject of such recovery strategy within the petitioning State; and

“(ii) establish objective criteria to evaluate the effectiveness of such recovery strategy in conserving such species within such State.

“(F) REVISION.—If a recovery strategy that is adopted as a regulation issued under paragraph (1) is determined by the Secretary to be ineffective in conserving the species that is the subject of such recovery strategy in accordance with the objective criteria established under subparagraph (E)(ii) for such recovery strategy, the Secretary shall revise such regulation and reissue such regulation in accordance with paragraph (1).”; and

(2) in subsection (f)(1)(B)—

(A) in clause (ii), by striking “and” at the end;

(B) in clause (iii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(iv) with respect to an endangered species, objective, incremental recovery goals in accordance with subsection (d)(2)(A) for use under that subsection if such endangered species is changed in status from an endangered species to a threatened species under subsection (c)(2)(B)(ii).”.

SEC. 302. 5-YEAR REVIEW DETERMINATIONS.

Section 4(c) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)) is amended by adding at the end the following:

“(3) Not later than 30 days after the date on which the Secretary makes a determination under paragraph (2)(B), the Secretary shall initiate a rulemaking to carry out such determination.”.

SEC. 303. JUDICIAL REVIEW DURING MONITORING PERIOD.

Section 4(g) of the Endangered Species Act of 1973 (16 U.S.C. 1533(g)) is amended by adding at the end the following:

“(3) The removal of a species from a list published under subsection (c)(1) is not subject to judicial review during the period established under paragraph (1) with respect to the species.”.

SEC. 304. CODIFICATION OF REGULATION.

The final rule titled “Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants” (84 Fed. Reg. 44753; published August 27, 2019) shall have the force and effect of law.

TITLE IV—CREATING GREATER TRANSPARENCY AND ACCOUNTABILITY IN RECOVERING LISTED SPECIES

SECTION 401. REQUIREMENT TO PUBLISH BASIS FOR LISTINGS ON INTERNET.

Section 4(b) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is amended by adding at the end the following:

“(9) The Secretary shall make publicly available on the Internet the best scientific and commercial data available that are used as the basis for each regulation, including each proposed regulation, promulgated under subsection (a)(1), except that—

“(A) at the request of a Governor, State agency, or legislature of a State, the Secretary may not make such data available under this paragraph if such entity determines that public disclosure of such data is prohibited by a law or regulation of such State, including any law or regulation requiring the protection of personal information; and

“(B) not later than 30 days after the date of the enactment of this paragraph, the Secretary shall execute an agreement with the Secretary of Defense that prevents the disclosure of classified information pertaining to Department of Defense personnel, facilities, lands, or waters.”.

SEC. 402. DECISIONAL TRANSPARENCY AND USE OF STATE, TRIBAL, AND LOCAL INFORMATION.

(a) **REQUIRING DECISIONAL TRANSPARENCY WITH AFFECTED STATES.**—Section 6(a) of the Endangered Species Act of 1973 (16 U.S.C. 1535(a)) is amended—

(1) by inserting “(1)” before the first sentence; and

(2) by striking “Such cooperation shall include” and inserting the following:

“(2) Such cooperation shall include—

“(A) before making a determination under section 4(a), providing to States affected by such determination all data that is the basis of the determination; and

“(B)”.

(b) **ENSURING USE OF STATE, TRIBAL, AND LOCAL INFORMATION.**—

(1) **IN GENERAL.**—Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(A) by redesignating paragraphs (2) through (10) as paragraphs (3) through (11), respectively; and

(B) by inserting after paragraph (1) the following:

“(2) The term ‘best scientific and commercial data available’ includes data submitted to the Secretary by a State, Tribal, or county government.”.

(2) **CONFORMING AMENDMENT.**—Section 7(n) of the Endangered Species Act of 1973 (16 U.S.C. 1536(n)) is amended by striking “section 3(13)” and inserting “section 3(14)”.

SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDANGERED SPECIES ACT OF 1973.

(a) **REQUIREMENT TO DISCLOSE.**—Section 13 of the Endangered Species Act of 1973 (87 Stat. 902) is amended to read as follows:

“SEC. 13. DISCLOSURE OF EXPENDITURES.

“(a) **REQUIREMENT.**—The Secretary of the Interior, in consultation with the Secretary of Commerce, shall—

“(1) not later than 90 days after the end of each fiscal year, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate an annual report detailing Federal Government expenditures for covered suits during the preceding fiscal year (including the information described in subsection (b)); and

“(2) make publicly available through the Internet a searchable database, updated monthly, of the information described in subsection (b).

“(b) **INCLUDED INFORMATION.**—The report shall include—

“(1) the case name and number of each covered suit, and, with respect to each such covered suit, a hyperlink to each settlement decision, final decision, consent decree, stipulation of dismissal, release, interim decision, motion to dismiss, partial motion for summary judgement, or related final document;

“(2) a description of each claim or cause of action in each covered suit;

“(3) the name of each covered agency the actions of which give rise to any claim in a covered suit and each plaintiff in such suit;

“(4) funds expended by each covered agency (disaggregated by agency account) to receive and respond to notices referred to in section 11(g)(2) or to prepare for litigation of, litigate, negotiate a settlement agreement or consent decree in, or provide material, technical, or other assistance in relation to, a covered suit;

“(5) the number of full-time equivalent employees that participated in the activities described in paragraph (4);

“(6) any information required to be published under section 1304 of title 31, United States Code, with respect to a covered suit; and

“(7) attorneys fees and other expenses (disaggregated by agency account) awarded in covered suits, including any consent decrees or settlement agreements (regardless of whether a decree or settlement agreement is sealed or otherwise subject to nondisclosure provisions), including the basis for such awards.

“(c) **REQUIREMENT TO PROVIDE INFORMATION.**—The head of each covered agency shall provide to the Secretary in a timely manner all information requested by the Secretary to comply with the requirements of this section.

“(d) **LIMITATION ON DISCLOSURE.**—Notwithstanding any other provision of this section, this section shall not affect any restriction in a consent decree or settlement agreement on the disclosure of information that is not described in subsection (b).

“(e) **DEFINITIONS.**—In this section:

“(1) **COVERED AGENCY.**—The term ‘covered agency’ means any agency of the—

- “(A) Department of the Interior;
 - “(B) Forest Service;
 - “(C) Environmental Protection Agency;
 - “(D) National Marine Fisheries Service;
 - “(E) Bonneville Power Administration;
 - “(F) Western Area Power Administration;
 - “(G) Southwestern Power Administration; or
 - “(H) Southeastern Power Administration.
- “(2) COVERED SUIT.—The term ‘covered suit’ means—
- “(A) any civil action containing any claim arising under this Act against the Federal Government and based on the action of a covered agency; and
 - “(B) any administrative proceeding under which the United States awards fees and other expenses to a third party under section 504 of title 5, United States Code.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the Endangered Species Act of 1973 (16 U.S.C. 1531 note) is amended by striking the item relating to section 13 and inserting the following:

“Sec. 13. Disclosure of expenditures.”.

SEC. 404. AWARD OF LITIGATION COSTS TO PREVAILING PARTIES IN ACCORDANCE WITH EXISTING LAW.

Section 11(g)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to any party, whenever the court determines such award is appropriate” and inserting “in accordance with section 2412 of title 28, United States Code and section 504 of title 5, United States Code”.

SEC. 405. ANALYSIS OF IMPACTS AND BENEFITS OF DETERMINATION OF ENDANGERED OR THREATENED STATUS.

Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)) is amended by adding at the end the following:

“(4) ANALYSIS OF EFFECTS OF DETERMINATION.—

“(A) IN GENERAL.—The Secretary shall, concurrently with making a determination under paragraph (1) that a species is a threatened species or an endangered species, prepare an analysis with respect to such determination of—

- “(i) the economic effect;
- “(ii) the effects on national security; and
- “(iii) any other relevant effect.

“(B) EFFECT.—Nothing in this paragraph shall delay a determination made by the Secretary under paragraph (1) or change the criteria used by the Secretary to make such a determination.”.

TITLE V—LIMITATION ON REASONABLE AND PRUDENT MEASURES

SECTION 501. LIMITATION ON REASONABLE AND PRUDENT MEASURES.

Section 7(b)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)) is amended by inserting “and that do not propose, recommend, or require the Federal agency or the applicant concerned, if any, to mitigate or offset such impact” after “minimize such impact”.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 9533 is to amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to recover listed species, create greater transparency and accountability in recovering listed species, and limit reasonable and prudent measures.

BACKGROUND AND NEED FOR LEGISLATION

The Endangered Species Act (P.L. 93–205) was enacted in 1973 “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, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth” in the Act.¹

The last time Congress significantly amended the Endangered Species Act (ESA or Act) was in 1988.² Despite these revisions, the main provisions of the ESA remain intact and govern species conservation efforts today. H.R. 9533 would make significant improvements to the ESA for the betterment of the species it is charged with recovering and the people that are impacted directly by its associated regulations. The bill would also reauthorize the ESA for five fiscal years at funding levels that correspond to the funding levels set in Fiscal Year (FY) 2025 appropriations bills introduced in the House of Representatives.

The bill would codify the Trump administration’s framework for determining the “foreseeable future” when determining whether a species qualifies as threatened under the ESA.³ This means that when the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (the Services) considers the “foreseeable future”, it can extend only so far into the future as the Services can reasonably determine that both the threats and the species responses to those threats are likely.⁴ Prior to the adoption this framework, “foreseeable future” was undefined causing inconsistencies in how the term was applied. The Biden administration has signaled their interest in rescinding this framework.⁵

The bill would also codify the Trump administration’s definition of “habitat” as it relates to the designation of critical habitat. On December 16, 2020, the Services published a final rule that defined “habitat,” for the purposes of designating critical habitat as the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of species.⁶ This was in response to the 2018 U.S. Supreme Court decision in *Weyerhaeuser Co. v. U.S. FWS*, which stated an area must logically be considered “habitat” for that area to meet the definition of “critical habitat” under the ESA.⁷

The Biden administration rescinded the 2020 regulatory definition of “habitat” in 2022, giving the Services significant discretion in designating critical habitat.⁸ This includes the ability to designate critical habitat in areas that are not (emphasis added) currently occupied by the species in question and in some cases, have not been occupied in decades and may never be occupied. By codifying a definition of “habitat” as it relates to critical habitat, this

¹ Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.

² Public Law 100–478, the Endangered Species Act Amendment of 1988. <https://www.congress.gov/100/STATUTE-102/STATUTE-102-Pg2306.pdf>.

³ 84 FR 45020.

⁴ *Id.*

⁵ 89 FR 23919.

⁶ “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat.” 87 FR 37757. Federal Register: Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat.

⁷ “Final Rules Amending ESA Critical Habitat Regulations.” Erin H. Ward and Pervaze A. Sheikh. Congressional Research Service. IF11740 (congress.gov).

⁸ “U.S. Fish and Wildlife Service and NOAA Fisheries Rescind Regulatory Definition of “Habitat” Under the Endangered Species Act.” Marilyn Kitchell and Lauren Gaches. U.S. Fish and Wildlife Service. 6/23/2022. Rescind Regulatory Definition of “Habitat” Under the Endangered Species Act U.S. Fish & Wildlife Service (fws.gov).

bill provides certainty and brings the Services in compliance with the Weyerhaeuser decision.

The bill would also codify into law a definition of “environmental baseline” into the ESA statute. When conducting interagency consultations on federal actions, the Services use the environmental baseline to help determine the effect on listed species and critical habitat by that action. On April 5, 2024, the Services finalized a rule that mandated the following factors be considered when calculating the environmental baseline: (1) the past and present effects of all activities in an action area; (2) the anticipated effects of each proposed federal project in an action area where consultation has been completed; (3) the effects of state and private actions that are contemporaneous with the consultation process; (4) the impacts to listed species or designated critical habitat from ongoing federal agency activities or existing federal agency facilities that are not within the agency’s discretion to modify.⁹

This bill would amend and replace the fourth consideration with: “the ongoing impacts to listed species or critical habitat from existing facilities or activities that are not caused by the proposed action or that are not within the discretion of the Federal action to modify.” The environmental baseline should act as a “snapshot” of a species health at the time of the consultation. However, too often the Services have used the environmental baseline to create a hypothetical environment that ignores existing infrastructure. This would require the Services to use a more complete picture of current impacts to species.

Title I amends section 4 to codify into law existing Services’ efforts to address current backlogs in listing petitions and critical habitat designation through a “National Listing Work Plan.”¹⁰ These changes would decrease the risk of litigation in the listing process and to allow the Services to better allocate their resources towards species most in need of protection. The Services would be required to submit a work plan to Congress at the beginning of each fiscal year that covers listing actions for the next seven fiscal years. The work plan must include information on species status reviews, listing determinations, and critical habitat designations.

The Services would be required to assign each species included in the work plan a priority classification, with priority 1 being the highest and priority 5 being the lowest. For example, a priority 1 species would be classified as critically imperiled and in need of immediate action. Whereas a priority 5 species is a species for which little information exists regarding threats and the status of the species.

Unfortunately, the ESA has been ineffective in accomplishing its goal of recovering species and taking them off the endangered species list, with only three percent of species that have ever been listed under the act having ever been delisted.

Private lands play a significant role in managing and the recovery of endangered and threatened species. As Aldo Leopold put it, “conservation will ultimately boil down to rewarding the private

⁹89 FR 24268.

¹⁰“National Listing Workplan.” U.S. Fish and Wildlife Service. National Listing Workplan | U.S. Fish & Wildlife Service (fws.gov).

landowner who conserves the public interest.”¹¹ In 2023, the FWS reported that “two-thirds of federally listed species have at least some habitat on private land, and some species have most of their remaining habitat on private land.”¹² For example, according to the Audubon Society, more than 80 percent of the grassland and wetlands that provide essential bird habitat are in private ownership.¹³

To incentivize private landowners to invest in wildlife conservation on their lands, the legislation amends the ESA to provide regulatory certainty to private landowners. This is done by codifying into law Candidate Conservation Agreements (CCAs) and Candidate Conservation Agreements with Assurances (CCAAs). These agreements allow private landowners to commit to implementing voluntary actions designed to reduce threats to a species that is a candidate to be listed under the ESA. In return, if the species is listed, landowners who are a part of the agreement would be able to continue their operations should a listing take place. Currently, these agreements only exist through executive action and secretarial orders, giving the Services great discretion in how they take these agreements into account when making listing decisions. The bill explicitly states that the Services must take the conservation benefit of these agreements into account when making listing decisions.

In addition, the legislation would give private landowners who are investing in, or want to invest in, habitat conservation on their lands the regulatory certainty to do so. Specifically, the bill prohibits the Services from designating critical habitat on private lands that are implementing habitat conservation and restoration actions designed to conserve the species in question and approved by the Services. This language mirrors language from the Sikes Act (16 U.S.C. 670a), which prevents critical habitat designations on lands controlled by the Department of Defense if those lands are implementing approved habitat conservation measures.

The ESA requires the Services to “cooperate to the maximum extent practicable with the states” in implementing the Act, including “consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.”¹⁴ Unfortunately, over the course of the ESA’s fifty-year history, states have often been left out of the process, with power being consolidated in the hands of officials at the Services. Title III reasserts congressional intent by giving regulatory incentives and opportunities for states in the ESA process.

Section 9 prohibits the “take” of an endangered species. Take is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.”¹⁵ The Act, however, does not automatically apply the same prohibitions to threatened species. Instead, Section 4(d) gives the Services

¹¹ Flader, S.L., Callicott, J.B., & Leopold, A. (1992). *The River of the mother of God: and other Essays by Aldo Leopold*. Madison: University of Wisconsin Press.

¹² “ESA Basics: 50 Years of Conserving Endangered Species.” U.S. Fish and Wildlife Service. 2/1/23. Endangered Species Act Basics (fws.gov).

¹³ Wilsey1, CB, J Grand, J Wu, N Michel, J Grogan-Brown, B Trusty. 2019. North American Grasslands. National Audubon Society, New York, New York, USA. https://nas-national-prod.s3.amazonaws.com/audubon+north+american+grasslands+birds_report-final.pdf.

¹⁴ Endangered Species act of 1973, 16 U.S.C., 1531–1544 (1973).

¹⁵ 16 USC Ch. 35. Sec 1532.

the discretion to grant some exceptions to the take prohibitions for threatened species.¹⁶ While National Oceanic and Atmospheric Administration (NOAA) has taken advantage of this flexibility,¹⁷ the FWS continues to take steps to manage threatened species as endangered species, counter to congressional intent.¹⁸

The FWS began issuing 4(d) rules in 1974, but in 1975 they finalized what has become known as the “blanket 4(d) rule” (blanket rule).¹⁹ This rule allowed the FWS to extend all Section 9 prohibitions to threatened species unless a specific 4(d) rule for the species was drafted that exempted certain activities from those prohibitions. The blanket rule effectively removes incentives for parties impacted by threatened species and any of the benefits that result in downlisting a listed species because no regulatory burdens are lowered. In 2019, the Trump administration finalized a rulemaking that took away FWS’s ability to blanket rules,²⁰ but this rule was rescinded by the Biden administration earlier this year.²¹

The legislation changes this dynamic by requiring the Services to include the following whenever they issue a 4(d) rule that contains take prohibitions: (1) objective, incremental recovery goals for the species in question; (2) provide for the stringency of the prohibitions to decrease as such recovery goals are met; and (3) provide for state management of the species once all recovery goals are met in preparation for the species being delisted.

These steps create greater accountability, transparency, and incentives to take conservation actions that restore habitat for and recover listed species because tangible regulatory relief will come with it. The bill also adopts a similar approach for the recovery of species listed as endangered. Specifically, the bill requires the Services to propose objective and incremental recovery goals for endangered species. Those goals would form the basis for a 4(d) rule when the species is downlisted to threatened species status.

This gives states the opportunity to propose a “recovery strategy” for threatened species and species that are candidates for listing in that state. The bill requires the Services to review the proposed recovery strategy and determine whether (1) the state would be able to implement the strategy and (2) whether that strategy would be effective in conserving the species in question. If it is determined that both of those tests are satisfied, the strategy is approved, and it would become the regulation governing the species in that state.

In addition, the bill amends the definition of “conserve,” “conserving,” and “conservation” to allow for the regulated take of threatened species. Currently, the definition only allows for regulated take “in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.”²² This standard has been interpreted by federal courts to mostly prohibit

¹⁶ USC Ch. 35. Sec 1533.

¹⁷ 88 FR 40742.

¹⁸ Revisions of the Regulation for Prohibitions to Threatened Wildlife and Plants.” Megan E. Jenkins and Camille Wardle. The Center for Growth and Opportunity at Utah State University. 10/17/18. Regulations for Prohibitions to Threatened Wildlife and Plants—The CGO.

¹⁹ “Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery.” David Willms, J.D. https://republicans-naturalresources.house.gov/UploadedFiles/Codex_II_Chapter_3.pdf.

²⁰ 84 FR 44753.

²¹ 89 FR 23919.

²² 16 USC Ch. 35. Sec 1532.

any regulated take of threatened species.²³ This raises tensions with the public, who have no means to control populations of listed species, even when the population of that species is well above its population goals. Additionally, it amends the definition to allow for regulated take “at the discretion of the Secretary,” therefore granting additional flexibility to the Services.

Title III would also amend section 4(g) to require the Services to monitor, in cooperation with the states, the status of a species for no less than five years after it is delisted to ensure it does require relisting. A provision is included which prohibits judicial review on the delisting of species during the five-year post-delisting monitoring period. There are many examples of species that have been successfully delisted through rigorous scientific decisions, such as wolves and grizzly bears, only to have a court overrule that decision.

Title IV amends the ESA to require the “best scientific and commercial data available” used to make listing and critical habitat decision be readily available and accessible online. ESA-related regulations are often controversial and impact the public in many ways, including land use, access to natural resources, and the value of property. In many cases, all the public gets to see is the result of a decision-making process, but not what led to that decision being made. The bill gives the public the ability to understand what the Services identified as the “best scientific and commercial data available.”

Additionally, the Services would be required to coordinate with states when making listing and critical habitat decisions. Before finalizing an ESA regulation, the Services must provide each affected state the data used as the basis of a regulation. The bill defines “best scientific and commercial data available” to include all such data submitted to the Services by state, tribal, and local governments.

The Services would be required to disclose to Congress and make publicly available, each fiscal year, all federal government expenditures on ESA-related lawsuits. The ESA has become a magnet for lawsuits designed to frustrate the process laid out in the underlying statute, with the Services often settling with litigious environmental groups.

Lastly, Title IV requires an analysis of the economic impacts, national security impacts, and any other relevant impacts concurrently with any listing decision. This section wouldn’t preclude a species from being listed for economic and national security reasons but would give the public necessary information on how a listing may impact them. Currently the ESA only requires an analysis of economic and national security impacts be done when designating critical habitat. Areas can be excluded from critical habitat for these reasons.

On April 5, 2024, the Services finalized a rule that made changes to the interagency consultation process on federal projects.²⁴ In-

²³ “Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery.” David Willms, J.D. https://republicans-naturalresources.house.gov/UploadedFiles/Codex_II_Chapter_3.pdf.

²⁴ “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation” 89 FR 24268 <https://www.federalregister.gov/documents/2024/04/05/2024-06902/endangered-and-threatened-wildlife-and-plants-regulations-for-interagency-cooperation>.

cluded in this rule is a provision that allows the Services to impose measures that “offset” any remaining impacts on a species caused by an agency action, after avoidance and minimization measures have been imposed. This provision greatly expands the discretion of the Services. Allowing the Services to require offsets for any residual impacts from an agency action on a listed species is not supported by ESA statute. As written, Section 7 requires federal agencies and project applicants to “minimize” impacts to listed species and critical habitat.²⁵ The words “offset” or “mitigate” are not mentioned. To further clarify this, the bill amends Section 7 to explicitly state that the Services may not propose, recommend, or require federal agencies and project applicants to fully mitigate or offset impacts to listed species and critical habitat.

COMMITTEE ACTION

H.R. 9533 was introduced on September 10, 2024, by Chairman Bruce Westerman (R-AR). The bill was referred to the Committee on Natural Resources. On July 9, 2024, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the discussion draft of this bill. On September 19, 2024, the Committee on Natural Resources met to consider the bill. Chairman Bruce Westerman (R-AR) offered an Amendment in the Nature of a Substitute designated Westerman_097 ANS. The amendment in the nature of a substitute was agreed to by voice vote. Representative Jared Huffman (D-CA) offered an amendment to the Amendment in the Nature of a Substitute designated Huffman #1. The amendment was not agreed to by a roll call vote of 13 yeas to 20 nays, as follows:

²⁵ 16 U.S.C. 1536.

Committee on Natural Resources											
U.S. House of Representatives											
118th Congress											
Date: September 19, 2024				Roll Call: #1							
Meeting on / Amendment on: Huffman #1 amendment to Westerman_097 ANS to H.R. 9533 (Rep. Westerman), "ESA Amendments Act of 2024"											
MEMBERS			Yea	Nay	Pres	MEMBERS			Yea	Nay	Pres
Mr. Westerman, AR, Chairman				X		Mr. Grijalva, AZ, Ranking					
Mr. Lamborn, CO				X		Ms. Napolitano, CA			X		
Mr. Wittman, VA				X		Mr. Sablan, CNMI			X		
Mr. McClintock, CA				X		Mr. Huffman, CA			X		
Mr. Gosar, AZ						Mr. Gallego, AZ					
Mr. Graves, LA				X		Mr. Neguse, CO					
Mrs. Radewagen, AS				X		Mr. Levin, CA			X		
Mr. LaMalfa, CA						Ms. Porter, CA			X		
Mr. Webster, FL				X		Ms. Leger Fernandez, NM			X		
Ms. González-Colón, PR				X		Ms. Stansbury, NM			X		
Mr. Fulcher, ID				X		Mrs. Peltola, AK			X		
Mr. Stauber, MN				X		Ms. Ocasio-Cortez, NY					
Mr. Curtis, UT				X		Mr. Mullin, CA			X		
Mr. Tiffany, WI				X		Ms. Hoyle,OR			X		
Mr. Carl, AL				X		Ms. Kamlager-Dove, CA			X		
Mr. Rosendale, MT				X		Mr. Magaziner, RI			X		
Mrs. Boebert, CO						Ms. Velázquez, NY					
Mr. Bentz, OR				X		Mr. Case, HI					
Ms. Kiggans, VA				X		Mrs. Dingell, MI					
Mr. Moylan, Guam				X		Ms. Lee, NV			X		
Mr. Hunt, TX											
Mr. Collins, GA				X							
Ms. Luna, FL											
Mr. Duarte, CA				X							
Ms. Hageman, WY				X							
						TOTAL:			13	20	

Representative Jared Huffman (D-CA) offered an amendment to the Amendment in the Nature of a Substitute designated Huffman #2. The amendment was not agreed to by a roll call vote of 13 yeas to 20 nays, as follows:

Committee on Natural Resources											
U.S. House of Representatives											
118th Congress											
Date: September 19, 2024				Roll Call: #2							
Meeting on / Amendment on: Huffman #2 amendment to Westerman_097 ANS to H.R. 9533 (Rep. Westerman). "ESA Amendments Act of 2024"											
MEMBERS			Yea	Nay	Pres	MEMBERS			Yea	Nay	Pres
Mr. Westerman, AR, Chairman				X		Mr. Grijalva, AZ, Ranking					
Mr. Lamborn, CO				X		Ms. Napolitano, CA			X		
Mr. Wittman, VA				X		Mr. Sablan, CNMI			X		
Mr. McClintock, CA				X		Mr. Huffman, CA			X		
Mr. Gosar, AZ						Mr. Gallego, AZ					
Mr. Graves, LA				X		Mr. Neguse, CO					
Mrs. Radewagen, AS				X		Mr. Levin, CA			X		
Mr. LaMalfa, CA						Ms. Porter, CA			X		
Mr. Webster, FL				X		Ms. Leger Fernandez, NM			X		
Ms. González-Colón, PR				X		Ms. Stansbury, NM			X		
Mr. Fulcher, ID				X		Mrs. Peltola, AK			X		
Mr. Stauber, MN				X		Ms. Ocasio-Cortez, NY					
Mr. Curtis, UT				X		Mr. Mullin, CA			X		
Mr. Tiffany, WI				X		Ms. Hoyle,OR			X		
Mr. Carl, AL				X		Ms. Kamlager-Dove, CA			X		
Mr. Rosendale, MT				X		Mr. Magaziner, RI			X		
Mrs. Boebert, CO						Ms. Velázquez, NY					
Mr. Bentz, OR				X		Mr. Case, HI					
Ms. Kiggans, VA				X		Mrs. Dingell, MI					
Mr. Moylan, Guam				X		Ms. Lee, NV			X		
Mr. Hunt, TX											
Mr. Collins, GA				X							
Ms. Luna, FL											
Mr. Duarte, CA				X							
Ms. Hageman, WY				X							
						TOTAL:			13	20	

Representative Jared Huffman (D-CA) offered an amendment to the Amendment in the Nature of a Substitute designated Huffman #8. The amendment was not agreed to by a roll call vote of 12 yeas to 22 nays, as follows:

Committee on Natural Resources							
U.S. House of Representatives							
118th Congress							
Date: September 19, 2024				Roll Call: #3			
Meeting on / Amendment on: Huffman #8 amendment to Westerman_097 ANS to H.R. 9533 (Rep. Westerman), "ESA Amendments Act of 2024"							
MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking			
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI	X		
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ			
Mr. Graves, LA		X		Mr. Neguse, CO			
Mrs. Radewagen, AS		X		Mr. Levin, CA	X		
Mr. LaMalfa, CA				Ms. Porter, CA	X		
Mr. Webster, FL		X		Ms. Leger Fernandez, NM	X		
Ms. González-Colón, PR		X		Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Peltola, AK		X	
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle,OR	X		
Mr. Carl, AL		X		Ms. Kamlager-Dove, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boebert, CO				Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI			
Ms. Kiggans, VA		X		Mrs. Dingell, MI			
Mr. Moylan, Guam		X		Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL							
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				TOTAL:	12	22	

Representative Katie Porter (D-CA) offered an amendment to the Amendment in the Nature of a Substitute designated Porter #4 revised. The amendment was not agreed to by a roll call vote of 13 yeas to 21 nays, as follows:

Committee on Natural Resources							
U.S. House of Representatives							
118th Congress							
Date: September 19, 2024				Roll Call: #4			
Meeting on / Amendment on: Porter #4 revised amendment to Westerman_097 ANS to H.R. 9533 (Rep. Westerman), “ESA Amendments Act of 2024”							
MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking			
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI	X		
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ			
Mr. Graves, LA		X		Mr. Neguse, CO			
Mrs. Radewagen, AS		X		Mr. Levin, CA	X		
Mr. LaMalfa, CA				Ms. Porter, CA	X		
Mr. Webster, FL		X		Ms. Leger Fernandez, NM	X		
Ms. González-Colón, PR		X		Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Peltola, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle,OR	X		
Mr. Carl, AL		X		Ms. Kamlager-Dove, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boebert, CO				Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI			
Ms. Kiggans, VA		X		Mrs. Dingell, MI			
Mr. Moylan, Guam		X		Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL							
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				TOTAL:	13	21	

Representative Katie Porter (D-CA) offered an amendment to the Amendment in the Nature of a Substitute designated Porter #7. The amendment was not agreed to by a roll call vote of 13 yeas to 21 nays, as follows:

Committee on Natural Resources							
U.S. House of Representatives							
118th Congress							
Date: September 19, 2024				Roll Call: #5			
Meeting on / Amendment on: Porter #7 amendment to Westerman_097 ANS to H.R. 9533 (Rep. Westerman), “ESA Amendments Act of 2024”							
MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking			
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA		X		Mr. Sablan, CNMI	X		
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ			
Mr. Graves, LA		X		Mr. Neguse, CO			
Mrs. Radewagen, AS		X		Mr. Levin, CA	X		
Mr. LaMalfa, CA				Ms. Porter, CA	X		
Mr. Webster, FL		X		Ms. Leger Fernandez, NM	X		
Ms. González-Colón, PR		X		Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Peltola, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle,OR	X		
Mr. Carl, AL		X		Ms. Kamlager-Dove, CA	X		
Mr. Rosendale, MT		X		Mr. Magaziner, RI	X		
Mrs. Boebert, CO				Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI			
Ms. Kiggans, VA		X		Mrs. Dingell, MI			
Mr. Moylan, Guam		X		Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA		X					
Ms. Luna, FL							
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				TOTAL:	13	21	

The bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas to 13 nays, as follows:

Committee on Natural Resources							
U.S. House of Representatives							
118th Congress							
Date: September 19, 2024				Roll Call: #6			
Meeting on / Amendment on: On Favorably Reporting, as amended, H.R. 9533 (Rep. Westerman), “ESA Amendments Act of 2024”							
MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Grijalva, AZ, Ranking			
Mr. Lamborn, CO	X			Ms. Napolitano, CA		X	
Mr. Wittman, VA	X			Mr. Sablan, CNMI		X	
Mr. McClintock, CA	X			Mr. Huffman, CA		X	
Mr. Gosar, AZ	X			Mr. Gallego, AZ			
Mr. Graves, LA	X			Mr. Neguse, CO			
Mrs. Radewagen, AS	X			Mr. Levin, CA		X	
Mr. LaMalfa, CA	X			Ms. Porter, CA		X	
Mr. Webster, FL	X			Ms. Leger Fernandez, NM		X	
Ms. González-Colón, PR	X			Ms. Stansbury, NM		X	
Mr. Fulcher, ID	X			Mrs. Peltola, AK		X	
Mr. Stauber, MN	X			Ms. Ocasio-Cortez, NY			
Mr. Curtis, UT	X			Mr. Mullin, CA		X	
Mr. Tiffany, WI	X			Ms. Hoyle,OR		X	
Mr. Carl, AL	X			Ms. Kamlager-Dove, CA		X	
Mr. Rosendale, MT	X			Mr. Magaziner, RI			
Mrs. Boebert, CO				Ms. Velázquez, NY			
Mr. Bentz, OR	X			Mr. Case, HI			
Ms. Kiggans, VA	X			Mrs. Dingell, MI		X	
Mr. Moylan, Guam	X			Ms. Lee, NV		X	
Mr. Hunt, TX							
Mr. Collins, GA	X						
Ms. Luna, FL							
Mr. Duarte, CA	X						
Ms. Hageman, WY	X						
				TOTAL:	22	13	

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on the discussion draft of this legislation on July 9, 2024.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; Table of Contents

Defines this Act may be cited as the “ESA Amendments Act of 2024”.

Definitions

Codifies the definition of the “foreseeable future” that was adopted by the Trump administration in a 2019 rulemaking. The bill would also codify the definition of “habitat” as it relates to critical habitat that was adopted by the Trump administration and codify a definition of “environmental baseline” in the Section 7 consultation process that includes considering the impacts of existing infrastructure that are not caused by the proposed action or that are not within the discretion of the federal action agency to modify.

TITLE I. OPTIMIZING CONSERVATION THROUGH
RESOURCE PRIORITIZATION

Codifies the structure of the listing work plan to create flexibility on listing timelines in times where too many petitions are being submitted relative to the capacity of the U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) to process them.

TITLE II. INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

Codifies into statute the need for the Services to consider the net conservation benefit of Candidate Conservation Agreements with Assurance (CCAA’s) or any programmatic CCAA’s for a species when making a listing decision on that species under the ESA. Would also replicate, on private lands, language from the Sikes Act (16 U.S.C. 670a) giving regulatory certainty that critical habitat will not be designated if a landowner is working to implement a land management plan that conserves the listed species in question.

TITLE III. PROVIDING FOR GREATER INCENTIVES TO RECOVER
LISTED SPECIES

Amends Section 4(d) to require the Services to establish objective, incremental recovery goals for threatened species, provide for the stringency of regulations to decrease as recovery goals are met, and provide for state management of that species once all recovery goals are met in preparation for delisting. Would allow states to develop and submit recovery strategies to the Services for species that are candidates for listing or listed as threatened. If the Services determine that the proposed recovery strategy would be effective in conserving the species, it will become the regulation governing the management of the species in that state. For species listed as endangered, the Services must develop objective incre-

mental recovery goals that would form the basis of a regulation under Section 4(d) once a species is upgraded to threatened. The bill would also require the Services to act on 5-year review determinations of listed species and prohibit judicial review within the 5-year monitoring period after a species is delisted. The bill would also codify into the 2019 final rule from the Trump Administration that prohibited the U.S. Fish and Wildlife Service from adopted “blanket” 4(d) rules.

TITLE IV. CREATING GREATER TRANSPARENCY AND ACCOUNTABILITY IN RECOVERING LISTED SPECIES

Requires the Services to make publicly available on the internet the best scientific and commercial data available that are used as the basis for listing and critical habitat determinations. This title would provide exceptions for data that states, or the Department of Defense do not want to be made publicly available. The Services would also be required to disclose to states affected by a listing or critical habitat determination all data used to make that determination. The definition of “best scientific and commercial data available” would be amended to include all such data submitted to the Secretary by a state, Tribal, or county government. Requires the Services to disclose to Congress all costs associated with ESA-related lawsuits. Places a cap on the award of attorney’s fees to successful litigants in line with the Equal Access to Justice Act. It also requires an analysis of the economic impacts and national security impacts of each listing and critical habitat determination. Clarifies that these analyses do not change the listing criteria set out by the ESA.

TITLE V. LIMITATION ON REASONABLE AND PRUDENT MEASURES

Amends Section 7(b)(4) of the ESA to clarify that the Services cannot require federal agencies or project applicants to fully mitigate or offset impacts to listed species caused by an action.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to

recover listed species, create greater transparency and accountability in recovering listed species, and limit reasonable and prudent measures.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee, if such estimate is not publicly available on the Congressional Budget Office website.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Endangered Species Act of 1973”.

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.

* * * * *

【Sec. 13. Conforming amendments.】

Sec. 13. Disclosure of expenditures.

* * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) *The term “best scientific and commercial data available” includes data submitted to the Secretary by a State, Tribal, or county government.*

【(2)】 (3) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

【(3)】 (4) The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, 【and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include】 *transplantation, and, at the discretion of the Secretary,* regulated taking.

【(4)】 (5) The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

【(5)】 (6)(A) The term “critical habitat” for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Sec-

retary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(D) For the purposes of designating critical habitat under this Act, the term "habitat" means the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support 1 or more life processes of a species.

[(6)] (7) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

[(7)] (8) The term "Federal agency" means any department, agency, or instrumentality of the United States.

[(8)] (9) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

[(9)] (10) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

[(10)] (11) The term "import" means to land on, bring into, or introduce into or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(12) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term “Secretary” means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(16) The term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term “State” means 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.

(18) The term “State agency” means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term “United States,” when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

- (i) be removed from any list published pursuant to subsection (c) of this section, or
 - (ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and
 - (C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.
- (3)(A) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—
- (i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and
 - (ii) may, from time-to-time thereafter as appropriate, revise such designation.
- (B)(i) The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.
- (ii) Nothing in this paragraph affects the requirement to consult under section 7(a)(2) with respect to an agency action (as that term is defined in that section).
 - (iii) Nothing in this paragraph affects the obligation of the Department of Defense to comply with section 9, including the prohibition preventing extinction and taking of endangered species and threatened species.

(C) *PRIVATELY OWNED OR CONTROLLED LAND.*—*The Secretary may not designate as critical habitat under subparagraph (A) any privately owned or controlled land or other geographical area that is subject to a land management plan that—*

(i) the Secretary determines is similar in nature to an integrated natural resources management plan described in section 101 of the Sikes Act (16 U.S.C. 670a);

(ii)(I) is prepared in cooperation with the Secretary and the head of each applicable State fish and wildlife agency of each State in which such land or other geographical area is located; or

(II) is submitted to the Secretary in a manner that is similar to the manner in which an applicant submits a conservation plan to the Secretary under section 10(a)(2)(A);

(iii) includes an activity or a limitation on an activity that the Secretary determines will likely conserve the species concerned;

(iv) *the Secretary determines will result in—*

(I) *an increase in the population of the species concerned above the population of such species on the date that such species is listed as a threatened species or an endangered species; or*

(II) *maintaining the same population of such species on the land or other geographical area as the population that would likely occur if such land or other geographical area is designated as critical habitat; and*

(v) *to the maximum extent practicable, will minimize and mitigate the impacts of any activity that will likely result in an incidental taking of the species concerned.*

(4) ANALYSIS OF EFFECTS OF DETERMINATION.—

(A) *IN GENERAL.—The Secretary shall, concurrently with making a determination under paragraph (1) that a species is a threatened species or an endangered species, prepare an analysis with respect to such determination of—*

(i) *the economic effect;*

(ii) *the effects on national security; and*

(iii) *any other relevant effect.*

(B) *EFFECT.—Nothing in this paragraph shall delay a determination made by the Secretary under paragraph (1) or change the criteria used by the Secretary to make such a determination.*

(b) BASIS FOR DETERMINATIONS.—(1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) *designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or*

(ii) *identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.*

(C) *CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.—In making a determination under subsection (a)(1) with respect to a species, the Secretary shall take into account and document the effect of any net conservation benefit (as that term is defined in subsection (k) of section 10) of any Candidate Conservation Agreement with Assurances or any programmatic Candidate Conservation Agreement with Assurances (as those terms are defined in that subsection) relating to such species.*

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, *the impact on existing efforts of private landowners to conserve the species*, and any

other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) **[Within 12 months]** *In accordance with the national listing work plan submitted under subsection (j)*, after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from such lists species for which the protections of the Act are no longer necessary,

in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

[(C)(i)] A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

[(ii)] Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

[(iii)] The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of

the authority under paragraph 7 to prevent a significant risk to the well being of any such species.】

(C) JUDICIAL REVIEW.—Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i)(I) shall be subject to judicial review.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

- (I) a final regulation to implement such determination,
- (II) a final regulation to implement such revision or a finding that such revision should not be made,
- (III) notice that such one-year period is being extended under subparagraph (B)(i), or
- (IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or
- (ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—
 - (I) a final regulation to implement such designation, or
 - (II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that—

- (i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or
- (ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish and wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(9) *The Secretary shall make publicly available on the Internet the best scientific and commercial data available that are used as the basis for each regulation, including each proposed regulation, promulgated under subsection (a)(1), except that—*

(A) at the request of a Governor, State agency, or legislature of a State, the Secretary may not make such data available under this paragraph if such entity determines that public disclosure of such data is prohibited by a law or regulation of such State, including any law or regulation requiring the protection of personal information; and

(B) not later than 30 days after the date of the enactment of this paragraph, the Secretary shall execute an agreement with the Secretary of Defense that prevents the disclosure of classified information pertaining to Department of Defense personnel, facilities, lands, or waters.

(c) **LISTS.**—(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to such species over what portion of its range it is endangered

or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b).

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsection (a) and (b).

(3) *Not later than 30 days after the date on which the Secretary makes a determination under paragraph (2)(B), the Secretary shall initiate a rulemaking to carry out such determination.*

[(d) PROTECTIVE REGULATIONS.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2) in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such, regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.]

(d) PROTECTIVE REGULATIONS.—

(1) *IN GENERAL.*—*Whenever any species is listed as a threatened species pursuant to subsection (c), the Secretary shall issue such regulations as are necessary and advisable to provide for the conservation of that species.*

(2) *RECOVERY GOALS.*—*If the Secretary issues a regulation under paragraph (1) that prohibits an act described in section 9(a), the Secretary shall, with respect to the species that is the subject of such regulation—*

(A) *establish objective, incremental recovery goals;*

(B) *provide for the stringency of such regulation to decrease as such recovery goals are met; and*

(C) *provide for State management within such State, if such State is willing to take on such management, beginning on the date on which the Secretary determines all such recovery goals are met and, if such recovery goals remain met, continuing until such species is removed from the list of threatened species published pursuant to subsection (c).*

(3) *COOPERATIVE AGREEMENT.*—*A regulation issued under paragraph (1) that prohibits an act described in section 9(a) with respect to a resident species shall apply with respect to a*

State that has entered into a cooperative agreement with the Secretary pursuant to section 6(c) only to the extent that such regulation is adopted by such State.

(4) STATE RECOVERY STRATEGY.—

(A) IN GENERAL.—*A State may develop a recovery strategy for a threatened species or a candidate species and submit to the Secretary a petition for the Secretary to use such recovery strategy as the basis for any regulation issued under paragraph (1) with respect to such species within such State.*

(B) APPROVAL OR DENIAL OF PETITION.—*Not later than 120 days after the date on which the Secretary receives a petition submitted under subparagraph (A), the Secretary shall—*

(i) approve such petition if the Secretary determines the recovery strategy is reasonably certain to be implemented by the petitioning State and to be effective in conserving the species that is the subject of such recovery strategy; or

(ii) deny such petition if the requirements described in clause (i) are not met.

(C) PUBLICATION.—*Not later than 30 days after the date on which the Secretary approves or denies a petition under subparagraph (B), the Secretary shall publish such approval or denial in the Federal Register.*

(D) DENIAL OF PETITION.—

(i) WRITTEN EXPLANATION.—*If the Secretary denies a petition under subparagraph (B), the Secretary shall include in such denial a written explanation for such denial, including a description of the changes to such petition that are necessary for the Secretary to approve such petition.*

(ii) RESUBMISSION OF DENIED PETITION.—*A State may resubmit a petition that is denied under subparagraph (B).*

(E) USE IN PROTECTIVE REGULATIONS.—*If the Secretary approves a petition under subparagraph (B), the Secretary shall—*

(i) issue a regulation under paragraph (1) that adopts the recovery strategy as such regulation with respect to the species that is the subject of such recovery strategy within the petitioning State; and

(ii) establish objective criteria to evaluate the effectiveness of such recovery strategy in conserving such species within such State.

(F) REVISION.—*If a recovery strategy that is adopted as a regulation issued under paragraph (1) is determined by the Secretary to be ineffective in conserving the species that is the subject of such recovery strategy in accordance with the objective criteria established under subparagraph (E)(ii) for such recovery strategy, the Secretary shall revise such regulation and reissue such regulation in accordance with paragraph (1).*

(e) SIMILARITY OF APPEARANCE CASES.—*The Secretary may, by regulation of commerce or taking, and to the extent he deems ad-*

visible, treat any species as an endangered species or threatened species even through it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f)(1) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan—

(i) a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; [and]

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan’s goal and to achieve intermediate steps toward that goal[.]; and

(iv) *with respect to an endangered species, objective, incremental recovery goals in accordance with subsection (d)(2)(A) for use under that subsection if such endangered species is changed in status from an endangered species to a threatened species under subsection (c)(2)(B)(ii).*

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to chapter 10 of title 5, United States Code.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall con-

sider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) MONITORING.—(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c).

(2) The Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(3) *The removal of a species from a list published under subsection (c)(1) is not subject to judicial review during the period established under paragraph (1) with respect to the species.*

(h) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of the section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3), the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

(j) NATIONAL LISTING WORK PLAN.—

(1) *IN GENERAL.*—Not later than the date described in paragraph (2), the Secretary shall submit to Congress a national listing work plan that establishes, for each covered species, a schedule for the completion during the 5-fiscal year period beginning on October 1 of the first fiscal year after the date of the submission of the work plan of—

(A) *findings as described in subsection (b)(3)(B) for each such covered species;*

(B) proposed and final determinations regarding listing each such covered species under this section; and

(C) proposed and final critical habitat designations under subsection (a)(3) relating to each such covered species.

(2) *SUBMISSION TO CONGRESS.*—

(A) *IN GENERAL.*—The Secretary shall submit to Congress—

(i) together with the budget request of the Secretary for the first fiscal year that begins not less than 365 days after the date of the enactment of this subsection, the initial work plan required under paragraph (1); and

(ii) together with the budget request of the Secretary for each fiscal year thereafter, an updated work plan under paragraph (1).

(B) *ADDITIONAL INCLUSIONS.*—The Secretary shall include with each budget request referred to in subparagraph (A) a description of the amounts to be requested to carry out the work plan for the fiscal year covered by the budget request, including any amounts requested to address emergency listings if the Secretary identifies any emergency posing a significant risk to the well-being of any species of fish or wildlife or plant.

(3) *PRIORITY.*—

(A) *IN GENERAL.*—In developing a work plan under this subsection, the Secretary shall assign to each species included in the work plan a priority classification of Priority 1 through Priority 5, such that, as determined by the Secretary, the following apply:

(i) Priority 1 represents species of the highest priority, to be designated as critically imperiled and in need of immediate action.

(ii) Priority 2 represents species with respect to which the best scientific and commercial data available support a clear decision regarding the status of the species.

(iii) Priority 3 represents species with respect to which studies regarding the status of the species are being carried out—

(I) to answer key questions that may influence the findings of a petition to list the species submitted under subsection (b)(3); and

(II) to resolve any uncertainty regarding the status of the species within a reasonable timeframe.

(iv) Priority 4 represents species for which proactive conservation efforts likely to reduce threats to the species are being developed or carried out, within a reasonable timeframe and in an organized manner, by Federal agencies, States, landowners, or other stakeholders.

(v) Priority 5 represents species—

(I) for which there exists little information regarding—

(aa) threats to the species; or

(bb) the status of the species; or

(II) that would receive limited conservation benefit in the foreseeable future by listing the species as a threatened species or endangered species under this section.

(B) *USE OF METHODOLOGY.*—The Secretary shall establish and assign priority classifications under subparagraph (A) in accordance with the notice of the Director of the United States Fish and Wildlife Service titled “Methodology for Prioritizing Status Reviews and Accompanying 12–Month Findings on Petitions for Listing Under the Endangered Species Act” (81 Fed. Reg. 49248; published July 27, 2016).

(C) *EXTENSIONS FOR CERTAIN PRIORITY CLASSIFICATIONS.*—

(i) *PRIORITY 3.*—With respect to a species classified as Priority 3 under subparagraph (A)(iii), if the Secretary determines that additional time would allow for more complete data collection or the completion of studies relating to the species, the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

(ii) *PRIORITY 4.*—With respect to a species classified as Priority 4 under subparagraph (A)(iv), if the Secretary determines that existing conservation efforts continue to meet the conservation needs of the species, the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

(iii) *PRIORITY 5.*—With respect to a species classified as Priority 5 under subparagraph (A)(v), the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

(D) *REVISION OF PRIORITY CLASSIFICATION.*—The Secretary may revise, in accordance with subparagraph (A), the assignment to a priority classification of a species included in a work plan at any time during the fiscal years to which the work plan applies.

(E) *EFFECT OF PRIORITY CLASSIFICATION.*—The assignment of a priority classification to a species included in a work plan is not a final agency action.

(4) *DEADLINE.*—The Secretary shall act on any petition to add a species to a list published under subsection (c) submitted under subsection (b)(3) not later than the last day of the fiscal year specified for that petition in the most recent work plan.

(5) *REGULATIONS.*—The Secretary may issue such regulations as the Secretary determines appropriate to carry out this subsection.

(6) *EFFECT OF SUBSECTION.*—Nothing in this subsection may be construed to preclude or otherwise affect the emergency listing authority of the Secretary under subsection (b)(7).

(7) *DEFINITIONS.*—In this subsection:

(A) *COVERED SPECIES.*—The term “covered species” means a species that is not included on a list published under subsection (c)—

(i) for which a petition to add the species to such a list has been submitted under subsection (b)(3); or

(ii) that is otherwise under consideration by the Secretary for addition to such a list.

(B) *WORK PLAN.*—The term “work plan” means the national listing work plan submitted by the Secretary under paragraph (1).

* * * * *

COOPERATION WITH THE STATES

SEC. 6. (a) *GENERAL.*—(1) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. [Such cooperation shall include]

(2) *Such cooperation shall include—*

(A) *before making a determination under section 4(a), providing to States affected by such determination all data that is the basis of the determination; and*

(B) *consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.*

(b) *MANAGEMENT AGREEMENTS.*—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c)(1) *COOPERATIVE AGREEMENTS.*—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) *authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;*

(B) *the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with*

all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; or

that under the State program—

(i) the requirements set forth in subparagraphs (C), (D), and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such findings, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(d) ALLOCATION OF FUNDS.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 4(b)(3) and recovered species pursuant to section 4(g). The Secretary shall allocate each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State;

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species;

(F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species; and

(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary.

So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 90 percent whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION.—(1) For purposes of this subsection, the term “establishment period” means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.—(1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to five percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.

INTERAGENCY COOPERATION

SEC. 7. (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the require-

ments of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(5) *For the purposes of carrying out a consultation under this section with respect to a threatened species or an endangered species, the term "environmental baseline"—*

(A) means the condition of the species or the critical habitat of the species in the action area, without the consequences to the species or the critical habitat of the species caused by the proposed action; and

(B) includes—

(i) the past and present effects of all Federal, State, and private actions and other human activities in the action area;

(ii) the anticipated effects of each proposed Federal project within the action area for which a consultation under this section has been completed;

(iii) the effects of State and private actions that are contemporaneous with the consultation in process; and

(iv) the ongoing impacts to listed species or designated critical habitat from existing facilities or activities that are not caused by the proposed action or that are not within the discretion of the Federal action agency to modify.

(b) **OPINION OF SECRETARY.**—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation; and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period. The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact *and that do not propose, recommend, or require the Federal agency or the applicant concerned, if any, to mitigate or offset such impact,*

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) BIOLOGICAL ASSESSMENT.—(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as in mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) LIMITATION ON COMMITMENT OF RESOURCES.—After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

(e)(1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

- (A) The Secretary of Agriculture.
- (B) The Secretary of the Army.
- (C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency. Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE.—(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify

the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d);

or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability and reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) EXEMPTION.—(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consulta-

tion under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) SPECIAL PROVISIONS.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of

such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE.—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.—Any person, as defined by [section 3(13)] *section 3(14)* of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.—Notwithstanding sections 4(d) and 9(a)(1)(B) and (C) of this Act, sections 101 and 102 of the Marine Mammal Protection Act of 1972, or any regulation promulgated to implement any such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

* * * * *

EXCEPTIONS

SEC. 10. (a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person ap-

plies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaska native village;

if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect to natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)(1) As used in this subsection—

(A) The term “pre-Act endangered species part” means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions.

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a 6-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article which—

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) NONCOMMERCIAL TRANSSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that

could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j) **EXPERIMENTAL POPULATIONS.**—(1) For purposes of this subsection, the term “experimental population” means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

(k) **CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.**—

(1) **PROPOSED AGREEMENT.**—A covered party may submit a proposed Agreement to the Secretary.

(2) **APPROVAL.**—Not later than 120 days after the date of the receipt of a proposed Agreement under paragraph (1), the Secretary shall approve the proposed Agreement if the Secretary determines that the proposed Agreement—

(A) sets forth specific management activities that the covered party will undertake to conserve the covered species;

(B) provides a positive estimate of the net conservation benefit of such management activities to the covered species;

(C) describes, to the maximum extent practicable, the existing population levels of the covered species or the existing quality of habitat;

(D) includes a monitoring plan to be carried out by the parties to the Agreement; and

(E) provides assurances to the covered party that no additional conservation measures will be required and additional land, water, or resource use restrictions will not be imposed on the covered party if the covered species becomes listed after the effective date of such Agreement.

(3) *DENIAL*.—Not later than 120 days after the date of the receipt of a proposed Agreement under paragraph (1), the Secretary shall—

(A) deny the proposed Agreement if the Secretary determines that the proposed Agreement does not meet the requirements described in paragraph (2); and

(B) provide the submitting covered party a written explanation for such determination and the adjustments required for the Secretary to approve such proposed Agreement.

(4) *PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES*.—

(A) *IN GENERAL*.—The Secretary may enter into a Candidate Conservation Agreement with Assurances with a covered party that authorizes such covered party—

(i) to administer such Candidate Conservation Agreement with Assurances;

(ii) to hold any permit issued under this section with regard to such Candidate Conservation Agreement with Assurances;

(iii) to enroll other covered parties within the area covered by such Candidate Conservation Agreement with Assurances in such Candidate Conservation Agreement with Assurances; and

(iv) to convey any permit authorization held by such covered party under clause (ii) to each covered party enrolled under clause (iii).

(B) *PUBLICATION*.—Upon receipt of a proposed programmatic Candidate Conservation Agreement with Assurances under paragraph (1) and before approving or denying such a proposed programmatic Candidate Conservation Agreement with Assurances under paragraph (2) or (3), respectively, the Secretary shall—

(i) not later than 30 days after the date of such receipt, publish the proposed programmatic Candidate Conservation Agreement with Assurances in the Federal Register for public comment for a period of not less than 60 days;

(ii) review any comments received under clause (i); and

(iii) after the close of the public comment period for the proposed programmatic Candidate Conservation Agreement with Assurances, publish in the Federal Register—

- (I) any comments received under clause (i); and
- (II) the approval or denial of the proposed programmatic Candidate Conservation Agreement with Assurances under paragraph (2) or (3), respectively.

(5) *INCIDENTAL TAKE AUTHORIZATION.*—If a covered species is listed under section 4, the Secretary shall issue a permit to the relevant covered party under this section allowing incidental take of and modification to the habitat of such covered species consistent with the Agreement.

(6) *TECHNICAL ASSISTANCE.*—The Secretary shall, upon request, provide a covered party with technical assistance in developing a proposed Agreement.

(7) *APPLICABILITY TO FEDERAL LAND.*—An Agreement may apply to a covered party that conducts activities on land administered by any Federal agency pursuant to a permit or lease issued to the covered party by that Federal agency.

(8) *EXEMPTION FROM CONSULTATION REQUIREMENT.*—An Agreement approved under this subsection shall be deemed to have been granted an exemption under section 7(h) for the purposes of that section.

(9) *EXEMPTION FROM DISCLOSURE.*—Information submitted by a private party to the Secretary under this subsection shall be exempt from disclosure under section 552(b)(3)(B) of title 5, United States Code.

(10) *DEFINITIONS.*—In this subsection:

(A) *AGREEMENT.*—The term “Agreement” means—

- (i) a Candidate Conservation Agreement with Assurances; or
- (ii) a programmatic Candidate Conservation Agreement with Assurances.

(B) *CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES.*—The term “Candidate Conservation Agreement with Assurances” means any voluntary agreement, including a conservation benefit agreement, between the Secretary and a covered party in which—

(i) the covered party commits to implementing mutually agreed upon conservation measures for a candidate species; and

(ii) the Secretary provides assurances that, if such candidate species is listed pursuant to section 4—

(I) the covered party shall incur no additional obligations beyond actions agreed to in the agreement with respect to conservation activities required under this Act; and

(II) no additional land, water, or resource use restrictions shall be imposed on the covered party beyond those included in the agreement.

(C) *CANDIDATE SPECIES.*—The term “candidate species” means a species—

(i) designated by the Secretary as a candidate species under this Act; or

(ii) proposed to be listed pursuant to section 4.

(D) COVERED PARTY.—The term “covered party” means a—

(i) party that conducts activities on land administered by a Federal agency pursuant to a permit or lease issued to the party;

(ii) private property owner;

(iii) county;

(iv) State or State agency; or

(v) Tribal government.

(E) COVERED SPECIES.—The term “covered species” means, with respect to an Agreement, the species that is the subject of such Agreement.

(F) NET CONSERVATION BENEFIT.—The term “net conservation benefit” means the net effect of an Agreement, determined by comparing the existing situation of the candidate species without the Agreement in effect and a situation in which the Agreement is in effect, on a candidate species, including—

(i) the net effect on threats to such species;

(ii) the net effect on the number of individuals of such species; or

(iii) the net effect on the habitat of such species.

(G) PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES.—The term “programmatic Candidate Conservation Agreement with Assurances” means a Candidate Conservation Agreement with Assurances described in paragraph (4)(A).

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d), (other than regulation relating to recordkeeping or filing of reports), (f), or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action

in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) CRIMINAL VIOLATIONS.—(1) Any person who knowingly violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States; including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) REWARDS AND CERTAIN INCIDENTAL EXPENSES.—The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violations of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection. Whenever the balance of sums received under this section and section 6(d) of the Act of November 16, 1981 (16 U.S.C. 3375(d)) as penalties or fines, or from forfeitures of property, exceed \$500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 6(i) of this Act.

(e) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such persons may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe

that the person to be arrested is committing the violation in his presence or view and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of the subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act or regulation issued under authority thereof.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and rea-

sonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this

section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) [to any party, whenever the court determines such award is appropriate] *in accordance with section 2412 of title 28, United States Code and section 504 of title 5, United States Code.*

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (as defined in section 2509(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a(f)) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

* * * * *

[CONFORMING AMENDMENTS]

[SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: “With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system.”]

[(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended

by Striking out “threatened with extinction,” and inserting in lieu thereof the following: “listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,”.

[(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601—9(a) (1)) is amended by striking out:

“Threatened Species.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.and inserting in lieu thereof the following:

“Endangered Species and Threatened Species.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 (a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants.

[(d) The first sentence of section 2 of the Act of September 28,1962, as amended (76 Stat. 653, 16 U.S.C. 460k-l), is amended to read as follow:

“The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

[(1) incidental fish and wildlife-oriented recreational development,

[(2) the protection of natural resources,

[(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

[(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.

[(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

[(1) by striking out “Endangered Species Conservation Act of 1969” in section 3(1)(B) thereof and inserting in lieu thereof the following: “Endangered Species Act of 1973”;

[(2) by striking out “pursuant to the Endangered Species Conservation Act of 1969” in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: “or threatened species pursuant to the Endangered Species Act of 1973”;

[(3) by striking out “endangered under the Endangered Species Conservation Act of 1969” in section 102(b)(3) thereof and inserting in lieu thereof the following: “an endangered species or threatened species pursuant to the Endangered Species Act of 1973”; and

[(4) by striking out “of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,” in section 202(a)(6) thereof and inserting in lieu thereof the following: “such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973”.

[(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words “by the Secretary of the Interior under Public Law 91– 135” and inserting in lieu thereof the words “or threatened by the Secretary pursuant to the Endangered Species Act of 1973”.]

SEC. 13. DISCLOSURE OF EXPENDITURES.

(a) *REQUIREMENT.*—*The Secretary of the Interior, in consultation with the Secretary of Commerce, shall—*

(1) *not later than 90 days after the end of each fiscal year, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate an annual report detailing Federal Government expenditures for covered suits during the preceding fiscal year (including the information described in subsection (b)); and*

(2) *make publicly available through the Internet a searchable database, updated monthly, of the information described in subsection (b).*

(b) *INCLUDED INFORMATION.*—*The report shall include—*

(1) *the case name and number of each covered suit, and, with respect to each such covered suit, a hyperlink to each settlement decision, final decision, consent decree, stipulation of dismissal, release, interim decision, motion to dismiss, partial motion for summary judgement, or related final document;*

(2) *a description of each claim or cause of action in each covered suit;*

(3) *the name of each covered agency the actions of which give rise to any claim in a covered suit and each plaintiff in such suit;*

(4) *funds expended by each covered agency (disaggregated by agency account) to receive and respond to notices referred to in section 11(g)(2) or to prepare for litigation of, litigate, negotiate a settlement agreement or consent decree in, or provide material, technical, or other assistance in relation to, a covered suit;*

(5) *the number of full-time equivalent employees that participated in the activities described in paragraph (4);*

(6) *any information required to be published under section 1304 of title 31, United States Code, with respect to a covered suit; and*

(7) *attorneys fees and other expenses (disaggregated by agency account) awarded in covered suits, including any consent decrees or settlement agreements (regardless of whether a decree or settlement agreement is sealed or otherwise subject to non-disclosure provisions), including the basis for such awards.*

(c) *REQUIREMENT TO PROVIDE INFORMATION.*—*The head of each covered agency shall provide to the Secretary in a timely manner all information requested by the Secretary to comply with the requirements of this section.*

(d) *LIMITATION ON DISCLOSURE.*—*Notwithstanding any other provision of this section, this section shall not affect any restriction in a consent decree or settlement agreement on the disclosure of information that is not described in subsection (b).*

(e) *DEFINITIONS.*—*In this section:*

(1) *COVERED AGENCY.*—*The term “covered agency” means any agency of the—*

- (A) *Department of the Interior;*
- (B) *Forest Service;*
- (C) *Environmental Protection Agency;*
- (D) *National Marine Fisheries Service;*
- (E) *Bonneville Power Administration;*
- (F) *Western Area Power Administration;*
- (G) *Southwestern Power Administration; or*
- (H) *Southeastern Power Administration.*

(2) *COVERED SUIT.*—*The term “covered suit” means—*

(A) any civil action containing any claim arising under this Act against the Federal Government and based on the action of a covered agency; and

(B) any administrative proceeding under which the United States awards fees and other expenses to a third party under section 504 of title 5, United States Code.

* * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. (a) *IN GENERAL.*—Except as provided in [subsection (b), (c), and (d)] *subsections (b) and (c)*, there are authorized to be appropriated—

(1) not to exceed \$35,000,000 for fiscal year 1988, \$36,500,000 for fiscal year 1989, \$38,000,000 for fiscal year 1990, \$39,500,000 for fiscal year 1991, [and] \$41,500,000 for fiscal year 1992, *and \$302,025,000 for each of fiscal years 2025 through 2030* to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

(2) not to exceed \$5,750,000 for fiscal year 1988, \$6,250,000 for each of fiscal years 1989 and 1990, [and] \$6,750,000 for each of fiscal years 1991 and 1992, *and \$116,630,000 for each of fiscal years 2025 through 2030* to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

(3) not to exceed \$2,200,000 for fiscal year 1988, \$2,400,000 for each of fiscal years 1989 and 1990, [and] \$2,600,000 for each of fiscal years 1991 and 1992, *and \$2,600,000 for each of fiscal years 2025 through 2030* to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of plants.

(b) *EXEMPTIONS FROM ACT.*—There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under sections 7 (e), (g), and (h) not to exceed \$600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992 *and \$600,000 for each of fiscal years 2025 through 2030.*

(c) *CONVENTION IMPLEMENTATION.*—There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 8A(e) not to exceed \$400,000 for each of fiscal years 1988, 1989, and 1990, [and] \$500,000 for each of fiscal years 1991 and 1992, *and \$9,900,000 for each of fiscal years 2025*

through 2030, and such sums shall remain available until expended.

* * * * *

DISSENTING VIEWS

H.R. 9533, the “ESA Amendments Act of 2024,” would weaken the authority and effectiveness of the Endangered Species Act (ESA). It would codify several 2019 Trump administration—era ESA rules weakening protections for threatened and endangered species and their critical habitat and requiring economic analyses that should remain outside the science-based decision-making process. The bill would increase the timeframe for listing species while fast-tracking de-listing and blocking judicial review. It would create narrow definitions for key terms to limit the scope of ESA consultations and require that “best available science” include information from states, tribes, and local communities without regard for the quality of the data. The bill would also create new, burdensome reporting requirements for ESA-related agency litigation and cap awards of litigation costs to disincentivize accountability.

Human-related impacts, including habitat destruction, invasive species, disease, and climate change, threaten many species of wildlife and plants. One million species globally are threatened with extinction.¹ In the United States, 34% of plants and 40% of animals are at risk of extinction, and 41% of our ecosystems are at risk of range-wide collapse.² The loss of biodiversity and ecosystems worldwide could lead to a global GDP loss of \$2.7 trillion annually by 2030.³ In light of this extinction crisis, the ESA is a critical tool for preventing extinction and putting imperiled species on the road to recovery. It is “the most comprehensive legislation for the preservation of endangered species enacted by any nation.”⁴

This bill would extend the deadlines to list some species from the mandatory 12-month deadline to 5 years. It provides no course of action should the Secretary misclassify a species to a lower priority, allowing for administrative misconduct to legally delay the listing for a species. The bill would fast-track the de-listing of species by requiring a rulemaking within 30 days of the five-year review and then prevent any judicial review of a de-listing decision for the next five years. These changes would make it harder for species to be listed and then easier for them to be de-listed prematurely, with little recourse to challenge either action.

¹ IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E.S. Brondizio, J. Settele, S. Díaz, and H.T. Ngo (editors). IPBES secretariat, Bonn, Germany. <https://doi.org/10.5281/zenodo.3831673>.

² NatureServe https://www.natureserve.org/sites/default/files/NatureServe_BiodiversityInFocus_Report_medium.pdf.

³ Johnson, Justin Andrew; Ruta, Giovanni; Baldos, Uris; Cervigni, Raffaello; Chonabayashi, Shun; Corong, Erwin; Gavryliuk, Olga; Gerber, James; Hertel, Thomas; Nootenboom, Christopher; Polasky, Stephen; Gerber, James; Ruta, Giovanni; Polasky, Stephen. 2021. The Economic Case for Nature: A Global Earth-Economy Model to Assess Development Policy Pathways. © World Bank, Washington, DC. <http://hdl.handle.net/10986/35882> License: CC BY 3.0 IGO.

⁴ *TVA v. Hill*, 473 U.S. 153, 180 (1978).

This bill is filled with harmful definitions that are a departure from the decades of established, working definitions. It expands “Best scientific and commercial data available” to include all data from “State, tribal or county governments,” regardless of its quality. The best science should be about the quality of the data—not the source. It would also exclude unoccupied habitat from the definition of critical habitat—regardless of whether it was historically where these species were found but no longer are, or if the unoccupied habitat is suitable for species recovery and would thus help save them from extinction. This includes precluding the designation of critical habitat for “any privately owned or controlled land or other geographical area” subject to a land management plan that meets their criteria.

This bill would also put threatened species in peril by removing the blanket 4(d) rule, which guarantees the same comprehensive and immediate protection for threatened species afforded to endangered species. The bill would also push threatened species recovery onto states without clear and objective science-based recovery goals. States can already manage ESA-listed species under Section 6(c) of the ESA but have not used the authority. The bill would reinstate a shortsighted definition for critical habitat and block directives to mitigate the impacts of actions on threatened and endangered species.

The Republican attempts to undermine the ESA would hinder the ability to protect species from extinction, no matter how close to extinction a species may be or what the best available science says about the status, recovery, or management.

RAÚL M. GRIJALVA,
Ranking Member.

