

ESA AMENDMENTS ACT OF 2025

MARCH 24, 2026.—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. 1897]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1897) 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, streamline the permitting process, eliminate barriers to conservation, and restore congressional intent, 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 2025”.
(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.
Sec. 5. Renaming of Endangered Species Act of 1973 to Endangered Species Recovery Act.

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. Conservation Benefit Agreements.
Sec. 202. Conservation plans.
Sec. 203. NEPA exemption for incidental take permits.

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. Designation of critical habitat.
- Sec. 305. Treatment of State, Tribal, and local government data.
- Sec. 306. Clarifying significant portion of range of species.
- Sec. 307. Delisting criteria.

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

- Sec. 401. Requirement to publish basis for listings and critical habitat designations online.
- 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.
- Sec. 406. Notification of Congress of certain critical habitat designations.
- Sec. 407. Notification of Congress of certain releases of experimental populations.
- Sec. 408. Annual cost analysis by the Fish and Wildlife Service.

TITLE V—STREAMLINING PERMITTING PROCESS

- Sec. 501. Limitation on reasonable and prudent measures.
- Sec. 502. Successive consultations.
- Sec. 503. Clarifying jeopardy.
- Sec. 504. Clarifying action area.
- Sec. 505. Judicial review.
- Sec. 506. Expansion of exemption process and eligibility under section 7 of Endangered Species Act of 1973.

TITLE VI—ELIMINATING BARRIERS TO CONSERVATION

- Sec. 601. Permits for CITES-listed species.
- Sec. 602. Utilize Convention standard for permits applicable to non-native species.

TITLE VII—RESTORING CONGRESSIONAL INTENT

- Sec. 701. Limiting agency regulations.

SEC. 2. ENDANGERED SPECIES ACT OF 1973 DEFINITIONS.

(a) FORESEEABLE FUTURE.—Section 3(20) Endangered Species Act of 1973 (16 U.S.C. 1532(20)) is amended by—

- (1) striking “The term” and inserting “(A) The term”; and
- (2) by adding at the end the following:

“(B) For the purposes of applying subparagraph (A), the term ‘foreseeable future’ means the period of time extending into the future within which the Secretary, based on the best scientific and commercial data available, is able to determine that a factor described in subparagraphs (A) through (E) of section 4(a)(1) is likely to occur with respect to the species.”

(b) COMMERCIAL ACTIVITY.—Section 3(2) Endangered Species Act of 1973 (16 U.S.C. 1532(2)) is amended by inserting “or public display or education aimed at the preservation or conservation of a species” after “organizations”.

(c) CONSERVE; CONSERVING; CONSERVATION.—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,”.

(d) 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)(i) For the purpose of designating critical habitat for a threatened species or an endangered species under this Act, the term ‘habitat’—

“(I) means the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support 1 or more life processes of the threatened species or endangered species; and

“(II) does not include an area—

“(aa) outside the current or historic range of the threatened species or endangered species; or

“(bb) visited by only vagrant individual members of the threatened species or endangered species.

“(ii) If the setting described in clause (i)(I) does not support all of the life processes of the relevant threatened species or endangered species, the threatened species or endangered species must be able to access, from the setting, other areas necessary to support its remaining life processes.”

(e) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

- (1) by redesignating paragraphs (2) through (10) as paragraphs (3) through (11), respectively; and
- (2) by inserting after paragraph (1) the following:

“(2) The terms ‘best scientific and commercial data available’ and ‘best scientific data available’—

“(A) mean all relevant and objective scientific and commercial information available at the time of the agency action; and

“(B) include credible and reliable data, quantitative analyses, conceptual and numerical models, and model results that—

“(i) account for known or potential sources or error;

“(ii) are applied using prevailing principles, methods, tools, and professional standards of practice; and

“(iii) are impartially gathered and objectively applied without reliance on precautionary assumptions in favor of a species or other assumptions or policy prescriptions that bias the application.”

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

“(q) ENVIRONMENTAL BASELINE DEFINED.—In this section, the term ‘environmental baseline’—

“(1) means the condition of the species or the critical habitat of the species in the area directly affected by the agency action at the time of the proposed agency action, without the consequences to the species or the critical habitat of the species caused by the proposed action; and

“(2) includes—

“(A) the past and present effects of all Federal, State, local, and private actions and other human activities in the area directly affected by the agency action;

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

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

“(D) existing structures and facilities and the past, present, and future effects of the physical existence of such structures and facilities on the species or the critical habitat of the species; and

“(E) the effects of Federal actions being carried out at the time of the proposed agency action and existing Federal facilities that are not within the discretion of the Secretary to modify.”

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—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 \$287,978,000 for each of fiscal years 2026 through 2031” after “fiscal year 1992”;

(C) in paragraph (2)—

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

(ii) by inserting “, and \$105,400,000 for each of fiscal years 2026 through 2031” 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 2026 through 2031” after “fiscal years 1991 and 1992.”;

(2) in subsection (b), by inserting “and \$600,000 for each of fiscal years 2026 through 2031” 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 2026 through 2031,” after “fiscal years 1991 and 1992.”

(b) TECHNICAL AMENDMENT.—Section 15(b) of the Endangered Species Act of 1973 (16 U.S.C. 1542(b)) is amended by striking “sections 7 (e), (g), and (h)” and inserting “subsections (e), (g), and (h) of section 7”.

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.

SEC. 5. RENAMING OF ENDANGERED SPECIES ACT OF 1973 TO ENDANGERED SPECIES RECOVERY ACT.

(a) **RENAMING.**—The first section of the Endangered Species Act of 1973 (16 U.S.C. 1531 note; Public Law 93–205) is amended by striking “may be cited as the ‘Endangered Species Act of 1973’” and inserting “may be cited as the ‘Endangered Species Recovery Act’”.

(b) **REFERENCES.**—Any reference in a law, map, regulation, document, paper, or other record of the United States to the “Endangered Species Act of 1973” shall be deemed to be a reference to the “Endangered Species Recovery Act”.

TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

SEC. 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);

“(B) any proposed or final determination under subsection (a)(1) required by a court order, court decree, or court-approved settlement agreement; and

“(C) any proposed or final designation of critical habitat under subsection (a)(3) required by a court order, court decree, or court-approved settlement agreement.

“(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 potential future listings of species considered on an emergency basis in that fiscal year.

“(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 the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on 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) the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on 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), or any successor document.

“(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.

“(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 AMENDMENT.—Section 4(b)(3)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)(B)) is amended by striking “Within 12 months” and inserting “In accordance with the national listing work plan submitted under subsection (j).”.

TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

SEC. 201. CONSERVATION BENEFIT AGREEMENTS.

(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) 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 section 10(k)) of any approved

Conservation Benefit Agreement (as that term is defined in such section) relating to the species.”

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

“(k) CONSERVATION BENEFIT AGREEMENTS.—

“(1) PROPOSED AGREEMENT.—

“(A) IN GENERAL.—A covered party may submit a proposed Agreement to the Secretary.

“(B) DETERMINATION OF COMPLETENESS.—Not later than 30 days after the date on which the Secretary receives a proposed Agreement, the Secretary shall—

“(i) determine whether the proposed Agreement is complete; and

“(ii) if the Secretary determines the proposed Agreement is incomplete under clause (i), provide the covered party with a written explanation of such determination, including any specific adjustment required for the Secretary to determine the proposed Agreement is complete.

“(C) APPROVAL; REJECTION.—Not later than 120 days after the date on which the Secretary receives a proposed Agreement that the Secretary determines under subparagraph (B)(i) is complete, the Secretary shall—

“(i) approve the proposed Agreement if the Secretary determines that the proposed Agreement—

“(I) is in compliance with, as applicable, section 17.22(c)(1) or 17.32(c)(1) of title 50, Code of Federal Regulations (or a successor regulation); and

“(II) provides assurances to the covered party that, if the covered species becomes listed after the effective date of such Agreement—

“(aa) no additional conservation measures will be required; and

“(bb) additional land, water, or resource use restrictions will not be imposed on the covered party;

“(ii) reject the proposed Agreement if the Secretary determines that the proposed Agreement does not meet the requirements described in subclauses (I) and (II) of clause (i); and

“(iii) if the Secretary rejects the proposed Agreement under clause (ii), provide the submitting covered party a written explanation for such rejection, including any specific adjustment required, as of the date on which the Secretary rejects the proposed Agreement, for the Secretary to approve the proposed Agreement.

“(2) PROGRAMMATIC CONSERVATION BENEFIT AGREEMENTS.—The Secretary may enter into a Conservation Benefit Agreement with a covered party that authorizes such covered party—

“(A) to administer such Conservation Benefit Agreement;

“(B) to hold any permit issued under this section with regard to such Conservation Benefit Agreement;

“(C) to enroll other covered parties within the area covered by such Conservation Benefit Agreement in such Conservation Benefit Agreement; and

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

“(3) TAKE AUTHORIZATION.—If a covered species is listed as a threatened species or an endangered species under section 4, the Secretary, consistent with the applicable Agreement, shall issue to the relevant covered party a permit under this section for the incidental take of and modification to the habitat of such covered species by such covered party.

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

“(5) APPLICABILITY TO FEDERAL LAND.—An Agreement may apply with respect 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.

“(6) EXEMPTIONS.—

“(A) CONSULTATION.—Section 7(a)(2) does not apply to the approval by the Secretary of a proposed Agreement under this subsection.

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

“(C) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The approval by the Secretary of a proposed Agreement under this subsection shall not be con-

sidered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

“(7) DEFINITIONS.—In this subsection:

“(A) AFFECTED SPECIES.—The term ‘affected species’ means a species—
 “(i) designated by the Secretary as a candidate species under this Act;

“(ii) proposed to be listed pursuant to section 4; or

“(iii) that is declining and at risk of being designated by the Secretary as a candidate species under this Act.

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

“(i) a Conservation Benefit Agreement; or

“(ii) a programmatic Conservation Benefit Agreement.

“(C) CONSERVATION BENEFIT AGREEMENT.—The term ‘Conservation Benefit Agreement’ means the supporting document required for the issuance of a permit under subsection (a)(1)(A) to enhance the propagation or survival of an affected species, as described in the final rule issued by the United States Fish and Wildlife Service titled ‘Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits’ (89 Fed. Reg. 26070; published April 12, 2024).

“(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 affected species that is the subject of such Agreement.

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

“(i) the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on the covered species;

“(ii) the number of individuals of the covered species; or

“(iii) the habitat of the covered species.

“(G) PROGRAMMATIC CONSERVATION BENEFIT AGREEMENT.—The term ‘programmatic Conservation Benefit Agreement’ means a Conservation Benefit Agreement described in paragraph (4).”.

SEC. 202. CONSERVATION PLANS.

(a) IN GENERAL.—Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)) is amended—

(1) in subparagraph (B), by inserting “, and shall include the terms and conditions of the related conservation plan, which shall be legally binding on all parties thereto” after “being complied with”; and

(2) by adding at the end the following:

“(D) Each Federal agency shall, as applicable and to the maximum extent practicable, adopt the mitigation measures contained in a permit issued under subparagraph (B) in any authorization issued by such Federal agency with respect to the action that is covered by such permit.

“(E) With respect to an action that is covered by a permit issued under subparagraph (B) and consistent with the implementation of the related conservation plan, the Secretary shall not seek any additional mitigation measures through any other Federal or State or local process from the permittee.”.

(b) EXEMPTION FROM CONSULTATION REQUIREMENT.—Section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) is amended by adding at the end the following:

“(3) Section 7(a)(2) does not apply to the issuance by the Secretary of a permit under this subsection.”.

SEC. 203. NEPA EXEMPTION FOR INCIDENTAL TAKE PERMITS.

Section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) is amended by adding at the end the following:

“(4) The issuance of a permit under paragraph (2) shall not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).”.

TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER LISTED SPECIES

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

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) ISSUANCE.—

“(A) 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.

“(B) REQUIREMENT.—In issuing a regulation under subparagraph (A), the Secretary, consistent with the findings, purposes, and policy described in section 2 and based on the best scientific and commercial data available, shall consider the conservation and economic effects of such regulation.

“(2) RECOVERY GOALS.—

“(A) IN GENERAL.—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—

“(i) establish objective, incremental recovery goals;

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

“(iii) 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 that each such recovery goal is met and, if each such recovery goal remains met, continuing until such species is removed from the list of threatened species published pursuant to subsection (c).

“(B) STATUS REVIEW.—On the date on which the Secretary determines that each recovery goal established under subparagraph (A)(i) for a species is met, the Secretary shall begin a review of the species and subsequently determine, on the basis of such review, whether the species should be removed from the lists published pursuant to subsection (c)(1).

“(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 60 days after the date on which the Secretary approves or denies a petition under subparagraph (B), the Secretary shall publish such approval or denial on the website of the applicable department.

“(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. DESIGNATION OF CRITICAL HABITAT.

(a) NOT PRUDENT DETERMINATIONS.—Section 4(a)(3)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)(3)(A)) is amended to read as follows:

“(A)(i) 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.

“(ii) The Secretary may determine, based on the best scientific data available, that it is not prudent to designate habitat as described in clause (i)(I) for a species, including if the Secretary determines—

“(I) the species is determined under paragraph (1) to be a threatened species or an endangered species because of take or other human activity and such designation will increase the degree of such take or other human activity;

“(II) the species is determined under paragraph (1) to be a threatened species or an endangered species because of a factor—

“(aa) other than that described in subparagraph (A) of that paragraph; or

“(bb) that cannot be addressed through reasonable and prudent alternatives resulting from consultations carried out pursuant to section 7(a)(2); or

“(III) the species primarily occurs in areas not under the jurisdiction of the United States and areas under the jurisdiction of the United States where the species occurs provide no more than a negligible conservation value to the species.

“(iii) Notwithstanding clause (i)(I), if the Secretary determines under clause (ii) that it is not prudent to designate habitat as described in clause (i)(I), the Secretary is not required to so designate habitat for the species.”.

(b) 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) 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.”

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

(1) in paragraph (2)—

(A) by inserting “the impact on existing efforts of private landowners to conserve the species,” after “impact on national security,”;

(B) by striking “The Secretary” and inserting “(A) The Secretary”; and

(C) by adding at the end the following:

“(B) In addition to any area otherwise considered by the Secretary for exclusion from critical habitat under subparagraph (A), the Secretary shall consider for exclusion from critical habitat any area—

“(i) submitted by a person through public comment pursuant to paragraph (5) or (6); and

“(ii) for which such submission includes credible information regarding a meaningful economic impact, impact on national security, impact on existing efforts of private landowners to conserve the applicable species, or other relevant impact of specifying the area as critical habitat that supports the exclusion from critical habitat of that area.”;

(2) in paragraph (5)(A)(i), by striking “, and” and inserting the following: “, including, with respect to a proposed regulation to designate or revise critical habitat under subsection (a)(3)—

“(I) a draft economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the designation or revision that the Secretary determines are within the area proposed for designation or covered by the revision; and

“(II) a draft exclusion analysis that identifies each area the Secretary has reason to consider for exclusion under paragraph (2) and why; and”;

(3) in paragraph (6)(A)—

(A) in clause (i)(II), by striking “made,” and inserting the following: “made, including, with respect to such a final regulation—

“(aa) a final economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the revision that the Secretary determines are within the area covered by the revision; and

“(bb) a final exclusion analysis that identifies each area the Secretary has determined under paragraph (2) to exclude from such revision and why;”;

(B) in clause (ii)(I), by striking “, or” and inserting the following: “, including—

“(aa) a final economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the designation that the Secretary determines are within the area proposed for designation; and

“(bb) a final exclusion analysis that identifies each area the Secretary has determined under paragraph (2) to exclude from such designation and why; or”.

SEC. 305. TREATMENT OF STATE, TRIBAL, AND LOCAL GOVERNMENT DATA.

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

(1) in paragraph (1)(A), by inserting “data submitted to the Secretary by a State, Tribal, or local government, and” after “account”; and

(2) in paragraph (2)(A), as so designated by section 304(c)(1)(B) of this Act, by inserting “data submitted to the Secretary by a State, Tribal, or local government, as well as” after “consideration”.

SEC. 306. CLARIFYING SIGNIFICANT PORTION OF RANGE OF SPECIES.

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) If the Secretary determines under paragraph (1) that a species is a threatened species or an endangered species in only a significant portion of the range of the species, the Secretary may only list the species under subsection (c) as a threatened species or an endangered species with respect to that portion of the range of the species.”.

SEC. 307. DELISTING CRITERIA.

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:

“(4) The Secretary shall determine under paragraph (2)(B)(i) that a species described in paragraph (2)(A) should be removed from a list described in that paragraph and shall remove such species from such list only if the Secretary determines, pursuant to a review conducted under that paragraph and based on the best scientific and commercial data available, such species—

“(A) is extinct;

“(B) is not a threatened species or an endangered species; or

“(C) is not a species.”.

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

SEC. 401. REQUIREMENT TO PUBLISH BASIS FOR LISTINGS AND CRITICAL HABITAT DESIGNATIONS ONLINE.

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)(A) The Secretary shall make publicly available on the website of the applicable department the best scientific and commercial data available that is used as the basis for each regulation, including each proposed regulation, promulgated under paragraphs (1) and (3) of subsection (a).

“(B) If a Governor, agency, or legislature of a State determines that public disclosure of any best scientific and commercial data available described in subparagraph (A) is prohibited by a law or regulation of the State, including such a law or regulation requiring the protection of personal information—

“(i) the Governor, agency, or legislature of the State may submit to the Secretary a request to exempt such best scientific and commercial data available from the application of subparagraph (A); and

“(ii) the Secretary shall so exempt such best scientific and commercial data available.

“(C) Subparagraph (A) does not apply with respect to global positioning system coordinates or other geographically specific species location information.

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

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

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)”.

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 Chair of the Council on Environmental Quality, in consultation with the Secretary of the Interior and 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; and

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

“(b) **INCLUDED INFORMATION.**—Each report submitted under subsection (a) shall include—

“(1) the case name and number of each covered suit, and, with respect to each 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 covered 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 Chair of the Council on Environmental Quality in a timely manner all information requested by the Chair 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 Federal Government 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 to read as follows:

“(4)(A) The court, in issuing any final order in any suit brought pursuant to paragraph (1), may award costs of litigation (including reasonable attorney and expert witness fees) to an eligible party, whenever the court determines such award is appropriate.

“(B) In awarding reasonable attorney and expert witness fees under subparagraph (A) in a suit brought pursuant to paragraph (1), the court—

“(i) shall base such fees on the prevailing market rates for the kind and quality of services furnished; and

“(ii) may not award—

“(I) such fees at a rate that exceeds \$125 per hour unless the court determines a higher rate is justified because of cost of living or a special factor, such as the limited availability of qualified attorneys for such suit; or

“(II) more than \$200,000 total in such fees in a single such suit.

“(C)(i) In this paragraph, the term ‘eligible party’—

“(I) means a party to a suit brought pursuant to paragraph (1) that is, as of the date on which the suit was initiated—

“(aa) an individual who has a net worth of not more than \$2,000,000;

“(bb) an owner of an unincorporated business or a partnership, corporation, association, unit of local government, or organization, including an organization that is described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of such Code, that has—

“(AA) a net worth of not more than \$7,000,000, including both personal and business interests; and

“(BB) not more than 500 employees; or

“(cc) a cooperative association (as that term is defined in section 15(a) of the Agriculture Marketing Act (12 U.S.C. 1141j(a))); and

“(II) does not include a party to a suit brought pursuant to paragraph (1) otherwise described in clause (i) of this subparagraph that has sought to recover attorney or expert witness fees under this subsection in 3 or more instances in the 12-month period preceding the date on which the final order in such suit is issued, including in such suit.

“(ii) Where 2 or more parties to a suit brought pursuant to paragraph (1) are plaintiffs and each such party individually is an eligible party, clause (i)(I) shall be applied to such parties collectively.”.

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:

“(5)(A) The Secretary shall, concurrently with determining under paragraph (1) whether 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;

“(iii) the effects on human health and safety; and

“(iv) any other relevant effect.

“(B) The analysis is to be prepared in coordination with the States, local governments, and Tribes impacted by the determination.

“(C) 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.”.

SEC. 406. NOTIFICATION OF CONGRESS OF CERTAIN CRITICAL HABITAT DESIGNATIONS.

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:

“(D)(i) The Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification of any proposed designation of critical habitat under subparagraph (A) of an area greater than 50,000 acres.

“(ii) A notification submitted under clause (i) shall include—

“(I) a description of the area proposed to be designated as critical habitat;

“(II) an inventory and evaluation of the natural resource uses and values of the area and adjacent public and nonpublic land and the economic impact of the proposed designation on individuals, local communities, and the United States;

“(III) an identification of users of the area and how such users will be affected by the proposed designation;

“(IV) an analysis of the manner in which existing and potential natural resource uses are incompatible with or in conflict with the proposed designation and a statement of the provisions to be made for continuation or termination of existing such uses, including an economic analysis of such continuation or termination;

“(V) a statement of the consultation which has been or will be had with other Federal departments and agencies, regional, State, and local government bodies, and other appropriate individuals and groups with respect to the proposed designation; and

“(VI) a statement indicating the effect of the proposed designation, if any, on State and local government interests and the regional economy.”.

SEC. 407. NOTIFICATION OF CONGRESS OF CERTAIN RELEASES OF EXPERIMENTAL POPULATIONS.

Section 10(j) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)) is amended by adding at the end the following:

“(4)(A) The Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification of any proposed release under this subsection that covers an area greater than 50,000 acres.

“(B) A notification submitted under subparagraph (A) shall include—

“(i) a description of the area covered by the proposed release;

“(ii) an inventory and evaluation of the natural resource uses and values of the area and adjacent public and nonpublic land and the economic impact of the proposed release on individuals, local communities, and the United States;

“(iii) an identification of users of the area, and how such users will be affected by the proposed release;

“(iv) an analysis of the manner in which existing and potential natural resource uses are incompatible with or in conflict with the proposed release and a statement of the provisions to be made for continuation or termination of existing such uses, including an economic analysis of such continuation or termination;

“(v) a statement of the consultation which has been or will be had with other Federal departments and agencies, regional, State, and local government bodies, and other appropriate individuals and groups with respect to the proposed release; and

“(vi) a statement indicating the effect of the proposed release, if any, on State and local government interests and the regional economy.”.

SEC. 408. ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE.

Section 18 of the Endangered Species Act of 1973 (16 U.S.C. 1544) is amended—

(1) by inserting “, and make publicly available on the website data.gov,” after “to the Congress”; and

(2) in paragraph (1), by inserting “, including any such expenditures made with respect to an experimental population (as that term is defined in section 10(j))” after “to this Act”.

TITLE V—STREAMLINING PERMITTING PROCESS

SEC. 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—

(1) in subparagraph (A), by adding “and” at the end;

(2) in subparagraph (B), by striking “and” at the end;

(3) by striking subparagraph (C);

(4) by striking “taking on the species,” and inserting “taking on the species, including, as necessary, through the use of a substitute used to represent a listed species, habitat, or an ecological function to express the amount or extent of such incidental taking;”;

(5) by striking “minimize such impact,” and inserting “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; and”;

(6) by striking “measures specified under clauses (ii) and (iii)” and inserting “measures specified under clause (ii);”;

(7) by striking clause (iii); and

(8) by redesignating clause (iv) as clause (iii).

SEC. 502. SUCCESSIVE CONSULTATIONS.

Section 7(b) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)) is amended by adding at the end the following:

“(5)(A) With respect to an ongoing agency action for which the applicable Federal agency has adopted a reasonable and prudent alternative or a reasonable and prudent measure to comply with subsection (a)(2), in any subsequent consultation for the agency action that occurs 10 years or more after the date on which the initial consultation for the agency action was completed, the Secretary shall determine whether continuing to implement the reasonable and prudent alternative or reasonable and prudent measure will materially increase the likelihood of and reduce the time for recovery of the applicable threatened species or endangered species.

“(B) If the Secretary determines under subparagraph (A) that continued implementation of the reasonable and prudent alternative or reasonable and prudent measure will not materially increase the likelihood of and shorten the time for the recovery of the applicable threatened species or endangered species, the Federal agency shall discontinue implementation of the reasonable and prudent alternative or reasonable and prudent measure notwithstanding subsection (a)(2).”

SEC. 503. CLARIFYING JEOPARDY.

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)(A) In carrying out a consultation under paragraph (2) or a conference under paragraph (4), the Secretary—

“(i) except as provided in clause (ii), may only consider the effects of the action that is the subject of such consultation or conference that the Secretary determines, based on clear and substantial information, using the best scientific and commercial data available, and in accordance with subparagraphs (B) and (C), respectively, are caused by the action itself and are reasonably certain to occur; and

“(ii) shall consider as a beneficial effect of the action that is the subject of such consultation or conference any avoidance, minimization, or mitigation measure proposed by the applicable Federal agency or the applicant, if any.

“(B) In determining whether an effect of an action described in subparagraph (A)(i) is caused by the action itself, the Secretary shall consider whether—

“(i) the effect is so remote in time from the action under consultation that it is not reasonably certain to occur;

“(ii) the effect is so geographically remote from the immediate area involved in the action that it is not reasonably certain to occur;

“(iii) the effect is only reached through a lengthy causal chain such that the effect not reasonably certain to occur;

“(iv) the applicable Federal agency does not have the ability to prevent the effect due to its limited statutory authority; or

“(v) would occur regardless of whether the action is carried out.

“(C) In determining whether an effect of an action described in subparagraph (A)(i) is reasonably certain to occur, the Secretary shall consider factors including the following:

“(i) Experiences with other such actions that are similar in scope, nature, and magnitude to the applicable such action.

“(ii) Plans for such action.

“(iii) Any economic, administrative, or legal requirement necessary for the action to be carried out that has not been fulfilled.

“(iv) Whether the effect has been observed previously and to what extent.

“(D) In carrying out a consultation under paragraph (2) or a conference under paragraph (4), the Secretary may not consider an effect of the action that is the subject of such consultation or conference for which there is not clear and substantial information for the Secretary to base a determination on under subparagraph (A)(i) that the effect of the action is reasonably certain to occur.

“(E) In this paragraph, the terms ‘effect of the action’ and ‘effects of the action’ mean a consequence or all consequences, respectively, to listed species or critical habitat that is or are caused by the proposed action.”

SEC. 504. CLARIFYING ACTION AREA.

Section 7(b)(3)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(3)(A)) is amended to read as follows:

“(A)(i) 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 af-

fects the species or its critical habitat within the area directly affected by the agency action, which such area may not be speculative or remote in time or distance from the agency action. In so doing, the Secretary shall differentiate the effects of the agency action from the environmental baseline.

“(ii) If jeopardy or adverse modification is found, the Secretary, in cooperation and consultation with the Federal agency and applicant, if any, shall consider a range of reasonable and prudent alternatives and suggest from among that range those reasonable and prudent alternatives which the Secretary believes—

“(I) would not violate subsection (a)(2);

“(II) can be taken by the Federal agency or applicant, if any, in implementing the agency action;

“(III) are economically and technologically feasible for the Federal agency and applicant, if any, to implement; and

“(IV) impose the fewest economic and other relevant costs for the applicant, if any.”.

SEC. 505. JUDICIAL REVIEW.

Section 7(n) of the Endangered Species Act of 1973 (16 U.S.C. 1536(n)) is amended—

(1) by striking “Any person, as defined by section 3(13) of this Act,” and inserting “(1) Any person”;

(2) in paragraph (1), as so designated, by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

“(2) Any person may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any opinion issued by the Secretary under subsection (b) of this section in the United States Court of Appeals for the District of Columbia by filing in such court not later than 150 days after the date on which the opinion is issued a written petition for review.”.

SEC. 506. EXPANSION OF EXEMPTION PROCESS AND ELIGIBILITY UNDER SECTION 7 OF ENDANGERED SPECIES ACT OF 1973.

Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(1) in subsection (g)—

(A) in paragraph (1), to read as follows:

“(1)(A) 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—

“(i) the agency action would violate subsection (a)(2); or

“(ii) a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2) may—

“(I) impair national security; or

“(II) result in significant adverse national or regional economic impacts.

“(B) 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).

“(C) The applicant for an exemption shall be referred to as the ‘exemption applicant’ in this section.”;

(B) in paragraph (3)—

(i) in subparagraph (A), to read as follows:

“(A) determine—

“(i) 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 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); and

“(ii) if the exemption applicant submitted to the Secretary the application for exemption pursuant to paragraph (1)(A)(ii), whether a reasonable and prudent alternative necessary for the proposed agency action to comply with subsection (a)(2) may—

“(I) impair national security; or

- “(II) result in significant adverse national or regional economic impacts; or”; and
- (ii) in subparagraph (B), by striking “(i), (ii), and (iii)”;
- (C) in paragraph (4), by striking “(i), (ii) and (iii)”;
- (D) in paragraph (5)—
 - (i) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and
 - (ii) by inserting after subparagraph (A) the following:
 - “(B) if the exemption applicant submitted to the Secretary the application for exemption pursuant to paragraph (1)(A)(ii), after consultation with the National Security Council regarding potential impacts to national security and the Director of the National Economic Council regarding potential significant adverse national and regional economic impacts, any impairment to national security or significant adverse national or regional economic impacts that would result from a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2), including a description of the analysis and conclusions produced by the National Security Council and the Director of the National Economic Council as a result of each such consultation;”; and
 - (2) in subsection (h)(1)(A)(i), to read as follows:
 - “(i)(I) there are no reasonable and prudent alternatives to the agency action; or
 - “(II) with respect to an agency action the application for exemption of which was submitted to the Secretary pursuant to subsection (g)(1)(A)(ii), a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2) may—
 - “(aa) impair national security; or
 - “(bb) result in significant adverse national or regional economic impacts;”.

TITLE VI— ELIMINATING BARRIERS TO CONSERVATION

SEC. 601. PERMITS FOR CITES-LISTED SPECIES.

Section 9(c)(2) of Endangered Species Act of 1973 (16 U.S.C. 1538(c)(2)) is amended to read as follows:

“(2) An export from or import into the United States of fish or wildlife listed as a threatened species or an endangered species pursuant to section 4 is lawful under this Act and not subject to permit requirements or other regulations issued by the Secretary with respect to exportation and importation pursuant to this Act if—

- “(A) such fish or wildlife—
 - “(i) is a species that is not native to the United States; and
 - “(ii) is listed in Appendix I or II of the Convention; and
- “(B) with respect to the export or import, each applicable requirement—
 - “(i) of the Convention is satisfied; and
 - “(ii) of subsections (d), (e), and (f) is satisfied.”.

SEC. 602. UTILIZE CONVENTION STANDARD FOR PERMITS APPLICABLE TO NON-NATIVE SPECIES.

Section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) is amended—

(1) in subparagraph (A), to read as follows:

- “(A)(i) with respect to a species that is native to the United States, any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); and
 - “(ii) with respect to a species that is not native to the United States, any act otherwise prohibited by section 9 that the Secretary determines is not detrimental to the survival of the species, including—
 - “(I) the export or import, delivery, receipt, carrying, transporting, or shipping in interstate or foreign commerce; and
 - “(II) buying or selling or offering for sale in interstate or foreign commerce; or”; and
- (2) by adding at the end the following:
- “(C) In this subsection, the term ‘is not detrimental to the survival of the species’ means—
- “(i)(I) will not have a negative effect on the status of the species in the wild;

- “(II) is not a use or removal from the wild that will result in the loss or destruction of critical habitat of the species; and
 “(III) will not directly interfere with recovery efforts with respect to the species; or
 “(ii) is an activity—
 “(I) involving wildlife described in section 17.21(g)(1) of title 50, Code of Federal Regulations; and
 “(II) that satisfies the conditions for registration under clauses (iii) through (v) of that section.”.

TITLE VII—RESTORING CONGRESSIONAL INTENT

SEC. 701. LIMITING AGENCY REGULATIONS.

Section 11(f) of the Endangered Species Act of 1973 (16 U.S.C. 1540(f)) is amended—

- (1) by striking “The Secretary,” and inserting the following:
 “(1) IN GENERAL.—The Secretary;”;
 (2) in paragraph (1), as so designated, by striking “to enforce this Act” and inserting “to enforce this section and section 8A”; and
 (3) by adding at the end the following:
 “(2) RULE OF CONSTRUCTION.—This subsection may not be construed to be an independent source of authority to promulgate regulations to enforce the provisions of this Act other than those included in this section and section 8A.”.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1897 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, streamline the permitting process, eliminate barriers to conservation, and restore congressional intent.

BACKGROUND AND NEED FOR LEGISLATION

The Endangered Species Act (ESA, or Act)¹ 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.²

The last time Congress significantly amended the ESA was in 1988.³ Despite those revisions, the ESA’s main provisions remain intact and govern species conservation efforts today. H.R. 1897 reauthorizes the ESA for five years and makes significant changes for the betterment of both the species and people directly impacted by its regulations.

The bill codifies the Trump administration’s 2019 framework for interpreting “foreseeable future,” a term that the ESA uses in the definition of a “threatened species” but does not separately define.⁴ When the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) consider

¹Pub. L. No. 93–205; 16 U.S.C. § 1531 et seq.

²*Id.*

³Pub. L. No. 100–478.

⁴90 Fed. Reg. 52607.

the “foreseeable future” in relation to a species, the 2019 interpretation provides that that period can extend “only so far into the future” as USFWS and NOAA (collectively, the Services) “can reasonably determine that both the future threats [to the species] and the species’ responses to those threats are likely.”⁵ Codifying this original framework, which was ambiguously amended in 2024, returns clarity and consistency to the process of determining whether a species qualifies as threatened.

H.R. 1897 also amends the shared definition of “conserve,” “conserving,” and “conservation” to allow for the regulated take of threatened species at the discretion of the Secretary.⁶ Currently, the definition allows for regulated take only “in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.”⁷ Federal courts have interpreted this standard to prohibit most regulated take of threatened species,⁸ raising tensions with the public, which has no means of controlling listed species populations, even when they are well above recovery goals. Another change to the definition allows for regulated take “at the discretion of the Secretary,” therefore granting additional flexibility to the Services.

Further, the bill codifies a definition of “habitat” to improve critical habitat designations. The bill’s definition ensures that an area can be considered critical habitat only if that area provides the resources and conditions necessary for all the life processes of the relevant species, except under specific circumstances. In cases when an area does not support all the life processes, the species must be able to access from the designated area other areas that can support the remaining processes. The definition also clarifies that areas outside the current or historical range of the species or only visited by vagrant individual members of the species cannot be designated critical habitat. This definition conforms the statute to the 2018 U.S. Supreme Court decision in *Weyerhaeuser Company v. United States Fish and Wildlife Service*, which stated that an area must logically be considered “habitat” for that area to meet the definition of “critical habitat” under the ESA.⁹

Another definition H.R. 1897 codifies is that of “Best Scientific and Commercial Data Available.” This change will ensure that ESA decision-making is impartial and applied objectively without the use of precautionary assumptions that unscientifically skew analysis. This codification is a response to a 2023 case in which the U.S. Court of Appeals for the District of Columbia Circuit ruled that NOAA distorted the science driving regulations for the Maine

⁵*Id.*

⁶H.R. 1897 uses the ESA’s definition of the term “Secretary,” which is defined in 16 U.S.C. § 1532 as “mean[ing], 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 on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto] which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.”

⁷16 U.S.C. § 1532.

⁸David Willms, “Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery,” *The Codex of the Endangered Species Act, Volume II*, available at [https://republicans-naturalresources.house.gov/UploadedFiles/Codex II Chapter 3.pdf](https://republicans-naturalresources.house.gov/UploadedFiles/Codex%20II%20Chapter%203.pdf).

⁹Erin H. Ward & Pervaze A. Sheikh, “Final Rules Amending ESA Critical Habitat Regulations,” Congressional Research Service, <https://crsreports.congress.gov/product/pdf/IF/IF11740>.

lobster industry and their interaction with whales.¹⁰ The Court found that the National Marine Fisheries Service (NMFS) improperly relied on dubious assumptions and worst-case scenarios when determining the risk that the industry posed to right whales. H.R. 1897 requires the Services to comply with this ruling.

The bill also codifies into law a definition of “environmental baseline.” When conducting interagency consultations on federal actions, the Services use the environmental baseline to help determine the effects those actions have on listed species and critical habitat. The bill codifies three environmental baseline criteria that are based upon current regulations: (1) the past and present effects of all federal, state, and local actions and other human activities on the area directly affected by the agency action; (2) the anticipated effects of each proposed federal project within the area directly affected by the agency action for which a consultation has been completed; and (3) the effects of state and private actions that are contemporaneous with the consultation in process.¹¹

The bill then adds two new environmental baseline criteria. As a fourth criterion, it adds “existing structures and facilities and the past, present, and future effects of the physical existence of such structures and facilities on the species or the critical habitat of the species.” This change reflects the fact that the environmental baseline should act as a snapshot of a species’ health at the time of the consultation. Too often, however, the Services have used the environmental baseline to create a hypothetical environment that ignores existing infrastructure. This change will require the Services to use a more complete picture of current impacts to species. The bill adds a fifth criterion that requires consideration of federal actions and facilities that are not within the Secretary’s discretion to modify. This change is intended to cover actions like the delivery of water from federal projects to senior water rights holders.

Title I of the bill amends Section 4 of the ESA to codify agencies’ existing efforts to reduce current backlogs in listing petitions and critical habitat designations through a “National Listing Work Plan.”¹² These changes would lower the risk of litigation in the listing process and allow the Services to allocate those resources toward the species most in need of protection. The bill requires the Services to submit, each fiscal year, a work plan to Congress that covers listing actions for the next five fiscal years. The work plan must include information on listing petitions, listing determinations, and critical habitat designations. In the work plans, the Services must assign each species a priority classification, with priority one being the highest and priority five being the lowest. For example, a priority one species would be classified as critically imperiled and in need of immediate action, whereas a priority five species is a species for which little information exists regarding threats and its status.

Private lands play a significant role in managing and recovering endangered and threatened species. Renowned 19th century conservationist Aldo Leopold said it best: “conservation will ultimately

¹⁰*Maine Lobstermen’s Association v. National Marine Fisheries Service*, No. 22–5238 (D.C. Cir. 2023), available at <https://law.justia.com/cases/federal/appellate-courts/cadc/22-5238/22-5238-2023-06-16.html>.

¹¹89 Fed. Reg. 24268.

¹²“National Listing Workplan,” U.S. Fish and Wildlife Service, <https://www.fws.gov/project/national-listing-workplan>.

boil down to rewarding the private landowner who conserves the public interest.”¹³ In 2023, USFWS 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.”¹⁴ According to the Audubon Society, more than 80 percent of the grassland and wetlands that provide essential bird habitat are in private ownership.¹⁵

To incentivize private landowners to invest in wildlife conservation on their property, Title II of the legislation amends the ESA to provide them with greater regulatory certainty. H.R. 1897 codifies into law Conservation Benefit Agreements (CBA), which 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 party to the agreement would be able to continue their operations. Currently, these agreements exist only through executive action and secretarial orders, giving the Services great discretion in how they take these agreements into account when making listing decisions. To improve certainty, the bill requires the Services to take the conservation benefit of these agreements into account when making listing decisions.

Title II also contains provisions intended to streamline and provide certainty in the permitting process for incidental take permits (ITP) and associated voluntary conservation agreements under Section 10 of the ESA, such as Habitat Conservation Plans (HCP). ITPs are issued to private, non-federal entities undertaking otherwise lawful projects that might result in the taking of a listed species. To issue an ITP under current law, the Services must confirm that several criteria have been met, including that issuing such a permit “will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.”¹⁶

HCPs are species conservation agreements into which private entities can enter with the Services after a species has already been listed under the ESA. Like CBAs, HCPs allow private entities to continue operations through an ITP if their conservation measures are followed. These agreements can take as long as a decade to be approved by the Services, and in some cases, the Services have reneged on HCPs or leveraged other federal and state regulatory processes to facilitate additional restrictions.

To streamline and provide certainty in the permitting process, Title II binds all parties, including the Services, to an HCP’s requirements. It also explicitly prohibits the Services from using other federal or state regulatory processes to require additional conservation measures beyond what is included in the HCP. Under Title II, federal agencies are required to adopt the measures included in the HCP for any authorization related to the action that is the subject of the HCP. ITPs issued under Section 10 are also exempted from the duplicative requirements to conduct Section 7

¹³S.L. Flader, et al., *The River of the mother of God: and other Essays by Aldo Leopold*, University of Wisconsin Press, Madison (1992).

¹⁴“ESA Basics: 50 Years of Conserving Endangered Species,” U.S. Fish and Wildlife Service, February 1, 2023, <https://www.fws.gov/sites/default/files/documents/endangered-species-act-basics-february-2023.pdf>.

¹⁵C.B. Wilsey, et al., *North American Grasslands and Birds Report*, National Audubon Society, New York (2019), https://nas-national-prod.s3.amazonaws.com/audubon_north_american_grasslands_birds_report-final.pdf.

¹⁶16 U.S.C. § 1539.

consultation and a National Environmental Policy Act (NEPA) review.

Title III of H.R. 1897 reasserts congressional intent by providing regulatory incentives and opportunities in the ESA process. Section 9 of the ESA 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.”¹⁷ The Act, however, does not automatically apply the same prohibitions to threatened species. Instead, Section 4(d) gives the Services the discretion to grant some exceptions to the take prohibitions for threatened species.¹⁸ While NOAA has used this flexibility,¹⁹ USFWS manages threatened species as endangered species, counter to congressional intent.²⁰

USFWS began issuing 4(d) rules in 1974, but in 1975 the agency finalized what has become known as the “blanket 4(d) rule” (blanket rule).²¹ The blanket rule allows USFWS 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. By regulating threatened species as endangered species, the blanket rule removes conservation incentives for impacted parties because no regulatory burdens are relaxed when species are downlisted. In 2019, the Trump administration finalized a rule-making that rescinded USFWS’s ability to issue blanket rules,²² but the Biden administration reinstated that authority in 2024.²³

Title III of the bill 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) decreasing stringency of the prohibitions as such recovery goals are met; and (3) provision for state management of the species once all recovery goals are met in preparation for the species being delisted. H.R. 1897 also requires the Services to account for the conservation and economic effects in their regulations governing take of threatened species, codifying a recent decision by the U.S. District Court for the Western District of Texas in *Kansas Natural Resources Coalition v. U.S. Fish and Wildlife Service*.

These steps improve accountability and transparency and incentivize states and private landowners to take conservation actions that restore habitat for and help recover listed species, given the tangible regulatory relief that will follow. The bill 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 bases for 4(d) rules when species are downlisted to threatened species status.

¹⁷ 16 U.S.C. § 1532.

¹⁸ 16 U.S.C. § Sec 1533.

¹⁹ 88 Fed. Reg. 40742.

²⁰ Megan E. Jenkins & Camille Wardle, “Revisions of the Regulations for Prohibitions to Threatened Wildlife and Plants,” The Center for Growth and Opportunity at Utah State University, October 17, 2018, <https://www.thecgo.org/research/revision-of-the-regulations-for-prohibitions-to-threatened-wildlife-and-plants/>.

²¹ David Willms, “Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery,” The Codex of the Endangered Species Act, Volume II, available at https://republicans-naturalresources.house.gov/UploadedFiles/Codex_II_Chapter_3.pdf.

²² 84 Fed. Reg. 44753.

²³ 89 Fed. Reg. 23919.

H.R. 1897 also affords each state the opportunity to propose recovery strategies for threatened species and species that are candidates for listing in that state. The bill requires the Services to review a 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.

Additionally, Title III amends Section 4(g), which requires 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 that it does not require relisting. The bill adds language that prohibits judicial review of the delisting of a 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 courts overrule those decisions.

The legislation gives private landowners the regulatory certainty to invest in habitat conservation on their lands. Specifically, the bill prohibits the Services from designating critical habitat on private lands that are already implementing habitat conservation and restoration actions designed to conserve the species in question and approved by the Services. This provision mirrors language from the Sikes Act,²⁴ which prevents critical habitat designations on lands controlled by the Department of War if approved habitat conservation measures are already being implemented on those lands.

Title III also codifies provisions from the 2025 proposed rule, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat.” These provisions provide guidelines for how the Services determine whether a critical habitat designation is necessary, how an analysis of the impact of a critical habitat designation should be conducted, and criteria for delisting species. It also requires the Services to consider data submitted by a state, tribal, or county government when making listing and critical habitat determinations.

Lastly, Title III clarifies that when one or both Services determine that a species is threatened or endangered only in a “significant portion of its range,” the Secretary may list the species with respect to only that portion. The Services have incorrectly interpreted current law by determining that species are threatened or endangered only in significant portions of their ranges but still extending ESA protections wherever the species are found. The language in this title corrects that misinterpretation by ensuring that listings occur only in the portion of a species range where it is truly at risk.

Title IV amends the ESA to require that the “best scientific and commercial data available” used to make listing and critical habitat decisions be readily available and accessible online. ESA-related regulations are often controversial and impact the public in many ways, including through land use, access to natural resources, and property values. In many cases, all the public sees is the result of a decision-making process, not what led to that decision being

²⁴ 16 U.S.C. § 670a.

made. H.R. 1897, however, improves public understanding of what the Services identified as the “best scientific and commercial data available.”

Relatedly, the bill requires the Services 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.

Title IV brings additional transparency by requiring the Chair of the Council on Environmental Quality (CEQ) 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.

Additionally, Title IV unwinds the perverse financial incentives that spur litigious environmental groups to sue over ESA-related actions. The bill places a \$200,000 cap on the awarding of attorneys fees in a single ESA-related adjudication and prohibits an entity from receiving attorneys fees more than three times in a 12-month period. The bill also requires that when two or more parties are co-plaintiffs in an ESA-related lawsuit, they are considered collectively when determining attorneys fees eligibility.

Title IV requires any listing decision to be accompanied by an analysis of the decision’s effects on the economy, national security, human health and safety, and any other relevant areas. This analysis must be conducted in coordination with the states, local governments, and tribes affected by the determination. This section does not preclude a species from being listed for economic and national security reasons but gives the public necessary information on how a listing may impact them. Currently, the ESA requires an analysis of economic and national security impacts to be performed only when designating critical habitat. Areas can be excluded from critical habitat for these reasons.

Title IV also includes language requiring transparency on the impacts of large critical habitat designations and experimental population areas. Specifically, it requires the Services to submit to the House Committee on Natural Resources and the Senate Committee on Environment and Public Works a notification of any proposed designation of critical habitat or any experimental population area over 50,000 acres. The notification must include an inventory and evaluation of the natural resource uses and values of the area; analysis of how those uses may be incompatible with or in conflict with the proposed designation; and statements regarding the consultation that took place with federal, state, and local governments with respect to the proposed designation. Additionally, it requires data on the costs of ESA recovery efforts to be published on data.gov, including the costs of experimental populations defined under Section 10(j) of ESA.

On April 5, 2024, the Services finalized a rule that changed the interagency consultation process on federal projects.²⁵ This rule includes a provision that allows the Services to impose measures that

²⁵ 89 Fed. Reg. 24268.

“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 Services’ discretion. Yet allowing the Services to require offsets for any residual impacts from an agency action on a listed species is not supported by the ESA’s statutory language. As written, Section 7 of the ESA requires federal agencies and project applicants to “minimize” impacts to listed species and critical habitat.²⁶ The words “offset” or “mitigate” are not mentioned. To provide clarity to the Services, the bill amends Section 7 to state explicitly that federal agencies and project applicants are not required to fully offset impacts to listed species and critical habitat.

Title V amends Section 7(b)(4) of the ESA in several ways. Importantly, it codifies the Services’ approach to quantifying, as a part of an ESA Section 7 consultation, the take of a listed species through the use of surrogates or “substitutes” when directly quantifying take is impossible or infeasible. This approach streamlines the permitting process by allowing the Services to use a similar species or habitat, for which anticipated take is better understood, to quantify take.

Additionally, this title removes language that precludes conclusion of consultations regarding an ESA-listed marine mammal if Marine Mammal Protection Act (MMPA) permitting requirements have not already been satisfied. This process is redundant, as the ESA requires actions permitted under Section 7 to avoid jeopardizing the existence of the species. The ESA can and should stand on its own. Moreover, receiving an MMPA authorization requires a negligible impact determination (NID), which federal agencies have weaponized to shut down otherwise lawful activities, such as in the case of the Maine lobster fishery, with respect to which NMFS stated that receiving an NID would require massive shutdowns of federal fisheries.

Title V also directs the Services to conduct a retrospective review of modifications that have been adopted to proposed actions during successive Section 7 consultations. This provision requires the Services, for any consultation that occurs 10 years or more after the original consultation, to determine if those modifications will improve the likelihood of the species’ survival. During the Section 7 consultation process, the Services often propose Reasonable and Prudent Alternatives (RPA) or Reasonable and Prudent Measures (RPM) to modify federal actions to avoid jeopardizing a listed species. Often these RPAs and RPMs impose additional costs and, in some cases, significantly change the action. If the Services determine that continuing the modification will not increase the likelihood of the species’ survival, they shall discontinue the modification.

Further, Title V requires the Services to conduct Section 7 consultations based solely on effects that are (1) caused by the actions that are subject to such consultations and (2) reasonably certain to occur. The bill provides explicit criteria to determine whether an effect is “caused by the action itself” and whether such effects are “reasonably certain to occur,” giving the Services consistent congressional direction on how to conduct consultations. Language is

²⁶ 16 U.S.C. § 1536.

included to ensure that the beneficial effects of avoidance, minimization, and mitigation measures proposed by the applicable Federal action agency or applicant (bolded for emphasis) are considered during the consultation. This will ensure that any voluntary actions taken by the proponent of an action are considered, while also protecting against overreach by the Services.

Title V also amends Section 7 to ensure that consultations are confined to the area directly affected by the agency action and, in instances when a Section 7 consultation finds that a project is likely to result in jeopardy or adverse modification, requires the Secretary to suggest only RPAs that are feasible for the federal agency and applicant. The RPAs must also impose the fewest economic and other relevant costs for the applicant.

Title V also prohibits judicial review of biological opinions more than 150 days after the date on which the opinion was issued. Challenges to biological opinions are required to be filed in the U.S. Court of Appeals for the District of Columbia, a court with expertise in, and a long history of, handling these cases.

Lastly, Title V allows access to the ESA Committee during a Section 7 consultation if the Services determine that (1) an action is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify the species' critical habitat or (2) any RPA necessary to avoid such jeopardization or adverse modification would impair national security or result in significant adverse national or regional economic impacts. The ESA Committee is a cabinet-level committee established in the 1978 amendments to the ESA, which can allow a proposed action to move forward even if it jeopardizes the continued existence of the species or adversely modifies critical habitat. Under current law, the ESA Committee can be triggered only if the Services issue a jeopardy biological opinion without any RPAs.

Use of the ESA Committee is rare under current law, having occurred only three times, most recently in 1992. Title V's language is not intended to vastly increase the number of times the ESA Committee is utilized but instead aims to provide greater access to projects of national and regional significance where RPAs may exist but key national priorities outweigh their costs. Projects that achieve this threshold may include the Central Valley Project and energy development in the Gulf of America.

Title VI amends Sections 9 and 10 of the ESA to remove duplicative permitting processes related to the importation and exportation of species that are not native to the U.S. It clarifies that regulating trade of non-native species should be governed by the standards used in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), not by additional ESA regulations that stifle conservation efforts.

CITES is an international agreement signed in 1973 that governs the trade of endangered plants and animals.²⁷ The U.S., 183 other countries, and the European Union are parties to CITES,²⁸ which is implemented in Section 8a of the ESA.²⁹ Over 40,000 species are granted some level of protection by CITES, which in many ways mirrors ESA protections, with species listed in CITES Appendix I

²⁷ "What is CITES?" CITES.org, <https://cites.org/eng/disc/what.php>.

²⁸ *Id.*

²⁹ 16 U.S.C. § 1537a.

being considered the most at risk of extinction.³⁰ The ESA, however, lists many species not native to the U.S. because the Act requires the Services to list species regardless of the species' range country.

In most cases, private entities that wish to legally import a CITES- or ESA-listed species into the U.S. must receive an import permit from the Services. Title VI removes the duplicative process of receiving an ESA import permit for a CITES-listed species if such species is not native to the U.S. and if all CITES requirements are met. This provision streamlines the permitting process and removes the uncertainty that sportsmen and entities like zoos and aquariums face when conducting conservation activities abroad.

Title VI also clarifies that the Services must use the CITES “not detrimental to the survival of the species” standard instead of the current “enhancement” standard when issuing permits related to species that are not native to the U.S.³¹ Currently, for the Services to issue permits related to non-native CITES- and ESA-listed species, they must certify that issuing the permit would “enhance the propagation or survival of the species.”³² This standard is extremely subjective and has caused complications in the permitting process, in some cases even turning into a “pay-to-play” exercise. Title VI also contains language pertaining to what is not detrimental in the case of captive-bred species, which is intended to provide clear direction to guide the permitting process for activities such as routine animal transport between zoo or animal research facilities.

Title VII limits the application of Section 11(f) of the ESA to enforcing Section 11 and Section 8a. This ensures that the Services cannot misuse this section to prohibit otherwise lawful activities by issuing regulations that are independent of existing statutory authority in Section 11 and Section 8a. Section 11 is the enforcement section of the Act, granting federal agencies the ability to enforce the ESA and giving private citizens the ability to file ESA-related lawsuits.³³ Section 11(f) states that “[t]he Secretary . . . [is] authorized to promulgate such regulations as may be appropriate to enforce this chapter . . .”³⁴ The plain language of this provision explicitly limits the agency’s rulemaking authority to regulations that will further statutory enforcement.

However, against congressional intent, the Services, especially NMFS, have exploited Section 11(f) as a justification for issuing regulations that lower the chance of taking a listed species. An example of this misuse is NFMS’s recently withdrawn 2022 rule that expanded vessel speed restrictions related to the North Atlantic Right Whale (NARW). Essentially, that rule placed requirements on vessel operators that were designed to lower the likelihood of striking an endangered NARW.³⁵ During a February 26, 2025, oversight hearing, the Subcommittee on Water, Wildlife and Fish-

³⁰ “The CITES Species,” CITES.org, <https://cites.org/eng/disc/species.php>.

³¹ Articles III and IV of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, (1973), available at <https://cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>.

³² 16 U.S.C. § 1539.

³³ 16 U.S.C. § 1540.

³⁴ *Id.*

³⁵ 87 Fed. Reg. 46921.

eries heard testimony on why Section 11(f), as currently written, should not be interpreted as allowing NMFS to issue such a regulation. As Paul Weiland, a partner at Nossaman LLP who has worked on numerous ESA issues, stated in his testimony: “Those means Congress included in the ESA do not include regulations to prevent take. The vessel speed rule purports to impose an enforceable requirement on vessel operators under the ESA, even when those operators have not engaged in prohibited take of Right Whales and there is a *de minimis* risk that their conduct could result in prohibited take.”³⁶ Nonetheless, the bills clarify the proper scope of this provision to prevent future misuses of this authority.

COMMITTEE ACTION

H.R. 1897 was introduced on March 6, 2025, by Rep. Bruce Westerman (R-AR). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On March 25, 2025, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On December 17, 2025, the Committee on Natural Resources met to consider the bill. The Subcommittee on Water, Wildlife and Fisheries was discharged from further consideration of H.R. 1897 by unanimous consent. Rep. Harriet Hageman (R-WY) offered an Amendment in the Nature of a Substitute designated Westerman_036 ANS. The Amendment in the Nature of a Substitute, as amended, was agreed to by voice vote. Rep. Harriet Hageman (R-WY) offered an amendment to the Amendment in the Nature of a Substitute designated Hageman_108. The amendment was agreed to by voice vote. Rep. Paul Gosar (R-AZ) offered an amendment to the Amendment in the Nature of a Substitute designated Gosar_070. The amendment was agreed to by a roll call vote of 23 yeas to 18 nays, as follows:

³⁶Testimony of Mr. Paul Weiland, House Committee on Natural Resources, Subcommittee on Water, Wildlife and Fisheries, February 26, 2025, <https://docs.house.gov/meetings/II/II13/20250226/117865/HHRG-119-II13-Wstate-WeilandP-20250226.pdf>.

Committee on Natural Resources

U.S. House of Representatives

119th Congress

Date: December 17, 2025

Recorded Vote #: 4

Meeting on / Amendment on: **Gosar 070 amendment** to Westerman_036 Amendment in the Nature of a Substitute to H.R. 1897 (Rep. Westerman), "ESA Amendments Act of 2025"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Huffman, CA		X	
Mr. Wittman, VA	X			Mr. Neguse, CO			
Mr. McClintock, CA				Ms. Leger Fernandez, NM		X	
Mr. Gosar, AZ	X			Ms. Stansbury, NM		X	
Mrs. Radewagen, AS	X			Ms. Hoyle, OR		X	
Mr. LaMalfa, CA	X			Mr. Magaziner, RI		X	
Mr. Webster, FL	X			Mr. Golden, ME		X	
Mr. Fulcher, ID	X			Mr. Min, CA		X	
Mr. Stauber, MN	X			Ms. Dexter, OR		X	
Mr. Tiffany, WI	X			Mr. Hernández, PR		X	
Ms. Boebert, CO	X			Ms. Randall, WA		X	
Mr. Bentz, OR	X			Ms. Ansari, AZ		X	
Ms. Kiggans, VA	X			Ms. Elfreth, MD		X	
Mr. Hunt, TX	X			Mr. Gray, CA		X	
Mr. Collins, GA	X			Ms. Rivas, CA		X	
Ms. Hageman, WY	X			Ms. Grijalva, AZ		X	
Mr. Amodei, NV				Mrs. Dingell, MI		X	
Mr. Walberg, MI	X			Mr. Soto, FL		X	
Mr. Ezell, MS	X			Ms. Brownley, CA			
Ms. Maloy, UT	X			Ms. Lee, NV		X	
Mr. McDowell, NC	X						
Mr. Crank, CO	X						
Mr. Begich, AK	X						
Mr. Hurd, CO	X						
Mr. Kennedy, UT	X			TOTAL:	23	18	

Rep. Pete Stauber (R-MN) offered an amendment to the Amendment in the Nature of a Substitute designated Stauber #1. The amendment was agreed to by voice vote. Ranking Member 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 16 yeas to 25 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

119th Congress

Date: December 17, 2025

Recorded Vote #: 5

Meeting on / Amendment on: **Huffman #1 amendment** to Westerman_036 Amendment in the Nature of a Substitute to H.R. 1897 (Rep. Westerman), "ESA Amendments Act of 2025"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Huffman, CA	X		
Mr. Wittman, VA		X		Mr. Neguse, CO			
Mr. McClintock, CA				Ms. Leger Fernandez, NM	X		
Mr. Gosar, AZ		X		Ms. Stansbury, NM	X		
Mrs. Radewagen, AS		X		Ms. Hoyle, OR	X		
Mr. LaMalfa, CA		X		Mr. Magaziner, RI	X		
Mr. Webster, FL		X		Mr. Golden, ME		X	
Mr. Fulcher, ID		X		Mr. Min, CA	X		
Mr. Stauber, MN		X		Ms. Dexter, OR	X		
Mr. Tiffany, WI		X		Mr. Hernández, PR	X		
Ms. Boebert, CO		X		Ms. Randall, WA	X		
Mr. Bentz, OR		X		Ms. Ansari, AZ	X		
Ms. Kiggans, VA		X		Ms. Elfreth, MD	X		
Mr. Hunt, TX		X		Mr. Gray, CA		X	
Mr. Collins, GA		X		Ms. Rivas, CA	X		
Ms. Hageman, WY		X		Ms. Grijalva, AZ	X		
Mr. Amodei, NV				Mrs. Dingell, MI	X		
Mr. Walberg, MI		X		Mr. Soto, FL	X		
Mr. Ezell, MS		X		Ms. Brownley, CA			
Ms. Maloy, UT		X		Ms. Lee, NV	X		
Mr. McDowell, NC		X					
Mr. Crank, CO		X					
Mr. Begich, AK		X					
Mr. Hurd, CO		X					
Mr. Kennedy, UT		X		TOTAL:	16	25	

Rep. Emily Randall (D-WA) offered an amendment to the Amendment in the Nature of a Substitute designated Randall #4. The amendment was not agreed to by a roll call vote of 17 yeas to 24 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

119th Congress

Date: December 17, 2025

Recorded Vote #: 6

Meeting on / Amendment on: **Randall #4 amendment** to Westerman_036 Amendment in the Nature of a Substitute to H.R. 1897 (Rep. Westerman), "ESA Amendments Act of 2025"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Huffman, CA	X		
Mr. Wittman, VA		X		Mr. Neguse, CO			
Mr. McClintock, CA				Ms. Leger Fernandez, NM	X		
Mr. Gosar, AZ		X		Ms. Stansbury, NM	X		
Mrs. Radewagen, AS		X		Ms. Hoyle, OR	X		
Mr. LaMalfa, CA		X		Mr. Magaziner, RI	X		
Mr. Webster, FL		X		Mr. Golden, ME	X		
Mr. Fulcher, ID		X		Mr. Min, CA	X		
Mr. Stauber, MN		X		Ms. Dexter, OR	X		
Mr. Tiffany, WI		X		Mr. Hernández, PR	X		
Ms. Boebert, CO		X		Ms. Randall, WA	X		
Mr. Bentz, OR		X		Ms. Ansari, AZ	X		
Ms. Kiggans, VA		X		Ms. Elfreth, MD	X		
Mr. Hunt, TX		X		Mr. Gray, CA		X	
Mr. Collins, GA		X		Ms. Rivas, CA	X		
Ms. Hageman, WY		X		Ms. Grijalva, AZ	X		
Mr. Amodei, NV				Mrs. Dingell, MI	X		
Mr. Walberg, MI		X		Mr. Soto, FL	X		
Mr. Ezell, MS		X		Ms. Brownley, CA			
Ms. Maloy, UT		X		Ms. Lee, NV	X		
Mr. McDowell, NC		X					
Mr. Crank, CO		X					
Mr. Begich, AK		X					
Mr. Hurd, CO		X					
Mr. Kennedy, UT		X		TOTAL:	17	24	

Rep. Adam Gray (D-CA) offered an amendment to the Amendment in the Nature of a Substitute designated Gray 019. The amendment was agreed to by voice vote. Rep. Adelita Grijalva (D-AZ) offered an amendment to the Amendment in the Nature of a Substitute designated Grijalva #2. The amendment was not agreed to by a roll call vote of 17 yeas to 24 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

119th Congress

Date: December 17, 2025

Recorded Vote #: 7

Meeting on / Amendment on: **Grijalva #2 amendment** to Westerman_036 Amendment in the Nature of a Substitute to H.R. 1897 (Rep. Westerman), "ESA Amendments Act of 2025"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Huffman, CA	X		
Mr. Wittman, VA		X		Mr. Neguse, CO			
Mr. McClintock, CA				Ms. Leger Fernandez, NM	X		
Mr. Gosar, AZ		X		Ms. Stansbury, NM	X		
Mrs. Radewagen, AS		X		Ms. Hoyle, OR	X		
Mr. LaMalfa, CA		X		Mr. Magaziner, RI	X		
Mr. Webster, FL		X		Mr. Golden, ME	X		
Mr. Fulcher, ID		X		Mr. Min, CA	X		
Mr. Stauber, MN		X		Ms. Dexter, OR	X		
Mr. Tiffany, WI		X		Mr. Hernández, PR	X		
Ms. Boebert, CO		X		Ms. Randall, WA	X		
Mr. Bentz, OR		X		Ms. Ansari, AZ	X		
Ms. Kiggans, VA		X		Ms. Elfreth, MD	X		
Mr. Hunt, TX		X		Mr. Gray, CA		X	
Mr. Collins, GA		X		Ms. Rivas, CA	X		
Ms. Hageman, WY		X		Ms. Grijalva, AZ	X		
Mr. Amodei, NV				Mrs. Dingell, MI	X		
Mr. Walberg, MI		X		Mr. Soto, FL	X		
Mr. Ezell, MS		X		Ms. Brownley, CA			
Ms. Maloy, UT		X		Ms. Lee, NV	X		
Mr. McDowell, NC		X					
Mr. Crank, CO		X					
Mr. Begich, AK		X					
Mr. Hurd, CO		X					
Mr. Kennedy, UT		X		TOTAL:	17	24	

Rep. Debbie Dingell (D-MI) offered an amendment to the Amendment in the Nature of a Substitute designated Dingell #5. The amendment was not agreed to by a roll call vote of 16 yeas to 25 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
119th Congress

Date: December 17, 2025

Recorded Vote #: 8

Meeting on / Amendment on: **Dingell #5 amendment** to Westerman_036 Amendment in the Nature of a Substitute to H.R. 1897 (Rep. Westerman), "ESA Amendments Act of 2025"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Huffman, CA	X		
Mr. Wittman, VA		X		Mr. Neguse, CO			
Mr. McClintock, CA				Ms. Leger Fernandez, NM	X		
Mr. Gosar, AZ		X		Ms. Stansbury, NM	X		
Mrs. Radewagen, AS		X		Ms. Hoyle, OR	X		
Mr. LaMalfa, CA		X		Mr. Magaziner, RI	X		
Mr. Webster, FL		X		Mr. Golden, ME		X	
Mr. Fulcher, ID		X		Mr. Min, CA	X		
Mr. Stauber, MN		X		Ms. Dexter, OR	X		
Mr. Tiffany, WI		X		Mr. Hernández, PR	X		
Ms. Boebert, CO		X		Ms. Randall, WA	X		
Mr. Bentz, OR		X		Ms. Ansari, AZ	X		
Ms. Kiggans, VA		X		Ms. Elfreth, MD	X		
Mr. Hunt, TX		X		Mr. Gray, CA		X	
Mr. Collins, GA		X		Ms. Rivas, CA	X		
Ms. Hageman, WY		X		Ms. Grijalva, AZ	X		
Mr. Amodei, NV				Mrs. Dingell, MI	X		
Mr. Walberg, MI		X		Mr. Soto, FL	X		
Mr. Ezell, MS		X		Ms. Brownley, CA			
Ms. Maloy, UT		X		Ms. Lee, NV	X		
Mr. McDowell, NC		X					
Mr. Crank, CO		X					
Mr. Begich, AK		X					
Mr. Hurd, CO		X					
Mr. Kennedy, UT		X		TOTAL:	16	25	

The bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 25 yeas to 16 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

119th Congress

Date: December 17, 2025

Recorded Vote #: 9

Meeting on / Amendment on: **On Favorably Reporting, as amended, H.R. 1897 (Rep. Westerman), "ESA Amendments Act of 2025"**

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Huffman, CA		X	
Mr. Wittman, VA	X			Mr. Neguse, CO			
Mr. McClintock, CA				Ms. Leger Fernandez, NM		X	
Mr. Gosar, AZ	X			Ms. Stansbury, NM		X	
Mrs. Radewagen, AS	X			Ms. Hoyle, OR		X	
Mr. LaMalfa, CA	X			Mr. Magaziner, RI		X	
Mr. Webster, FL	X			Mr. Golden, ME	X		
Mr. Fulcher, ID	X			Mr. Min, CA		X	
Mr. Stauber, MN	X			Ms. Dexter, OR		X	
Mr. Tiffany, WI	X			Mr. Hernández, PR		X	
Ms. Boebert, CO	X			Ms. Randall, WA		X	
Mr. Bentz, OR	X			Ms. Ansari, AZ		X	
Ms. Kiggans, VA	X			Ms. Elfreth, MD		X	
Mr. Hunt, TX	X			Mr. Gray, CA	X		
Mr. Collins, GA	X			Ms. Rivas, CA		X	
Ms. Hageman, WY	X			Ms. Grijalva, AZ		X	
Mr. Amodei, NV				Mrs. Dingell, MI		X	
Mr. Walberg, MI	X			Mr. Soto, FL		X	
Mr. Ezell, MS	X			Ms. Brownley, CA			
Ms. Maloy, UT	X			Ms. Lee, NV		X	
Mr. McDowell, NC	X						
Mr. Crank, CO	X						
Mr. Begich, AK	X						
Mr. Hurd, CO	X						
Mr. Kennedy, UT	X			TOTAL:	25	16	

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 March 25, 2025.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

- Names the bill the “ESA Amendments Act of 2025.”

Section 2. Endangered Species Act of 1973 Definitions

- *Foreseeable Future*: Defines the previously undefined term “foreseeable future,” which is used in current law as a key factor in determining whether a species should be considered a threatened species. This codifies the definition the Trump administration adopted in the 2019 rulemaking, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat.”

- *Commercial Activity*: Clarifies that public display or education for conservation purposes does not constitute a commercial activity under the ESA.

- *Conserve; Conserving; Conservation*: Clarifies the ability of the Secretary to permit regulated take of listed species for conservation purposes by eliminating the prerequisite of an “extraordinary case”, which has proven unimplementable.

- *Habitat*: Clarifies that areas that cannot support listed species’ full biological requirements are not classified as critical habitat.

- *Best Scientific and Commercial Data Available*: Amends the definition of “best scientific and commercial data available” to ensure that data used in ESA decision-making is impartial and is objectively applied without the use of precautionary assumptions in favor of the species.

- *Environmental Baseline*: Defines the term “environmental baseline” in the Section 7 consultation process to include existing infrastructure, ensuring that operating assumptions in ESA decision-making reflect current reality, rather than an ideal fiction. The definition also includes the effects of ongoing federal actions and federal facilities that are not within the Secretary’s discretion to modify.

Section 3. Authorization of Appropriations

- Reauthorizes the ESA through fiscal year (FY) 2031 at levels consistent with the fiscally responsible House FY 2026 appropriations bills and the Majority Leader’s Floor Protocols for the 119th Congress.

Section 4. Rule of Construction

- Clarifies that nothing in this bill modifies any state’s primacy over management of fish and wildlife on lands and waters within that state.

Section 5. Renaming the Endangered Species Act of 1973 to Endangered Species Recovery Act

- Renames the ESA the “Endangered Species Recovery Act” and requires all references in federal documents to reflect this change.

TITLE I: OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

- Establishes a science-based ESA listing work plan structure that provides greater flexibility in the timing of acting on petitions to list a species as threatened or endangered based on the severity of threats to the species, ongoing conservation efforts for the species, and level of scientific information on the species’ status.
- Replaces the unscientific requirement for the Services to act within 12 months on listing petitions with the listing work plan framework.

TITLE II: INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

- Codifies CBAs, which promote voluntary conservation and prevent regulatory overreach if the Services ultimately list the relevant species.
- Exempts CBA approvals from the Section 7 consultation process and NEPA.
- Prevents the federal government from seeking mitigation measures beyond what a Habitat Conservation Plan or other approved permit already requires.
- Exempts from the Section 7 consultation process the issuance of voluntary consultation agreements under Section 10 of the ESA.
- Exempts from NEPA incidental take permits issued consistent with Section 10 voluntary conservation plans.

TITLE III: PROVIDING FOR GREATER INCENTIVES TO RECOVER LISTED SPECIES

- Requires the Services to account for the conservation and economic effects of their regulations governing take of threatened species.
- Requires the Services to establish objective, incremental recovery goals for threatened species, decrease regulatory burdens as populations improve, and provide for state management of species once all recovery goals are met.
- Allows states to develop and submit recovery strategies to the Services for candidate or threatened species. Permits state-developed recovery plans to become the management regulations if the Services determine such plans would effectively conserve the species.
- Requires objective, incremental recovery goals for endangered species to be developed in preparation for when the species is upgraded to threatened status.
- Imposes on the Services a 30-day deadline to initiate a rule-making process adjusting a species’ status under the ESA once their own science recommends such adjustment.
- Prohibits judicial review within the five-year monitoring period after a species is delisted, preventing years of successful conservation work from being undone in a courtroom by radical environmental groups and activist judges.

- Codifies provisions from the 2025 proposed rule, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat,” that guide the Services in determining whether a critical habitat designation is necessary, analyzing the impacts of a critical habitat designation, and establishing criteria for delisting species.
- Requires the Services to consider data submitted by state, tribal, or county governments when making listing and critical habitat determinations.
- Clarifies that when the Services determine a species is threatened or endangered only in a “significant portion of its range,” the Secretary must list the species with respect to only that portion of its range.
- Promotes private property rights and voluntary conservation efforts by preventing critical habitat designations on private lands when landowners implement land management plans to conserve listed species. This mirrors existing provisions from the Sikes Act (16 U.S.C. § 670a).
- Provides clear statutory guidelines on the process and sole criteria that may serve as the basis for delisting decisions, rectifying the Services’ historical practices that have resulted in species remaining listed despite no longer meeting the requirements to be listed as threatened or endangered.

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

- Requires the Services to publish online the scientific and commercial data used as the basis for listings and critical habitat determinations. Provides exceptions for data that states or the Department of War do not want to be made publicly available. Requires the Services to provide to states affected by a forthcoming species listing all data justifying the listing.
- Requires the Chairman of the CEQ, in consultation with the Secretary of the Interior and the Secretary of Commerce, to disclose all costs associated with ESA-related lawsuits to Congress.
- Places a \$200,000 cap on the awarding of attorneys fees in a single ESA-related adjudication and prohibits an entity from receiving attorneys fees more than three times in a 12-month period.
- Requires that when two or more parties are co-plaintiffs in an ESA-related lawsuit they be considered collectively in determining whether they are eligible for attorneys fees.
- Requires an analysis of the economic impacts, national security impacts, and human health and safety impacts of each listing. This analysis is required to be conducted in coordination with the states, local governments, and tribes impacted by the determination.
- Requires the Services to submit to the House Committee on Natural Resources and the Senate Committee on Environment and Public Works a notification of any proposed designation of critical habitat or any experimental population area over 50,000 acres. The notification must include an inventory and evaluation of the natural resource uses and values of the area, analysis of how those uses may be incompatible with or in conflict with the proposed designation, and statements regarding the consultation that took place with federal, state, and local governments with respect to the proposed designation.

- Requires publication on data.gov of data on the costs of ESA recovery efforts, including the costs of experimental populations defined under Section 10(j) of ESA.

TITLE V: STREAMLINING PERMITTING PROCESS

- Amends Section 7 of the ESA to prevent the Services from compelling mitigation as a part of the RPM process, restoring decades of regulatory precedent. This provision will ensure the Services cannot weaponize the RPM process, which Congress intended to be used only to recommend small modifications without substantially increasing the cost of projects. Reduces regulatory duplication by separating the Section 7 consultation process from the MMPA.
- Amends Section 7 to require the Services to determine if long-standing modifications to federal projects adopted as part of ESA consultation materially benefit listed species. They must be discontinued if the Services determine they are not benefiting the relevant species.
- Amends Section 7 to require the Services to conduct consultations based on effects that are caused by the action itself and that are reasonably certain to occur.
- Amends Section 7 to ensure that consultations are confined to the area directly affected by the agency action. In addition, requires in instances when a Section 7 consultation finds a project is likely to result in jeopardy or adverse modification that the Secretary shall suggest only RPAs that are feasible for the federal action agency and applicant. The RPAs must also impose the fewest economic and other relevant costs for the applicant.
- Prohibits judicial review of biological opinions after 150 days from the date on which the opinion is issued.
- Allows access to the ESA Committee during a Section 7 consultation if proposed RPAs would impair national security or have significant adverse national or regional economic impacts.

TITLE VI: ELIMINATING BARRIERS TO CONSERVATION

- Streamlines the permitting of international movement of non-native species by eliminating redundant ESA permits for species listed under CITES.
- Clarifies that CITES “not detrimental to the survival of the species” standard governs permitting requirements for non-native species.

TITLE VII: RESTORING CONGRESSIONAL INTENT

- Amends Section 11(f) of the ESA to clarify that the Services do not have authority to prohibit otherwise lawful activities by issuing regulations, independent of existing statutory authority in Section 11 and Section 8A of the ESA, that are designed to reduce the mere potential of impacting listed species.

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.

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, streamline the permitting process, eliminate barriers to conservation, and restore congressional intent.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY,
AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to the Congressional Budget Act of 1974.

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

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office pursuant to Section 423 of the Unfunded Mandates Reform Act.

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”] may be cited as the “Endangered Species Recovery Act”.

TABLE OF CONTENTS

*	*	*	*	*	*	*
[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 terms “best scientific and commercial data available” and “best scientific data available”—*

(A) mean all relevant and objective scientific and commercial information available at the time of the agency action; and

(B) include credible and reliable data, quantitative analyses, conceptual and numerical models, and model results that—

(i) account for known or potential sources or error;

(ii) are applied using prevailing principles, methods, tools, and professional standards of practice; and

(iii) are impartially gathered and objectively applied without reliance on precautionary assumptions in favor of a species or other assumptions or policy prescriptions that bias the application.

[(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 *or public display or education aimed at the preservation or conservation of a species.*

[(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 Secretary 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)(i) *For the purpose of designating critical habitat for a threatened species or an endangered species under this Act, the term “habitat”—*

(I) *means the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support 1 or more life processes of the threatened species or endangered species; and*

(II) *does not include an area—*

(aa) *outside the current or historic range of the threatened species or endangered species; or*

(bb) *visited by only vagrant individual members of the threatened species or endangered species.*

(ii) *If the setting described in clause (i)(I) does not support all of the life processes of the relevant threatened species or endangered species, the threatened species or endangered species must be able to access, from the setting, other areas necessary to support its remaining life processes.*

[(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) (A) 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.

(B) *For the purposes of applying subparagraph (A), the term "foreseeable future" means the period of time extending into the future within which the Secretary, based on the best scientific and commercial data available, is able to determine that a factor described in subparagraphs (A) through (E) of section 4(a)(1) is likely to occur with respect to the species.*

(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 de-

termination 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.]

(A)(i) *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.

(ii) The Secretary may determine, based on the best scientific data available, that it is not prudent to designate habitat as described in clause (i)(I) for a species, including if the Secretary determines—

(I) the species is determined under paragraph (1) to be a threatened species or an endangered species because of take or other human activity and such designation will increase the degree of such take or other human activity;

(II) the species is determined under paragraph (1) to be a threatened species or an endangered species because of a factor—

(aa) other than that described in subparagraph (A) of that paragraph; or

(bb) that cannot be addressed through reasonable and prudent alternatives resulting from consultations carried out pursuant to section 7(a)(2);

or

(III) the species primarily occurs in areas not under the jurisdiction of the United States and areas under the jurisdiction of the United States where the species occurs provide no more than a negligible conservation value to the species.

(iii) Notwithstanding clause (i)(I), if the Secretary determines under clause (ii) that it is not prudent to designate habitat as described in clause (i)(I), the Secretary is not required to so designate habitat for the species.

(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) *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.

(D)(i) *The Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification of any proposed designation of critical habitat under subparagraph (A) of an area greater than 50,000 acres.*

(ii) A notification submitted under clause (i) shall include—

(I) a description of the area proposed to be designated as critical habitat;

(II) an inventory and evaluation of the natural resource uses and values of the area and adjacent public and nonpublic land and the economic impact of the proposed designation on individuals, local communities, and the United States;

(III) an identification of users of the area and how such users will be affected by the proposed designation;

(IV) an analysis of the manner in which existing and potential natural resource uses are incompatible with or in conflict with the proposed designation and a statement of the provisions to be made for continuation or termination of existing such uses, including an economic analysis of such continuation or termination;

(V) a statement of the consultation which has been or will be had with other Federal departments and agencies, regional, State, and local government bodies, and other appropriate individuals and groups with respect to the proposed designation; and

(VI) a statement indicating the effect of the proposed designation, if any, on State and local government interests and the regional economy.

(4) If the Secretary determines under paragraph (1) that a species is a threatened species or an endangered species in only a significant portion of the range of the species, the Secretary may only list the species under subsection (c) as a threatened species or an endangered species with respect to that portion of the range of the species.

(5)(A) The Secretary shall, concurrently with determining under paragraph (1) whether 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;
- (iii) the effects on human health and safety; and
- (iv) any other relevant effect.

(B) The analysis is to be prepared in coordination with the States, local governments, and Tribes impacted by the determination.

(C) 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 data submitted to the Secretary by a State, Tribal, or local government, and 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) 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 section 10(k)) of any approved Conservation Benefit Agreement (as that term is defined in such section) relating to the species.

(2)(A) 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 data submitted to the Secretary by a State, Tribal, or local government,

as well as 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.

(B) *In addition to any area otherwise considered by the Secretary for exclusion from critical habitat under subparagraph (A), the Secretary shall consider for exclusion from critical habitat any area—*

(i) submitted by a person through public comment pursuant to paragraph (5) or (6); and

(ii) for which such submission includes credible information regarding a meaningful economic impact, impact on national security, impact on existing efforts of private landowners to conserve the applicable species, or other relevant impact of specifying the area as critical habitat that supports the exclusion from critical habitat of that area.

(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.

(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~~ , *including, with respect to a proposed regulation to designate or revise critical habitat under subsection (a)(3)—*

(I) a draft economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the designation or revision that the Secretary determines are within the area proposed for designation or covered by the revision; and

(II) a draft exclusion analysis that identifies each area the Secretary has reason to consider for exclusion under paragraph (2) and why; 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,]** *made, including, with respect to such a final regulation—*

(aa) a final economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the revision that the Secretary determines are within the area covered by the revision; and

(bb) a final exclusion analysis that identifies each area the Secretary has determined under paragraph (2) to exclude from such revision and why;

(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]**, *including—*

(aa) a final economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the designation that the Secretary determines are within the area proposed for designation; and

(bb) a final exclusion analysis that identifies each area the Secretary has determined under paragraph (2) to exclude from such designation and why; 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)(A) The Secretary shall make publicly available on the website of the applicable department the best scientific and commercial data available that is used as the basis for each regulation, including each proposed regulation, promulgated under paragraphs (1) and (3) of subsection (a).

(B) If a Governor, agency, or legislature of a State determines that public disclosure of any best scientific and commercial data available described in subparagraph (A) is prohibited by a law or regulation of the State, including such a law or regulation requiring the protection of personal information—

(i) the Governor, agency, or legislature of the State may submit to the Secretary a request to exempt such best scientific and commercial data available from the application of subparagraph (A); and

(ii) the Secretary shall so exempt such best scientific and commercial data available.

(C) Subparagraph (A) does not apply with respect to global positioning system coordinates or other geographically specific species location information.

(D) Not later than 30 days after the date of the enactment of this paragraph, the Secretary shall execute an agreement with the Secretary of War that prevents the disclosure under this paragraph of classified information pertaining to Department of War 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 determina-

tions, 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.*

(4) *The Secretary shall determine under paragraph (2)(B)(i) that a species described in paragraph (2)(A) should be removed from a list described in that paragraph and shall remove such species from such list only if the Secretary determines, pursuant to a review conducted under that paragraph and based on the best scientific and commercial data available, such species—*

(A) is extinct;

(B) is not a threatened species or an endangered species; or

(C) is not a species.

[(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) **ISSUANCE.**—

(A) 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.*

(B) REQUIREMENT.—*In issuing a regulation under subparagraph (A), the Secretary, consistent with the findings, purposes, and policy described in section 2 and based on the best scientific and commercial data available, shall consider the conservation and economic effects of such regulation.*

(2) **RECOVERY GOALS.**—

(A) IN GENERAL.—*If the Secretary issues a regulation under paragraph (1) that prohibits an act described in sec-*

tion 9(a), the Secretary shall, with respect to the species that is the subject of such regulation—

- (i) establish objective, incremental recovery goals;
- (ii) provide for the stringency of such regulation to decrease as such recovery goals are met; and
- (iii) 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 that each such recovery goal is met and, if each such recovery goal remains met, continuing until such species is removed from the list of threatened species published pursuant to subsection (c).

(B) *STATUS REVIEW.*—On the date on which the Secretary determines that each recovery goal established under subparagraph (A)(i) for a species is met, the Secretary shall begin a review of the species and subsequently determine, on the basis of such review, whether the species should be removed from the lists published pursuant to subsection (c)(1).

(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 60 days after the date on which the Secretary approves or denies a petition under subparagraph (B), the Secretary shall publish such approval or denial on the website of the applicable department.

(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 advisable, treat any species as an endangered species or threatened species even though 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 consider 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);

(B) any proposed or final determination under subsection (a)(1) required by a court order, court decree, or court-approved settlement agreement; and

(C) any proposed or final designation of critical habitat under subsection (a)(3) required by a court order, court decree, or court-approved settlement agreement.

(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 potential future listings of species considered on an emergency basis in that fiscal year.*

(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 the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on 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) the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on 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), or any successor document.

(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.

(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 bore 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 effec-

tively (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 requirements 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)(A) *In carrying out a consultation under paragraph (2) or a conference under paragraph (4), the Secretary—*

(i) except as provided in clause (ii), may only consider the effects of the action that is the subject of such consultation or conference that the Secretary determines, based on clear and substantial information, using the best scientific and commercial data available, and in accordance with subparagraphs (B) and (C), respectively, are caused by the action itself and are reasonably certain to occur; and

(ii) shall consider as a beneficial effect of the action that is the subject of such consultation or conference any avoidance, minimization, or mitigation measure proposed by the applicable Federal agency or the applicant, if any.

(B) *In determining whether an effect of an action described in subparagraph (A)(i) is caused by the action itself, the Secretary shall consider whether—*

(i) the effect is so remote in time from the action under consultation that it is not reasonably certain to occur;

(ii) the effect is so geographically remote from the immediate area involved in the action that it is not reasonably certain to occur;

(iii) the effect is only reached through a lengthy causal chain such that the effect not reasonably certain to occur;

(iv) the applicable Federal agency does not have the ability to prevent the effect due to its limited statutory authority; or

(v) would occur regardless of whether the action is carried out.

(C) *In determining whether an effect of an action described in subparagraph (A)(i) is reasonably certain to occur, the Secretary shall consider factors including the following:*

(i) Experiences with other such actions that are similar in scope, nature, and magnitude to the applicable such action.

(ii) Plans for such action.

(iii) Any economic, administrative, or legal requirement necessary for the action to be carried out that has not been fulfilled.

(iv) Whether the effect has been observed previously and to what extent.

(D) *In carrying out a consultation under paragraph (2) or a conference under paragraph (4), the Secretary may not consider an effect of the action that is the subject of such consultation or conference for which there is not clear and substantial information for the Secretary to base a determination on under subparagraph (A)(i) that the effect of the action is reasonably certain to occur.*

(E) *In this paragraph, the terms “effect of the action” and “effects of the action” mean a consequence or all consequences, respectively, to listed species or critical habitat that is or are caused by the proposed action.*

(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.]**

(A)(i) 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 within the area directly affected by the agency action, which such area may not be speculative or remote in time or distance from the agency action. In so doing, the Secretary shall differentiate the effects of the agency action from the environmental baseline.

(ii) If jeopardy or adverse modification is found, the Secretary, in cooperation and consultation with the Federal agency and applicant, if any, shall consider a range of reasonable and prudent alternatives and suggest from among that range those reasonable and prudent alternatives which the Secretary believes—

(I) would not violate subsection (a)(2);

(II) can be taken by the Federal agency or applicant, if any, in implementing the agency action;

(III) are economically and technologically feasible for the Federal agency and applicant, if any, to implement; and

(IV) impose the fewest economic and other relevant costs for the applicant, if any.

(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; *and*

(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,]** *taking on the species, including, as necessary, through the use of a substitute used to represent a listed species, habitat, or an ecological function to express the amount or extent of such incidental taking;*

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to **[minimize such impact,]** *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; and*

[(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)] *(iii) 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)] measures specified under clause (i).*

(5)(A) With respect to an ongoing agency action for which the applicable Federal agency has adopted a reasonable and prudent alternative or a reasonable and prudent measure to comply with subsection (a)(2), in any subsequent consultation for the agency action that occurs 10 years or more after the date on which the initial consultation for the agency action was completed, the Secretary shall determine whether continuing to implement the reasonable and prudent alternative or reasonable and prudent measure will materially increase the likelihood of and reduce the time for recovery of the applicable threatened species or endangered species.

(B) If the Secretary determines under subparagraph (A) that continued implementation of the reasonable and prudent alternative or reasonable and prudent measure will not materially increase the likelihood of and shorten the time for the recovery of the applicable threatened species or endangered species, the Federal agency shall discontinue implementation of the reasonable and prudent alternative or reasonable and prudent measure notwithstanding subsection (a)(2).

(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.
- (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 consider-

ation 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.]**

(1)(A) 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—

(i) the agency action would violate subsection (a)(2); or

(ii) a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2) may—

(I) impair national security; or

(II) result in significant adverse national or regional economic impacts.

(B) 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).

(C) 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】

(A) *determine—*

(i) 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 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); and

(ii) if the exemption applicant submitted to the Secretary the application for exemption pursuant to paragraph (1)(A)(i), whether a reasonable and prudent alternative necessary for the proposed agency action to comply with subsection (a)(2) may—

(I) impair national security; or
(II) result in significant adverse national or regional economic impacts; 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) if the exemption applicant submitted to the Secretary the application for exemption pursuant to paragraph (1)(A)(ii), after consultation with the National Security Council regarding potential impacts to national security and the Director of the National Economic Council regarding potential significant adverse national and regional economic impacts, any impairment to national security or significant adverse national or regional economic impacts that would result from a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2), including a description of the analysis and conclusions produced by the National Security Council and the Director of the National Economic Council as a result of each such consultation;

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

[(D)] (E) 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;]

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

(II) with respect to an agency action the application for exemption of which was submitted to the Secretary pursuant to subsection (g)(1)(A)(ii), a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2) may—

(aa) impair national security; or

(bb) result in significant adverse national or regional economic impacts;

(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 consultation 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.

(1) 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 en-

hancement 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) of this Act,** (1) *Any person* 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)] (A)** any circuit wherein the agency action concerned will be, or is being, carried out, or **[(2)] (B)** 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.

(2) *Any person may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any opinion issued by the Secretary under subsection (b) of this section in the United States Court of Appeals for the District of Columbia by filing in such court not later than 150 days after the date on which the opinion is issued a written petition for review.*

(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.

(q) *ENVIRONMENTAL BASELINE DEFINED.*—*In this section, the term “environmental baseline”*—

(1) *means the condition of the species or the critical habitat of the species in the area directly affected by the agency action at the time of the proposed agency action, without the consequences to the species or the critical habitat of the species caused by the proposed action; and*

(2) *includes—*

(A) *the past and present effects of all Federal, State, local, and private actions and other human activities in the area directly affected by the agency action;*

(B) *the anticipated effects of each proposed Federal project within the area directly affected by the agency action for which a consultation under this section has been completed;*

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

(D) *existing structures and facilities and the past, present, and future effects of the physical existence of such structures and facilities on the species or the critical habitat of the species; and*

(E) *the effects of Federal actions being carried out at the time of the proposed agency action and existing Federal facilities that are not within the discretion of the Secretary to modify.*

* * * * *

PROHIBITED ACTS

SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided*, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsections (a)(1) shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

[(2) Any importation into the United States of fish or wildlife shall, if—

[(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II of the Convention;

[(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied;

[(C) the applicable requirements of subsection (d), (e), and (f) of this section have been satisfied; and

[(D) such importation is not made in the course of a commercial activity;

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.】

(2) *An export from or import into the United States of fish or wildlife listed as a threatened species or an endangered species pursuant to section 4 is lawful under this Act and not subject to permit requirements or other regulations issued by the Secretary with respect to exportation and importation pursuant to this Act if—*

(A) *such fish or wildlife—*

(i) is a species that is not native to the United States; and

(ii) is listed in Appendix I or II of the Convention; and

(B) *with respect to the export or import, each applicable requirement—*

(i) of the Convention is satisfied; and

(ii) of subsections (d), (e), and (f) is satisfied.

(d) IMPORTS AND EXPORTS.—

(1) IN GENERAL.—It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS.—Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition, made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to ex-

amine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OF AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

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】

(A)(i) with respect to a species that is native to the United States, any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); and

(ii) with respect to a species that is not native to the United States, any act otherwise prohibited by section 9 that the Secretary determines is not detrimental to the survival of the species, including—

(I) the export or import, delivery, receipt, carrying, transporting, or shipping in interstate or foreign commerce; and

(II) buying or selling or offering for sale in interstate or foreign commerce; 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.

(C) *In this subsection, the term “is not detrimental to the survival of the species” means—*

(i)(I) will not have a negative effect on the status of the species in the wild;

(II) is not a use or removal from the wild that will result in the loss or destruction of critical habitat of the species; and

(III) will not directly interfere with recovery efforts with respect to the species; or

(ii) is an activity—

(I) involving wildlife described in section 17.21(g)(1) of title 50, Code of Federal Regulations; and

(II) that satisfies the conditions for registration under clauses (iii) through (v) of that section.

(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, *and shall include the terms and conditions of the related conservation plan, which shall be legally binding on all parties thereto.*

(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.

(D) Each Federal agency shall, as applicable and to the maximum extent practicable, adopt the mitigation measures contained in a permit issued under subparagraph (B) in any authorization issued by such Federal agency with respect to the action that is covered by such permit.

(E) With respect to an action that is covered by a permit issued under subparagraph (B) and consistent with the implementation of the related conservation plan, the Secretary shall not seek any additional mitigation measures through any other Federal or State or local process from the permittee.

(3) Section 7(a)(2) does not apply to the issuance by the Secretary of a permit under this subsection.

(4) The issuance of a permit under paragraph (2) shall not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(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 applies 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.

(4)(A) *The Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification of any proposed release under this subsection that covers an area greater than 50,000 acres.*

(B) *A notification submitted under subparagraph (A) shall include—*

(i) a description of the area covered by the proposed release;

(ii) an inventory and evaluation of the natural resource uses and values of the area and adjacent public and nonpublic land and the economic impact of the proposed release on individuals, local communities, and the United States;

(iii) an identification of users of the area, and how such users will be affected by the proposed release;

(iv) an analysis of the manner in which existing and potential natural resource uses are incompatible with or in conflict with

the proposed release and a statement of the provisions to be made for continuation or termination of existing such uses, including an economic analysis of such continuation or termination;

(v) a statement of the consultation which has been or will be had with other Federal departments and agencies, regional, State, and local government bodies, and other appropriate individuals and groups with respect to the proposed release; and

(vi) a statement indicating the effect of the proposed release, if any, on State and local government interests and the regional economy.

(k) CONSERVATION BENEFIT AGREEMENTS.—

(1) PROPOSED AGREEMENT.—

(A) IN GENERAL.—*A covered party may submit a proposed Agreement to the Secretary.*

(B) DETERMINATION OF COMPLETENESS.—*Not later than 30 days after the date on which the Secretary receives a proposed Agreement, the Secretary shall—*

(i) determine whether the proposed Agreement is complete; and

(ii) if the Secretary determines the proposed Agreement is incomplete under clause (i), provide the covered party with a written explanation of such determination, including any specific adjustment required for the Secretary to determine the proposed Agreement is complete.

(C) APPROVAL; REJECTION.—*Not later than 120 days after the date on which the Secretary receives a proposed Agreement that the Secretary determines under subparagraph (B)(i) is complete, the Secretary shall—*

(i) approve the proposed Agreement if the Secretary determines that the proposed Agreement—

(I) is in compliance with, as applicable, section 17.22(c)(1) or 17.32(c)(1) of title 50, Code of Federal Regulations (or a successor regulation); and

(II) provides assurances to the covered party that, if the covered species becomes listed after the effective date of such Agreement—

(aa) no additional conservation measures will be required; and

(bb) additional land, water, or resource use restrictions will not be imposed on the covered party;

(ii) reject the proposed Agreement if the Secretary determines that the proposed Agreement does not meet the requirements described in subclauses (I) and (II) of clause (i); and

(iii) if the Secretary rejects the proposed Agreement under clause (ii), provide the submitting covered party a written explanation for such rejection, including any specific adjustment required, as of the date on which the Secretary rejects the proposed Agreement, for the Secretary to approve the proposed Agreement.

(2) *PROGRAMMATIC CONSERVATION BENEFIT AGREEMENTS.*—The Secretary may enter into a Conservation Benefit Agreement with a covered party that authorizes such covered party—

(A) to administer such Conservation Benefit Agreement;

(B) to hold any permit issued under this section with regard to such Conservation Benefit Agreement;

(C) to enroll other covered parties within the area covered by such Conservation Benefit Agreement in such Conservation Benefit Agreement; and

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

(3) *TAKE AUTHORIZATION.*—If a covered species is listed as a threatened species or an endangered species under section 4, the Secretary, consistent with the applicable Agreement, shall issue to the relevant covered party a permit under this section for the incidental take of and modification to the habitat of such covered species by such covered party.

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

(5) *APPLICABILITY TO FEDERAL LAND.*—An Agreement may apply with respect 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.

(6) *EXEMPTIONS.*—

(A) *CONSULTATION.*—Section 7(a)(2) does not apply to the approval by the Secretary of a proposed Agreement under this subsection.

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

(C) *NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.*—The approval by the Secretary of a proposed Agreement under this subsection shall not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

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

(A) *AFFECTED SPECIES.*—The term “affected species” means a species—

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

(ii) proposed to be listed pursuant to section 4; or

(iii) that is declining and at risk of being designated by the Secretary as a candidate species under this Act.

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

(i) a Conservation Benefit Agreement; or

(ii) a programmatic Conservation Benefit Agreement.

(C) *CONSERVATION BENEFIT AGREEMENT.*—The term “Conservation Benefit Agreement” means the supporting document required for the issuance of a permit under subsection (a)(1)(A) to enhance the propagation or survival of an affected species, as described in the final rule issued by the United States Fish and Wildlife Service titled “Endan-

gered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits” (89 Fed. Reg. 26070; published April 12, 2024).

(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 affected species that is the subject of such Agreement.

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

- (i) the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on the covered species;
 - (ii) the number of individuals of the covered species;
- or
- (iii) the habitat of the covered species.

(G) PROGRAMMATIC CONSERVATION BENEFIT AGREEMENT.—The term “programmatic Conservation Benefit Agreement” means a Conservation Benefit Agreement described in paragraph (4).

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 Sec-

retary 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 ex-

portation. 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,】

(1) *IN GENERAL.*—*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 regula-*

tions as may be appropriate **[to enforce this Act]** *to enforce this section and section 8A*, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable 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.

(2) *RULE OF CONSTRUCTION.—This subsection may not be construed to be an independent source of authority to promulgate regulations to enforce the provisions of this Act other than those included in this section and section 8A.*

(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.]

(4)(A) The court, in issuing any final order in any suit brought pursuant to paragraph (1), may award costs of litigation (including reasonable attorney and expert witness fees) to an eligible party, whenever the court determines such award is appropriate.

(B) In awarding reasonable attorney and expert witness fees under subparagraph (A) in a suit brought pursuant to paragraph (1), the court—

(i) shall base such fees on the prevailing market rates for the kind and quality of services furnished; and

(ii) may not award—

(I) such fees at a rate that exceeds \$125 per hour unless the court determines a higher rate is justified because of cost of living or a special factor, such as the limited availability of qualified attorneys for such suit; or

(II) more than \$200,000 total in such fees in a single such suit.

(C)(i) In this paragraph, the term “eligible party”—

(I) means a party to a suit brought pursuant to paragraph (1) that is, as of the date on which the suit was initiated—

(aa) an individual who has a net worth of not more than \$2,000,000;

(bb) an owner of an unincorporated business or a partnership, corporation, association, unit of local government, or organization, including an organization that is described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of such Code, that has—

(AA) a net worth of not more than \$7,000,000, including both personal and business interests; and

(BB) not more than 500 employees; or

(cc) a cooperative association (as that term is defined in section 15(a) of the Agriculture Marketing Act (12 U.S.C. 1141j(a))); and

(II) does not include a party to a suit brought pursuant to paragraph (1) otherwise described in clause (i) of this subparagraph that has sought to recover attorney or expert witness fees under this subsection in 3 or more instances in the 12-month period preceding the date on which the final order in such suit is issued, including in such suit.

(ii) Where 2 or more parties to a suit brought pursuant to paragraph (1) are co-plaintiffs and each such party individually is an eligible party, clause (i)(I) shall be applied to such parties collectively.

(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-1), 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(1) 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 Chair of the Council on Environmental Quality, in consultation with the Secretary of the Interior and 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; and*

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

(b) **INCLUDED INFORMATION.**—*Each report submitted under subsection (a) shall include—*

(1) *the case name and number of each covered suit, and, with respect to each 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 judgment, 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 covered 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 Chair of the Council on Environmental Quality in a timely manner all information requested by the Chair 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 Federal Government 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 \$287,978,000 for each of fiscal years 2026 through 2031 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 \$105,400,000 for each of fiscal years 2026 through 2031 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 2026 through 2031 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)] *subsections (e), (g), and (h) of section 7* not to exceed \$600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992 and \$600,000 for each of fiscal years 2026 through 2031.

(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 2026 through 2031, and such sums shall remain available until expended.

* * * * *

ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE

SEC. 18. Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), on or before January 15, 1990, and each January 15 thereafter, the Secretary of the Interior, acting through the Fish and Wildlife Service, shall submit to the Congress, *and make publicly available on the website data.gov*, an annual report covering the preceding fiscal year which shall contain—

(1) an accounting on a species by species basis of all reasonably unidentifiable Federal expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act, *including any such expenditures made with respect to an experimental population (as that term is defined in section 10(j))*; and

(2) an accounting on a species by species basis for all reasonably identifiable expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act by States receiving grants under section 6.

DISSENTING VIEWS

H.R. 1897, as amended, would fundamentally weaken the authority and effectiveness of the Endangered Species Act (ESA). This bill would codify and expand upon the harmful 2019 Trump administration ESA rules¹ that weakened protections for threatened and endangered species and their critical habitat. It would extend the timeframe for listing species through a new five-tier priority system while fast-tracking delisting and barring judicial review of delisting decisions. It would narrowly redefine key terms—including “foreseeable future,” “habitat,” “best scientific and commercial data available,” and “environmental baseline”—to limit the scope of the ESA and interfere with science-based decision-making by prohibiting “precautionary assumptions in favor of a species.” The bill would eliminate blanket protections for threatened species, prohibit mitigation in reasonable and prudent measures, exempt Conservation Benefit Agreements and incidental take permits from the National Environmental Policy Act (NEPA) and ESA Section 7 consultation, dramatically expand the “God Squad” exemption process to allow economic considerations to override project-specific species protections, cap attorney fees to discourage citizen enforcement, and restrict agency regulatory authority. Additional amendments would impose burdensome congressional notification requirements for critical habitat designations and experimental population releases, thereby disincentivizing the use of conservation tools such as species reintroduction programs and science-based critical habitat designations. These changes would hinder federal agencies’ ability to protect species from extinction, regardless of how imperiled a species may be or what the best available science indicates.

Human-related impacts, including habitat destruction, invasive species, disease, pollution, overexploitation, and climate change, threaten many species of wildlife and plants. One million species globally are threatened with extinction.² 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.³ The loss of biodiversity and ecosystems worldwide could cost the global economy \$2.7 trillion annually by 2030.⁴ 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

¹ Congressional Research Service (CRS), Final Rules Changing Endangered Species Act Regulations, (Updated August 27, 2019), Report IF10944.

² 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. D. and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. 1148 pages. <https://doi.org/10.5281/zenodo.3831673>.

³ NatureServe, Biodiversity in Focus: United States Edition (2023). <https://www.natureserve.org/biodiversity-in-focus>.

⁴ Johnson, Justin Andrew, et al. (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>.

legislation for the preservation of endangered species enacted by any nation.”⁵ Over 99% of species listed under the ESA have avoided extinction, and the law has been responsible for the recovery of iconic species such as the Bald Eagle, Gray Whale, Steller Sea Lion, Brown Pelican, and American Alligator.⁶

Delays Listings and Fast-Tracks Delisting: This bill would create a new National Listing Work Plan with a 5-tier priority classification system that could extend the timeframe for listing some species from the mandatory 12-month deadline to up to 10 years. Species classified as Priority 3, 4, or 5 may be retained on the work plan for up to five additional years beyond regular deadlines—with Priority 5 species potentially languishing indefinitely if the Secretary determines they would receive “limited conservation benefit” from listing. The bill provides no recourse if the Secretary misclassifies a species as a lower-priority species, allowing administrative misconduct to delay listing decisions legally. Meanwhile, the bill would fast-track delisting by requiring a rulemaking to be initiated within 30 days of a five-year review determination and then barring any judicial review of delisting decisions during the entire post-delisting monitoring period, which can last five years or more. These changes would make it harder for species to be listed and easier for them to be delisted prematurely, with little recourse to challenge either action. Research demonstrates that species listed earlier, before populations reach crisis levels, recover faster and at lower cost.⁷ This bill would move in the opposite direction.

Establishes Harmful Definitions: This bill is filled with harmful definitions that depart from decades of established, working legal standards. It would redefine “best scientific and commercial data available” to prohibit “precautionary assumptions in favor of a species or other assumptions or policy prescriptions that bias the application.” This provision would weaponize scientific uncertainty to prevent protective action. The bill would redefine “foreseeable future” to limit it to periods in which threats can be demonstrated to be “likely to occur,” undermining the Services’ ability to address long-term threats like climate change. It would redefine “habitat” to exclude areas outside the current or historic range or visited by “only vagrant individual members,” preventing designation of habitat that could serve as climate refugia or corridors for species movement. It would codify a narrow “environmental baseline” definition that includes “existing structures and facilities” and their “past, present, and future effects,” treating ongoing harm as the baseline against which new impacts are measured.

Guts Critical Habitat Protections: The bill would exclude unoccupied habitat from critical habitat designation—regardless of whether species historically occupied these areas or whether such habitat is essential for species recovery. It would substantially expand the circumstances under which the Secretary may determine critical habitat designation is “not prudent,” including when species are

⁵Tennessee Valley Authority v. Hill, 437 U.S. 153, 180 (1978).

⁶Defenders of Wildlife analysis; see also Center for Biological Diversity, “On Time, On Target: How the Endangered Species Act Is Saving America’s Wildlife” (2016). Also see: “Species Delisted.” USFWS. <https://ecos.fws.gov/ecp/report/species-delisted> Last Visited on January 14, 2026.

⁷U.S. Fish and Wildlife Service, “Report to Congress on the Recovery of Threatened and Endangered Species, Fiscal Years 2019–2020.”

threatened by factors other than habitat destruction or when species “primarily occur” outside U.S. jurisdiction. Most significantly, the bill would prohibit critical habitat designation on “any privately owned or controlled land” that is subject to a land management plan the Secretary determines will maintain species populations. Private land supports approximately two-thirds of threatened and endangered species,⁸ so excluding these lands from critical habitat designation puts these species at serious risk. Yet the bill would exclude such lands if the Secretary declares the relevant land management plan as “similar in nature” to an Integrated Natural Resources Management Plan—a standard far weaker than the current critical habitat framework.

Sets Burdensome Congressional Notification Requirements: An amendment accepted in markup (Sections 406–408) would impose extensive new bureaucratic requirements on critical habitat designations and experimental population releases covering areas greater than 50,000 acres. For each such action, the Secretary would be required to submit detailed notifications to Congress including inventories and evaluations of natural resources uses, economic impact analyses on individuals, local communities, and the United States, identification of all users and how they would be affected, analyses of conflicts with existing uses, documentation of all consultations with federal, state, and local entities, and statements on effects to state and local government interests and regional economies. These requirements duplicate analyses already conducted under NEPA and existing ESA procedures, adding delay and administrative burden without improving conservation outcomes. The 50,000-acre threshold appears specifically designed to disincentivize large-scale recovery efforts such as the Mexican gray wolf experimental population in Arizona and New Mexico. The amendment would also require annual cost analyses of all ESA expenditures, including those for experimental populations, to be published on data.gov—further evidence of an intent to build a political case against successful recovery programs rather than improve species conservation.

Leaves Threatened Species in Uncertainty: This bill would put threatened species in peril by effectively eliminating the blanket 4(d) rule, which currently guarantees the same comprehensive and immediate protection afforded to endangered species. The bill would rewrite Section 4(d) to require species-specific protective regulations that consider “conservation and economic effects” and include “objective, incremental recovery goals” with protections that “decrease as such recovery goals are met.” Without the blanket rule as a default, an already under-resourced Fish and Wildlife Service (FWS) would need to draft special rules for every threatened species—or newly listed threatened species could have zero protections until a rule is finalized. The bill further pushes threatened species management onto states through a new process, without requiring clear, objective, science-based recovery goals at the state level. States already have the authority to manage ESA-listed species

⁸U.S. Fish and Wildlife Service, “Report to Congress on the Recovery of Threatened and Endangered Species, Fiscal Years 2019–2020.”

under Section 6(c), but have not used it. This change would create a confusing patchwork of inconsistent state regulations.

Weakens Interagency Consultation: The bill would undermine the Section 7 consultation process in multiple ways. It would explicitly prohibit mitigation and offsets from reasonable and prudent measures (RPMs), eliminating a critical tool for minimizing the impact of federal actions on listed species. It would create an automatic sunset provision requiring agencies to discontinue RPMs and reasonable and prudent alternatives (RPAs) after 10 years if they do not “materially increase the likelihood of and reduce the time for recovery”—even if those measures are successfully maintaining species populations. It would narrow the “effects of the action” that may be considered to only those that are “caused by the action itself and are reasonably certain to occur,” excluding effects that are “remote in time,” “geographically remote,” or reached through a “lengthy causal chain.” It similarly would limit the “action area” to areas “directly affected” that are not “speculative or remote.” Together, these provisions would prevent the Services from considering cumulative, indirect, or downstream effects and would eliminate conservation measures that are working.

Dramatically Expands “God Squad” Exemptions: An amendment accepted in markup (Section 506) would dramatically expand the Endangered Species Committee process—commonly known as the “God Squad”—to sidestep the ESA and allow projects to cause jeopardy to a species (push a species closer to extinction) based on economic considerations. Currently, the Committee may grant an exemption only if it determines that there are no reasonable and prudent alternatives to the agency action, and it has been used only twice since the ESA was enacted. The amendment would allow applicants to seek exemptions whenever a reasonable and prudent alternative “may impair national security” or “result in significant adverse national or regional economic impacts.” This would fundamentally transform the exemption process from a last resort for truly irreconcilable conflicts into a routine escape valve for any project facing conservation requirements deemed economically inconvenient.⁹ The amendment would require consultation with the National Security Council and National Economic Council, inserting political considerations into what should be science-based wildlife management decisions. Congress deliberately set a high bar for exemptions because extinction is irreversible—this amendment would allow economic calculations to override species survival, contrary to the ESA’s fundamental purpose.

Undermines Voluntary Conservation: The bill would codify Conservation Benefit Agreements (CBAs) but exempt them from both Section 7 consultation and NEPA review and would make CBA information exempt from FOIA disclosure. It would impose strict timelines that will burden agency resources—30 days for completeness determinations and 120 days for approval or rejection. The bill would also exempt incidental take permits under this CBA process from Section 7 consultation and NEPA review, removing essential

⁹The Endangered Species Committee, commonly known as the “God Squad”, has only been convened a handful of times in the ESA’s 50-year history, reflecting Congress’s intent that exemptions be reserved for truly extraordinary circumstances. Also see: Greenwire. “Trump resurrects ‘God Squad’ to bend the ESA”. January 23, 2025. Last accessed on January 14, 2026.

environmental review safeguards from decisions that directly affect imperiled species.

Increases Barriers to Citizen Enforcement: The bill would create extensive new reporting requirements for ESA-related agency litigation while simultaneously making it harder for citizens to enforce the law. It would cap attorney fees at \$125 per hour—well below market rates—and limit total per-case fees to \$200,000. It would restrict fee recovery to “eligible parties” meeting net worth thresholds (\$2 million for individuals, \$7 million for organizations with 500 or fewer employees) and bar parties that have sought fee recovery in three or more cases in the preceding 12 months. These restrictions would make it economically unviable for conservation organizations to bring meritorious cases enforcing the ESA, while well-funded industry groups face no such barriers when challenging protective decisions. The bill further would limit judicial review by routing all challenges to biological opinions exclusively to the U.S. Court of Appeals for the D.C. Circuit, with a 150-day filing deadline—increasing costs and barriers for parties outside Washington, D.C. and eliminating traditional venue options.

Strips Agency Authority: The bill would limit the Secretary’s regulatory authority to only Section 11 (enforcement) and Section 8A (the Convention), adding a rule of construction that this authority “may not be construed to be an independent source of authority to promulgate regulations” to enforce other provisions of the ESA. This would threaten existing species-specific regulations, including ship strike rules protecting North Atlantic right whales, turtle excluder device requirements, and other critical safeguards developed over decades to address specific threats to imperiled species.

Provides Inadequate Funding: The bill would authorize approximately \$288 million per year for FWS and \$105 million per year for the National Marine Fisheries Service (NMFS) for fiscal years 2026–2031 (Section 3). These authorization levels are inadequate to implement the ESA effectively, let alone to carry out the extensive new requirements the amended bill would impose, including species-specific 4(d) rules for all threatened species, new work plans, expanded economic analyses, and litigation reporting.

Weakens International Protections: The bill would exempt non-native species listed under both the ESA and CITES Appendix I or II from ESA permit requirements and create a weaker “not detrimental” standard for non-native species permits. These changes would complicate efforts to combat wildlife trafficking and undermine U.S. leadership in international species conservation at a time when global cooperation is essential to address the extinction crisis.

Symbolically Renames the ESA: The Hageman amendment (Section 5) would rename the Endangered Species Act of 1973 to the “Endangered Species Recovery Act.” While seemingly innocuous, this change signals the bill’s intent to reframe the ESA away from its core purpose of preventing extinction and protecting imperiled species toward a narrower focus on “recovery”—even as other provisions in the bill make actual recovery more complicated to achieve by delaying listings, weakening protections, and eliminating conservation tools. The renaming is ironic given that the legislation

would gut the very mechanisms that have enabled species recovery over the past 50 years.

At a time of accelerating biodiversity loss, H.R. 1897, as amended, would roll back the ESA's core protections, restrict agency authority, and codify harmful Trump policies. The bill's proponents claim it will provide regulatory relief and incentivize conservation, but in practice, it would delay protections for at-risk species, make recovery more difficult and costly, create new legal uncertainties for all stakeholders, and undermine the citizen enforcement that has been essential to the ESA's success. The Republican attempts to undermine the ESA¹⁰ would hinder federal agencies' ability to protect species from extinction, no matter how close to extinction a species may be or what the best available science says about its status, recovery, or management. Members of the House should strongly oppose this legislation.

JARED HUFFMAN,
Ranking Member.



¹⁰For additional information on the recurring arguments, misconceptions, and attacks on the ESA—please refer to the memoranda from hearings during both of the 118th and 119th Congress: July 18, 2023, Oversight hearing on ESA at 50: The Destructive Cost of the ESA; April 18, 2023, Legislative hearing on ESA Congressional Review Act resolutions; March 23, 2023, Legislative hearing on bills to legislatively de-list wolves and grizzly bears from the ESA; and July 9, 2024, Legislative hearing on the ESA Amendments Act of 2024; February 26, 2025, Oversight Hearing Evaluating the Implementation of the MMPA and the ESA; March 4, 2025, Oversight hearing understanding the consequences of experimental populations under the ESA; March 25, 2025, Legislative hearing on ESA Amendments Act of 2025; July 22, 2025, Legislative hearing on bills to amend the ESA; September 3, 2025, Legislative hearing on bills to legislatively de-list Mexican wolves and grizzly bears from the ESA.