

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 9533  
OFFERED BY MR. WESTERMAN OF ARKANSAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

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

**TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE  
PRIORITIZATION**

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

**TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE  
LANDS**

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

**TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER  
LISTED SPECIES**

Sec. 301. Protective regulations under Endangered Species Act of 1973.  
Sec. 302. 5-year review determinations.  
Sec. 303. Judicial review during monitoring period.  
Sec. 304. Codification of regulation.

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

Sec. 401. Requirement to publish basis for listings on Internet.  
Sec. 402. Decisional transparency and use of State, Tribal, and local information.

- Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.  
Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law.  
Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status.

TITLE V—LIMITATION ON REASONABLE AND PRUDENT  
MEASURES

- Sec. 501. Limitation on reasonable and prudent measures.

1 **SEC. 2. ENDANGERED SPECIES ACT OF 1973 DEFINITIONS.**

2 (a) FORESEEABLE FUTURE.—The final rule titled  
3 “Endangered and Threatened Wildlife and Plants; Regu-  
4 lations for Listing Species and Designating Critical Habi-  
5 tat” (84 Fed. Reg. 45020; published August 27, 2019)  
6 shall have the force and effect of law with respect to the  
7 use of the term “foreseeable future”.

8 (b) HABITAT.—Section 3(5) of the Endangered Spe-  
9 cies Act of 1973 (16 U.S.C. 1532(5)) is amended by add-  
10 ing at the end the following:

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

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

19 “(5) For the purposes of carrying out a consultation  
20 under this section with respect to a threatened species or

1 an endangered species, the term ‘environmental base-  
2 line’—

3 “(A) means the condition of the species or the  
4 critical habitat of the species in the action area,  
5 without the consequences to the species or the crit-  
6 ical habitat of the species caused by the proposed ac-  
7 tion; and

8 “(B) includes—

9 “(i) the past and present effects of all Fed-  
10 eral, State, and private actions and other  
11 human activities in the action area;

12 “(ii) the anticipated effects of each pro-  
13 posed Federal project within the action area for  
14 which a consultation under this section has  
15 been completed;

16 “(iii) the effects of State and private ac-  
17 tions that are contemporaneous with the con-  
18 sultation in process; and

19 “(iv) the ongoing impacts to listed species  
20 or designated critical habitat from existing fa-  
21 cilities or activities that are not caused by the  
22 proposed action or that are not within the dis-  
23 cretion of the Federal action agency to mod-  
24 ify.”.

1 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 15 of the Endangered Species Act of 1973  
3 (16 U.S.C. 1542) is amended—

4 (1) in subsection (a)—

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

7 (B) in paragraph (1)—

8 (i) by striking “and” after “fiscal year  
9 1991,”; and

10 (ii) by inserting “, and \$302,025,000  
11 for each of fiscal years 2025 through  
12 2030” after “fiscal year 1992”;

13 (C) in paragraph (2)—

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

16 (ii) by inserting “, and \$116,630,000  
17 for each of fiscal years 2025 through  
18 2030” after “fiscal years 1991 and 1992”;

19 and

20 (D) in paragraph (3)—

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

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

1 (2) in subsection (b), by inserting “and  
2 \$600,000 for each of fiscal years 2025 through  
3 2030” after “1992”; and

4 (3) in subsection (c)—

5 (A) by striking “and” after “fiscal years  
6 1988, 1989, and 1990,”; and

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

10 **SEC. 4. RULE OF CONSTRUCTION.**

11 Nothing in this Act or the amendments made by this  
12 Act may be construed to enlarge or diminish the authority,  
13 jurisdiction, or responsibility of a State (as that term is  
14 defined in section 3 of the Endangered Species Act of  
15 1973 (16 U.S.C. 1532)) to manage, control, or regulate  
16 fish and wildlife on lands and waters, including Federal  
17 lands and waters, within the State.

18 **TITLE I—OPTIMIZING CON-**  
19 **SERVATION THROUGH RE-**  
20 **SOURCE PRIORITIZATION**

21 **SECTION 101. PRIORITIZATION OF LISTING PETITIONS, RE-**  
22 **VIEWS, AND DETERMINATIONS.**

23 (a) IN GENERAL.—Section 4 of the Endangered Spe-  
24 cies Act of 1973 (16 U.S.C. 1533) is amended by adding  
25 at the end the following:

1 “(j) NATIONAL LISTING WORK PLAN.—

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

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

11 “(B) proposed and final determinations re-  
12 garding listing each such covered species under  
13 this section; and

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

17 “(2) SUBMISSION TO CONGRESS.—

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

20 “(i) together with the budget request  
21 of the Secretary for the first fiscal year  
22 that begins not less than 365 days after  
23 the date of the enactment of this sub-  
24 section, the initial work plan required  
25 under paragraph (1); and

1                   “(ii) together with the budget request  
2                   of the Secretary for each fiscal year there-  
3                   after, an updated work plan under para-  
4                   graph (1).

5                   “(B) ADDITIONAL INCLUSIONS.—The Sec-  
6                   retary shall include with each budget request  
7                   referred to in subparagraph (A) a description of  
8                   the amounts to be requested to carry out the  
9                   work plan for the fiscal year covered by the  
10                  budget request, including any amounts re-  
11                  quested to address emergency listings if the  
12                  Secretary identifies any emergency posing a sig-  
13                  nificant risk to the well-being of any species of  
14                  fish or wildlife or plant.

15                  “(3) PRIORITY.—

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

22                  “(i) Priority 1 represents species of  
23                  the highest priority, to be designated as  
24                  critically imperiled and in need of imme-  
25                  diate action.

1           “(ii) Priority 2 represents species with  
2           respect to which the best scientific and  
3           commercial data available support a clear  
4           decision regarding the status of the spe-  
5           cies.

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

10                   “(I) to answer key questions that  
11                   may influence the findings of a peti-  
12                   tion to list the species submitted  
13                   under subsection (b)(3); and

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

17           “(iv) Priority 4 represents species for  
18           which proactive conservation efforts likely  
19           to reduce threats to the species are being  
20           developed or carried out, within a reason-  
21           able timeframe and in an organized man-  
22           ner, by Federal agencies, States, land-  
23           owners, or other stakeholders.

24           “(v) Priority 5 represents species—



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

3 “(aa) threats to the species;

4 or

5 “(bb) the status of the spe-  
6 cies; or

7 “(II) that would receive limited  
8 conservation benefit in the foreseeable  
9 future by listing the species as a  
10 threatened species or endangered spe-  
11 cies under this section.

12 “(B) USE OF METHODOLOGY.—The Sec-  
13 retary shall establish and assign priority classi-  
14 fications under subparagraph (A) in accordance  
15 with the notice of the Director of the United  
16 States Fish and Wildlife Service titled ‘Method-  
17 ology for Prioritizing Status Reviews and Ac-  
18 companying 12–Month Findings on Petitions  
19 for Listing Under the Endangered Species Act’  
20 (81 Fed. Reg. 49248; published July 27, 2016).

21 “(C) EXTENSIONS FOR CERTAIN PRIORITY  
22 CLASSIFICATIONS.—

23 “(i) PRIORITY 3.—With respect to a  
24 species classified as Priority 3 under sub-  
25 paragraph (A)(iii), if the Secretary deter-

1 mines that additional time would allow for  
2 more complete data collection or the com-  
3 pletion of studies relating to the species,  
4 the Secretary may retain the species under  
5 the work plan for a period of not more  
6 than 5 years after the deadline under para-  
7 graph (4).

8 “(ii) PRIORITY 4.—With respect to a  
9 species classified as Priority 4 under sub-  
10 paragraph (A)(iv), if the Secretary deter-  
11 mines that existing conservation efforts  
12 continue to meet the conservation needs of  
13 the species, the Secretary may retain the  
14 species under the work plan for a period of  
15 not more than 5 years after the deadline  
16 under paragraph (4).

17 “(iii) PRIORITY 5.—With respect to a  
18 species classified as Priority 5 under sub-  
19 paragraph (A)(v), the Secretary may retain  
20 the species under the work plan for a pe-  
21 riod of not more than 5 years after the  
22 deadline under paragraph (4).

23 “(D) REVISION OF PRIORITY CLASSIFICA-  
24 TION.—The Secretary may revise, in accordance  
25 with subparagraph (A), the assignment to a pri-

1           ority classification of a species included in a  
2           work plan at any time during the fiscal years  
3           to which the work plan applies.

4           “(E) EFFECT OF PRIORITY CLASSIFICA-  
5           TION.—The assignment of a priority classifica-  
6           tion to a species included in a work plan is not  
7           a final agency action.

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

14          “(5) REGULATIONS.—The Secretary may issue  
15          such regulations as the Secretary determines appro-  
16          priate to carry out this subsection.

17          “(6) EFFECT OF SUBSECTION.—Nothing in this  
18          subsection may be construed to preclude or other-  
19          wise affect the emergency listing authority of the  
20          Secretary under subsection (b)(7).

21          “(7) DEFINITIONS.—In this subsection:

22                 “(A) COVERED SPECIES.—The term ‘cov-  
23                 ered species’ means a species that is not in-  
24                 cluded on a list published under subsection  
25                 (c)—

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

4                   “(ii) that is otherwise under consider-  
5                   ation by the Secretary for addition to such  
6                   a list.

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

10           (b) CONFORMING AMENDMENTS.—Section 4(b)(3) of  
11 the Endangered Species Act of 1973 (16 U.S.C.  
12 1533(b)(3)) is amended—

13                   (1) in subparagraph (B), by striking “Within  
14                   12 months” and inserting “In accordance with the  
15                   national listing work plan submitted under sub-  
16                   section (j),”; and

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

18                   “(C) JUDICIAL REVIEW.—Any negative finding  
19                   described in subparagraph (A) and any finding de-  
20                   scribed in subparagraph (B)(i)(I) shall be subject to  
21                   judicial review.”.

1 **TITLE II—INCENTIVIZING WILD-**  
2 **LIFE CONSERVATION ON PRI-**  
3 **VATE LANDS**

4 **SECTION 201. CANDIDATE CONSERVATION AGREEMENTS**  
5 **WITH ASSURANCES.**

6 (a) LISTING DETERMINATIONS.—Section 4(b)(1) of  
7 the Endangered Species Act of 1973 (16 U.S.C.  
8 1533(b)(1)) is amended by adding at the end the fol-  
9 lowing:

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

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

24 “(k) CANDIDATE CONSERVATION AGREEMENTS  
25 WITH ASSURANCES.—

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

3           “(2) APPROVAL.—Not later than 120 days  
4           after the date of the receipt of a proposed Agree-  
5           ment under paragraph (1), the Secretary shall ap-  
6           prove the proposed Agreement if the Secretary de-  
7           termines that the proposed Agreement—

8                   “(A) sets forth specific management activi-  
9                   ties that the covered party will undertake to  
10                  conserve the covered species;

11                  “(B) provides a positive estimate of the net  
12                  conservation benefit of such management activi-  
13                  ties to the covered species;

14                  “(C) describes, to the maximum extent  
15                  practicable, the existing population levels of the  
16                  covered species or the existing quality of habi-  
17                  tat;

18                  “(D) includes a monitoring plan to be car-  
19                  ried out by the parties to the Agreement; and

20                  “(E) provides assurances to the covered  
21                  party that no additional conservation measures  
22                  will be required and additional land, water, or  
23                  resource use restrictions will not be imposed on  
24                  the covered party if the covered species becomes

1 listed after the effective date of such Agree-  
2 ment.

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

6 “(A) deny the proposed Agreement if the  
7 Secretary determines that the proposed Agree-  
8 ment does not meet the requirements described  
9 in paragraph (2); and

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

14 “(4) PROGRAMMATIC CANDIDATE CONSERVA-  
15 TION AGREEMENT WITH ASSURANCES.—

16 “(A) IN GENERAL.—The Secretary may  
17 enter into a Candidate Conservation Agreement  
18 with Assurances with a covered party that au-  
19 thORIZES such covered party—

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

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

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

6 “(iv) to convey any permit authoriza-  
7 tion held by such covered party under  
8 clause (ii) to each covered party enrolled  
9 under clause (iii).

10 “(B) PUBLICATION.—Upon receipt of a  
11 proposed programmatic Candidate Conservation  
12 Agreement with Assurances under paragraph  
13 (1) and before approving or denying such a pro-  
14 posed programmatic Candidate Conservation  
15 Agreement with Assurances under paragraph  
16 (2) or (3), respectively, the Secretary shall—

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

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



1 “(iii) after the close of the public com-  
2 ment period for the proposed pro-  
3 grammatic Candidate Conservation Agree-  
4 ment with Assurances, publish in the Fed-  
5 eral Register—

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

8 “(II) the approval or denial of  
9 the proposed programmatic Candidate  
10 Conservation Agreement with Assur-  
11 ances under paragraph (2) or (3), re-  
12 spectively.

13 “(5) INCIDENTAL TAKE AUTHORIZATION.—If a  
14 covered species is listed under section 4, the Sec-  
15 retary shall issue a permit to the relevant covered  
16 party under this section allowing incidental take of  
17 and modification to the habitat of such covered spe-  
18 cies consistent with the Agreement.

19 “(6) TECHNICAL ASSISTANCE.—The Secretary  
20 shall, upon request, provide a covered party with  
21 technical assistance in developing a proposed Agree-  
22 ment.

23 “(7) APPLICABILITY TO FEDERAL LAND.—An  
24 Agreement may apply to a covered party that con-  
25 ducts activities on land administered by any Federal

1 agency pursuant to a permit or lease issued to the  
2 covered party by that Federal agency.

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

8 “(9) EXEMPTION FROM DISCLOSURE.—Infor-  
9 mation submitted by a private party to the Secretary  
10 under this subsection shall be exempt from disclo-  
11 sure under section 552(b)(3)(B) of title 5, United  
12 States Code.

13 “(10) DEFINITIONS.—In this subsection:

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

16 “(i) a Candidate Conservation Agree-  
17 ment with Assurances; or

18 “(ii) a programmatic Candidate Con-  
19 servation Agreement with Assurances.

20 “(B) CANDIDATE CONSERVATION AGREE-  
21 MENT WITH ASSURANCES.—The term ‘Can-  
22 didate Conservation Agreement with Assur-  
23 ances’ means any voluntary agreement, includ-  
24 ing a conservation benefit agreement, between  
25 the Secretary and a covered party in which—

1 “(i) the covered party commits to im-  
2 plementing mutually agreed upon conserva-  
3 tion measures for a candidate species; and

4 “(ii) the Secretary provides assur-  
5 ances that, if such candidate species is list-  
6 ed pursuant to section 4—

7 “(I) the covered party shall incur  
8 no additional obligations beyond ac-  
9 tions agreed to in the agreement with  
10 respect to conservation activities re-  
11 quired under this Act; and

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

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

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

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

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

24 “(i) party that conducts activities on  
25 land administered by a Federal agency

1                   pursuant to a permit or lease issued to the  
2                   party;

3                   “(ii) private property owner;

4                   “(iii) county;

5                   “(iv) State or State agency; or

6                   “(v) Tribal government.

7                   “(E) COVERED SPECIES.—The term ‘cov-  
8                   ered species’ means, with respect to an Agree-  
9                   ment, the species that is the subject of such  
10                  Agreement.

11                  “(F) NET CONSERVATION BENEFIT.—The  
12                  term ‘net conservation benefit’ means the net  
13                  effect of an Agreement, determined by com-  
14                  paring the existing situation of the candidate  
15                  species without the Agreement in effect and a  
16                  situation in which the Agreement is in effect,  
17                  on a candidate species, including—

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

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

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

24                         “(G) PROGRAMMATIC CANDIDATE CON-  
25                         SERVATION AGREEMENT WITH ASSURANCES.—

1           The term ‘programmatic Candidate Conserva-  
2           tion Agreement with Assurances’ means a Can-  
3           didate Conservation Agreement with Assurances  
4           described in paragraph (4)(A).”.

5 **SEC. 202. DESIGNATION OF CRITICAL HABITAT.**

6           (a) PRIVATELY OWNED OR CONTROLLED LAND.—  
7 Section 4(a)(3) of the Endangered Species Act of 1973  
8 (16 U.S.C. 1533(a)(3)) is amended by adding at the end  
9 the following:

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

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

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

24           “(II) is submitted to the Secretary in  
25           a manner that is similar to the manner in

1           which an applicant submits a conservation  
2           plan to the Secretary under section  
3           10(a)(2)(A);

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

7           “(iv) the Secretary determines will result  
8           in—

9                   “(I) an increase in the population of  
10                   the species concerned above the population  
11                   of such species on the date that such spe-  
12                   cies is listed as a threatened species or an  
13                   endangered species; or

14                   “(II) maintaining the same population  
15                   of such species on the land or other geo-  
16                   graphical area as the population that  
17                   would likely occur if such land or other  
18                   geographical area is designated as critical  
19                   habitat; and

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

24           (b)     DESIGNATION     CONSIDERATIONS.—Section  
25     4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C.

1 1533(b)(2)) is amended in the first sentence by inserting  
2 “the impact on existing efforts of private landowners to  
3 conserve the species,” after “impact on national secu-  
4 rity.”.

5 **TITLE III—PROVIDING FOR**  
6 **GREATER INCENTIVES TO RE-**  
7 **COVER LISTED SPECIES**

8 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDAN-**  
9 **GERED SPECIES ACT OF 1973.**

10 (a) AMENDMENT TO DEFINITION.—Section 3(3) of  
11 the Endangered Species Act of 1973 (16 U.S.C. 1532(3))  
12 is amended by striking “and transplantation, and, in the  
13 extraordinary case where population pressures within a  
14 given ecosystem cannot be otherwise relieved, may in-  
15 clude” and inserting “transplantation, and, at the discre-  
16 tion of the Secretary.”.

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

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

21 “(d) PROTECTIVE REGULATIONS.—

22 “(1) IN GENERAL.—Whenever any species  
23 is listed as a threatened species pursuant to  
24 subsection (c), the Secretary shall issue such

1 regulations as are necessary and advisable to  
2 provide for the conservation of that species.

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

8 “(A) establish objective, incremental  
9 recovery goals;

10 “(B) provide for the stringency of  
11 such regulation to decrease as such recov-  
12 ery goals are met; and

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

22 “(3) COOPERATIVE AGREEMENT.—A regu-  
23 lation issued under paragraph (1) that prohibits  
24 an act described in section 9(a) with respect to  
25 a resident species shall apply with respect to a



1 State that has entered into a cooperative agree-  
2 ment with the Secretary pursuant to section  
3 6(c) only to the extent that such regulation is  
4 adopted by such State.

5 “(4) STATE RECOVERY STRATEGY.—

6 “(A) IN GENERAL.—A State may de-  
7 velop a recovery strategy for a threatened  
8 species or a candidate species and submit  
9 to the Secretary a petition for the Sec-  
10 retary to use such recovery strategy as the  
11 basis for any regulation issued under para-  
12 graph (1) with respect to such species  
13 within such State.

14 “(B) APPROVAL OR DENIAL OF PETI-  
15 TION.—Not later than 120 days after the  
16 date on which the Secretary receives a pe-  
17 tition submitted under subparagraph (A),  
18 the Secretary shall—

19 “(i) approve such petition if the  
20 Secretary determines the recovery  
21 strategy is reasonably certain to be  
22 implemented by the petitioning State  
23 and to be effective in conserving the  
24 species that is the subject of such re-  
25 covery strategy; or

1                   “(ii) deny such petition if the re-  
2                   quirements described in clause (i) are  
3                   not met.

4                   “(C) PUBLICATION.—Not later than  
5                   30 days after the date on which the Sec-  
6                   retary approves or denies a petition under  
7                   subparagraph (B), the Secretary shall pub-  
8                   lish such approval or denial in the Federal  
9                   Register.

10                  “(D) DENIAL OF PETITION.—

11                   “(i) WRITTEN EXPLANATION.—If  
12                   the Secretary denies a petition under  
13                   subparagraph (B), the Secretary shall  
14                   include in such denial a written expla-  
15                   nation for such denial, including a de-  
16                   scription of the changes to such peti-  
17                   tion that are necessary for the Sec-  
18                   retary to approve such petition.

19                   “(ii) RESUBMISSION OF DENIED  
20                   PETITION.—A State may resubmit a  
21                   petition that is denied under subpara-  
22                   graph (B).

23                   “(E) USE IN PROTECTIVE REGULA-  
24                   TIONS.—If the Secretary approves a peti-

1                   tion under subparagraph (B), the Sec-  
2                   retary shall—

3                   “ (i) issue a regulation under  
4                   paragraph (1) that adopts the recov-  
5                   ery strategy as such regulation with  
6                   respect to the species that is the sub-  
7                   ject of such recovery strategy within  
8                   the petitioning State; and

9                   “ (ii) establish objective criteria to  
10                  evaluate the effectiveness of such re-  
11                  covery strategy in conserving such  
12                  species within such State.

13                 “(F) REVISION.—If a recovery strat-  
14                 egy that is adopted as a regulation issued  
15                 under paragraph (1) is determined by the  
16                 Secretary to be ineffective in conserving  
17                 the species that is the subject of such re-  
18                 covery strategy in accordance with the ob-  
19                 jective criteria established under subpara-  
20                 graph (E)(ii) for such recovery strategy,  
21                 the Secretary shall revise such regulation  
22                 and reissue such regulation in accordance  
23                 with paragraph (1).”; and

24                 (2) in subsection (f)(1)(B)—

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

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

5 (C) by adding at the end the following:

6 “(iv) with respect to an endangered spe-  
7 cies, objective, incremental recovery goals in ac-  
8 cordance with subsection (d)(2)(A) for use  
9 under that subsection if such endangered spe-  
10 cies is changed in status from an endangered  
11 species to a threatened species under subsection  
12 (c)(2)(B)(ii).”.

13 **SEC. 302. 5-YEAR REVIEW DETERMINATIONS.**

14 Section 4(c) of the Endangered Species Act of 1973  
15 (16 U.S.C. 1533(c)) is amended by adding at the end the  
16 following:

17 “(3) Not later than 30 days after the date on  
18 which the Secretary makes a determination under  
19 paragraph (2)(B), the Secretary shall initiate a rule-  
20 making to carry out such determination.”.

21 **SEC. 303. JUDICIAL REVIEW DURING MONITORING PERIOD.**

22 Section 4(g) of the Endangered Species Act of 1973  
23 (16 U.S.C. 1533(g)) is amended by adding at the end the  
24 following:

1           “(3) The removal of a species from a list pub-  
2           lished under subsection (c)(1) is not subject to judi-  
3           cial review during the period established under para-  
4           graph (1) with respect to the species.”.

5 **SEC. 304. CODIFICATION OF REGULATION.**

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

11 **TITLE IV—CREATING GREATER**  
12 **TRANSPARENCY AND AC-**  
13 **COUNTABILITY IN RECOV-**  
14 **ERING LISTED SPECIES**

15 **SECTION 401. REQUIREMENT TO PUBLISH BASIS FOR LIST-**  
16 **INGS ON INTERNET.**

17           Section 4(b) of the Endangered Species Act of 1973  
18 (16 U.S.C. 1533(b)) is amended by adding at the end the  
19 following:

20           “(9) The Secretary shall make publicly available on  
21 the Internet the best scientific and commercial data avail-  
22 able that are used as the basis for each regulation, includ-  
23 ing each proposed regulation, promulgated under sub-  
24 section (a)(1), except that—

1           “(A) at the request of a Governor, State agen-  
2           cy, or legislature of a State, the Secretary may not  
3           make such data available under this paragraph if  
4           such entity determines that public disclosure of such  
5           data is prohibited by a law or regulation of such  
6           State, including any law or regulation requiring the  
7           protection of personal information; and

8           “(B) not later than 30 days after the date of  
9           the enactment of this paragraph, the Secretary shall  
10          execute an agreement with the Secretary of Defense  
11          that prevents the disclosure of classified information  
12          pertaining to Department of Defense personnel, fa-  
13          cilities, lands, or waters.”.

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

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

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

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

23                         “(2) Such cooperation shall include—

24                                 “(A) before making a determination under  
25                                 section 4(a), providing to States affected by

1           such determination all data that is the basis of  
2           the determination; and

3           “(B)”.

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

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

8           (A) by redesignating paragraphs (2)  
9 through (21) as paragraphs (3) through (22),  
10 respectively; and

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

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

16           (2) CONFORMING AMENDMENT.—Section 7(n)  
17 of the Endangered Species Act of 1973 (16 U.S.C.  
18 1536(n)) is amended by striking “section 3(13)”  
19 and inserting “section 3(14)”.

20 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**  
21 **GERED SPECIES ACT OF 1973.**

22           (a) REQUIREMENT TO DISCLOSE.—Section 13 of the  
23 Endangered Species Act of 1973 (87 Stat. 902) is amend-  
24 ed to read as follows:

1 **“SEC. 13. DISCLOSURE OF EXPENDITURES.**

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

4 “(1) not later than 90 days after the end of  
5 each fiscal year, submit to the Committee on Nat-  
6 ural Resources of the House of Representatives and  
7 the Committee on Environment and Public Works of  
8 the Senate an annual report detailing Federal Gov-  
9 ernment expenditures for covered suits during the  
10 preceding fiscal year (including the information de-  
11 scribed in subsection (b)); and

12 “(2) make publicly available through the Inter-  
13 net a searchable database, updated monthly, of the  
14 information described in subsection (b).

15 “(b) INCLUDED INFORMATION.—The report shall in-  
16 clude—

17 “(1) the case name and number of each covered  
18 suit, and, with respect to each such covered suit, a  
19 hyperlink to each settlement decision, final decision,  
20 consent decree, stipulation of dismissal, release, in-  
21 terim decision, motion to dismiss, partial motion for  
22 summary judgement, or related final document;

23 “(2) a description of each claim or cause of ac-  
24 tion in each covered suit;



1           “(3) the name of each covered agency the ac-  
2           tions of which give rise to any claim in a covered  
3           suit and each plaintiff in such suit;

4           “(4) funds expended by each covered agency  
5           (disaggregated by agency account) to receive and re-  
6           spond to notices referred to in section 11(g)(2) or to  
7           prepare for litigation of, litigate, negotiate a settle-  
8           ment agreement or consent decree in, or provide ma-  
9           terial, technical, or other assistance in relation to, a  
10          covered suit;

11          “(5) the number of full-time equivalent employ-  
12          ees that participated in the activities described in  
13          paragraph (4);

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

17          “(7) attorneys fees and other expenses  
18          (disaggregated by agency account) awarded in cov-  
19          ered suits, including any consent decrees or settle-  
20          ment agreements (regardless of whether a decree or  
21          settlement agreement is sealed or otherwise subject  
22          to nondisclosure provisions), including the basis for  
23          such awards.

24          “(c) REQUIREMENT TO PROVIDE INFORMATION.—

25          The head of each covered agency shall provide to the Sec-

1 retary in a timely manner all information requested by the  
2 Secretary to comply with the requirements of this section.

3 “(d) LIMITATION ON DISCLOSURE.—Notwith-  
4 standing any other provision of this section, this section  
5 shall not affect any restriction in a consent decree or set-  
6 tlement agreement on the disclosure of information that  
7 is not described in subsection (b).

8 “(e) DEFINITIONS.—In this section:

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

11 “(A) Department of the Interior;

12 “(B) Forest Service;

13 “(C) Environmental Protection Agency;

14 “(D) National Marine Fisheries Service;

15 “(E) Bonneville Power Administration;

16 “(F) Western Area Power Administration;

17 “(G) Southwestern Power Administration;

18 or

19 “(H) Southeastern Power Administration.

20 “(2) COVERED SUIT.—The term ‘covered suit’  
21 means—

22 “(A) any civil action containing any claim  
23 arising under this Act against the Federal Gov-  
24 ernment and based on the action of a covered  
25 agency; and

1           “(B) any administrative proceeding under  
2           which the United States awards fees and other  
3           expenses to a third party under section 504 of  
4           title 5, United States Code.”.

5           (b) CLERICAL AMENDMENT.—The table of contents  
6           in the first section of the Endangered Species Act of 1973  
7           (16 U.S.C. 1531 note) is amended by striking the item  
8           relating to section 13 and inserting the following:

          “Sec. 13. Disclosure of expenditures.”.

9   **SEC. 404. AWARD OF LITIGATION COSTS TO PREVAILING**  
10                           **PARTIES IN ACCORDANCE WITH EXISTING**  
11                           **LAW.**

12           Section 11(g)(4) of the Endangered Species Act of  
13           1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to  
14           any party, whenever the court determines such award is  
15           appropriate” and inserting “in accordance with section  
16           2412 of title 28, United States Code and section 504 of  
17           title 5, United States Code.”.

18   **SEC. 405. ANALYSIS OF IMPACTS AND BENEFITS OF DETER-**  
19                           **MINATION OF ENDANGERED OR THREAT-**  
20                           **ENED STATUS.**

21           Section 4(a) of the Endangered Species Act of 1973  
22           (16 U.S.C. 1533(a)) is amended by adding at the end the  
23           following:

24           “(4) ANALYSIS OF EFFECTS OF DETERMINATION.—

1           “(A) IN GENERAL.—The Secretary shall, con-  
2           currently with making a determination under para-  
3           graph (1) that a species is a threatened species or  
4           an endangered species, prepare an analysis with re-  
5           spect to such determination of—

6                     “(i) the economic effect;

7                     “(ii) the effects on national security; and

8                     “(iii) any other relevant effect.

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

13 **TITLE V—LIMITATION ON REA-**  
14 **SONABLE AND PRUDENT**  
15 **MEASURES**

16 **SECTION 501. LIMITATION ON REASONABLE AND PRUDENT**  
17 **MEASURES.**

18          Section 7(b)(4) of the Endangered Species Act of  
19 1973 (16 U.S.C. 1536(b)(4)) is amended by inserting  
20 “and that do not propose, recommend, or require the Fed-  
21 eral agency or the applicant concerned, if any, to mitigate  
22 or offset such impact” after “minimize such impact”.

