

[DISCUSSION DRAFT]118TH CONGRESS
2^D SESSION**H. R.** _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. WESTERMAN introduced the following bill; which was referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

1 (b) TABLE OF CONTENTS.—The table of contents for
2 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.

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.

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

4 (a) FORESEEABLE FUTURE.—The final rule titled
5 “Endangered and Threatened Wildlife and Plants; Regu-
6 lations for Listing Species and Designating Critical Habi-
7 tat” (84 Fed. Reg. 45020; published August 27, 2019)

1 shall have the force and effect of law with respect to the
2 use of the term “foreseeable future”.

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

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

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

14 “(5) For the purposes of carrying out a consultation
15 under this section with respect to a threatened species or
16 an endangered species, the term ‘environmental base-
17 line’—

18 “(A) means the condition of the species or the
19 critical habitat of the species in the action area,
20 without the consequences to the species or the crit-
21 ical habitat of the species caused by the proposed ac-
22 tion; and

23 “(B) includes—

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

4 “(ii) the anticipated effects of each pro-
5 posed Federal project within the action area for
6 which a consultation under this section has
7 been completed;

8 “(iii) the effects of State and private ac-
9 tions that are contemporaneous with the con-
10 sultation in process; and

11 “(iv) the ongoing impacts to listed species
12 or designated critical habitat from existing fa-
13 cilities or activities that are not caused by the
14 proposed action or that are not within the dis-
15 cretion of the Federal action agency to mod-
16 ify.”.

17 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

18 Section 15 of the Endangered Species Act of 1973
19 (16 U.S.C. 1542) is amended—

20 (1) in subsection (a)—

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

23 (B) in paragraph (1)—

24 (i) by striking “and” after “fiscal year
25 1991,”; and

1 (ii) by inserting “, and **【\$_____】** for
2 each of fiscal years 2025 through 2030”
3 after “fiscal year 1992”;

4 (C) in paragraph (2)—

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

7 (ii) by inserting “, and **【\$_____】** for
8 each of fiscal years 2025 through 2030”
9 after “fiscal years 1991 and 1992”; and

10 (D) in paragraph (3)—

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

13 (ii) by inserting “and **【\$_____】** for
14 each of fiscal years 2025 through 2030”
15 after “fiscal years 1991 and 1992,”;

16 (2) in subsection (b), by inserting “and
17 **【\$_____】** for each of fiscal years 2025 through
18 2030” after “1992”; and

19 (3) in subsection (c)—

20 (A) by striking “and” after “fiscal years
21 1988, 1989, and 1990,”; and

22 (B) by inserting “and **【\$_____】** for each
23 of fiscal years 2025 through 2030,” after “fis-
24 cal years 1991 and 1992,”.

1 **TITLE I—OPTIMIZING CON-**
2 **SERVATION THROUGH RE-**
3 **SOURCE PRIORITIZATION**

4 **SECTION 101. PRIORITIZATION OF LISTING PETITIONS, RE-**
5 **VIEWS, AND DETERMINATIONS.**

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

9 “(j) NATIONAL LISTING WORK PLAN.—

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

17 “(A) status reviews for each such covered
18 species;

19 “(B) proposed and final determinations re-
20 garding listing each such covered species under
21 this section; and

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

25 “(2) SUBMISSION TO CONGRESS.—

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

3 “(i) together with the budget request
4 of the Secretary for the first fiscal year be-
5 ginning after the date of the enactment of
6 this subsection, the initial work plan re-
7 quired under paragraph (1); and

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

12 “(B) ADDITIONAL INCLUSIONS.—The Sec-
13 retary shall include with each budget request
14 referred to in subparagraph (A) a description of
15 the amounts to be requested to carry out the
16 work plan for each fiscal year covered by the
17 work plan, including any amounts requested to
18 resolve emergency petitions not addressed in the
19 work plan.

20 “(3) PRIORITY.—

21 “(A) IN GENERAL.—In developing a work
22 plan under this subsection, the Secretary shall
23 assign to each species included in the work plan
24 a priority classification of Priority 1 through

1 Priority 5, such that, as determined by the Sec-
2 retary, the following apply:

3 “(i) Priority 1 represents species of
4 the highest priority, to be designated as
5 critically imperiled and in need of imme-
6 diate action.

7 “(ii) Priority 2 represents species with
8 respect to which the best scientific and
9 commercial data available support a clear
10 decision regarding the status of the spe-
11 cies.

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

16 “(I) to answer key questions that
17 may influence the findings of a peti-
18 tion to list the species submitted
19 under subsection (b)(3); and

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

23 “(iv) Priority 4 represents species for
24 which proactive conservation efforts likely
25 to reduce threats to the species are being

1 developed or carried out, within a reason-
2 able timeframe and in an organized man-
3 ner, by Federal agencies, States, land-
4 owners, or other stakeholders.

5 “(v) Priority 5 represents species—

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

8 “(aa) threats to the species;

9 or

10 “(bb) the status of the spe-
11 cies; or

12 “(II) that would receive limited
13 conservation benefit in the foreseeable
14 future by listing the species as a
15 threatened species or endangered spe-
16 cies under this section.

17 “(B) USE OF METHODOLOGY.—The Sec-
18 retary shall establish and assign priority classi-
19 fications under subparagraph (A) in accordance
20 with the notice of the Director of the United
21 States Fish and Wildlife Service titled ‘Method-
22 ology for Prioritizing Status Reviews and Ac-
23 companying 12–Month Findings on Petitions
24 for Listing Under the Endangered Species Act’
25 (81 Fed. Reg. 49248; published July 27, 2016).

1 “(C) EXTENSIONS FOR CERTAIN PRIORITY
2 CLASSIFICATIONS.—

3 “(i) PRIORITY 3.—With respect to a
4 species classified as Priority 3 under sub-
5 paragraph (A)(iii), if the Secretary deter-
6 mines that additional time would allow for
7 more complete data collection or the com-
8 pletion of studies relating to the species,
9 the Secretary may retain the species under
10 the work plan for a period of not more
11 than 5 years after the deadline under para-
12 graph (4).

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

22 “(iii) PRIORITY 5.—With respect to a
23 species classified as Priority 5 under sub-
24 paragraph (A)(v), the Secretary may retain
25 the species under the work plan for a pe-

1 riod of not more than 5 years after the
2 deadline under paragraph (4).

3 “(D) REVISION OF PRIORITY CLASSIFICA-
4 TION.—The Secretary may revise, in accordance
5 with subparagraph (A), the assignment to a pri-
6 ority classification of a species included in a
7 work plan at any time during the fiscal years
8 to which the work plan applies.

9 “(E) EFFECT OF PRIORITY CLASSIFICA-
10 TION.—The assignment of a priority classifica-
11 tion to a species included in a work plan is not
12 a final agency action.

13 “(4) DEADLINE.—The Secretary shall act on a
14 petition to add a species to a list published under
15 subsection (c) submitted under subsection (b)(3) not
16 later than the last day of the period of the work plan
17 in which the species was first included.

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

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

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

1 “(A) COVERED SPECIES.—The term ‘cov-
2 ered species’ means a species that is not in-
3 cluded on a list published under subsection
4 (c)—

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

8 “(ii) that is otherwise under consider-
9 ation by the Secretary for addition to such
10 a list.

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

14 (b) CONFORMING AMENDMENTS.—

15 (1) PETITIONS.—Section 4(b)(3) of the Endan-
16 gered Species Act of 1973 (16 U.S.C. 1533(b)(3)) is
17 amended—

18 (A) in subparagraph (B), to read as fol-
19 lows:

20 “(B) FINDINGS.—

21 “(i) IN GENERAL.—In accordance with the
22 national listing work plan submitted under sub-
23 section (j), after receiving a petition that is
24 found under subparagraph (A) to present sub-
25 stantial information indicating that the peti-

1 tioned action may be warranted, the Secretary
2 shall make 1 of the following findings:

3 “(I) The petitioned action is not war-
4 ranted, in which case the Secretary shall
5 promptly publish such finding in the Fed-
6 eral Register.

7 “(II) The petitioned action is war-
8 ranted, in which case the Secretary shall
9 promptly publish in the Federal Register a
10 general notice and the complete text of a
11 proposed regulation to implement such ac-
12 tion in accordance with paragraph (5).

13 “(ii) PUBLICATION.—After making a find-
14 ing under clause (i), the Secretary shall
15 promptly publish such finding in the Federal
16 Register, together with a description and eval-
17 uation of the reasons and data on which the
18 finding is based.”;

19 (B) in subparagraph (C), to read as fol-
20 lows:

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

1 (C) in subparagraph (D)(ii), by striking
2 “(ii) Within 12 months after” and inserting the
3 following:

4 “(ii) ACTION ON POSITIVE FINDING.—In ac-
5 cordance with the national listing work plan sub-
6 mitted under subsection (j), after”.

7 (2) ALLOCATION OF FUNDS.—Section 6(d)(1)
8 of the Endangered Species Act of 1973 (16 U.S.C.
9 1535(d)(1)) is amended by striking “candidate spe-
10 cies pursuant to subparagraph (C) of section
11 4(b)(3)” and inserting “species included in the na-
12 tional listing work plan submitted under section 4(j)
13 (referred to in this paragraph as ‘candidate spe-
14 cies’)”.

15 **TITLE II—INCENTIVIZING WILD-**
16 **LIFE CONSERVATION ON PRI-**
17 **VATE LANDS**

18 **SECTION 201. CANDIDATE CONSERVATION AGREEMENTS**
19 **WITH ASSURANCES.**

20 (a) LISTING DETERMINATIONS.—Section 4(b)(1) of
21 the Endangered Species Act of 1973 (16 U.S.C.
22 1533(b)(1)) is amended by adding at the end the fol-
23 lowing:

24 “(C) CANDIDATE CONSERVATION AGREEMENTS
25 WITH ASSURANCES.—In making a determination

1 under subsection (a)(1) with respect to a species, the
2 Secretary shall take into account and document the
3 effect of any net conservation benefit (as that term
4 is defined in section 10(k)) of any Candidate Con-
5 servation Agreement with Assurances or any pro-
6 grammatic Candidate Conservation Agreement with
7 Assurances (as those terms are defined in that sub-
8 section) relating to such species.”.

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

13 “(k) CANDIDATE CONSERVATION AGREEMENTS
14 WITH ASSURANCES.—

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

17 “(2) APPROVAL.—Not later than 120 days
18 after the date of the receipt of a proposed Agree-
19 ment under paragraph (1), the Secretary shall ap-
20 prove the proposed Agreement if the Secretary de-
21 termines that the proposed Agreement—

22 “(A) sets forth specific management activi-
23 ties that the covered party will undertake to
24 conserve the covered species;

1 “(B) provides a positive estimate of the net
2 conservation benefit of such management activi-
3 ties to the covered species;

4 “(C) describes, to the maximum extent
5 practicable, the existing population levels of the
6 covered species or the existing quality of habi-
7 tat;

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

10 “(E) provides assurances to the covered
11 party that no additional conservation measures
12 will be required and additional land, water, or
13 resource use restrictions will not be imposed on
14 the covered party if the covered species becomes
15 listed after the effective date of such Agree-
16 ment.

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

20 “(A) deny the proposed Agreement if the
21 Secretary determines that the proposed Agree-
22 ment does not meet the requirements described
23 in paragraph (2); and

24 “(B) provide the submitting covered party
25 a written explanation for such determination

1 and the adjustments required for the Secretary
2 to approve such proposed Agreement.

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

5 “(A) IN GENERAL.—The Secretary may
6 enter into a Candidate Conservation Agreement
7 with Assurances with a covered party that au-
8 thorizes such covered party—

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

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

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

19 “(iv) to convey any permit authoriza-
20 tion held by such covered party under
21 clause (ii) to each covered party enrolled
22 under clause (iii).

23 “(B) PUBLICATION.—Upon receipt of a
24 proposed programmatic Candidate Conservation
25 Agreement with Assurances under paragraph

1 (1) and before approving or denying such a pro-
2 posed programmatic Candidate Conservation
3 Agreement with Assurances under paragraph
4 (2) or (3), respectively, the Secretary shall—

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

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

13 “(iii) after the close of the public com-
14 ment period for the proposed pro-
15 grammatic Candidate Conservation Agree-
16 ment with Assurances, publish in the Fed-
17 eral Register—

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

20 “(II) the approval or denial of
21 the proposed programmatic Candidate
22 Conservation Agreement with Assur-
23 ances under paragraph (2) or (3), re-
24 spectively.

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

7 “(6) TECHNICAL ASSISTANCE.—The Secretary
8 shall, upon request, provide a covered party with
9 technical assistance in developing a proposed Agree-
10 ment.

11 “(7) APPLICABILITY TO FEDERAL LAND.—An
12 Agreement may apply to a covered party that con-
13 ducts activities on land administered by any Federal
14 agency pursuant to a permit or lease issued to the
15 covered party by that Federal agency.

16 “(8) EXEMPTION FROM CONSULTATION RE-
17 QUIREMENT.—An Agreement approved under this
18 subsection shall be deemed to have been granted an
19 exemption under section 7(h) for the purposes of
20 that section.

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

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

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

4 “(i) a Candidate Conservation Agree-
5 ment with Assurances; or

6 “(ii) a programmatic Candidate Con-
7 servation Agreement with Assurances.

8 “(B) CANDIDATE CONSERVATION AGREE-
9 MENT WITH ASSURANCES.—The term ‘Can-
10 didate Conservation Agreement with Assur-
11 ances’ means any voluntary agreement, includ-
12 ing a conservation benefit agreement, between
13 the Secretary and a covered party in which—

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

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

20 “(I) the covered party shall incur
21 no additional obligations beyond ac-
22 tions agreed to in the agreement with
23 respect to conservation activities re-
24 quired under this Act; and

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

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

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

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

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

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

17 “(ii) private property owner;

18 “(iii) county;

19 “(iv) State or State agency; or

20 “(v) Tribal government.

21 “(E) COVERED SPECIES.—The term ‘cov-
22 ered species’ means, with respect to an Agree-
23 ment, the species that is the subject of such
24 Agreement.

1 “(F) NET CONSERVATION BENEFIT.—The
2 term ‘net conservation benefit’ means the net
3 effect of an Agreement, determined by com-
4 paring the existing situation of the candidate
5 species without the Agreement in effect and a
6 situation in which the Agreement is in effect,
7 on a candidate species, including—

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

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

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

14 “(G) PROGRAMMATIC CANDIDATE CON-
15 SERVATION AGREEMENT WITH ASSURANCES.—
16 The term ‘programmatic Candidate Conserva-
17 tion Agreement with Assurances’ means a Can-
18 didate Conservation Agreement with Assurances
19 described in paragraph (4)(A).”.

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

21 (a) PRIVATELY OWNED OR CONTROLLED LAND.—
22 Section 4(a)(3) of the Endangered Species Act of 1973
23 (16 U.S.C. 1533(a)(3)) is amended by adding at the end
24 the following:

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

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

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

15 “(II) is submitted to the Secretary in
16 a manner that is similar to the manner in
17 which an applicant submits a conservation
18 plan to the Secretary under section
19 10(a)(2)(A);

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

23 “(iv) the Secretary determines will result
24 in—

1 “(I) an increase in the population of
2 the species concerned above the population
3 of such species on the date that such spe-
4 cies is listed as a threatened species or an
5 endangered species; or

6 “(II) maintaining the same population
7 of such species on the land or other geo-
8 graphical area as the population that
9 would likely occur if such land or other
10 geographical area is designated as critical
11 habitat; and

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

16 (b) DESIGNATION CONSIDERATIONS.—Section
17 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C.
18 1533(b)(2)) is amended in the first sentence by inserting
19 “the impact on efforts of private landowners to conserve
20 the species,” after “impact on national security,”.

1 **TITLE III—PROVIDING FOR**
2 **GREATER INCENTIVES TO RE-**
3 **COVER LISTED SPECIES**

4 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDAN-**
5 **GERED SPECIES ACT OF 1973.**

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

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

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

17 “(d) PROTECTIVE REGULATIONS.—

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

23 “(2) RECOVERY GOALS.—If the Secretary
24 issues a regulation under paragraph (1) that
25 prohibits an act described in section 9(a), the

1 Secretary shall, with respect to the species that
2 is the subject of such regulation—

3 “(A) establish objective, incremental
4 recovery goals;

5 “(B) provide for the stringency of
6 such regulation to decrease as such recov-
7 ery goals are met; and

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

17 “(3) COOPERATIVE AGREEMENT.—A regu-
18 lation issued under paragraph (1) that prohibits
19 an act described in section 9(a)(1) with respect
20 to a resident species shall apply with respect to
21 a State that has entered into a cooperative
22 agreement with the Secretary pursuant to sec-
23 tion 6(c) only to the extent that such regulation
24 is adopted by such State.

25 “(4) STATE RECOVERY STRATEGY.—

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

9 “(B) APPROVAL OR DENIAL OF PETI-
10 TION.—Not later than 120 days after the
11 date on which the Secretary receives a pe-
12 tition submitted under subparagraph (A),
13 the Secretary shall—

14 “(i) approve such petition if the
15 recovery strategy is reasonably certain
16 to be implemented by the petitioning
17 State and to be effective in conserving
18 the species that is the subject of such
19 recovery strategy; or

20 “(ii) deny such petition if the re-
21 quirements described in clause (i) are
22 not met.

23 “(C) PUBLICATION.—Not later than
24 30 days after the date on which the Sec-
25 retary approves or denies a petition under

1 subparagraph (B), the Secretary shall pub-
2 lish such approval or denial in the Federal
3 Register.

4 “(D) DENIAL OF PETITION.—

5 “(i) WRITTEN EXPLANATION.—If
6 the Secretary denies a petition under
7 subparagraph (B), the Secretary shall
8 include in such denial a written expla-
9 nation for such denial, including a de-
10 scription of the changes to such peti-
11 tion that are necessary for the Sec-
12 retary to approve such petition.

13 “(ii) RESUBMISSION OF DENIED
14 PETITION.—A State may resubmit a
15 petition that is denied under subpara-
16 graph (B).

17 “(E) USE IN PROTECTIVE REGULA-
18 TIONS.—If the Secretary approves a peti-
19 tion under subparagraph (B), the Sec-
20 retary shall—

21 “(i) issue a regulation under
22 paragraph (1) that adopts the recov-
23 ery strategy as such regulation with
24 respect to the species that is the sub-

1 ject of such recovery strategy within
2 the petitioning State; and

3 “(ii) establish objective criteria to
4 evaluate the effectiveness of such re-
5 covery strategy in conserving such
6 species within such State.

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

18 (2) in subsection (f)(1)(B)—

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

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

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

24 “(iv) with respect to an endangered spe-
25 cies, objective, incremental recovery goals in ac-

1 cordance with subsection (d)(2)(A) for use
2 under that subsection if such endangered spe-
3 cies is changed in status from an endangered
4 species to a threatened species under subsection
5 (c)(2)(B)(ii).”.

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

7 Section 4(c) of the Endangered Species Act of 1973
8 (16 U.S.C. 1533(c)) is amended by adding at the end the
9 following:

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

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

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

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

22 **SEC. 304. CODIFICATION OF REGULATION.**

23 The final rule titled “Endangered and Threatened
24 Wildlife and Plants; Regulations for Prohibitions to
25 Threatened Wildlife and Plants” (84 Fed. Reg. 44753;

1 published August 27, 2019) shall have the force and effect
2 of law.

3 **TITLE IV—CREATING GREATER**
4 **TRANSPARENCY AND AC-**
5 **COUNTABILITY IN RECOV-**
6 **ERING LISTED SPECIES**

7 **SECTION 401. REQUIREMENT TO PUBLISH BASIS FOR LIST-**
8 **INGS ON INTERNET.**

9 Section 4(b) of the Endangered Species Act of 1973
10 (16 U.S.C. 1533(b)) is amended by adding at the end the
11 following:

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

17 “(A) at the request of a Governor, State agen-
18 cy, or legislature of a State, the Secretary shall not
19 make such data available under this paragraph if
20 such entity determines that public disclosure of such
21 data is prohibited by a law or regulation of such
22 State, including any law or regulation requiring the
23 protection of personal information; and

24 “(B) not later than 30 days after the date of
25 the enactment of this paragraph, the Secretary shall

1 execute an agreement with the Secretary of Defense
2 that prevents the disclosure of classified information
3 pertaining to Department of Defense personnel, fa-
4 cilities, lands, or waters.”.

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

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

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

11 and

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

14 “(2) Such cooperation shall include—

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

19 “(B)”.

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

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

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

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

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

9 (2) CONFORMING AMENDMENT.—Section 7(n)
10 of such Act (16 U.S.C. 1536(n)) is amended by
11 striking “section 3(13)” and inserting “section
12 3(14)”.

13 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
14 **GERED SPECIES ACT OF 1973.**

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

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

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

21 “(1) not later than 90 days after the end of
22 each fiscal year, submit to the Committee on Nat-
23 ural Resources of the House of Representatives and
24 the Committee on Environment and Public Works of
25 the Senate an annual report detailing Federal Gov-

1 ernment expenditures for covered suits during the
2 preceding fiscal year (including the information de-
3 scribed in subsection (b)); and

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

7 “(b) INCLUDED INFORMATION.—The report shall in-
8 clude—

9 “(1) the case name and number of each covered
10 suit, and, with respect to each such covered suit, a
11 hyperlink to each settlement decision, final decision,
12 consent decree, stipulation of dismissal, release, in-
13 terim decision, motion to dismiss, partial motion for
14 summary judgement, or related final document;

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

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

20 “(4) funds expended by each covered agency
21 (disaggregated by agency account) to receive and re-
22 spond to notices referred to in section 11(g)(2) or to
23 prepare for litigation of, litigate, negotiate a settle-
24 ment agreement or consent decree in, or provide ma-

1 terial, technical, or other assistance in relation to, a
2 covered suit;

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

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

9 “(7) attorneys fees and other expenses
10 (disaggregated by agency account) awarded in cov-
11 ered suits, including any consent decrees or settle-
12 ment agreements (regardless of whether a decree or
13 settlement agreement is sealed or otherwise subject
14 to nondisclosure provisions), including the bases for
15 such awards.

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

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

25 “(e) DEFINITIONS.—In this section:

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

3 “(A) Department of the Interior;

4 “(B) Forest Service;

5 “(C) Environmental Protection Agency;

6 “(D) National Marine Fisheries Service;

7 “(E) Bonneville Power Administration;

8 “(F) Western Area Power Administration;

9 “(G) Southwestern Power Administration;

10 or

11 “(H) Southeastern Power Administration.

12 “(2) COVERED SUIT.—The term ‘covered suit’
13 means—

14 “(A) any civil action containing any claim
15 arising under this Act against the Federal Gov-
16 ernment and based on the action of a covered
17 agency; and

18 “(B) any administrative proceeding under
19 which the United States awards fees and other
20 expenses to a third party under section 504 of
21 title 5, United States Code.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 in the first section of the Endangered Species Act of 1973
24 (16 U.S.C. 1531 note) is amended by striking the item
25 relating to section 13 and inserting the following:

“Sec. 13. Disclosure of expenditures.”.

1 **SEC. 404. AWARD OF LITIGATION COSTS TO PREVAILING**
2 **PARTIES IN ACCORDANCE WITH EXISTING**
3 **LAW.**

4 Section 11(g)(4) of the Endangered Species Act of
5 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to
6 any” and all that follows through the end of the sentence
7 and inserting “in accordance with section 2412 of title 28,
8 United States Code and section 504 of title 5, United
9 States Code.”.

10 **SEC. 405. ANALYSIS OF IMPACTS AND BENEFITS OF DETER-**
11 **MINATION OF ENDANGERED OR THREAT-**
12 **ENED STATUS.**

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

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

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

22 “(i) the economic effect;

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

24 “(iii) any other relevant effect.

25 “(B) EFFECT.—Nothing in this paragraph
26 shall delay a determination made by the Secretary

1 under paragraph (1) or change the criteria used by
2 the Secretary to make such a determination.”.

3 **TITLE V—LIMITATION ON REA-**
4 **SONABLE AND PRUDENT**
5 **MEASURES**

6 **SECTION 501. LIMITATION ON REASONABLE AND PRUDENT**
7 **MEASURES.**

8 Section 7(b)(4) of the Endangered Species Act of
9 1973 (16 U.S.C. 1536(b)(4)) is amended by inserting
10 “and that do not require the Federal agency or the appli-
11 cant concerned, if any, to fully mitigate or offset such im-
12 pact” after “minimize such impact”.