

SECTION-BY-SECTION ANALYSIS

Sec. 2. Definitions. – **Makes ESA definitions less protective of species on the brink.**

- **Foreseeable future**

- The bill would give the 2019 regulatory definition of “foreseeable future” the force and effect of law. This term is important because threatened species are defined under the ESA as species likely to become endangered within the foreseeable future. *See* 16 U.S.C. § 1532(20). The definition of this term therefore influences whether a whole suite of species receives ESA protection.
- The 2019 definition reads, in part: “In determining whether a species is a threatened species, the Services must analyze whether the species is likely to become an endangered species within the foreseeable future. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species’ responses to those threats are likely...” 84 Fed. Reg. 45,020, 45,052 (Aug. 27, 2019).
- By using the term “likely,” the 2019 definition appeared to depart from longstanding guidance under a 2009 Interior M-Opinion¹ that allows the use of extrapolation and scientifically grounded prediction, based upon available scientific data, to assess foreseeable future threats to species.
- The current (2024) definition of the term removed the problematic “likely” standard (i.e., removed the standard this bill would reinstate). The 2024 definition reads: “The foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats.” 89 Fed. Reg. 24,300, 24,335 (Apr. 5, 2024).

- **Commercial activity**

- Modifies the definition of this term as follows: *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 exhibition of*

¹ <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>

*commodities by museums or similar cultural or historical organizations **or public display or education aimed at the preservation or conservation of a species.***

- This term is important to the take prohibition, which forbids transportation of listed species “in the course of a commercial activity.” 16 U.S.C. § 1538(a)(1)(E).
- Under the proposed revision, listed species can be transported for “public display” without running afoul of the take provision—so long as the display is “aimed” at species conservation (even if conservation is not actually furthered or achieved).
- This is a problematic loophole that could assist, for example, badly managed roadside zoos.
- **Conserve; conserving; conservation**
 - Modifies the definition of this term to expand the scope of regulated taking, as follows: *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 chapter 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.*

“Regulated taking” includes sport hunting which, under this bill, would become a discretionary conservation tool.
- **Critical habitat**
 - Under the bill, a new definition of “habitat” applicable for purposes of designating critical habitat would foreclose critical habitat designation from facilitating adaptation to climate change.
 - Specifically, under the proposed definition, “For the purposes of designating critical habitat under this Act, the term ‘habitat’ means the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support 1 or more life processes.” This means that only areas that a species could currently occupy can be designated as critical habitat—even if the best available science clearly projects that the species will need to move to different areas (e.g., northward or upslope) in the future to adapt to climate change.
 - The proposed definition also confusingly states that if these areas (i.e., the currently suitable areas) do not support all of the species’ life processes, the species “must be able to access, from the setting, other areas necessary to support its remaining life processes.” This sentence is highly unclear, but seems arguably

to be an admission that sometimes currently occupied habitat cannot fully support the species.

- In addition, the proposed definition states that “habitat” does not include “an area visited by only vagrant individual members” of the species. This exception could exclude large areas from critical habitat protection even if they are important expansion areas into which individuals of a protected species are beginning to venture.
- **Best scientific and commercial data available**
 - “Best scientific and commercial data available” has not previously been defined; its meaning is common-sense. The bill proposes a definition that deviates from the common-sense meaning by stating that the term includes all data submitted to the Secretary by a State, Tribal, or local government—regardless of its quality. This change threatens to upend the scientific process that has always guided ESA decisionmaking.
- **Environmental Baseline**
 - The bill would add a definition of “environmental baseline” that has previously only existed in regulations that were finalized in 2019 and were highly problematic for conservation. Among other things, the bill would provide that the baseline includes “existing structures and facilities and the past, present, and future effects on the species or the critical habitat of the species from the physical existence of such structures and facilities.”
 - Including existing structures in the baseline warps the consultation process by obscuring the true condition of the species. The goal of consultation is to determine whether, given both the baseline and the new proposed agency action, jeopardy or adverse modification is likely. Folding existing structures into the baseline encourages agencies to ignore the problems that harm species on a continuous basis and analyze only a subset of marginal activities that cause additional harms or even marginal benefits, easing the way to a misleading “no-jeopardy” conclusion, and approving individual actions that together may lead to a species’ extirpation or extinction.
 - In reality, the continued presence of existing structures is sometimes the source of jeopardy. For example, dams in the Pacific northwest that predate the ESA have placed some native salmon runs in jeopardy in a way the ESA forbids, but if they are simply part of the baseline, they may never be addressed in ESA consultation.

Sec. 3. Authorization of appropriations. **Authorizes ESA funding at levels that fall far short of what is needed.**

- This provision updates the authorization of appropriations from the amounts currently in the statute, which are from the late 1980s and early 1990s.

- The proposed bill provides the following amounts (rounded): \$302m for Interior for each of years 2025-2030; \$116m for Commerce; \$2.6m for USDA; \$600k for the God Squad; and \$9.9m for treaty implementation.
- These amounts are far short of what is actually required for full implementation of the ESA. For example, Defenders’ Center for Conservation Innovation has calculated a total need of \$857 million to fully fund FWS ESA implementation, meaning the authorized amount is equivalent to, at most, 35% of the current need—and is set at a flat level that will not grow with inflation.
- Moreover, it is important to note that actual appropriations will not necessarily even reach these authorized amounts—so it makes very little sense to aim at a target that is inadequate. For example, in every one of the past four fiscal years Ecological Services, the FWS department responsible for implementing the ESA, received less than \$300 million in nominal dollars to do so. In each of those years the amount appropriated was less than that requested by the executive branch, which was itself less than what was needed to fully implement the ESA.

Sec. 4. Rule of construction.

- Provides that nothing in the ESA enlarges or diminishes state authority to manage, control, or regulate fish and wildlife on lands and waters, including federal lands and waters, within the state.

TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

Sec. 101. Prioritization of listing petitions, reviews, and determinations. **Substantially extends deadlines to act on petitions to list imperiled species.**

- The ESA recognizes that timely listing of species is important to securing the Act’s protections, and therefore imposes deadlines for action on petitions to list species. Within 90 days of receiving a petition, the Services must determine, to the maximum extent practicable, whether the petition presents substantial information indicating listing may be warranted. Twelve months thereafter, a listing decision is due. 16 U.S.C. § 1533(b)(3). *See also Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 (9th Cir. 2002) (noting that Congress has “expressed particular concern for species that had languished for years in status reviews” and “passed the 1982 amendments” to the ESA “for the very purpose of curtailing the process”) (cleaned up).
- Given the pace of the extinction crisis and the inadequate funding the Services receive to keep up with petitions, the Services currently maintain a five-year listing work plan² used to prioritize species and predict when certain decisions may be made.

² <https://www.fws.gov/project/national-listing-workplan>

- This bill would codify and mandate a version of the work plan concept and use it to substantially extend deadlines for listing decisions, eliminating the current, mandatory deadlines and providing little recourse (aside from emergency listing) in the event that a species rapidly declines and fast action is needed.
- Specifically, the bill requires Interior to create and submit annually to Congress a “national listing work plan” with a schedule for completing status reviews, listing decisions, and critical habitat designations within five years of submitting the work plan. Species must be prioritized, from Priority 1 (critically imperiled) through Priority 5 (last priority). Priority 3-5 species may receive a five-year extension on the five-year deadline. There is little recourse for the misclassification of species as lower priority, as priority classifications cannot be challenged under the bill (because under the bill they are not final agency action).
- Under the bill, “[t]he Secretary shall act on a 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 period of the work plan in which the species was first included.” In other words, the Services would have at least five, and in some cases 10, years to make listing decision. This language appears to replace the current, mandatory 12-month deadline.
- Species covered by the work plan are those for which a petition to list has been submitted, as well as species “otherwise under consideration by the Secretary for addition” to the ESA list.

TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

Sec. 201. Candidate Conservation Agreements with Assurances. **Codifies and extends past practice of relying on ineffective voluntary conservation agreements in a way that is likely to harm species. Creates large exemptions that would allow incidental take permits—which allow harm to listed species—to escape meaningful review and scrutiny.**

- CCAAs³ set forth pre-listing conservation measures, with participants who enter into them granted permits when the species is listed. The “assurances” part of CCAAs means parties covered by a CCAA do not later have to undertake additional conservation measures or face restrictions if a species is listed.
- There have been significant issues with the effectiveness of past and current CCAAs. For example, the dunes sagebrush lizard was the subject of past agreements, but the Service eventually had to list it as endangered.
- This bill would codify and extend the practice of relying on CCAAs and would give agencies much less discretion to ensure that they protect species. Among other things, it would:

³ Under 2024 rules, CCAAs are now termed Conservation Benefit Agreements. *See* <https://www.fws.gov/service/candidate-conservation-agreements-assurances>. As the bill does, this analysis uses the prior term.

- *Require* agencies to approve a CCAA proposal within 120 days if it meets statutory requirements, which are relaxed in comparison to current requirements set forth in regulations. For example, the bill would require approval if there is, among other things, “a positive estimate of the net conservation benefit.” In comparison, current regulations provide agency *discretion* to issue permits if conditions are met—for example, that “implementation of the terms of the CCAA is reasonably expected to provide a net conservation benefit to the affected covered species.” 50 C.F.R. § 17.32(d) (threatened species regulation—see endangered species counterpart at section 17.22).
- Provide a weak definition of “net conservation benefit,” which under the bill is “determined by comparing the existing situation of the candidate species without the Agreement in effect and a situation in which the Agreement is in effect.” Since candidate species are often unprotected in any way, this means that even minimal and insufficient conservation actions in a CCAA will provide a “net conservation benefit.”
- Require issuance of permit for incidental take and habitat modification consistent with CCAA terms.
- Make CCAAs available on federal lands (to lessees or permittees) and deem them exempt from ESA section 7 inter-agency consultations and ESA substantive standards, no matter their size or scope.
 - Together, these provisions could pave the way for consultation-free extractive resource uses on federal lands. This is problematic because section 7 inter-agency consultations and the section 7 substantive standards are essential to protect species.
- Create a FOIA exemption for information provided in seeking a CCAA.
- Require the Services to account for any net benefit set forth in the CCAAs when deciding whether to list a species. This is problematic, as many of these plans have deficient “net benefit” goals.
- Allow CCAAs to proceed without financial assurances that the conservation actions would be implemented. *Compare* 50 C.F.R. § 17.22 (current regulation, requiring agency to find that applicant “has shown a capability for and commitment to implementing all terms...”). Insufficient assets have previously proved problematic for CCAA implementation; this was the case, for example, with the lesser prairie-chicken CCAA.

Sec. 202. Conservation plans. **Together with section 203, exempts incidental take permits—which allow imperiled species to be harmed or killed—from meaningful review and freezes mitigation measures in place even when they are clearly not working.**

- This section would exempt incidental take permits from meaningful review by treating each as a “God Squad” application that is automatically granted. The God Squad is a committee that can vote—typically after extensive process—for a proposed project to cause a species extinction. Greenlighting God Squad grants as this bill does creates a real danger of extinction without any review or process. Under the bill, incidental take permits would never receive ESA consultation or—under section 203—NEPA review.

- The bill alters the mitigation measures allowed as part of the incidental take permit (ITP) process. ITPs are issued to allow state or private parties to “take” (including harm or kill) imperiled species, incidental to lawful activities, so long as those parties also take federally approved conservation measures.
- Under the bill, where an ITP has been issued based on a conservation plan, the mitigation measures in the ITP function as a cap, with no additional mitigation allowed in the event that there is any additional federal approval required for the relevant project. This means that, even if existing mitigation measures are plainly not working, there is no room to expand upon them.
- Moreover, arguably the bill completely eliminates protections under *other* statutes—such as the Bald and Golden Eagle Protection Act—in situations where an ITP has been issued, because post-ITP there can be no “additional mitigation measures through any other Federal or State or local process.” This is highly problematic because the ITP will only account for ESA-listed species, not species that are protected under other acts like the Bald and Golden Eagle Protection Act—leaving these species completely without protection even though existing mitigation measures have nothing to do with them at all.

Sec. 203. NEPA exemption for incidental take permits.

- Under the bill, issuance of an ITP shall not be considered a major federal action for NEPA purposes. This is another significant carveout allowing take permits to escape full review.

TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER LISTED SPECIES

Sec. 301. Protective regulations under Endangered Species Act of 1973. **Clears the way for more taking of listed species and weakens the longstanding federal role in management of threatened species.**

- Under the guise of “protective regulations,” the bill would make regulations for threatened species significantly less protective. First, elsewhere (in section 304) the bill reinstates the 2019 removal of the so-called “blanket 4(d)” rule, which for years automatically provided threatened species under FWS jurisdiction with the same protections against “take” (i.e., harm/harassment/killing) that apply to endangered species. This creates a void: without the blanket rule, threatened species have no take protections (or other protections under section 9, such as protection against trafficking in commerce) unless those protections are specifically imposed on a species-by-species basis.
- Section 301 of the bill then blocks the Services from filling that void by significantly limiting how much take protection can be afforded to any threatened species.
- Specifically, under the bill, if the Services issue a 4(d) rule that limits take, they must provide for the stringency of the take prohibition to decrease as recovery goals are met

and also provide for state management to take over once recovery goals are met—even while a species is still listed.

- States can propose recovery strategies relevant under this provision, and the Services must act on them within 120 days and must approve them if certain conditions are met.

Sec. 302. 5-year review determinations. **Fast-forwards delistings in a manner that would burden the Services, which are already staggering under the blows from recent resource cuts.**

- There is not currently a deadline for delisting species after a status review indicates that the species' listing status should change. This bill would change that. Under the bill, after a decision to delist or down/uplist, the Services would have to initiate rulemaking “to carry out” the decision within 30 days. If “carry out” means that the Services must blindly effectuate whatever decision is recommended in the status review, there is arguably a conflict with typical rulemaking process.
- In any event, this short timeframe would crunch the resource-strapped Services, who are staggering with the blows inflicted by years of inadequate funding as well as more recent staffing cuts. In addition, the short 30-day timeframe is a remarkable contrast with the bill's changes to listing procedures, which would extend action on listing by a period of years.

Sec. 303. Judicial review during monitoring period. **Significantly limits challenges to delistings.**

- Under the bill, during a five-year monitoring period after delisting, the delisting cannot be reviewed by a court.
- This means an unlawfully delisted species could decline—even precipitously—for five years without any recourse for the public.

Sec. 304. Codification of regulation. **Codifies the 2019 removal of the blanket 4(d) rule—imposing the burdens of implementing species-specific rules on agencies that now have fewer resources than ever.**

- As noted above, this provision codifies the 2019 removal of the FWS “blanket 4(d)” rule for threatened species. See above under section 301 for a discussion.
- Note that it is unclear how this change interacts with the provisions above for increased taking of threatened species. The 2019 removal of the blanket 4(d) rule only lifted automatic take protections for *future-listed* threatened species under FWS jurisdiction. It is not clear what rules would apply to govern already-listed threatened species.
- In addition, a shift from blanket, automatic 4(d) protections (for FWS species) to species-by-species protections that (per section 301) would involve recovery planning and state management appears exceedingly cumbersome and time-intensive.

Sec. 305. Designation of critical habitat. **Creates a series of ill-defined and unadministrable carveouts from critical habitat designation on a wide array of private and public lands that will be resource-intensive to apply and, if applied, will be far less protective for species than existing law.**

- In passing the ESA Congress recognized that imperiled species' habitat must be protected if they are to survive and recover. For that reason, with limited exceptions critical habitat must be designated for all listed species. That habitat then receives special protection, including protection from “destruction or adverse modification” in section 7 consultations.
- The bill waters down that protection significantly, shifting designation away from the current, pragmatic process of identifying the habitats that are needed to support the species (with consideration of economic impacts).
- The bill would preclude critical habitat designation on a wide array of habitats—i.e., “any privately owned or controlled land or other geographical area,” so long as there is a land management plan in place that meets certain criteria. Qualifying plans must:
 - Be “similar in nature to” integrated natural resources management plans for DOD lands under the Sikes Act (extending in a broad and vague way an existing exemption from designation for certain land on military installations); OR
 - Be prepared with Interior and state cooperation; *or* be submitted “in a manner that is similar” to the submission of Habitat Conservation Plans under section 10 of the ESA;
 - Either increase the population of the species relative to the population at the time of listing OR maintain the population relative to the population that would exist were critical habitat designated; AND
 - Meet the “minimize and mitigate to the maximum extent practical” standard that exists for HCPs.
- These carveouts do *not* just apply to private land. They also cover “privately controlled” land, an undefined and potentially broad term, and also an unspecified set of *publicly owned areas* so long as they are subject to some kind of land management plan, which apparently could be a federal or a state plan.
- Even identifying what lands qualify for the carveouts would be massively time-consuming and resource intensive, apparently requiring the Services to assess a wide array of *state and federal* land management planning regimes—to apply the ill-defined mandate to exempt land management plans “similar to” Sikes Act plans.
- Assuming the Services can even manage to apply the carveout, the results would not be good for species. Any area carved out from critical habitat designation under this provision would almost certainly be managed in a manner that is much less protective than critical habitat is managed; for example, escaping review in section 7 consultations.

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

Sec. 401. Requirement to publish basis for listings and critical habitat designations on Internet.

- The best science that forms “the basis for each regulation” has to be posted online, except if a state agency, governor, or “legislature” requests that it not be posted due to state law.

Sec. 402. Decisional transparency and use of state, tribal, and local information.

- Before listing or critical habitat decision, agencies must provide to affected states all data that is the basis of the determination.

Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973. **Burdensome information requirements about a wide array of agency litigation.**

- Amends 16 U.S.C. § 1540 to require reporting to the relevant House and Senate Committees on “expenditures for covered suits.” The information required is extensive: case name, certain case documents, funds expended to respond, and attorney’s fees all have to be included, among other things. This information must also be posted on the internet.
- Covered suits are ESA citizen suits and “any administrative proceeding under which the United States awards fees and other expenses to a third party under section 504 of title 5,” which is a reference to the Equal Access to Justice Act. The latter category in particular would sweep in a broad array of cases—not just environmental cases.

Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law. **ESA fees in citizen suits would be restricted to the Equal Access to Justice Act rates, which are well below market rates.** This would create a disincentive to citizen enforcement of the ESA.

Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status. **Creates new, burdensome, super-broad impact reports that would be required for listing.**

- Under the bill, a listing decision has to be accompanied by a report on economic impact and effects on human health and safety and national security, as well as “any other relevant effect.”

TITLE V—LIMITATION ON REASONABLE AND PRUDENT MEASURES

Sec. 501. Limitation on reasonable and prudent measures. **Forecloses mitigation as a tool for alleviating some take of imperiled species at the hands of federal agencies.**

- Under the bill, when an incidental take statement is issued as part of consultation—to insulate the action agency against incidental take that may occur as a result of the proposed action—any “reasonable and prudent measures” previously used to mitigate

take would be limited significantly. Under the bill, RPMs *may not* require any mitigation or offsetting.

Sec. 502. Successive consultations. **Requires inefficient revisiting of past consultation outcomes to shut down already-implemented conservation measures in a manner that would hurt species.**

- Under the bill, where there is an ongoing agency action for which a “reasonable and prudent alternative” or “reasonable and prudent measure” has been adopted, if there is a subsequent consultation within ten years, then in that subsequent consultation the agencies must project the likelihood and timeline for recovery of affected species and determine whether continuing the measure (or alternative) will increase the likelihood/reduce the timeline of recovery. If not, the relevant measure/alternative “shall” be discontinued.
- This provision makes little sense. Dropping conservation measures plainly invites harm to species that the measures were intended to avoid, subverting the entire purpose of consultation and threatening to make already-implemented conservation measures ineffective.
- Moreover, the provision may not even be feasible to implement. A “reasonable and prudent alternative” is a course-correction adopted to avoid federal agency actions that are likely to jeopardize the continued existence of listed species (or destroy or adversely modify their critical habitat). The alternative could encompass a project redesign—so there will be circumstances in which an alternative cannot be “discontinued.”

Sec. 503. Requirement to consider reasonably certain effects. **Limits consultation process so as to make it far less effective.**

- Under this provision, section 7(a)(2) of the ESA will only require assessment of “reasonably certain effects” of agency actions without a “substantive presumption in favor of the species.”
- This represents a significant narrowing of the scope of consultation that will make consultations far less effective. If only the “reasonably certain effects” of agency action can be considered, then consultations cannot, for example, take into account potential catastrophic consequences, such as oil spills, that may not be reasonably certain but are clearly possible and could devastate species. This goes against basic common sense.
- In addition, dropping any presumption in favor of the species flies in the face of the scientific “precautionary principle” recognized by scientists for decades.

Sec. 504. Clarifying jeopardy. **Far from “clarifying” jeopardy, this section is extraordinarily confusing drafted and appears to eliminate the longstanding statutory standard foreclosing agency actions that are likely to adversely modify critical habitat. That change would**

uspend ESA implementation and eliminate much of the benefit of critical habitat, allowing federal agencies to destroy areas that species on the brink of extinction need for survival.

- Under this provision, in the course of consultation it is only possible for the wildlife agency to reach a “jeopardy” or “adverse modification” conclusion if the agency determines “that the effects that are reasonably certain to be caused by the action are likely to result in the action itself causing such jeopardy.”
- This provision is extremely poorly drafted. To the extent intelligible, it is problematic in numerous ways:
 - It seems to hitch adverse modification determinations to jeopardy determinations, writing the longstanding prohibition against federal agency actions that are likely to destroy or adversely modify critical habitat out of the statute.
 - It doubles down on the “reasonably certain” standard that is problematic for the reasons discussed above.
 - It requires that the proposed agency action itself cause the jeopardy—meaning the environmental baseline would no longer be added to the proposed agency action to evaluate jeopardy. This means that species that are on the brink of extinction from decades of incremental harms would only receive a jeopardy finding if the proposed agency action itself delivers the coup de grace. This would be a sea change in the section 7 consultation process.

TITLE VI—ELIMINATING BARRIERS TO CONSERVATION

Sec. 601.

- Allows commercial import and export of non-native listed species so long as CITES [Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973] standards (as well as certain statutory reporting standards) are satisfied.

Sec. 602. Utilize convention standards for permits applicable to non-native species. **Clears the way for sale, import, and export, of species from other countries that are imperiled, potentially allowing U.S. commerce to harm beloved exotic species.**

- Amends the take exceptions to distinguish between species native to the U.S. (as to which there is no statutory change) and non-native species. For non-native species, under the proposed bill federal agencies may permit any kind of take upon a determination that it is “not detrimental to the survival of the affected species,” including sale and commercial import and export.

Sec. 701. Limiting agency regulations. **Scales back agency authority to promulgate important rules such as the 2008 Vessel Speed Rule that provides essential protection for the critically endangered North Atlantic Right Whale.**

- This provision would drastically scale back the permitting authority found in section 11(f) of the ESA, which currently authorizes “such regulations as may be appropriate to enforce this chapter.” In one example, NMFS relied on Section 11(f) as authority to promulgate the 2008 Vessel Speed Rule that protects critically endangered North Atlantic right whales from vessel strikes. Section 11(f) may also have been part of the statutory authority for the NMFS regulations requiring Turtle Excluder Devices on most shrimp trawling nets in state and federal fisheries in the Southeastern Atlantic and Gulf of Mexico.
- In an attack on the Vessel Speed Rule, this provision would bar the wildlife agencies from relying on 11(f)’s general rulemaking authority to promulgate affirmative conservation regulations outside the context of incidental take regulation, instead confining section 11(f) regulatory authority to regulations implementing the civil and criminal enforcement provisions of section 11 and the CITES treaty enforcement provisions of section 8A.