

APRIL 16, 2026

RULES COMMITTEE PRINT 119–23
TEXT OF H.R. 1897, THE ESA AMENDMENTS ACT
OF 2025

**[Showing the text of H.R. 1897, as reported by the Committee
on Natural Resources, with modifications]**

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “ESA Amendments Act of 2025”.

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.
- Sec. 5. Renaming of Endangered Species Act of 1973 to Endangered Species
Recovery Act.

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

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

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

- Sec. 201. Conservation Benefit Agreements.
- Sec. 202. Conservation plans.
- Sec. 203. NEPA exemption for incidental take permits.

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

- Sec. 301. Protective regulations under Endangered Species Act of 1973.
- Sec. 302. 5-year review determinations.
- Sec. 303. Judicial review during monitoring period.
- Sec. 304. Designation of critical habitat.
- Sec. 305. Treatment of State, Tribal, and local government data.
- Sec. 306. Clarifying significant portion of range of species.
- Sec. 307. Delisting criteria.

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

- Sec. 401. Requirement to publish basis for listings and critical habitat designations online.
- Sec. 402. Decisional transparency and use of State, Tribal, and local information.
- Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.
- Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law.
- Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status.
- Sec. 406. Notification of Congress of certain critical habitat designations.
- Sec. 407. Notification of Congress of certain releases of experimental populations.
- Sec. 408. Annual cost analysis by the Fish and Wildlife Service.
- Sec. 409. Compliance with biological opinion related to dredge and fill permitting program.

TITLE V—STREAMLINING PERMITTING PROCESS

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

TITLE VI— ELIMINATING BARRIERS TO CONSERVATION

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

TITLE VII—RESTORING CONGRESSIONAL INTENT

- Sec. 701. Limiting agency regulations.

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

2 (a) FORESEEABLE FUTURE.—Section 3(20) Endan-
3 gered Species Act of 1973 (16 U.S.C. 1532(20)) is amend-
4 ed by—

5 (1) striking “The term” and inserting “(A) The
6 term”; and

7 (2) by adding at the end the following:

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

8 (b) COMMERCIAL ACTIVITY.—Section 3(2) Endan-
9 gered Species Act of 1973 (16 U.S.C. 1532(2)) is amend-
10 ed by inserting “or public display or education aimed at
11 the preservation or conservation of a species” after “orga-
12 nizations”.

13 (c) CONSERVE; CONSERVING; CONSERVATION.—Sec-
14 tion 3(3) of the Endangered Species Act of 1973 (16
15 U.S.C. 1532(3)) is amended by striking “and transplan-
16 tation, and, in the extraordinary case where population
17 pressures within a given ecosystem cannot be otherwise
18 relieved, may include” and inserting “transplantation,
19 and, at the discretion of the Secretary,”.

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

23 “(D)(i) For the purpose of designating critical habi-
24 tat for a threatened species or an endangered species
25 under this Act, the term ‘habitat’—

1 “(I) means the abiotic and biotic setting that
2 currently or periodically contains the resources and
3 conditions necessary to support 1 or more life proc-
4 esses of the threatened species or endangered spe-
5 cies; and

6 “(II) does not include an area—

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

10 “(bb) visited by only vagrant individual
11 members of the threatened species or endan-
12 gered species.

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

19 (e) BEST SCIENTIFIC AND COMMERCIAL DATA
20 AVAILABLE.—Section 3 of the Endangered Species Act of
21 1973 (16 U.S.C. 1532) is amended—

22 (1) by redesignating paragraphs (2) through
23 (10) as paragraphs (3) through (11), respectively;
24 and

1 (2) by inserting after paragraph (1) the fol-
2 lowing:

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

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

8 “(B) include credible and reliable data, quan-
9 titative analyses, conceptual and numerical models,
10 and model results that—

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

13 “(ii) are applied using prevailing prin-
14 ciples, methods, tools, and professional stand-
15 ards of practice; and

16 “(iii) are impartially gathered and objec-
17 tively applied without reliance on precautionary
18 assumptions in favor of a species or other as-
19 sumptions or policy prescriptions that bias the
20 application.”.

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

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

1 “(1) means the condition of the species or the
2 critical habitat of the species in the area directly af-
3 fected by the agency action at the time of the pro-
4 posed agency action, without the consequences to the
5 species or the critical habitat of the species caused
6 by the proposed action; and

7 “(2) includes—

8 “(A) the past and present effects of all
9 Federal, State, local, and private actions and
10 other human activities in the area directly af-
11 fected by the agency action;

12 “(B) the anticipated effects of each pro-
13 posed Federal project within the area directly
14 affected by the agency action for which a con-
15 sultation under this section has been completed;

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

19 “(D) existing structures and facilities and
20 the past, present, and future effects of the
21 physical existence of such structures and facili-
22 ties on the species or the critical habitat of the
23 species; and

24 “(E) the effects of Federal actions being
25 carried out at the time of the proposed agency

1 action and existing Federal facilities that are
2 not within the discretion of the Secretary to
3 modify.”.

4 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) IN GENERAL.—Section 15 of the Endangered
6 Species Act of 1973 (16 U.S.C. 1542) is amended—

7 (1) in subsection (a)—

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

10 (B) in paragraph (1)—

11 (i) by striking “and” after “fiscal year
12 1991,”; and

13 (ii) by inserting “, and \$287,978,000
14 for each of fiscal years 2026 through
15 2031” after “fiscal year 1992”;

16 (C) in paragraph (2)—

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

19 (ii) by inserting “, and \$105,400,000
20 for each of fiscal years 2026 through
21 2031” after “fiscal years 1991 and 1992”;

22 and

23 (D) in paragraph (3)—

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

1 (ii) by inserting “and \$2,600,000 for
2 each of fiscal years 2026 through 2031”
3 after “fiscal years 1991 and 1992,”;

4 (2) in subsection (b), by inserting “and
5 \$600,000 for each of fiscal years 2026 through
6 2031” after “1992”; and

7 (3) in subsection (c)—

8 (A) by striking “and” after “fiscal years
9 1988, 1989, and 1990,”; and

10 (B) by inserting “and \$9,900,000 for each
11 of fiscal years 2026 through 2031,” after “fis-
12 cal years 1991 and 1992,”.

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

17 **SEC. 4. RULE OF CONSTRUCTION.**

18 Nothing in this Act or the amendments made by this
19 Act may be construed to enlarge or diminish the authority,
20 jurisdiction, or responsibility of a State (as that term is
21 defined in section 3 of the Endangered Species Act of
22 1973 (16 U.S.C. 1532)) to manage, control, or regulate
23 fish and wildlife on lands and waters, including Federal
24 lands and waters, within the State.

1 **SEC. 5. RENAMING OF ENDANGERED SPECIES ACT OF 1973**
2 **TO ENDANGERED SPECIES RECOVERY ACT.**

3 (a) RENAMING.—The first section of the Endangered
4 Species Act of 1973 (16 U.S.C. 1531 note; Public Law
5 93–205) is amended by striking “may be cited as the ‘En-
6 dangered Species Act of 1973’” and inserting “may be
7 cited as the ‘Endangered Species Recovery Act’”.

8 (b) REFERENCES.—Any reference in a law, map, reg-
9 ulation, document, paper, or other record of the United
10 States to the “Endangered Species Act of 1973” shall be
11 deemed to be a reference to the “Endangered Species Re-
12 covery Act”.

13 **TITLE I—OPTIMIZING CON-**
14 **SERVATION THROUGH RE-**
15 **SOURCE PRIORITIZATION**

16 **SEC. 101. PRIORITIZATION OF LISTING PETITIONS, RE-**
17 **VIEWS, AND DETERMINATIONS.**

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

21 “(j) NATIONAL LISTING WORK PLAN.—

22 “(1) IN GENERAL.—Not later than the date de-
23 scribed in paragraph (2), the Secretary shall submit
24 to Congress a national listing work plan that estab-
25 lishes, for each covered species, a schedule for the
26 completion during the 5-fiscal year period beginning

1 on October 1 of the first fiscal year after the date
2 of the submission of the work plan of—

3 “(A) findings as described in subsection
4 (b)(3)(B);

5 “(B) any proposed or final determination
6 under subsection (a)(1) required by a court
7 order, court decree, or court-approved settle-
8 ment agreement; and

9 “(C) any proposed or final designation of
10 critical habitat under subsection (a)(3) required
11 by a court order, court decree, or court-ap-
12 proved settlement agreement.

13 “(2) SUBMISSION TO CONGRESS.—

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

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

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

1 “(B) ADDITIONAL INCLUSIONS.—The Sec-
2 retary shall include with each budget request
3 referred to in subparagraph (A) a description of
4 the amounts to be requested to carry out the
5 work plan for the fiscal year covered by the
6 budget request, including any amounts re-
7 quested to address potential future listings of
8 species considered on an emergency basis in
9 that fiscal year.

10 “(3) PRIORITY.—

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

17 “(i) Priority 1 represents species of
18 the highest priority, to be designated as
19 critically imperiled and in need of imme-
20 diate action.

21 “(ii) Priority 2 represents species with
22 respect to which the best scientific and
23 commercial data available support a clear
24 decision regarding the status of the spe-
25 cies.

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

5 “(I) to answer key questions that
6 may influence the findings of a peti-
7 tion to list the species submitted
8 under subsection (b)(3); and

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

12 “(iv) Priority 4 represents species for
13 which proactive conservation efforts likely
14 to reduce the effects of the factors de-
15 scribed in subparagraphs (A) through (E)
16 of subsection (a)(1) on the species are
17 being developed or carried out, within a
18 reasonable timeframe and in an organized
19 manner, by Federal agencies, States, land-
20 owners, or other stakeholders.

21 “(v) Priority 5 represents species—

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

24 “(aa) the effects of the fac-
25 tors described in subparagraphs

1 (A) through (E) of subsection
2 (a)(1) on to the species; or

3 “(bb) the status of the spe-
4 cies; or

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

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

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

22 “(i) PRIORITY 3.—With respect to a
23 species classified as Priority 3 under sub-
24 paragraph (A)(iii), if the Secretary deter-
25 mines that additional time would allow for

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

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

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

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

1 ority classification of a species included in a
2 work plan at any time.

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

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

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

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

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

21 “(A) COVERED SPECIES.—The term ‘cov-
22 ered species’ means a species that is not in-
23 cluded on a list published under subsection
24 (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 AMENDMENT.—Section 4(b)(3)(B)
11 of the Endangered Species Act of 1973 (16 U.S.C.
12 1533(b)(3)(B)) is amended by striking “Within 12
13 months” and inserting “In accordance with the national
14 listing work plan submitted under subsection (j),”.

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

18 **SEC. 201. CONSERVATION BENEFIT AGREEMENTS.**

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

23 “(C) In making a determination under sub-
24 section (a)(1) with respect to a species, the Sec-
25 retary shall take into account and document the ef-

1 fect of any net conservation benefit (as that term is
2 defined in section 10(k)) of any approved Conserva-
3 tion Benefit Agreement (as that term is defined in
4 such section) relating to the species.”.

5 (b) CONSERVATION BENEFIT AGREEMENTS.—Sec-
6 tion 10 of the Endangered Species Act of 1973 (16 U.S.C.
7 1539) is amended by adding at the end the following:

8 “(k) CONSERVATION BENEFIT AGREEMENTS.—

9 “(1) PROPOSED AGREEMENT.—

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

12 “(B) DETERMINATION OF COMPLETE-
13 NESS.—Not later than 30 days after the date
14 on which the Secretary receives a proposed
15 Agreement, the Secretary shall—

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

18 “(ii) if the Secretary determines the
19 proposed Agreement is incomplete under
20 clause (i), provide the covered party with a
21 written explanation of such determination,
22 including any specific adjustment required
23 for the Secretary to determine the pro-
24 posed Agreement is complete.

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

6 “(i) approve the proposed Agreement
7 if the Secretary determines that the pro-
8 posed Agreement—

9 “(I) is in compliance with, as ap-
10 plicable, section 17.22(c)(1) or
11 17.32(c)(1) of title 50, Code of Fed-
12 eral Regulations (or a successor regu-
13 lation); and

14 “(II) provides assurances to the
15 covered party that, if the covered spe-
16 cies becomes listed after the effective
17 date of such Agreement—

18 “(aa) no additional con-
19 servation measures will be re-
20 quired; and

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

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

6 “(iii) if the Secretary rejects the pro-
7 posed Agreement under clause (ii), provide
8 the submitting covered party a written ex-
9 planation for such rejection, including any
10 specific adjustment required, as of the date
11 on which the Secretary rejects the pro-
12 posed Agreement, for the Secretary to ap-
13 prove the proposed Agreement.

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

18 “(A) to administer such Conservation Ben-
19 efit Agreement;

20 “(B) to hold any permit issued under this
21 section with regard to such Conservation Ben-
22 efit Agreement;

23 “(C) to enroll other covered parties within
24 the area covered by such Conservation Benefit

1 Agreement in such Conservation Benefit Agree-
2 ment; and

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

6 “(3) TAKE AUTHORIZATION.—If a covered spe-
7 cies is listed as a threatened species or an endan-
8 gered species under section 4, the Secretary, con-
9 sistent with the applicable Agreement, shall issue to
10 the relevant covered party a permit under this sec-
11 tion for the incidental take of and modification to
12 the habitat of such covered species by such covered
13 party.

14 “(4) TECHNICAL ASSISTANCE.—The Secretary
15 shall, upon the request of a covered party, provide
16 the covered party with technical assistance in devel-
17 oping a proposed Agreement.

18 “(5) APPLICABILITY TO FEDERAL LAND.—An
19 Agreement may apply with respect to a covered
20 party that conducts activities on land administered
21 by any Federal agency pursuant to a permit or lease
22 issued to the covered party by that Federal agency.

23 “(6) EXEMPTIONS.—

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

4 “(B) DISCLOSURE.—Information sub-
5 mitted by a private party to the Secretary pur-
6 suant to this subsection shall be exempt from
7 disclosure under section 552(b)(3)(B) of title 5,
8 United States Code.

9 “(C) NATIONAL ENVIRONMENTAL POLICY
10 ACT OF 1969.—The approval by the Secretary of
11 a proposed Agreement under this subsection
12 shall not be considered a major Federal action
13 under section 102(2)(C) of the National Envi-
14 ronmental Policy Act of 1969 (42 U.S.C.
15 4332(2)(C)).

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

17 “(A) AFFECTED SPECIES.—The term ‘af-
18 fected species’ means a species—

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

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

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

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

3 “(i) a Conservation Benefit Agree-
4 ment; or

5 “(ii) a programmatic Conservation
6 Benefit Agreement.

7 “(C) CONSERVATION BENEFIT AGREE-
8 MENT.—The term ‘Conservation Benefit Agree-
9 ment’ means the supporting document required
10 for the issuance of a permit under subsection
11 (a)(1)(A) to enhance the propagation or sur-
12 vival of an affected species, as described in the
13 final rule issued by the United States Fish and
14 Wildlife Service titled ‘Endangered and Threat-
15 ened Wildlife and Plants; Enhancement of Sur-
16 vival and Incidental Take Permits’ (89 Fed.
17 Reg. 26070; published April 12, 2024).

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

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

24 “(ii) private property owner;

25 “(iii) county;

1 “(iv) State or State agency; or

2 “(v) Tribal government.

3 “(E) COVERED SPECIES.—The term ‘cov-
4 ered species’ means, with respect to an Agree-
5 ment, the affected species that is the subject of
6 such Agreement.

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

14 “(i) the effects of the factors de-
15 scribed in subparagraphs (A) through (E)
16 of subsection (a)(1) on the covered species;

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

19 “(iii) the habitat of the covered spe-
20 cies.

21 “(G) PROGRAMMATIC CONSERVATION BEN-
22 EFIT AGREEMENT.—The term ‘programmatic
23 Conservation Benefit Agreement’ means a Con-
24 servation Benefit Agreement described in para-
25 graph (4).”.

1 **SEC. 202. CONSERVATION PLANS.**

2 (a) IN GENERAL.—Section 10(a)(2) of the Endan-
3 gered Species Act of 1973 (16 U.S.C. 1539(a)(2)) is
4 amended—

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

9 (2) by adding at the end the following:

10 “(D) Each Federal agency shall, as applicable and
11 to the maximum extent practicable, adopt the mitigation
12 measures contained in a permit issued under subpara-
13 graph (B) in any authorization issued by such Federal
14 agency with respect to the action that is covered by such
15 permit.

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

22 (b) EXEMPTION FROM CONSULTATION REQUIRE-
23 MENT.—Section 10(a) of the Endangered Species Act of
24 1973 (16 U.S.C. 1539(a)) is amended by adding at the
25 end the following:

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

3 **SEC. 203. NEPA EXEMPTION FOR INCIDENTAL TAKE PER-**
4 **MITTS.**

5 Section 10(a) of the Endangered Species Act of 1973
6 (16 U.S.C. 1539(a)) is amended by adding at the end the
7 following:

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

12 **TITLE III—PROVIDING FOR**
13 **GREATER INCENTIVES TO RE-**
14 **COVER LISTED SPECIES**

15 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDAN-**
16 **GERED SPECIES ACT OF 1973.**

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

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

20 “(d) PROTECTIVE REGULATIONS.—

21 “(1) ISSUANCE.—

22 “(A) 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 “(B) REQUIREMENT.—In issuing a regula-
4 tion under subparagraph (A), the Secretary,
5 consistent with the findings, purposes, and pol-
6 icy described in section 2 and based on the best
7 scientific and commercial data available, shall
8 consider the conservation and economic effects
9 of such regulation.

10 “(2) RECOVERY GOALS.—

11 “(A) IN GENERAL.—If the Secretary issues
12 a regulation under paragraph (1) that prohibits
13 an act described in section 9(a), the Secretary
14 shall, with respect to the species that is the
15 subject of such regulation—

16 “(i) establish objective, incremental
17 recovery goals;

18 “(ii) provide for the stringency of
19 such regulation to decrease as such recov-
20 ery goals are met; and

21 “(iii) provide for State management
22 within such State, if such State is willing
23 to take on such management, beginning on
24 the date on which the Secretary determines
25 that each such recovery goal is met and, if

1 each such recovery goal remains met, con-
2 tinuing until such species is removed from
3 the list of threatened species published
4 pursuant to subsection (c).

5 “(B) STATUS REVIEW.—On the date on
6 which the Secretary determines that each recov-
7 ery goal established under subparagraph (A)(i)
8 for a species is met, the Secretary shall begin
9 a review of the species and subsequently deter-
10 mine, on the basis of such review, whether the
11 species should be removed from the lists pub-
12 lished pursuant to subsection (c)(1).

13 “(3) COOPERATIVE AGREEMENT.—A regulation
14 issued under paragraph (1) that prohibits an act de-
15 scribed in section 9(a) with respect to a resident
16 species shall apply with respect to a State that has
17 entered into a cooperative agreement with the Sec-
18 retary pursuant to section 6(c) only to the extent
19 that such regulation is adopted by such State.

20 “(4) STATE RECOVERY STRATEGY.—

21 “(A) IN GENERAL.—A State may develop
22 a recovery strategy for a threatened species or
23 a candidate species and submit to the Secretary
24 a petition for the Secretary to use such recovery
25 strategy as the basis for any regulation issued

1 under paragraph (1) with respect to such spe-
2 cies within such State.

3 “(B) APPROVAL OR DENIAL OF PETI-
4 TION.—Not later than 120 days after the date
5 on which the Secretary receives a petition sub-
6 mitted under subparagraph (A), the Secretary
7 shall—

8 “(i) approve such petition if the Sec-
9 retary determines the recovery strategy is
10 reasonably certain to be implemented by
11 the petitioning State and to be effective in
12 conserving the species that is the subject
13 of such recovery strategy; or

14 “(ii) deny such petition if the require-
15 ments described in clause (i) are not met.

16 “(C) PUBLICATION.—Not later than 60
17 days after the date on which the Secretary ap-
18 proves or denies a petition under subparagraph
19 (B), the Secretary shall publish such approval
20 or denial on the website of the applicable de-
21 partment.

22 “(D) DENIAL OF PETITION.—

23 “(i) WRITTEN EXPLANATION.—If the
24 Secretary denies a petition under subpara-
25 graph (B), the Secretary shall include in

1 such denial a written explanation for such
2 denial, including a description of the
3 changes to such petition that are necessary
4 for the Secretary to approve such petition.

5 “(ii) RESUBMISSION OF DENIED PETI-
6 TION.—A State may resubmit a petition
7 that is denied under subparagraph (B).

8 “(E) USE IN PROTECTIVE REGULA-
9 TIONS.—If the Secretary approves a petition
10 under subparagraph (B), the Secretary shall—

11 “(i) issue a regulation under para-
12 graph (1) that adopts the recovery strategy
13 as such regulation with respect to the spe-
14 cies that is the subject of such recovery
15 strategy within the petitioning State; and

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

20 “(F) REVISION.—If a recovery strategy
21 that is adopted as a regulation issued under
22 paragraph (1) is determined by the Secretary to
23 be ineffective in conserving the species that is
24 the subject of such recovery strategy in accord-
25 ance with the objective criteria established

1 under subparagraph (E)(ii) for such recovery
2 strategy, the Secretary shall revise such regula-
3 tion and reissue such regulation in accordance
4 with paragraph (1).”; and
5 (2) in subsection (f)(1)(B)—

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

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

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

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

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

19 Section 4(c) of the Endangered Species Act of 1973
20 (16 U.S.C. 1533(c)) is amended by adding at the end the
21 following:

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

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

2 Section 4(g) of the Endangered Species Act of 1973
3 (16 U.S.C. 1533(g)) is amended by adding at the end the
4 following:

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

9 **SEC. 304. DESIGNATION OF CRITICAL HABITAT.**

10 (a) NOT PRUDENT DETERMINATIONS.—Section
11 4(a)(3)(A) of the Endangered Species Act of 1973 (16
12 U.S.C. 1533(a)(3)(A)) is amended to read as follows:

13 “(A)(i) The Secretary, by regulation pro-
14 mulgated in accordance with subsection (b) and
15 to the maximum extent prudent and deter-
16 minable—

17 “(I) shall, concurrently with making a
18 determination under paragraph (1) that a
19 species is an endangered species or a
20 threatened species, designate any habitat
21 of such species which is then considered to
22 be critical habitat; and

23 “(II) may, from time-to-time there-
24 after as appropriate, revise such designa-
25 tion.

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

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

12 “(II) the species is determined under
13 paragraph (1) to be a threatened species or
14 an endangered species because of a fac-
15 tor—

16 “(aa) other than that described
17 in subparagraph (A) of that para-
18 graph; or

19 “(bb) that cannot be addressed
20 through reasonable and prudent alter-
21 natives resulting from consultations
22 carried out pursuant to section
23 7(a)(2); or

24 “(III) the species primarily occurs in
25 areas not under the jurisdiction of the

1 United States and areas under the juris-
2 diction of the United States where the spe-
3 cies occurs provide no more than a neg-
4 ligible conservation value to the species.

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

10 (b) PRIVATELY OWNED OR CONTROLLED LAND.—
11 Section 4(a)(3) of the Endangered Species Act of 1973
12 (16 U.S.C. 1533(a)(3)) is amended by adding at the end
13 the following:

14 “(C) The Secretary may not designate as critical
15 habitat under subparagraph (A) any privately owned or
16 controlled land or other geographical area that is subject
17 to a land management plan that—

18 “(i) the Secretary determines is similar in na-
19 ture to an integrated natural resources management
20 plan described in section 101 of the Sikes Act (16
21 U.S.C. 670a);

22 “(ii)(I) is prepared in cooperation with the Sec-
23 retary and the head of each applicable State fish
24 and wildlife agency of each State in which such land
25 or other geographical area is located; or

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

5 “(iii) includes an activity or a limitation on an
6 activity that the Secretary determines will likely con-
7 serve the species concerned;

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

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

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

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

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

1 (1) in paragraph (2)—

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

5 (B) by striking “The Secretary” and in-
6 serting “(A) The Secretary”; and

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

8 “(B) In addition to any area otherwise considered by
9 the Secretary for exclusion from critical habitat under
10 subparagraph (A), the Secretary shall consider for exclu-
11 sion from critical habitat any area—

12 “(i) submitted by a person through public com-
13 ment pursuant to paragraph (5) or (6); and

14 “(ii) for which such submission includes cred-
15 ible information regarding a meaningful economic
16 impact, impact on national security, impact on exist-
17 ing efforts of private landowners to conserve the ap-
18 plicable species, or other relevant impact of speci-
19 fying the area as critical habitat that supports the
20 exclusion from critical habitat of that area.”;

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

1 “(I) a draft economic analysis that
2 identifies any impacts on national security
3 and existing efforts of private landowners
4 to conserve the applicable species and
5 other relevant impacts of the designation
6 or revision that the Secretary determines
7 are within the area proposed for designa-
8 tion or covered by the revision; and

9 “(II) a draft exclusion analysis that
10 identifies each area the Secretary has rea-
11 son to consider for exclusion under para-
12 graph (2) and why; and”;

13 (3) in paragraph (6)(A)—

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

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

24 “(bb) a final exclusion analysis that
25 identifies each area the Secretary has de-

1 terminated under paragraph (2) to exclude
2 from such revision and why;” and

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

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

12 “(bb) a final exclusion analysis that
13 identifies each area the Secretary has de-
14 termined under paragraph (2) to exclude
15 from such designation and why; or”.

16 **SEC. 305. TREATMENT OF STATE, TRIBAL, AND LOCAL GOV-**
17 **ERNMENT DATA.**

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

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

23 (2) in paragraph (2)(A), as so designated by
24 section 304(c)(1)(B) of this Act, by inserting “data

1 submitted to the Secretary by a State, Tribal, or
2 local government, as well as” after “consideration”.

3 **SEC. 306. CLARIFYING SIGNIFICANT PORTION OF RANGE**
4 **OF SPECIES.**

5 Section 4(a) of the Endangered Species Act of 1973
6 (16 U.S.C. 1533(a)) is amended by adding at the end the
7 following:

8 “(4) If the Secretary determines under paragraph (1)
9 that a species is a threatened species or an endangered
10 species in only a significant portion of the range of the
11 species, the Secretary may only list the species under sub-
12 section (c) as a threatened species or an endangered spe-
13 cies with respect to that portion of the range of the spe-
14 cies.”.

15 **SEC. 307. DELISTING CRITERIA.**

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

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

1 “(A) is extinct;

2 “(B) is not a threatened species or an endan-
3 gered species; or

4 “(C) is not a species.”.

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

9 **SEC. 401. REQUIREMENT TO PUBLISH BASIS FOR LISTINGS**
10 **AND CRITICAL HABITAT DESIGNATIONS ON-**
11 **LINE.**

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

15 “(9)(A) The Secretary shall make publicly available
16 on the website of the applicable department the best sci-
17 entific and commercial data available that is used as the
18 basis for each regulation, including each proposed regula-
19 tion, promulgated under paragraphs (1) and (3) of sub-
20 section (a).

21 “(B) If a Governor, agency, or legislature of a State
22 determines that public disclosure of any best scientific and
23 commercial data available described in subparagraph (A)
24 is prohibited by a law or regulation of the State, including

1 such a law or regulation requiring the protection of per-
2 sonal information—

3 “(i) the Governor, agency, or legislature of the
4 State may submit to the Secretary a request to ex-
5 empt such best scientific and commercial data avail-
6 able from the application of subparagraph (A); and

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

9 “(C) Subparagraph (A) does not apply with respect
10 to global positioning system coordinates or other geo-
11 graphically specific species location information.

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

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

20 Section 6(a) of the Endangered Species Act of 1973
21 (16 U.S.C. 1535(a)) is amended—

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

23 and

24 (2) by striking “Such cooperation shall include”

25 and inserting the following:

1 “(2) Such cooperation shall include—

2 “(A) before making a determination under sec-
3 tion 4(a), providing to States affected by such deter-
4 mination all data that is the basis of the determina-
5 tion; and

6 “(B)”.

7 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
8 **GERED SPECIES ACT OF 1973.**

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

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

13 “(a) **REQUIREMENT.**—The Chair of the Council on
14 Environmental Quality, in consultation with the Secretary
15 of the Interior and Secretary of Commerce, shall—

16 “(1) not later than 90 days after the end of
17 each fiscal year, submit to the Committee on Nat-
18 ural Resources of the House of Representatives and
19 the Committee on Environment and Public Works of
20 the Senate an annual report detailing Federal Gov-
21 ernment expenditures for covered suits during the
22 preceding fiscal year; and

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

1 “(b) INCLUDED INFORMATION.—Each report sub-
2 mitted under subsection (a) shall include—

3 “(1) the case name and number of each covered
4 suit, and, with respect to each covered suit, a
5 hyperlink to each settlement decision, final decision,
6 consent decree, stipulation of dismissal, release, in-
7 terim decision, motion to dismiss, partial motion for
8 summary judgement, or related final document;

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

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

14 “(4) funds expended by each covered agency
15 (disaggregated by agency account) to receive and re-
16 spond to notices referred to in section 11(g)(2) or to
17 prepare for litigation of, litigate, negotiate a settle-
18 ment agreement or consent decree in, or provide ma-
19 terial, technical, or other assistance in relation to, a
20 covered suit;

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

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

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

11 “(c) REQUIREMENT TO PROVIDE INFORMATION.—
12 The head of each covered agency shall provide to the Chair
13 of the Council on Environmental Quality in a timely man-
14 ner all information requested by the Chair to comply with
15 the requirements of this section.

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

21 “(e) DEFINITIONS.—In this section:

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

24 “(A) Department of the Interior;

25 “(B) Forest Service;

- 1 “(C) Environmental Protection Agency;
- 2 “(D) National Marine Fisheries Service;
- 3 “(E) Bonneville Power Administration;
- 4 “(F) Western Area Power Administration;
- 5 “(G) Southwestern Power Administration;
- 6 or
- 7 “(H) Southeastern Power Administration.

8 “(2) COVERED SUIT.—The term ‘covered suit’
9 means—

10 “(A) any civil action containing any claim
11 arising under this Act against the Federal Gov-
12 ernment and based on the action of a covered
13 agency; and

14 “(B) any administrative proceeding under
15 which the Federal Government awards fees and
16 other expenses to a third party under section
17 504 of title 5, United States Code.”.

18 (b) CLERICAL AMENDMENT.—The table of contents
19 in the first section of the Endangered Species Act of 1973
20 (16 U.S.C. 1531 note) is amended by striking the item
21 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 to read as fol-
6 lows:

7 “(4)(A) The court, in issuing any final order in any
8 suit brought pursuant to paragraph (1), may award costs
9 of litigation (including reasonable attorney and expert wit-
10 ness fees) to an eligible party, whenever the court deter-
11 mines such award is appropriate.

12 “(B) In awarding reasonable attorney and expert wit-
13 ness fees under subparagraph (A) in a suit brought pursu-
14 ant to paragraph (1), the court—

15 “(i) shall base such fees on the prevailing mar-
16 ket rates for the kind and quality of services fur-
17 nished; and

18 “(ii) may not award—

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

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

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

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

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

6 “(bb) an owner of an unincorporated busi-
7 ness or a partnership, corporation, association,
8 unit of local government, or organization, in-
9 cluding an organization that is described in sec-
10 tion 501(c)(3) of the Internal Revenue Code
11 and exempt from taxation under section 501(a)
12 of such Code, that has—

13 “(AA) a net worth of not more than
14 \$7,000,000, including both personal and
15 business interests; and

16 “(BB) not more than 500 employees;
17 or

18 “(cc) a cooperative association (as that
19 term is defined in section 15(a) of the Agri-
20 culture Marketing Act (12 U.S.C. 1141j(a)));
21 and

22 “(II) does not include a party to a suit brought pur-
23 suant to paragraph (1) otherwise described in clause (i)
24 of this subparagraph that has sought to recover attorney
25 or expert witness fees under this subsection in 3 or more

1 instances in the 12-month period preceding the date on
2 which the final order in such suit is issued, including in
3 such suit.

4 “(ii) Where 2 or more parties to a suit brought pur-
5 suant to paragraph (1) are co-plaintiffs and each such
6 party individually is an eligible party, clause (i)(I) shall
7 be applied to such parties collectively.”.

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

11 Section 4(a) of the Endangered Species Act of 1973
12 (16 U.S.C. 1533(a)) is amended by adding at the end the
13 following:

14 “(5)(A) The Secretary shall, concurrently with deter-
15 mining under paragraph (1) whether a species is a threat-
16 ened species or an endangered species, prepare an analysis
17 with respect to such determination of—

18 “(i) the economic effect;

19 “(ii) the effects on national security;

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

21 and

22 “(iv) any other relevant effect.

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

1 “(C) Nothing in this paragraph shall delay a deter-
2 mination made by the Secretary under paragraph (1) or
3 change the criteria used by the Secretary to make such
4 a determination.”.

5 **SEC. 406. NOTIFICATION OF CONGRESS OF CERTAIN CRIT-**
6 **ICAL HABITAT DESIGNATIONS.**

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

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

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

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

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

1 “(III) an identification of users of the area and
2 how such users will be affected by the proposed des-
3 ignation;

4 “(IV) an analysis of the manner in which exist-
5 ing and potential natural resource uses are incom-
6 patible with or in conflict with the proposed designa-
7 tion and a statement of the provisions to be made
8 for continuation or termination of existing such
9 uses, including an economic analysis of such con-
10 tinuation or termination;

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

16 “(VI) a statement indicating the effect of the
17 proposed designation, if any, on State and local gov-
18 ernment interests and the regional economy.”.

19 **SEC. 407. NOTIFICATION OF CONGRESS OF CERTAIN RE-**
20 **LEASES OF EXPERIMENTAL POPULATIONS.**

21 Section 10(j) of the Endangered Species Act of 1973
22 (16 U.S.C. 1539(j)) is amended by adding at the end the
23 following:

24 “(4)(A) The Secretary shall submit to the Committee
25 on Natural Resources of the House of Representatives and

1 the Committee on Environment and Public Works of the
2 Senate a notification of any proposed release under this
3 subsection that covers an area greater than 50,000 acres.

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

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

8 “(ii) an inventory and evaluation of the natural
9 resource uses and values of the area and adjacent
10 public and nonpublic land and the economic impact
11 of the proposed release on individuals, local commu-
12 nities, and the United States;

13 “(iii) an identification of users of the area, and
14 how such users will be affected by the proposed re-
15 lease;

16 “(iv) an analysis of the manner in which exist-
17 ing and potential natural resource uses are incom-
18 patible with or in conflict with the proposed release
19 and a statement of the provisions to be made for
20 continuation or termination of existing such uses, in-
21 cluding an economic analysis of such continuation or
22 termination;

23 “(v) a statement of the consultation which has
24 been or will be had with other Federal departments
25 and agencies, regional, State, and local government

1 bodies, and other appropriate individuals and groups
2 with respect to the proposed release; and

3 “(vi) a statement indicating the effect of the
4 proposed release, if any, on State and local govern-
5 ment interests and the regional economy.”.

6 **SEC. 408. ANNUAL COST ANALYSIS BY THE FISH AND WILD-
7 LIFE SERVICE.**

8 Section 18 of the Endangered Species Act of 1973
9 (16 U.S.C. 1544) is amended—

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

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

17 **SEC. 409. COMPLIANCE WITH BIOLOGICAL OPINION RE-
18 LATED TO DREDGE AND FILL PERMITTING
19 PROGRAM.**

20 (a) IN GENERAL.—For purposes of the Agency Ac-
21 tion—

22 (1) the Biological Opinion is deemed to be com-
23 pliant with, and compliance with the Biological
24 Opinion is deemed to be compliance with, the re-

1 requirements of the Endangered Species Act of 1973
2 (16 U.S.C. 1531 et seq.); and

3 (2) no additional consultation under section
4 7(a) of that Act (16 U.S.C. 1536(a)) is required.

5 (b) DEFINITIONS.—In this section:

6 (1) AGENCY ACTION.—The term “Agency Ac-
7 tion”—

8 (A) means the approval by the Adminis-
9 trator of the Environmental Protection Agency
10 of the request of the State of Florida for the
11 assumption by the State of Florida of the ad-
12 ministration and permitting of a State permit
13 program under section 404 of the Federal
14 Water Pollution Control Act (33 U.S.C. 1344),
15 as described in the notice published by the En-
16 vironmental Protection Agency titled “EPA’s
17 Approval of Florida’s Clean Water Act Section
18 404 Assumption Request” (December 22, 2020;
19 85 Fed. Reg. 83553); and

20 (B) includes other activities.

21 (2) BIOLOGICAL OPINION.—The term “Biologi-
22 cal Opinion”—

23 (A) means the programmatic biological
24 opinion issued by the United States Fish and
25 Wildlife Service titled “Programmatic Biological

1 Opinion for Environmental Protection Agency’s
2 Approval of FDEP’s Assumption of the Admin-
3 istration of the Dredge and Fill Permitting
4 Program under Section 404 of the Clean Water
5 Act” (dated November 17, 2020; FWS Log #:
6 04E00000-2021-F-0001; 04E00000-2021-B-
7 0001); and

8 (B) includes the incidental take statement
9 described in pages 69 through 73 of the pro-
10 grammatic biological opinion.

11 (3) OTHER ACTIVITIES.—The term “other ac-
12 tivities” has the meaning given the term in the glos-
13 sary of the Biological Opinion.

14 **TITLE V—STREAMLINING** 15 **PERMITTING PROCESS**

16 **SEC. 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—

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

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

24 (3) by striking subparagraph (C);

1 (4) by striking “taking on the species,” and in-
2 serting “taking on the species, including, as nec-
3 essary, through the use of a substitute used to rep-
4 resent a listed species, habitat, or an ecological func-
5 tion to express the amount or extent of such inci-
6 dental taking;”;

7 (5) by striking “minimize such impact,” and in-
8 serting “minimize such impact and that do not pro-
9 pose, recommend, or require the Federal agency or
10 the applicant concerned, if any, to mitigate or offset
11 such impact; and”;

12 (6) by striking “measures specified under
13 clauses (ii) and (iii)” and inserting “measures speci-
14 fied under clause (ii)”;

15 (7) by striking clause (iii); and

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

17 **SEC. 502. SUCCESSIVE CONSULTATIONS.**

18 Section 7(b) of the Endangered Species Act of 1973
19 (16 U.S.C. 1536(b)) is amended by adding at the end the
20 following:

21 “(5)(A) With respect to an ongoing agency action for
22 which the applicable Federal agency has adopted a reason-
23 able and prudent alternative or a reasonable and prudent
24 measure to comply with subsection (a)(2), in any subse-
25 quent consultation for the agency action that occurs 10

1 years or more after the date on which the initial consulta-
2 tion for the agency action was completed, the Secretary
3 shall determine whether continuing to implement the rea-
4 sonable and prudent alternative or reasonable and prudent
5 measure will materially increase the likelihood of and re-
6 duce the time for recovery of the applicable threatened
7 species or endangered species.

8 “(B) If the Secretary determines under subparagraph
9 (A) that continued implementation of the reasonable and
10 prudent alternative or reasonable and prudent measure
11 will not materially increase the likelihood of and shorten
12 the time for the recovery of the applicable threatened spe-
13 cies or endangered species, the Federal agency shall dis-
14 continue implementation of the reasonable and prudent al-
15 ternative or reasonable and prudent measure notwith-
16 standing subsection (a)(2).”.

17 **SEC. 503. CLARIFYING JEOPARDY.**

18 Section 7(a) of the Endangered Species Act of 1973
19 (16 U.S.C. 1536(a)) is amended by adding at the end the
20 following:

21 “(5)(A) In carrying out a consultation under para-
22 graph (2) or a conference under paragraph (4), the Sec-
23 retary—

24 “(i) except as provided in clause (ii), may only con-
25 sider the effects of the action that is the subject of such

1 consultation or conference that the Secretary determines,
2 based on clear and substantial information, using the best
3 scientific and commercial data available, and in accord-
4 ance with subparagraphs (B) and (C), respectively, are
5 caused by the action itself and are reasonably certain to
6 occur; and

7 “(ii) shall consider as a beneficial effect of the
8 action that is the subject of such consultation or
9 conference any avoidance, minimization, or mitiga-
10 tion measure proposed by the applicable Federal
11 agency or the applicant, if any.

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

15 “(i) the effect is so remote in time from the ac-
16 tion under consultation that it is not reasonably cer-
17 tain to occur;

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

21 “(iii) the effect is only reached through a
22 lengthy causal chain such that the effect not reason-
23 ably certain to occur;

1 “(iv) the applicable Federal agency does not
2 have the ability to prevent the effect due to its lim-
3 ited statutory authority; or

4 “(v) would occur regardless of whether the ac-
5 tion is carried out.

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

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

13 “(ii) Plans for such action.

14 “(iii) Any economic, administrative, or legal re-
15 quirement necessary for the action to be carried out
16 that has not been fulfilled.

17 “(iv) Whether the effect has been observed pre-
18 viously and to what extent.

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

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

5 **SEC. 504. CLARIFYING ACTION AREA.**

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

9 “(A)(i) Promptly after conclusion of consultation
10 under paragraph (2) or (3) of subsection (a), the Sec-
11 retary shall provide to the Federal agency and the appli-
12 cant, if any, a written statement setting forth the Sec-
13 retary’s opinion, and a summary of the information on
14 which the opinion is based, detailing how the agency action
15 affects the species or its critical habitat within the area
16 directly affected by the agency action, which such area
17 may not be speculative or remote in time or distance from
18 the agency action. In so doing, the Secretary shall dif-
19 ferentiate the effects of the agency action from the envi-
20 ronmental baseline.

21 “(ii) If jeopardy or adverse modification is found, the
22 Secretary, in cooperation and consultation with the Fed-
23 eral agency and applicant, if any, shall consider a range
24 of reasonable and prudent alternatives and suggest from

1 among that range those reasonable and prudent alter-
2 natives which the Secretary believes—

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

4 “(II) can be taken by the Federal agency or ap-
5 plicant, if any, in implementing the agency action;

6 “(III) are economically and technologically fea-
7 sible for the Federal agency and applicant, if any, to
8 implement; and

9 “(IV) impose the fewest economic and other rel-
10 evant costs for the applicant, if any.”.

11 **SEC. 505. JUDICIAL REVIEW.**

12 Section 7(n) of the Endangered Species Act of 1973
13 (16 U.S.C. 1536(n)) is amended—

14 (1) by striking “Any person, as defined by sec-
15 tion 3(13) of this Act,” and inserting “(1) Any per-
16 son”;

17 (2) in paragraph (1), as so designated, by re-
18 designating paragraphs (1) and (2) as subpara-
19 graphs (A) and (B), respectively; and

20 (3) by adding at the end the following:

21 “(2) Any person may obtain judicial review, under
22 chapter 7 of title 5 of the United States Code, of any opin-
23 ion issued by the Secretary under subsection (b) of this
24 section in the United States Court of Appeals for the Dis-
25 trict of Columbia by filing in such court not later than

1 150 days after the date on which the opinion is issued
2 a written petition for review.”.

3 **SEC. 506. EXPANSION OF EXEMPTION PROCESS AND ELIGI-**
4 **BILITY UNDER SECTION 7 OF ENDANGERED**
5 **SPECIES ACT OF 1973.**

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

8 (1) in subsection (g)—

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

10 “(1)(A) A Federal agency, the Governor of the State
11 in which an agency action will occur, if any, or a permit
12 or license applicant may apply to the Secretary for an ex-
13 emption for an agency action of such agency if, after con-
14 sultation under subsection (a)(2), the Secretary’s opinion
15 under subsection (b) indicates that—

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

18 “(ii) a reasonable and prudent alternative nec-
19 essary for the agency action to comply with sub-
20 section (a)(2) may—

21 “(I) impair national security; or

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

24 “(B) An application for an exemption shall be consid-
25 ered initially by the Secretary in the manner provided for

1 in this subsection, and shall be considered by the Com-
2 mittee for a final determination under subsection (h) after
3 a report is made pursuant to paragraph (5).

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

6 (B) in paragraph (3)—

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

9 “(A) determine—

10 “(i) that the Federal agency concerned and
11 the exemption applicant have—

12 “(I) carried out the consultation re-
13 sponsibilities described in subsection (a) in
14 good faith and made a reasonable and re-
15 sponsible effort to develop and fairly con-
16 sider reasonable and prudent alternatives
17 to the proposed agency action which would
18 not violate subsection (a)(2);

19 “(II) conducted any biological assess-
20 ment required by subsection (c); and

21 “(III) to the extent determinable with-
22 in the time provided herein, refrained from
23 making any irreversible or irretrievable
24 commitment of resources prohibited by
25 subsection (d); and

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

7 “(I) impair national security; or
8 “(II) result in significant adverse na-
9 tional or regional economic impacts; or”;
10 and

11 (ii) in subparagraph (B), by striking
12 “(i), (ii), and (iii)”;

13 (C) in paragraph (4), by striking “(i), (ii)
14 and (iii)”;

15 (D) in paragraph (5)—

16 (i) by redesignating subparagraphs
17 (B) through (D) as subparagraphs (C)
18 through (E), respectively; and

19 (ii) by inserting after subparagraph
20 (A) the following:

21 “(B) if the exemption applicant submitted to
22 the Secretary the application for exemption pursuant
23 to paragraph (1)(A)(ii), after consultation with the
24 National Security Council regarding potential im-
25 pacts to national security and the Director of the

1 National Economic Council regarding potential sig-
2 nificant adverse national and regional economic im-
3 pacts, any impairment to national security or signifi-
4 cant adverse national or regional economic impacts
5 that would result from a reasonable and prudent al-
6 ternative necessary for the agency action to comply
7 with subsection (a)(2), including a description of the
8 analysis and conclusions produced by the National
9 Security Council and the Director of the National
10 Economic Council as a result of each such consulta-
11 tion;” and

12 (2) in subsection (h)(1)(A)(i), to read as fol-
13 lows:

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

16 “(II) with respect to an agency action the
17 application for exemption of which was sub-
18 mitted to the Secretary pursuant to subsection
19 (g)(1)(A)(ii), a reasonable and prudent alter-
20 native necessary for the agency action to com-
21 ply with subsection (a)(2) may—

22 “(aa) impair national security; or

23 “(bb) result in significant adverse na-
24 tional or regional economic impacts;”.

1 **TITLE VI— ELIMINATING**
2 **BARRIERS TO CONSERVATION**

3 **SEC. 601. PERMITS FOR CITES-LISTED SPECIES.**

4 Section 9(c)(2) of Endangered Species Act of 1973
5 (16 U.S.C. 1538(c)(2)) is amended to read as follows:

6 “(2) An export from or import into the United States
7 of fish or wildlife listed as a threatened species or an en-
8 dangered species pursuant to section 4 is lawful under this
9 Act and not subject to permit requirements or other regu-
10 lations issued by the Secretary with respect to exportation
11 and importation pursuant to this Act if—

12 “(A) such fish or wildlife—

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

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

17 “(B) with respect to the export or import, each
18 applicable requirement—

19 “(i) of the Convention is satisfied; and

20 “(ii) of subsections (d), (e), and (f) is sat-
21 isfied.”.

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

24 Section 10(a)(1) of the Endangered Species Act of
25 1973 (16 U.S.C. 1539(a)(1)) is amended—

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

2 “(A)(i) with respect to a species that is native
3 to the United States, any act otherwise prohibited by
4 section 9 for scientific purposes or to enhance the
5 propagation or survival of the affected species, in-
6 cluding acts necessary for the establishment and
7 maintenance of experimental populations pursuant
8 to subsection (j); and

9 “(ii) with respect to a species that is not native
10 to the United States, any act otherwise prohibited by
11 section 9 that the Secretary determines is not detri-
12 mental to the survival of the species, including—

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

16 “(II) buying or selling or offering for sale
17 in interstate or foreign commerce; or”;

18 (2) by adding at the end the following:

19 “(C) In this subsection, the term ‘is not detri-
20 mental to the survival of the species’ means—

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

23 “(II) is not a use or removal from the wild
24 that will result in the loss or destruction of crit-
25 ical habitat of the species; and

1 “(III) will not directly interfere with recov-
2 ery efforts with respect to the species; or

3 “(ii) is an activity—

4 “(I) involving wildlife described in sec-
5 tion 17.21(g)(1) of title 50, Code of Fed-
6 eral Regulations; and

7 “(II) that satisfies the conditions for
8 registration under clauses (iii) through (v)
9 of that section.”.

10 **TITLE VII—RESTORING** 11 **CONGRESSIONAL INTENT**

12 **SEC. 701. LIMITING AGENCY REGULATIONS.**

13 Section 11(f) of the Endangered Species Act of 1973
14 (16 U.S.C. 1540(f)) is amended—

15 (1) by striking “The Secretary,” and inserting
16 the following:

17 “(1) IN GENERAL.—The Secretary,”;

18 (2) in paragraph (1), as so designated, by strik-
19 ing “to enforce this Act” and inserting “to enforce
20 this section and section 8A”; and

21 (3) by adding at the end the following:

22 “(2) RULE OF CONSTRUCTION.—This sub-
23 section may not be construed to be an independent
24 source of authority to promulgate regulations to en-

1 force the provisions of this Act other than those in-
2 cluded in this section and section 8A.”.

