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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to recover listed species, create greater transparency and accountability in recovering listed species, streamline the permitting process, eliminate barriers to conservation, and restore congressional intent.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to recover listed species, create greater transparency and accountability in recovering listed species, streamline the permitting process, eliminate barriers to conservation, and restore congressional intent.

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

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.

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

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

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

- Sec. 201. Candidate conservation agreements with assurances.
- Sec. 202. 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. Codification of regulation.
- Sec. 305. Designation of critical habitat.

**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.
- Sec. 402. Decisional transparency and use of State, Tribal, and local information.
- Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.
- Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law.
- Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status.

TITLE V—STREAMLINING PERMITTING PROCESS

- Sec. 501. Limitation on reasonable and prudent measures.
- Sec. 502. Successive consultations.
- Sec. 503. Requirement to consider reasonably certain effects.
- Sec. 504. Clarifying jeopardy.

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

8 (b) 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:

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

4 “(I) means the abiotic and biotic setting
5 that currently or periodically contains the re-
6 sources and conditions necessary to support 1
7 or more life processes of the threatened species
8 or endangered species; and

9 “(II) does not include an area visited by
10 only vagrant individual members of the threat-
11 ened species or endangered species.

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

18 (e) BEST SCIENTIFIC AND COMMERCIAL DATA
19 AVAILABLE.—

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

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

1 (B) by inserting after paragraph (1) the
2 following:

3 (2) CONFORMING AMENDMENT.—Section 7(n)
4 of the Endangered Species Act of 1973 (16 U.S.C.
5 1536(n)) is amended by striking “section 3(13)”
6 and inserting “section 3(14)”.

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

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

13 “(q) ENVIRONMENTAL BASELINE.—For the purpose
14 of carrying out a consultation under this section with re-
15 spect to a threatened species or an endangered species,
16 the term ‘environmental baseline’—

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

22 “(2) includes—

23 “(A) the past and present effects of all
24 Federal, State, and private actions and other
25 human activities in the action area;

1 “(B) the anticipated effects of each pro-
2 posed Federal project within the action area for
3 which a consultation under this section has
4 been completed;

5 “(C) the effects of State and private ac-
6 tions that are contemporaneous with the con-
7 sultation in process; and

8 “(D) existing structures and facilities and
9 the past, present, and future effects on the spe-
10 cies or the critical habitat of the species from
11 the physical existence of such structures and fa-
12 cilities.”.

13 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

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

16 (1) in subsection (a)—

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

19 (B) in paragraph (1)—

20 (i) by striking “and” after “fiscal year
21 1991,”; and

22 (ii) by inserting “, and \$302,025,000
23 for each of fiscal years 2026 through
24 2031” after “fiscal year 1992”;

25 (C) in paragraph (2)—

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

3 (ii) by inserting “, and \$116,630,000
4 for each of fiscal years 2026 through
5 2031” after “fiscal years 1991 and 1992”;
6 and

7 (D) in paragraph (3)—

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

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

13 (2) in subsection (b), by inserting “and
14 \$600,000 for each of fiscal years 2026 through
15 2031” after “1992”; and

16 (3) in subsection (c)—

17 (A) by striking “and” after “fiscal years
18 1988, 1989, and 1990,”; and

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

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

1 **SEC. 4. RULE OF CONSTRUCTION.**

2 Nothing in this Act or the amendments made by this
3 Act may be construed to enlarge or diminish the authority,
4 jurisdiction, or responsibility of a State (as that term is
5 defined in section 3 of the Endangered Species Act of
6 1973 (16 U.S.C. 1532)) to manage, control, or regulate
7 fish and wildlife on lands and waters, including Federal
8 lands and waters, within the State.

9 **TITLE I—OPTIMIZING CON-**
10 **SERVATION THROUGH RE-**
11 **SOURCE PRIORITIZATION**

12 **SEC. 101. PRIORITIZATION OF LISTING PETITIONS, RE-**
13 **VIEWS, AND DETERMINATIONS.**

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

17 “(j) NATIONAL LISTING WORK PLAN.—

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

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

1 “(B) proposed and final determinations re-
2 garding listing each such covered species under
3 this section; and

4 “(C) proposed and final critical habitat
5 designations under subsection (a)(3) relating to
6 each such covered species.

7 “(2) SUBMISSION TO CONGRESS.—

8 “(A) IN GENERAL.—The Secretary shall
9 submit to Congress—

10 “(i) together with the budget request
11 of the Secretary for the first fiscal year
12 that begins not less than 365 days after
13 the date of the enactment of this sub-
14 section, the initial work plan required
15 under paragraph (1); and

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

20 “(B) ADDITIONAL INCLUSIONS.—The Sec-
21 retary shall include with each budget request
22 referred to in subparagraph (A) a description of
23 the amounts to be requested to carry out the
24 work plan for the fiscal year covered by the
25 budget request, including any amounts re-

1 quested to address emergency listings if the
2 Secretary identifies any emergency posing a sig-
3 nificant risk to the well-being of any species of
4 fish or wildlife or plant.

5 “(3) PRIORITY.—

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

12 “(i) Priority 1 represents species of
13 the highest priority, to be designated as
14 critically imperiled and in need of imme-
15 diate action.

16 “(ii) Priority 2 represents species with
17 respect to which the best scientific and
18 commercial data available support a clear
19 decision regarding the status of the spe-
20 cies.

21 “(iii) Priority 3 represents species
22 with respect to which studies regarding the
23 status of the species are being carried
24 out—

1 “(I) to answer key questions that
2 may influence the findings of a peti-
3 tion to list the species submitted
4 under subsection (b)(3); and

5 “(II) to resolve any uncertainty
6 regarding the status of the species
7 within a reasonable timeframe.

8 “(iv) Priority 4 represents species for
9 which proactive conservation efforts likely
10 to reduce threats to the species are being
11 developed or carried out, within a reason-
12 able timeframe and in an organized man-
13 ner, by Federal agencies, States, land-
14 owners, or other stakeholders.

15 “(v) Priority 5 represents species—

16 “(I) for which there exists little
17 information regarding—

18 “(aa) threats to the species;

19 or

20 “(bb) the status of the spe-
21 cies; or

22 “(II) that would receive limited
23 conservation benefit in the foreseeable
24 future by listing the species as a

1 threatened species or endangered spe-
2 cies under this section.

3 “(B) USE OF METHODOLOGY.—The Sec-
4 retary shall establish and assign priority classi-
5 fications under subparagraph (A) in accordance
6 with the notice of the Director of the United
7 States Fish and Wildlife Service titled ‘Method-
8 ology for Prioritizing Status Reviews and Ac-
9 companying 12–Month Findings on Petitions
10 for Listing Under the Endangered Species Act’
11 (81 Fed. Reg. 49248; published July 27, 2016).

12 “(C) EXTENSIONS FOR CERTAIN PRIORITY
13 CLASSIFICATIONS.—

14 “(i) PRIORITY 3.—With respect to a
15 species classified as Priority 3 under sub-
16 paragraph (A)(iii), if the Secretary deter-
17 mines that additional time would allow for
18 more complete data collection or the com-
19 pletion of studies relating to the species,
20 the Secretary may retain the species under
21 the work plan for a period of not more
22 than 5 years after the deadline under para-
23 graph (4).

24 “(ii) PRIORITY 4.—With respect to a
25 species classified as Priority 4 under sub-

1 paragraph (A)(iv), if the Secretary deter-
2 mines that existing conservation efforts
3 continue to meet the conservation needs of
4 the species, the Secretary may retain the
5 species under the work plan for a period of
6 not more than 5 years after the deadline
7 under paragraph (4).

8 “(iii) PRIORITY 5.—With respect to a
9 species classified as Priority 5 under sub-
10 paragraph (A)(v), the Secretary may retain
11 the species under the work plan for a pe-
12 riod of not more than 5 years after the
13 deadline under paragraph (4).

14 “(D) REVISION OF PRIORITY CLASSIFICA-
15 TION.—The Secretary may revise, in accordance
16 with subparagraph (A), the assignment to a pri-
17 ority classification of a species included in a
18 work plan at any time during the fiscal years
19 to which the work plan applies.

20 “(E) EFFECT OF PRIORITY CLASSIFICA-
21 TION.—The assignment of a priority classifica-
22 tion to a species included in a work plan is not
23 a final agency action.

24 “(4) DEADLINE.—The Secretary shall act on
25 any petition to add a species to a list published

1 under subsection (c) submitted under subsection
2 (b)(3) not later than the last day of the fiscal year
3 specified for that petition in the most recent work
4 plan.

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

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

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

13 “(A) COVERED SPECIES.—The term ‘cov-
14 ered species’ means a species that is not in-
15 cluded on a list published under subsection
16 (c)—

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

20 “(ii) that is otherwise under consider-
21 ation by the Secretary for addition to such
22 a list.

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

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

4 (1) in subparagraph (B), by striking “Within
5 12 months” and inserting “In accordance with the
6 national listing work plan submitted under sub-
7 section (j),”; and

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

9 “(C) Any negative finding described in subpara-
10 graph (A) and any finding described in subpara-
11 graph (B)(i)(I) shall be subject to judicial review.”.

12 **TITLE II—INCENTIVIZING WILD-**
13 **LIFE CONSERVATION ON PRI-**
14 **VATE LANDS**

15 **SEC. 201. CANDIDATE CONSERVATION AGREEMENTS WITH**
16 **ASSURANCES.**

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

21 “(C) In making a determination under sub-
22 section (a)(1) with respect to a species, the Sec-
23 retary shall take into account and document the ef-
24 fect of any net conservation benefit (as that term is
25 defined in subsection (k) of section 10) of any Can-

1 didate Conservation Agreement with Assurances or
2 any programmatic Candidate Conservation Agree-
3 ment with Assurances (as those terms are defined in
4 that subsection) relating to such species.”.

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

9 “(k) CANDIDATE CONSERVATION AGREEMENTS
10 WITH ASSURANCES.—

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

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

18 “(A) sets forth specific management activi-
19 ties that the covered party will undertake to
20 conserve the covered species;

21 “(B) provides a positive estimate of the net
22 conservation benefit of such management activi-
23 ties to the covered species;

24 “(C) describes, to the maximum extent
25 practicable, the existing population levels of the

1 covered species or the existing quality of habi-
2 tat;

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

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

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

15 “(A) deny the proposed Agreement if the
16 Secretary determines that the proposed Agree-
17 ment does not meet the requirements described
18 in paragraph (2); and

19 “(B) provide the submitting covered party
20 a written explanation for such determination
21 and the adjustments required for the Secretary
22 to approve such proposed Agreement.

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

1 “(A) IN GENERAL.—The Secretary may
2 enter into a Candidate Conservation Agreement
3 with Assurances with a covered party that au-
4 thorizes such covered party—

5 “(i) to administer such Candidate
6 Conservation Agreement with Assurances;

7 “(ii) to hold any permit issued under
8 this section with regard to such Candidate
9 Conservation Agreement with Assurances;

10 “(iii) to enroll other covered parties
11 within the area covered by such Candidate
12 Conservation Agreement with Assurances
13 in such Candidate Conservation Agreement
14 with Assurances; and

15 “(iv) to convey any permit authoriza-
16 tion held by such covered party under
17 clause (ii) to each covered party enrolled
18 under clause (iii).

19 “(B) PUBLICATION.—Upon receipt of a
20 proposed programmatic Candidate Conservation
21 Agreement with Assurances under paragraph
22 (1) and before approving or denying such a pro-
23 posed programmatic Candidate Conservation
24 Agreement with Assurances under paragraph
25 (2) or (3), respectively, the Secretary shall—

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

7 “(ii) review any comments received
8 under clause (i); and

9 “(iii) after the close of the public com-
10 ment period for the proposed pro-
11 grammatic Candidate Conservation Agree-
12 ment with Assurances, publish in the Fed-
13 eral Register—

14 “(I) any comments received
15 under clause (i); and

16 “(II) the approval or denial of
17 the proposed programmatic Candidate
18 Conservation Agreement with Assur-
19 ances under paragraph (2) or (3), re-
20 spectively.

21 “(5) INCIDENTAL TAKE AUTHORIZATION.—If a
22 covered species is listed under section 4, the Sec-
23 retary shall issue a permit to the relevant covered
24 party under this section allowing incidental take of

1 and modification to the habitat of such covered spe-
2 cies consistent with the Agreement.

3 “(6) TECHNICAL ASSISTANCE.—The Secretary
4 shall, upon request, provide a covered party with
5 technical assistance in developing a proposed Agree-
6 ment.

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

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

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

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

23 “(A) AGREEMENT.—The term ‘Agreement’
24 means—

1 “(i) a Candidate Conservation Agree-
2 ment with Assurances; or

3 “(ii) a programmatic Candidate Con-
4 servation Agreement with Assurances.

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

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

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

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

22 “(II) no additional land, water,
23 or resource use restrictions shall be
24 imposed on the covered party beyond
25 those included in the agreement.

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

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

5 “(ii) proposed to be listed pursuant to
6 section 4.

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

9 “(i) party that conducts activities on
10 land administered by a Federal agency
11 pursuant to a permit or lease issued to the
12 party;

13 “(ii) private property owner;

14 “(iii) county;

15 “(iv) State or State agency; or

16 “(v) Tribal government.

17 “(E) COVERED SPECIES.—The term ‘cov-
18 ered species’ means, with respect to an Agree-
19 ment, the species that is the subject of such
20 Agreement.

21 “(F) NET CONSERVATION BENEFIT.—The
22 term ‘net conservation benefit’ means the net
23 effect of an Agreement, determined by com-
24 paring the existing situation of the candidate
25 species without the Agreement in effect and a

1 situation in which the Agreement is in effect,
2 on a candidate species, including—

3 “(i) the net effect on threats to such
4 species;

5 “(ii) the net effect on the number of
6 individuals of such species; or

7 “(iii) the net effect on the habitat of
8 such species.

9 “(G) PROGRAMMATIC CANDIDATE CON-
10 SERVATION AGREEMENT WITH ASSURANCES.—
11 The term ‘programmatic Candidate Conserva-
12 tion Agreement with Assurances’ means a Can-
13 didate Conservation Agreement with Assurances
14 described in paragraph (4)(A).”.

15 **SEC. 202. CONSERVATION PLANS.**

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

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

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

24 “(D) Each Federal agency shall, as appli-
25 cable and to the maximum extent practicable,

1 adopt the mitigation measures contained in a
 2 permit issued under subparagraph (B) in any
 3 authorization issued by such Federal agency
 4 with respect to the action that is the subject of
 5 such permit.

6 “(E) With respect to an action that is the
 7 subject of a permit issued under subparagraph
 8 (B), the Secretary shall not seek any additional
 9 mitigation measures through any other Federal
 10 or State or local process.”.

11 (b) EXEMPTION FROM CONSULTATION REQUIRE-
 12 MENT.—Section 10(a) of the Endangered Species Act of
 13 1973 (16 U.S.C. 1539(a)) is amended by adding at the
 14 end the following:

15 “(3) A permit issued by the Secretary under this sub-
 16 section shall be deemed to have been granted an exemption
 17 under section 7(h) for the purposes of that section.”.

18 **SEC. 203. NEPA EXEMPTION FOR INCIDENTAL TAKE PER-**
 19 **MITS.**

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

23 “(4) The issuance of a permit under paragraph (2)
 24 shall not be considered a major Federal action under sec-

1 tion 102(2)(C) of the National Environmental Policy Act
2 of 1969 (42 U.S.C. 4332(2)(C)).”.

3 **TITLE III—PROVIDING FOR**
4 **GREATER INCENTIVES TO RE-**
5 **COVER LISTED SPECIES**

6 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDAN-**
7 **GERED SPECIES ACT OF 1973.**

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

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

11 “(d) PROTECTIVE REGULATIONS.—

12 “(1) IN GENERAL.—Whenever any species is
13 listed as a threatened species pursuant to subsection
14 (c), the Secretary shall issue such regulations as are
15 necessary and advisable to provide for the conserva-
16 tion of that species.

17 “(2) RECOVERY GOALS.—

18 “(A) IN GENERAL.—If the Secretary issues
19 a regulation under paragraph (1) that prohibits
20 an act described in section 9(a), the Secretary
21 shall, with respect to the species that is the
22 subject of such regulation—

23 “(i) establish objective, incremental
24 recovery goals;

1 “(ii) provide for the stringency of
2 such regulation to decrease as such recov-
3 ery goals are met; and

4 “(iii) provide for State management
5 within such State, if such State is willing
6 to take on such management, beginning on
7 the date on which the Secretary determines
8 that each such recovery goal is met and, if
9 each such recovery goal remains met, con-
10 tinuing until such species is removed from
11 the list of threatened species published
12 pursuant to subsection (c).

13 “(B) STATUS REVIEW.—On the date on
14 which the Secretary determines that each recov-
15 ery goal established under subparagraph (A)(i)
16 for a species is met, the Secretary shall begin
17 a review of the species and subsequently deter-
18 mine, on the basis of such review, whether the
19 species should be removed from the lists pub-
20 lished pursuant to subsection (c)(1).

21 “(3) COOPERATIVE AGREEMENT.—A regulation
22 issued under paragraph (1) that prohibits an act de-
23 scribed in section 9(a) with respect to a resident
24 species shall apply with respect to a State that has
25 entered into a cooperative agreement with the Sec-

1 retary pursuant to section 6(c) only to the extent
2 that such regulation is adopted by such State.

3 “(4) STATE RECOVERY STRATEGY.—

4 “(A) IN GENERAL.—A State may develop
5 a recovery strategy for a threatened species or
6 a candidate species and submit to the Secretary
7 a petition for the Secretary to use such recovery
8 strategy as the basis for any regulation issued
9 under paragraph (1) with respect to such spe-
10 cies within such State.

11 “(B) APPROVAL OR DENIAL OF PETI-
12 TION.—Not later than 120 days after the date
13 on which the Secretary receives a petition sub-
14 mitted under subparagraph (A), the Secretary
15 shall—

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

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

24 “(C) PUBLICATION.—Not later than 30
25 days after the date on which the Secretary ap-

1 proves or denies a petition under subparagraph
2 (B), the Secretary shall publish such approval
3 or denial in the Federal Register.

4 “(D) DENIAL OF PETITION.—

5 “(i) WRITTEN EXPLANATION.—If the
6 Secretary denies a petition under subpara-
7 graph (B), the Secretary shall include in
8 such denial a written explanation for such
9 denial, including a description of the
10 changes to such petition that are necessary
11 for the Secretary to approve such petition.

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

15 “(E) USE IN PROTECTIVE REGULA-
16 TIONS.—If the Secretary approves a petition
17 under subparagraph (B), the Secretary shall—

18 “(i) issue a regulation under para-
19 graph (1) that adopts the recovery strategy
20 as such regulation with respect to the spe-
21 cies that is the subject of such recovery
22 strategy within the petitioning State; and

23 “(ii) establish objective criteria to
24 evaluate the effectiveness of such recovery

1 strategy in conserving such species within
2 such State.

3 “(F) REVISION.—If a recovery strategy
4 that is adopted as a regulation issued under
5 paragraph (1) is determined by the Secretary to
6 be ineffective in conserving the species that is
7 the subject of such recovery strategy in accord-
8 ance with the objective criteria established
9 under subparagraph (E)(ii) for such recovery
10 strategy, the Secretary shall revise such regula-
11 tion and reissue such regulation in accordance
12 with paragraph (1).”; and

13 (2) in subsection (f)(1)(B)—

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

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

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

19 “(iv) with respect to an endangered spe-
20 cies, objective, incremental recovery goals in ac-
21 cordance with subsection (d)(2)(A) for use
22 under that subsection if such endangered spe-
23 cies is changed in status from an endangered
24 species to a threatened species under subsection
25 (c)(2)(B)(ii).”.

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

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

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

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

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

13 “(3) The removal of a species from a list published
14 under subsection (c)(1) is not subject to judicial review
15 during the period established under paragraph (1) with
16 respect to the species.”.

17 **SEC. 304. CODIFICATION OF REGULATION.**

18 The final rule titled “Endangered and Threatened
19 Wildlife and Plants; Regulations for Prohibitions to
20 Threatened Wildlife and Plants” (84 Fed. Reg. 44753;
21 published August 27, 2019) shall have the force and effect
22 of law.

23 **SEC. 305. DESIGNATION OF CRITICAL HABITAT.**

24 (a) PRIVATELY OWNED OR CONTROLLED LAND.—
25 Section 4(a)(3) of the Endangered Species Act of 1973

1 (16 U.S.C. 1533(a)(3)) is amended by adding at the end
2 the following:

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

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

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

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

19 “(iii) includes an activity or a limitation on an
20 activity that the Secretary determines will likely con-
21 serve the species concerned;

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

23 “(I) an increase in the population of the
24 species concerned above the population of such
25 species on the date that such species is listed as

1 a threatened species or an endangered species;

2 or

3 “(II) maintaining the same population of

4 such species on the land or other geographical

5 area as the population that would likely occur

6 if such land or other geographical area is des-

7 igned as critical habitat; and

8 “(v) to the maximum extent practicable, will

9 minimize and mitigate the impacts of any activity

10 that will likely result in an incidental taking of the

11 species concerned.”.

12 (b) DESIGNATION CONSIDERATIONS.—Section

13 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C.

14 1533(b)(2)) is amended in the first sentence by inserting

15 “the impact on existing efforts of private landowners to

16 conserve the species,” after “impact on national secu-

17 rity,”.

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

5 **SEC. 401. REQUIREMENT TO PUBLISH BASIS FOR LISTINGS**
6 **AND CRITICAL HABITAT DESIGNATIONS ON**
7 **INTERNET.**

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

11 “(9) The Secretary shall make publicly available on
12 the Internet the best scientific and commercial data avail-
13 able that are used as the basis for each regulation, includ-
14 ing each proposed regulation, promulgated under para-
15 graphs (1) and (3) of subsection (a), except that—

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

23 “(B) not later than 30 days after the date of
24 the enactment of this paragraph, the Secretary shall
25 execute an agreement with the Secretary of Defense

1 that prevents the disclosure under this paragraph of
2 classified information pertaining to Department of
3 Defense personnel, facilities, lands, or waters.”.

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

6 Section 6(a) of the Endangered Species Act of 1973
7 (16 U.S.C. 1535(a)) is amended—

8 (1) by inserting “(1)” before the first sentence;
9 and

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

12 “(2) Such cooperation shall include—

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

17 “(B)”.

18 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
19 **GERED SPECIES ACT OF 1973.**

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

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

24 “(a) **REQUIREMENT.**—The Secretary of the Interior,
25 in consultation with the Secretary of Commerce, shall—

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

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

12 “(b) INCLUDED INFORMATION.—The report shall in-
13 clude—

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

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

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

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

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

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

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

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

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

6 “(e) DEFINITIONS.—In this section:

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

9 “(A) Department of the Interior;

10 “(B) Forest Service;

11 “(C) Environmental Protection Agency;

12 “(D) National Marine Fisheries Service;

13 “(E) Bonneville Power Administration;

14 “(F) Western Area Power Administration;

15 “(G) Southwestern Power Administration;

16 or

17 “(H) Southeastern Power Administration.

18 “(2) COVERED SUIT.—The term ‘covered suit’
19 means—

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

24 “(B) any administrative proceeding under
25 which the United States awards fees and other

1 expenses to a third party under section 504 of
2 title 5, United States Code.”.

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

“Sec. 13. Disclosure of expenditures.”.

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

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

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

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

22 “(4)(A) The Secretary shall, concurrently with deter-
23 mining under paragraph (1) whether a species is a threat-
24 ened species or an endangered species, prepare an analysis
25 with respect to such determination of—

- 1 “(i) the economic effect;
- 2 “(ii) the effects on national security;
- 3 “(iii) the effects on human health and safety;
- 4 and
- 5 “(iv) any other relevant effect.
- 6 “(B) Nothing in this paragraph shall delay a deter-
- 7 mination made by the Secretary under paragraph (1) or
- 8 change the criteria used by the Secretary to make such
- 9 a determination.”.

10 **TITLE V—STREAMLINING**

11 **PERMITTING PROCESS**

12 **SEC. 501. LIMITATION ON REASONABLE AND PRUDENT**

13 **MEASURES.**

14 Section 7(b)(4) of the Endangered Species Act of

15 1973 (16 U.S.C. 1536(b)(4)) is amended—

16 (1) by inserting “and that do not propose, rec-

17 ommend, or require the Federal agency or the appli-

18 cant concerned, if any, to mitigate or offset such im-

19 pact” after “minimize such impact”; and

20 (2) by inserting “which measures may be issued

21 after the written statement,” after “such taking,”.

22 **SEC. 502. SUCCESSIVE CONSULTATIONS.**

23 Section 7(b) of the Endangered Species Act of 1973

24 (16 U.S.C. 1536(b)) is amended by adding at the end the

25 following:

1 “(5)(A) With respect to an ongoing Federal agency
2 action for which the applicable Federal agency has adopt-
3 ed a reasonable and prudent alternative or a reasonable
4 and prudent measure to comply with subsection (a)(2), in
5 any subsequent consultation for the Federal agency action
6 that occurs 10 years or more after the date on which the
7 initial consultation for the Federal agency action was com-
8 pleted, the Secretary shall—

9 “(i) project the likelihood of and timeline for
10 the recovery of the threatened species and endan-
11 gered species affected by the Federal agency action;
12 and

13 “(ii) determine whether continuing to imple-
14 ment the reasonable and prudent alternative or a
15 reasonable and prudent measure will materially in-
16 crease the likelihood of and reduce the time for re-
17 covery of the threatened species and endangered spe-
18 cies.

19 “(B) If the Secretary finds under subparagraph
20 (A)(ii) that continued implementation of the modification
21 will not materially improve the likelihood of and shorten
22 the time to the recovery of the species, the Federal agency
23 shall discontinue implementation of the modification not-
24 withstanding subsection (a)(2).”.

1 **SEC. 503. REQUIREMENT TO CONSIDER REASONABLY CER-**
2 **TAIN EFFECTS.**

3 Section 7(a)(2) of the Endangered Species Act of
4 1973 (16 U.S.C. 1536(a)) is amended by inserting “A
5 consultation carried out pursuant to this paragraph shall
6 consider the effects that are reasonably certain to be
7 caused by the action without a substantive presumption
8 in favor of the species” after “commercial data available.”.

9 **SEC. 504. CLARIFYING JEOPARDY.**

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

13 “(5) For the purposes of a consultation carried out
14 pursuant to paragraph (2) or a conference carried out
15 under paragraph (4), the Secretary may only determine
16 that the action that is the subject of such consultation
17 or conference is likely to jeopardize the continued exist-
18 ence of an applicable species or result in the destruction
19 or adverse modification of habitat of such a species which
20 is determined by the Secretary, after consultation as ap-
21 propriate with affected States, to be critical if the Sec-
22 retary determines, based on the best scientific and com-
23 mercial data available, that the effects that are reasonably
24 certain to be caused by the action are likely to result in
25 the action itself causing such jeopardy.”.

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
7 States of fish or wildlife listed as a threatened spe-
8 cies or an endangered species pursuant to section 4
9 is lawful under this Act and not subject to permit
10 requirements or other regulations issued by the Sec-
11 retary with respect to exportation and importation
12 pursuant to this Act if—

13 “(A) such fish or wildlife is a species that
14 is not native to the United States;

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

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

18 “(ii) of subsections (d), (e), and (f) is
19 satisfied.”.

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

22 Section 10(a)(1)(A) of the Endangered Species Act
23 of 1973 (16 U.S.C. 1539(a)(1)(A)) is amended to read
24 as follows:

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

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

13 “(I) to export or re-import, deliver, receive,
14 carry, transport, or ship in interstate or foreign
15 commerce in the course of a commercial activ-
16 ity;

17 “(II) to buy or sell or offer for sale in
18 interstate or foreign commerce; and

19 “(III) acts necessary for the establishment
20 and maintenance of experimental populations
21 pursuant to subsection (j); or”.

1 **TITLE VII—RESTORING**
2 **CONGRESSIONAL INTENT**

3 **SEC. 701. LIMITING AGENCY REGULATIONS.**

4 Section 11(f) of the Endangered Species Act of 1973
5 (16 U.S.C. 1540(f)) is amended—

6 (1) by striking “The Secretary,” and inserting
7 the following:

8 “(1) IN GENERAL.—The Secretary,”;

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

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

13 “(2) RULE OF CONSTRUCTION.—This sub-
14 section may not be construed to be an independent
15 source of authority to promulgate regulations to en-
16 force the provisions of this Act other than those in-
17 cluded in this section and section 8A.”.