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Text of H.R. 1897, the ESA Amendments Act of 2025 Offered by M. _____ [Showing the text of H.R. 1897, as reported by the Committee on Natural Resources, with modifications]

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.~~

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) SHORT TITLE.—This Act may be cited as the “ESA Amendments Act of 2025”.
- (b) TABLE OF CONTENTS.—The table of contents for 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.

SEC. 2. ENDANGERED SPECIES ACT OF 1973 DEFINITIONS.

(a) FORESEEABLE FUTURE.—Section 3(20) Endangered Species Act of 1973 (16 U.S.C. 1532(20)) is amended by—

- (1) striking “The term” and inserting “(A) The term”; and
- (2) by adding at the end the following:

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

(b) **COMMERCIAL ACTIVITY.**—Section 3(2) Endangered Species Act of 1973 (16 U.S.C. 1532(2)) is amended by inserting “or public display or education aimed at the preservation or conservation of a species” after “organizations”.

(c) **CONSERVE; CONSERVING; CONSERVATION.**—Section 3(3) of the Endangered Species Act of 1973 (16 U.S.C. 1532(3)) is amended by striking “and transplanted, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include” and inserting “transplantation, and, at the discretion of the Secretary,”.

(d) **HABITAT.**—Section 3(5) of the Endangered Species Act of 1973 (16 U.S.C. 1532(5)) is amended by adding at the end the following:

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

“(I) means the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support 1 or more life processes of the threatened species or endangered species; and

“(II) does not include an area—

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

“(bb) visited by only vagrant individual members of the threatened species or endangered species.

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

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

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

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

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

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

“(B) include credible and reliable data, quantitative analyses, conceptual and numerical models, and model results that—

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

“(ii) are applied using prevailing principles, methods, tools, and professional standards of practice; and

“(iii) are impartially gathered and objectively applied without reliance on precautionary assumptions in favor of a species or other assumptions or policy prescriptions that bias the application.”

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

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

“(1) means the condition of the species or the critical habitat of the species in the area directly affected by the agency action at the time of the proposed agency action, without the consequences to the species or the critical habitat of the species caused by the proposed action; and

“(2) includes—

“(A) the past and present effects of all Federal, State, local, and private actions and other human activities in the area directly affected by the agency action;

- “(B) the anticipated effects of each proposed Federal project within the area directly affected by the agency action for which a consultation under this section has been completed;
- “(C) the effects of State and private actions that are contemporaneous with the consultation in process;
- “(D) existing structures and facilities and the past, present, and future effects of the physical existence of such structures and facilities on the species or the critical habitat of the species; and
- “(E) the effects of Federal actions being carried out at the time of the proposed agency action and existing Federal facilities that are not within the discretion of the Secretary to modify.”

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

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

(1) in subsection (a)—

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

(B) in paragraph (1)—

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

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

(C) in paragraph (2)—

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

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

(D) in paragraph (3)—

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

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

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

(3) in subsection (c)—

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

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

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

SEC. 4. RULE OF CONSTRUCTION.

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

SEC. 5. RENAMING OF ENDANGERED SPECIES ACT OF 1973 TO ENDANGERED SPECIES RECOVERY ACT.

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

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the “Endangered Species Act of 1973” shall be deemed to be a reference to the “Endangered Species Recovery Act”.

TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE PRIORITIZATION

SEC. 101. PRIORITIZATION OF LISTING PETITIONS, REVIEWS, AND DETERMINATIONS.

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

“(j) NATIONAL LISTING WORK PLAN.—

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

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

“(B) any proposed or final determination under subsection (a)(1) required by a court order, court decree, or court-approved settlement agreement; and

“(C) any proposed or final designation of critical habitat under subsection (a)(3) required by a court order, court decree, or court-approved settlement agreement.

“(2) SUBMISSION TO CONGRESS.—

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

“(i) together with the budget request of the Secretary for the first fiscal year that begins not less than 365 days after the date of the enactment of this subsection, the initial work plan required under paragraph (1); and

“(ii) together with the budget request of the Secretary for each fiscal year thereafter, an updated work plan under paragraph (1).

“(B) ADDITIONAL INCLUSIONS.—The Secretary shall include with each budget request referred to in subparagraph (A) a description of the amounts to be requested to carry out the work plan for the fiscal year covered by the budget request, including any amounts requested to address potential future listings of species considered on an emergency basis in that fiscal year.

“(3) PRIORITY.—

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

“(i) Priority 1 represents species of the highest priority, to be designated as critically imperiled and in need of immediate action.

“(ii) Priority 2 represents species with respect to which the best scientific and commercial data available support a clear decision regarding the status of the species.

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

“(I) to answer key questions that may influence the findings of a petition to list the species submitted under subsection (b)(3); and

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

“(iv) Priority 4 represents species for which proactive conservation efforts likely to reduce the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on the species are being developed or carried out, within a reasonable timeframe and in an organized manner, by Federal agencies, States, landowners, or other stakeholders.

“(v) Priority 5 represents species—

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

“(aa) the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on to the species; or

“(bb) the status of the species; or

“(II) that would receive limited conservation benefit in the foreseeable future by listing the species as a threatened species or endangered species under this section.

“(B) USE OF METHODOLOGY.—The Secretary shall establish and assign priority classifications under subparagraph (A) in accordance with the notice of the Director of the United States Fish and Wildlife Service titled ‘Methodology for Prioritizing Status Reviews and Accompanying 12–Month Findings on Petitions for Listing Under the Endangered Species Act’ (81 Fed. Reg. 49248; published July 27, 2016), or any successor document.

“(C) EXTENSIONS FOR CERTAIN PRIORITY CLASSIFICATIONS.—

“(i) PRIORITY 3.—With respect to a species classified as Priority 3 under subparagraph (A)(iii), if the Secretary determines that additional time would allow for more complete data collection or the completion of studies relating to the species, the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

“(ii) PRIORITY 4.—With respect to a species classified as Priority 4 under subparagraph (A)(iv), if the Secretary determines that existing conservation efforts continue to meet the conservation needs of the species, the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

“(iii) PRIORITY 5.—With respect to a species classified as Priority 5 under subparagraph (A)(v), the Secretary may retain the species under the work plan for a period of not more than 5 years after the deadline under paragraph (4).

“(D) REVISION OF PRIORITY CLASSIFICATION.—The Secretary may revise, in accordance with subparagraph (A), the assignment to a priority classification of a species included in a work plan at any time.

“(E) EFFECT OF PRIORITY CLASSIFICATION.—The assignment of a priority classification to a species included in a work plan is not a final agency action.

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

“(5) REGULATIONS.—The Secretary may issue such regulations as the Secretary determines appropriate to carry out this subsection.

“(6) EFFECT OF SUBSECTION.—Nothing in this subsection may be construed to preclude or otherwise affect the emergency listing authority of the Secretary under subsection (b)(7).

“(7) DEFINITIONS.—In this subsection:

“(A) COVERED SPECIES.—The term ‘covered species’ means a species that is not included on a list published under subsection (c)—

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

“(ii) that is otherwise under consideration by the Secretary for addition to such a list.

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

(b) CONFORMING AMENDMENT.—Section 4(b)(3)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)(B)) is amended by striking “Within 12 months” and inserting “In accordance with the national listing work plan submitted under subsection (j).”.

TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE LANDS

SEC. 201. CONSERVATION BENEFIT AGREEMENTS.

(a) LISTING DETERMINATIONS.—Section 4(b)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(1)) is amended by adding at the end the following:

“(C) In making a determination under subsection (a)(1) with respect to a species, the Secretary shall take into account and document the effect of any net conservation benefit (as that term is defined in section 10(k)) of any approved Conservation Benefit Agreement (as that term is defined in such section) relating to the species.”

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

“(k) CONSERVATION BENEFIT AGREEMENTS.—

“(1) PROPOSED AGREEMENT.—

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

“(B) DETERMINATION OF COMPLETENESS.—Not later than 30 days after the date on which the Secretary receives a proposed Agreement, the Secretary shall—

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

“(ii) if the Secretary determines the proposed Agreement is incomplete under clause (i), provide the covered party with a written explanation of such determination, including any specific adjustment required for the Secretary to determine the proposed Agreement is complete.

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

“(i) approve the proposed Agreement if the Secretary determines that the proposed Agreement—

“(I) is in compliance with, as applicable, section 17.22(c)(1) or 17.32(c)(1) of title 50, Code of Federal Regulations (or a successor regulation); and

“(II) provides assurances to the covered party that, if the covered species becomes listed after the effective date of such Agreement—

“(aa) no additional conservation measures will be required; and

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

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

“(iii) if the Secretary rejects the proposed Agreement under clause (ii), provide the submitting covered party a written explanation for such rejection, including any specific adjustment required, as of the date on which the Secretary rejects the proposed Agreement, for the Secretary to approve the proposed Agreement.

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

“(A) to administer such Conservation Benefit Agreement;

“(B) to hold any permit issued under this section with regard to such Conservation Benefit Agreement;

“(C) to enroll other covered parties within the area covered by such Conservation Benefit Agreement in such Conservation Benefit Agreement; and

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

“(3) TAKE AUTHORIZATION.—If a covered species is listed as a threatened species or an endangered species under section 4, the Secretary, consistent with the applicable Agreement, shall issue to the relevant covered party a permit under this section for the incidental take of and modification to the habitat of such covered species by such covered party.

“(4) TECHNICAL ASSISTANCE.—The Secretary shall, upon the request of a covered party, provide the covered party with technical assistance in developing a proposed Agreement.

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

“(6) EXEMPTIONS.—

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

“(B) DISCLOSURE.—Information submitted by a private party to the Secretary pursuant to this subsection shall be exempt from disclosure under section 552(b)(3)(B) of title 5, United States Code.

“(C) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The approval by the Secretary of a proposed Agreement under this subsection shall not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

“(7) DEFINITIONS.—In this subsection:

“(A) AFFECTED SPECIES.—The term ‘affected species’ means a species—

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

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

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

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

“(i) a Conservation Benefit Agreement; or

“(ii) a programmatic Conservation Benefit Agreement.

“(C) CONSERVATION BENEFIT AGREEMENT.—The term ‘Conservation Benefit Agreement’ means the supporting document required for the issuance of a permit under subsection (a)(1)(A) to enhance the propagation or survival of an affected species, as described in the final rule issued by the United States Fish and Wildlife Service titled ‘Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits’ (89 Fed. Reg. 26070; published April 12, 2024).

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

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

“(ii) private property owner;

“(iii) county;

“(iv) State or State agency; or

“(v) Tribal government.

“(E) COVERED SPECIES.—The term ‘covered species’ means, with respect to an Agreement, the affected species that is the subject of such Agreement.

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

“(i) the effects of the factors described in subparagraphs (A) through (E) of subsection (a)(1) on the covered species;

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

“(iii) the habitat of the covered species.

“(G) PROGRAMMATIC CONSERVATION BENEFIT AGREEMENT.—The term ‘programmatic Conservation Benefit Agreement’ means a Conservation Benefit Agreement described in paragraph (4).”

SEC. 202. CONSERVATION PLANS.

(a) IN GENERAL.—Section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)) is amended—

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

(2) by adding at the end the following:

“(D) Each Federal agency shall, as applicable and to the maximum extent practicable, adopt the mitigation measures contained in a permit issued under subparagraph (B) in any authorization issued by such Federal agency with respect to the action that is covered by such permit.

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

(b) EXEMPTION FROM CONSULTATION REQUIREMENT.—Section 10(a) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)) is amended by adding at the end the following:

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

SEC. 203. NEPA EXEMPTION FOR INCIDENTAL TAKE PERMITS.

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

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

TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER LISTED SPECIES

SEC. 301. PROTECTIVE REGULATIONS UNDER ENDANGERED SPECIES ACT OF 1973.

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

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

“(d) PROTECTIVE REGULATIONS.—

“(1) ISSUANCE.—

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

“(B) REQUIREMENT.—In issuing a regulation under subparagraph (A), the Secretary, consistent with the findings, purposes, and policy described in section 2 and based on the best scientific and commercial data available, shall consider the conservation and economic effects of such regulation.

“(2) RECOVERY GOALS.—

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

“(i) establish objective, incremental recovery goals;

“(ii) provide for the stringency of such regulation to decrease as such recovery goals are met; and

“(iii) provide for State management within such State, if such State is willing to take on such management, beginning on the date on which the Secretary determines that each such recovery goal is met and, if each such recovery goal remains met, continuing until such species is removed from the list of threatened species published pursuant to subsection (c).

“(B) STATUS REVIEW.—On the date on which the Secretary determines that each recovery goal established under subparagraph (A)(i) for a species is met, the Secretary shall begin a review of the species and subsequently determine, on the basis of such review, whether the species should be removed from the lists published pursuant to subsection (c)(1).

“(3) COOPERATIVE AGREEMENT.—A regulation issued under paragraph (1) that prohibits an act described in section 9(a) with respect to a resident species shall apply with respect to a State that has entered into a cooperative agreement with the Secretary pursuant to section 6(c) only to the extent that such regulation is adopted by such State.

“(4) STATE RECOVERY STRATEGY.—

“(A) IN GENERAL.—A State may develop a recovery strategy for a threatened species or a candidate species and submit to the Secretary a petition for the Secretary to use such recovery strategy as the basis for any regulation issued under paragraph (1) with respect to such species within such State.

“(B) APPROVAL OR DENIAL OF PETITION.—Not later than 120 days after the date on which the Secretary receives a petition submitted under subparagraph (A), the Secretary shall—

“(i) approve such petition if the Secretary determines the recovery strategy is reasonably certain to be implemented by the petitioning State and to be effective in conserving the species that is the subject of such recovery strategy; or

“(ii) deny such petition if the requirements described in clause (i) are not met.

“(C) PUBLICATION.—Not later than 60 days after the date on which the Secretary approves or denies a petition under subparagraph (B), the Secretary shall publish such approval or denial on the website of the applicable department.

“(D) DENIAL OF PETITION.—

“(i) WRITTEN EXPLANATION.—If the Secretary denies a petition under subparagraph (B), the Secretary shall include in such denial a written explanation for such denial, including a description of the changes to such petition that are necessary for the Secretary to approve such petition.

“(ii) RESUBMISSION OF DENIED PETITION.—A State may resubmit a petition that is denied under subparagraph (B).

“(E) USE IN PROTECTIVE REGULATIONS.—If the Secretary approves a petition under subparagraph (B), the Secretary shall—

“(i) issue a regulation under paragraph (1) that adopts the recovery strategy as such regulation with respect to the species that is the subject of such recovery strategy within the petitioning State; and

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

“(F) REVISION.—If a recovery strategy that is adopted as a regulation issued under paragraph (1) is determined by the Secretary to be ineffective in conserving the species that is the subject of such recovery strategy in accordance with the objective criteria established under subparagraph (E)(ii) for such recovery strategy, the Secretary shall revise such regulation and reissue such regulation in accordance with paragraph (1).”

; and

(2) in subsection (f)(1)(B)—

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

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

(C) by adding at the end the following:

“(iv) with respect to an endangered species, objective, incremental recovery goals in accordance with subsection (d)(2)(A) for use under that subsection if such endangered species is changed in status from an endangered species to a threatened species under subsection (c)(2)(B)(ii).”

SEC. 302. 5-YEAR REVIEW DETERMINATIONS.

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

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

SEC. 303. JUDICIAL REVIEW DURING MONITORING PERIOD.

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

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

SEC. 304. DESIGNATION OF CRITICAL HABITAT.

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

“(A)(i) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—

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

“(II) may, from time-to-time thereafter as appropriate, revise such designation.

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

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

“(II) the species is determined under paragraph (1) to be a threatened species or an endangered species because of a factor—

“(aa) other than that described in subparagraph (A) of that paragraph; or

“(bb) that cannot be addressed through reasonable and prudent alternatives resulting from consultations carried out pursuant to section 7(a)(2); or

“(III) the species primarily occurs in areas not under the jurisdiction of the United States and areas under the jurisdiction of the United States where the species occurs provide no more than a negligible conservation value to the species.

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

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

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

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

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

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

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

“(iv) the Secretary determines will result in—

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

“(II) maintaining the same population of such species on the land or other geographical area as the population that would likely occur if such land or other geographical area is designated as critical habitat; and

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

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

(1) in paragraph (2)—

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

(B) by striking “The Secretary” and inserting “(A) The Secretary”; and

(C) by adding at the end the following:

“(B) In addition to any area otherwise considered by the Secretary for exclusion from critical habitat under subparagraph (A), the Secretary shall consider for exclusion from critical habitat any area—

“(i) submitted by a person through public comment pursuant to paragraph (5) or (6); and

“(ii) for which such submission includes credible information regarding a meaningful economic impact, impact on national security, impact on existing efforts of private landowners to conserve the applicable species, or other relevant impact of specifying the area as critical habitat that supports the exclusion from critical habitat of that area.”

;

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

“(I) a draft economic analysis that identifies any impacts on national security and existing efforts of private landowners to conserve the applicable species and other relevant impacts of the designation or revision that the Secretary determines are within the area proposed for designation or covered by the revision; and

“(II) a draft exclusion analysis that identifies each area the Secretary has reason to consider for exclusion under paragraph (2) and why; and”

; and

(3) in paragraph (6)(A)—

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

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

“(bb) a final exclusion analysis that identifies each area the Secretary has determined under paragraph (2) to exclude from such revision and why;”

; and

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

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

“(bb) a final exclusion analysis that identifies each area the Secretary has determined under paragraph (2) to exclude from such designation and why; or”

.

SEC. 305. TREATMENT OF STATE, TRIBAL, AND LOCAL GOVERNMENT DATA.

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

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

(2) in paragraph (2)(A), as so designated by section 304(c)(1)(B) of this Act, by inserting “data submitted to the Secretary by a State, Tribal, or local government, as well as” after “consideration”.

SEC. 306. CLARIFYING SIGNIFICANT PORTION OF RANGE OF SPECIES.

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

“(4) If the Secretary determines under paragraph (1) that a species is a threatened species or an endangered species in only a significant portion of the range of the species, the Secretary may only list the species

under subsection (c) as a threatened species or an endangered species with respect to that portion of the range of the species.”

SEC. 307. DELISTING CRITERIA.

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

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

“(A) is extinct;

“(B) is not a threatened species or an endangered species; or

“(C) is not a species.”

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

SEC. 401. REQUIREMENT TO PUBLISH BASIS FOR LISTINGS AND CRITICAL HABITAT DESIGNATIONS ONLINE.

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

“(9)(A) The Secretary shall make publicly available on the website of the applicable department the best scientific and commercial data available that is used as the basis for each regulation, including each proposed regulation, promulgated under paragraphs (1) and (3) of subsection (a).

“(B) If a Governor, agency, or legislature of a State determines that public disclosure of any best scientific and commercial data available described in subparagraph (A) is prohibited by a law or regulation of the State, including such a law or regulation requiring the protection of personal information—

“(i) the Governor, agency, or legislature of the State may submit to the Secretary a request to exempt such best scientific and commercial data available from the application of subparagraph (A); and

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

“(C) Subparagraph (A) does not apply with respect to global positioning system coordinates or other geographically specific species location information.

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

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

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

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

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

“(2) Such cooperation shall include—

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

“(B)

SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDANGERED SPECIES ACT OF 1973.

(a) REQUIREMENT TO DISCLOSE.—Section 13 of the Endangered Species Act of 1973 (87 Stat. 902) is amended to read as follows:

“SEC. 13. DISCLOSURE OF EXPENDITURES.

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

“(1) not later than 90 days after the end of each fiscal year, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate an annual report detailing Federal Government expenditures for covered suits during the preceding fiscal year; and

“(2) make publicly available through the Internet a searchable database, updated monthly, of the information described in subsection (b).

“(b) INCLUDED INFORMATION.—Each report submitted under subsection (a) shall include—

“(1) the case name and number of each covered suit, and, with respect to each covered suit, a hyperlink to each settlement decision, final decision, consent decree, stipulation of dismissal, release, interim decision, motion to dismiss, partial motion for summary judgement, or related final document;

“(2) a description of each claim or cause of action in each covered suit;

“(3) the name of each covered agency the actions of which give rise to any claim in a covered suit and each plaintiff in such covered suit;

“(4) funds expended by each covered agency (disaggregated by agency account) to receive and respond to notices referred to in section 11(g)(2) or to prepare for litigation of, litigate, negotiate a settlement agreement or consent decree in, or provide material, technical, or other assistance in relation to, a covered suit;

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

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

“(7) attorneys fees and other expenses (disaggregated by agency account) awarded in covered suits, including any consent decrees or settlement agreements (regardless of whether a decree or settlement agreement is sealed or otherwise subject to nondisclosure provisions), including the basis for such awards.

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

“(d) LIMITATION ON DISCLOSURE.—Notwithstanding any other provision of this section, this section shall not affect any restriction in a consent decree or settlement agreement on the disclosure of information that is not described in subsection (b).

“(e) DEFINITIONS.—In this section:

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

“(A) Department of the Interior;

“(B) Forest Service;

“(C) Environmental Protection Agency;

- “(D) National Marine Fisheries Service;
- “(E) Bonneville Power Administration;
- “(F) Western Area Power Administration;
- “(G) Southwestern Power Administration; or
- “(H) Southeastern Power Administration.

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

- “(A) any civil action containing any claim arising under this Act against the Federal Government and based on the action of a covered agency; and
- “(B) any administrative proceeding under which the Federal Government awards fees and other expenses to a third party under section 504 of title 5, United States Code.”

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

“Sec. 13. Disclosure of expenditures.”

SEC. 404. AWARD OF LITIGATION COSTS TO PREVAILING PARTIES IN ACCORDANCE WITH EXISTING LAW.

Section 11(g)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)(4)) is amended to read as follows:

“(4)(A) The court, in issuing any final order in any suit brought pursuant to paragraph (1), may award costs of litigation (including reasonable attorney and expert witness fees) to an eligible party, whenever the court determines such award is appropriate.

“(B) In awarding reasonable attorney and expert witness fees under subparagraph (A) in a suit brought pursuant to paragraph (1), the court—

“(i) shall base such fees on the prevailing market rates for the kind and quality of services furnished; and

“(ii) may not award—

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

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

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

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

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

“(bb) an owner of an unincorporated business or a partnership, corporation, association, unit of local government, or organization, including an organization that is described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of such Code, that has—

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

“(BB) not more than 500 employees; or

“(cc) a cooperative association (as that term is defined in section 15(a) of the Agriculture Marketing Act (12 U.S.C. 1141j(a))); and

“(II) does not include a party to a suit brought pursuant to paragraph (1) otherwise described in clause (i) of this subparagraph that has sought to recover attorney or expert witness fees under this subsection in 3 or more instances in the 12-month period preceding the date on which the final order in such suit is issued, including in such suit.

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

SEC. 405. ANALYSIS OF IMPACTS AND BENEFITS OF DETERMINATION OF ENDANGERED OR THREATENED STATUS.

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

“(5)(A) The Secretary shall, concurrently with determining under paragraph (1) whether a species is a threatened species or an endangered species, prepare an analysis with respect to such determination of—

“(i) the economic effect;

“(ii) the effects on national security;

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

“(iv) any other relevant effect.

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

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

SEC. 406. NOTIFICATION OF CONGRESS OF CERTAIN CRITICAL HABITAT DESIGNATIONS.

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

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

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

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

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

“(III) an identification of users of the area and how such users will be affected by the proposed designation;

“(IV) an analysis of the manner in which existing and potential natural resource uses are incompatible with or in conflict with the proposed designation and a statement of the provisions to be made for continuation or termination of existing such uses, including an economic analysis of such continuation or termination;

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

“(VI) a statement indicating the effect of the proposed designation, if any, on State and local government interests and the regional economy.”

SEC. 407. NOTIFICATION OF CONGRESS OF CERTAIN RELEASES OF EXPERIMENTAL POPULATIONS.

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

“(4)(A) The Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification of any proposed release under this subsection that covers an area greater than 50,000 acres.

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

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

“(ii) an inventory and evaluation of the natural resource uses and values of the area and adjacent public and nonpublic land and the economic impact of the proposed release on individuals, local communities, and the United States;

“(iii) an identification of users of the area, and how such users will be affected by the proposed release;

“(iv) an analysis of the manner in which existing and potential natural resource uses are incompatible with or in conflict with the proposed release and a statement of the provisions to be made for continuation or termination of existing such uses, including an economic analysis of such continuation or termination;

“(v) a statement of the consultation which has been or will be had with other Federal departments and agencies, regional, State, and local government bodies, and other appropriate individuals and groups with respect to the proposed release; and

“(vi) a statement indicating the effect of the proposed release, if any, on State and local government interests and the regional economy.”

SEC. 408. ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE.

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

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

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

SEC. 409. COMPLIANCE WITH BIOLOGICAL OPINION RELATED TO DREDGE AND FILL PERMITTING PROGRAM.

(a) IN GENERAL.—For purposes of the Agency Action—

(1) the Biological Opinion is deemed to be compliant with, and compliance with the Biological Opinion is deemed to be compliance with, the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

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

(b) DEFINITIONS.—In this section:

(1) AGENCY ACTION.—The term “Agency Action”—

(A) means the approval by the Administrator of the Environmental Protection Agency of the request of the State of Florida for the assumption by the State of Florida of the administration and permitting of a State permit program under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), as described in the notice published by the Environmental Protection Agency titled “EPA’s Approval of Florida’s Clean Water Act Section 404 Assumption Request” (December 22, 2020; 85 Fed. Reg. 83553); and

(B) includes other activities.

(2) BIOLOGICAL OPINION.—The term “Biological Opinion”—

(A) means the programmatic biological opinion issued by the United States Fish and Wildlife Service titled “Programmatic Biological Opinion for Environmental Protection Agency’s Approval of FDEP’s Assumption of the Administration of the Dredge and Fill Permitting Program under Section 404 of the Clean Water Act” (dated November 17, 2020; FWS Log #: 04E00000-2021-F-0001; 04E00000-2021-B-0001); and

(B) includes the incidental take statement described in pages 69 through 73 of the programmatic biological opinion.

(3) OTHER ACTIVITIES.—The term “other activities” has the meaning given the term in the glossary of the Biological Opinion.

TITLE V—STREAMLINING PERMITTING PROCESS

SEC. 501. LIMITATION ON REASONABLE AND PRUDENT MEASURES.

Section 7(b)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)) is amended—

- (1) in subparagraph (A), by adding “and” at the end;
- (2) in subparagraph (B), by striking “and” at the end;
- (3) by striking subparagraph (C);
- (4) by striking “taking on the species,” and inserting “taking on the species, including, as necessary, through the use of a substitute used to represent a listed species, habitat, or an ecological function to express the amount or extent of such incidental taking;”;
- (5) by striking “minimize such impact,” and inserting “minimize such impact and that do not propose, recommend, or require the Federal agency or the applicant concerned, if any, to mitigate or offset such impact; and”;
- (6) by striking “measures specified under clauses (ii) and (iii)” and inserting “measures specified under clause (ii)”;
- (7) by striking clause (iii); and
- (8) by redesignating clause (iv) as clause (iii).

SEC. 502. SUCCESSIVE CONSULTATIONS.

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

“(5)(A) With respect to an ongoing agency action for which the applicable Federal agency has adopted a reasonable and prudent alternative or a reasonable and prudent measure to comply with subsection (a)(2), in any subsequent consultation for the agency action that occurs 10 years or more after the date on which the initial consultation for the agency action was completed, the Secretary shall determine whether continuing to implement the reasonable and prudent alternative or reasonable and prudent measure will materially increase the likelihood of and reduce the time for recovery of the applicable threatened species or endangered species.

“(B) If the Secretary determines under subparagraph (A) that continued implementation of the reasonable and prudent alternative or reasonable and prudent measure will not materially increase the likelihood of and shorten the time for the recovery of the applicable threatened species or endangered species, the Federal agency shall discontinue implementation of the reasonable and prudent alternative or reasonable and prudent measure notwithstanding subsection (a)(2).”

SEC. 503. CLARIFYING JEOPARDY.

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

“(5)(A) In carrying out a consultation under paragraph (2) or a conference under paragraph (4), the Secretary—

“(i) except as provided in clause (ii), may only consider the effects of the action that is the subject of such consultation or conference that the Secretary determines, based on clear and substantial information, using the best scientific and commercial data available, and in accordance with subparagraphs (B) and (C), respectively, are caused by the action itself and are reasonably certain to occur; and

“(ii) shall consider as a beneficial effect of the action that is the subject of such consultation or conference any avoidance, minimization, or mitigation measure proposed by the applicable Federal agency or the applicant, if any.

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

“(i) the effect is so remote in time from the action under consultation that it is not reasonably certain to occur;

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

“(iii) the effect is only reached through a lengthy causal chain such that the effect not reasonably certain to occur;

“(iv) the applicable Federal agency does not have the ability to prevent the effect due to its limited statutory authority; or

“(v) would occur regardless of whether the action is carried out.

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

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

“(ii) Plans for such action.

“(iii) Any economic, administrative, or legal requirement necessary for the action to be carried out that has not been fulfilled.

“(iv) Whether the effect has been observed previously and to what extent.

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

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

SEC. 504. CLARIFYING ACTION AREA.

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

“(A)(i) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary’s opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat within the area directly affected by the agency

action, which such area may not be speculative or remote in time or distance from the agency action. In so doing, the Secretary shall differentiate the effects of the agency action from the environmental baseline.

“(ii) If jeopardy or adverse modification is found, the Secretary, in cooperation and consultation with the Federal agency and applicant, if any, shall consider a range of reasonable and prudent alternatives and suggest from among that range those reasonable and prudent alternatives which the Secretary believes—

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

“(II) can be taken by the Federal agency or applicant, if any, in implementing the agency action;

“(III) are economically and technologically feasible for the Federal agency and applicant, if any, to implement; and

“(IV) impose the fewest economic and other relevant costs for the applicant, if any.”

SEC. 505. JUDICIAL REVIEW.

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

(1) by striking “Any person, as defined by section 3(13) of this Act,” and inserting “(1) Any person”;

(2) in paragraph (1), as so designated, by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

“(2) Any person may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any opinion issued by the Secretary under subsection (b) of this section in the United States Court of Appeals for the District of Columbia by filing in such court not later than 150 days after the date on which the opinion is issued a written petition for review.”

SEC. 506. EXPANSION OF EXEMPTION PROCESS AND ELIGIBILITY UNDER SECTION 7 OF ENDANGERED SPECIES ACT OF 1973.

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

(1) in subsection (g)—

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

“(1)(A) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary’s opinion under subsection (b) indicates that—

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

“(ii) a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2) may—

“(I) impair national security; or

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

“(B) An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5).

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

;

(B) in paragraph (3)—

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

“(A) determine—

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

“(I) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

“(II) conducted any biological assessment required by subsection (c); and

“(III) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

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

“(I) impair national security; or

“(II) result in significant adverse national or regional economic impacts; or”

; and

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

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

(D) in paragraph (5)—

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

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

“(B) if the exemption applicant submitted to the Secretary the application for exemption pursuant to paragraph (1)(A)(ii), after consultation with the National Security Council regarding potential impacts to national security and the Director of the National Economic Council regarding potential significant adverse national and regional economic impacts, any impairment to national security or significant adverse national or regional economic impacts that would result from a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2), including a description of the analysis and conclusions produced by the National Security Council and the Director of the National Economic Council as a result of each such consultation;”

; and

(2) in subsection (h)(1)(A)(i), to read as follows:

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

“(II) with respect to an agency action the application for exemption of which was submitted to the Secretary pursuant to subsection (g)(1)(A)(ii), a reasonable and prudent alternative necessary for the agency action to comply with subsection (a)(2) may—

“(aa) impair national security; or

“(bb) result in significant adverse national or regional economic impacts;”

TITLE VI— ELIMINATING BARRIERS TO CONSERVATION

SEC. 601. PERMITS FOR CITES-LISTED SPECIES.

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

“(2) An export from or import into the United States of fish or wildlife listed as a threatened species or an endangered species pursuant to section 4 is lawful under this Act and not subject to permit requirements or other regulations issued by the Secretary with respect to exportation and importation pursuant to this Act if—

“(A) such fish or wildlife—

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

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

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

“(i) of the Convention is satisfied; and

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

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

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

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

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

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

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

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

; and

(2) by adding at the end the following:

“(C) In this subsection, the term ‘is not detrimental to the survival of the species’ means—

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

“(II) is not a use or removal from the wild that will result in the loss or destruction of critical habitat of the species; and

“(III) will not directly interfere with recovery efforts with respect to the species; or

“(ii) is an activity—

“(I) involving wildlife described in section 17.21(g)(1) of title 50, Code of Federal Regulations; and

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

TITLE VII—RESTORING CONGRESSIONAL INTENT

SEC. 701. LIMITING AGENCY REGULATIONS.

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

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

“(1) IN GENERAL.—The Secretary,”

;

(2) in paragraph (1), as so designated, by striking “to enforce this Act” and inserting “to enforce this section and section 8A”; and

(3) by adding at the end the following:

“(2) RULE OF CONSTRUCTION.—This subsection may not be construed to be an independent source of authority to promulgate regulations to enforce the provisions of this Act other than those included in this section and section 8A.”

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