

Union Calendar No. 717

118TH CONGRESS
2^D SESSION

H. R. 9533

[Report No. 118–879]

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2024

Mr. WESTERMAN (for himself, Mr. NEWHOUSE, Mr. BENTZ, Ms. HAGEMAN, Mr. GOSAR, Mr. STAUBER, Mr. TIFFANY, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Natural Resources

DECEMBER 16, 2024

Additional sponsors: Mr. DUARTE, Mrs. RADEWAGEN, Mr. CARL, and Mr. FULCHER

DECEMBER 16, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on September 10, 2024]

A BILL

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

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

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

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

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *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. Designation of critical habitat.

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

Sec. 301. Protective regulations under Endangered Species Act of 1973.

Sec. 302. 5-year review determinations.

Sec. 303. Judicial review during monitoring period.

Sec. 304. Codification of regulation.

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

Sec. 401. Requirement to publish basis for listings on Internet.

Sec. 402. Decisional transparency and use of State, Tribal, and local informa-
tion.

Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.

Sec. 404. Award of litigation costs to prevailing parties in accordance with exist-
ing law.

Sec. 405. Analysis of impacts and benefits of determination of endangered or
threatened status.

TITLE V—LIMITATION ON REASONABLE AND PRUDENT MEASURES

Sec. 501. Limitation on reasonable and prudent measures.

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

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

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

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

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

19 “(5) For the purposes of carrying out a consultation
20 under this section with respect to a threatened species or
21 an endangered species, the term ‘environmental baseline’—

22 “(A) means the condition of the species or the
23 critical habitat of the species in the action area, with-
24 out the consequences to the species or the critical habi-
25 tat of the species caused by the proposed action; and

26 “(B) includes—

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

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

8 “(iii) the effects of State and private actions
9 that are contemporaneous with the consultation
10 in process; and

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

16 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

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

19 (1) in subsection (a)—

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

22 (B) in paragraph (1)—

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

1 (ii) by inserting “, and \$302,025,000
2 for each of fiscal years 2025 through 2030”
3 after “fiscal year 1992”;

4 (C) in paragraph (2)—

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

7 (ii) by inserting “, and \$116,630,000
8 for each of fiscal years 2025 through 2030”
9 after “fiscal years 1991 and 1992”; and

10 (D) in paragraph (3)—

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

13 (ii) by inserting “and \$2,600,000 for
14 each of fiscal years 2025 through 2030”
15 after “fiscal years 1991 and 1992,”;

16 (2) in subsection (b), by inserting “and \$600,000
17 for each of fiscal years 2025 through 2030” after
18 “1992”; and

19 (3) in subsection (c)—

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

22 (B) by inserting “and \$9,900,000 for each
23 of fiscal years 2025 through 2030,” after “fiscal
24 years 1991 and 1992,”.

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 1973*
 6 *(16 U.S.C. 1532)) to manage, control, or regulate fish and*
 7 *wildlife on lands and waters, including Federal lands and*
 8 *waters, within the State.*

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

12 **SECTION 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 com-*
 22 *pletion during the 5-fiscal year period beginning on*
 23 *October 1 of the first fiscal year after the date of the*
 24 *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 des-
5 ignations 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 of
11 the Secretary for the first fiscal year that
12 begins not less than 365 days after the date
13 of the enactment of this subsection, the ini-
14 tial work plan required under paragraph
15 (1); and

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

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

1 *identifies any emergency posing a significant*
2 *risk to the well-being of any species of fish or*
3 *wildlife or plant.*

4 “(3) *PRIORITY.*—

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

11 “(i) *Priority 1 represents species of the*
12 *highest priority, to be designated as criti-*
13 *cally imperiled and in need of immediate*
14 *action.*

15 “(ii) *Priority 2 represents species with*
16 *respect to which the best scientific and com-*
17 *mercial data available support a clear deci-*
18 *sion regarding the status of the species.*

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

22 “(I) *to answer key questions that*
23 *may influence the findings of a peti-*
24 *tion to list the species submitted under*
25 *subsection (b)(3); and*

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

4 “(iv) Priority 4 represents species for
5 which proactive conservation efforts likely to
6 reduce threats to the species are being devel-
7 oped or carried out, within a reasonable
8 timeframe and in an organized manner, by
9 Federal agencies, States, landowners, or
10 other stakeholders.

11 “(v) Priority 5 represents species—
12 “(I) for which there exists little
13 information regarding—

14 “(aa) threats to the species;
15 or

16 “(bb) the status of the species;
17 or

18 “(II) that would receive limited
19 conservation benefit in the foreseeable
20 future by listing the species as a
21 threatened species or endangered spe-
22 cies under this section.

23 “(B) USE OF METHODOLOGY.—The Sec-
24 retary shall establish and assign priority classi-
25 fications under subparagraph (A) in accordance

1 *with the notice of the Director of the United*
2 *States Fish and Wildlife Service titled ‘Method-*
3 *ology for Prioritizing Status Reviews and Ac-*
4 *companying 12–Month Findings on Petitions for*
5 *Listing Under the Endangered Species Act’ (81*
6 *Fed. Reg. 49248; published July 27, 2016).*

7 “(C) *EXTENSIONS FOR CERTAIN PRIORITY*
8 *CLASSIFICATIONS.—*

9 “(i) *PRIORITY 3.—With respect to a*
10 *species classified as Priority 3 under sub-*
11 *paragraph (A)(iii), if the Secretary deter-*
12 *mines that additional time would allow for*
13 *more complete data collection or the comple-*
14 *tion of studies relating to the species, the*
15 *Secretary may retain the species under the*
16 *work plan for a period of not more than 5*
17 *years after the deadline under paragraph*
18 *(4).*

19 “(ii) *PRIORITY 4.—With respect to a*
20 *species classified as Priority 4 under sub-*
21 *paragraph (A)(iv), if the Secretary deter-*
22 *mines that existing conservation efforts con-*
23 *tinue to meet the conservation needs of the*
24 *species, the Secretary may retain the species*
25 *under the work plan for a period of not*

1 *more than 5 years after the deadline under*
2 *paragraph (4).*

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

9 “(D) *REVISION OF PRIORITY CLASSIFICA-*
10 *TION.*—*The Secretary may revise, in accordance*
11 *with subparagraph (A), the assignment to a pri-*
12 *ority classification of a species included in a*
13 *work plan at any time during the fiscal years to*
14 *which the work plan applies.*

15 “(E) *EFFECT OF PRIORITY CLASSIFICA-*
16 *TION.*—*The assignment of a priority classifica-*
17 *tion to a species included in a work plan is not*
18 *a final agency action.*

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

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

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

8 “(7) *DEFINITIONS.*—*In this subsection:*

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

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

15 “(ii) *that is otherwise under consider-*
16 *ation by the Secretary for addition to such*
17 *a list.*

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

21 (b) *CONFORMING AMENDMENTS.*—*Section 4(b)(3) of*
22 *the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3))*
23 *is amended—*

24 (1) *in subparagraph (B), by striking “Within 12*
25 *months” and inserting “In accordance with the na-*

1 *tional listing work plan submitted under subsection*
 2 *(j),”;* and

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

4 *“(C) JUDICIAL REVIEW.—Any negative*
 5 *finding described in subparagraph (A) and any*
 6 *finding described in subparagraph (B)(i)(I) shall*
 7 *be subject to judicial review.”.*

8 **TITLE II—INCENTIVIZING WILD-**
 9 **LIFE CONSERVATION ON PRI-**
 10 **VATE LANDS**

11 **SECTION 201. CANDIDATE CONSERVATION AGREEMENTS**
 12 **WITH ASSURANCES.**

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

16 *“(C) CANDIDATE CONSERVATION AGREE-*
 17 *MENTS WITH ASSURANCES.—In making a deter-*
 18 *mination under subsection (a)(1) with respect to*
 19 *a species, the Secretary shall take into account*
 20 *and document the effect of any net conservation*
 21 *benefit (as that term is defined in subsection (k)*
 22 *of section 10) of any Candidate Conservation*
 23 *Agreement with Assurances or any pro-*
 24 *grammatic Candidate Conservation Agreement*

1 *with Assurances (as those terms are defined in*
2 *that subsection) relating to such species.”.*

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

7 **“(k) CANDIDATE CONSERVATION AGREEMENTS WITH**
8 *ASSURANCES.—*

9 **“(1) PROPOSED AGREEMENT.—***A covered party*
10 *may submit a proposed Agreement to the Secretary.*

11 **“(2) APPROVAL.—***Not later than 120 days after*
12 *the date of the receipt of a proposed Agreement under*
13 *paragraph (1), the Secretary shall approve the pro-*
14 *posed Agreement if the Secretary determines that the*
15 *proposed Agreement—*

16 **“(A) sets forth specific management activi-**
17 *ties that the covered party will undertake to con-*
18 *serve the covered species;*

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

22 **“(C) describes, to the maximum extent prac-**
23 *ticable, the existing population levels of the cov-*
24 *ered species or the existing quality of habitat;*

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

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

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

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

16 “(B) provide the submitting covered party a
17 written explanation for such determination and
18 the adjustments required for the Secretary to ap-
19 prove such proposed Agreement.

20 “(4) PROGRAMMATIC CANDIDATE CONSERVATION
21 AGREEMENT WITH ASSURANCES.—

22 “(A) IN GENERAL.—The Secretary may
23 enter into a Candidate Conservation Agreement
24 with Assurances with a covered party that au-
25 thORIZES such covered party—

1 “(i) to administer such Candidate
2 Conservation Agreement with Assurances;

3 “(ii) to hold any permit issued under
4 this section with regard to such Candidate
5 Conservation Agreement with Assurances;

6 “(iii) to enroll other covered parties
7 within the area covered by such Candidate
8 Conservation Agreement with Assurances in
9 such Candidate Conservation Agreement
10 with Assurances; and

11 “(iv) to convey any permit authoriza-
12 tion held by such covered party under
13 clause (ii) to each covered party enrolled
14 under clause (iii).

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

22 “(i) not later than 30 days after the
23 date of such receipt, publish the proposed
24 programmatic Candidate Conservation
25 Agreement with Assurances in the Federal

1 *Register for public comment for a period of*
2 *not less than 60 days;*

3 “*(ii) review any comments received*
4 *under clause (i); and*

5 “*(iii) after the close of the public com-*
6 *ment period for the proposed programmatic*
7 *Candidate Conservation Agreement with As-*
8 *surances, publish in the Federal Register—*

9 “*(I) any comments received under*
10 *clause (i); and*

11 “*(II) the approval or denial of the*
12 *proposed programmatic Candidate*
13 *Conservation Agreement with Assur-*
14 *ances under paragraph (2) or (3), re-*
15 *spectively.*

16 “*(5) INCIDENTAL TAKE AUTHORIZATION.—If a*
17 *covered species is listed under section 4, the Secretary*
18 *shall issue a permit to the relevant covered party*
19 *under this section allowing incidental take of and*
20 *modification to the habitat of such covered species*
21 *consistent with the Agreement.*

22 “*(6) TECHNICAL ASSISTANCE.—The Secretary*
23 *shall, upon request, provide a covered party with*
24 *technical assistance in developing a proposed Agree-*
25 *ment.*

1 “(7) *APPLICABILITY TO FEDERAL LAND.*—An
2 *Agreement may apply to a covered party that con-*
3 *ducts activities on land administered by any Federal*
4 *agency pursuant to a permit or lease issued to the*
5 *covered party by that Federal agency.*

6 “(8) *EXEMPTION FROM CONSULTATION REQUIRE-*
7 *MENT.*—An *Agreement approved under this subsection*
8 *shall be deemed to have been granted an exemption*
9 *under section 7(h) for the purposes of that section.*

10 “(9) *EXEMPTION FROM DISCLOSURE.*—*Informa-*
11 *tion submitted by a private party to the Secretary*
12 *under this subsection shall be exempt from disclosure*
13 *under section 552(b)(3)(B) of title 5, United States*
14 *Code.*

15 “(10) *DEFINITIONS.*—*In this subsection:*

16 “(A) *AGREEMENT.*—*The term ‘Agreement’*
17 *means—*

18 “(i) *a Candidate Conservation Agree-*
19 *ment with Assurances; or*

20 “(ii) *a programmatic Candidate Con-*
21 *servation Agreement with Assurances.*

22 “(B) *CANDIDATE CONSERVATION AGREE-*
23 *MENT WITH ASSURANCES.*—*The term ‘Candidate*
24 *Conservation Agreement with Assurances’ means*
25 *any voluntary agreement, including a conserva-*

1 *tion benefit agreement, between the Secretary*
2 *and a covered party in which—*

3 “(i) *the covered party commits to im-*
4 *plementing mutually agreed upon conserva-*
5 *tion measures for a candidate species; and*

6 “(ii) *the Secretary provides assurances*
7 *that, if such candidate species is listed pur-*
8 *suant to section 4—*

9 “(I) *the covered party shall incur*
10 *no additional obligations beyond ac-*
11 *tions agreed to in the agreement with*
12 *respect to conservation activities re-*
13 *quired under this Act; and*

14 “(II) *no additional land, water,*
15 *or resource use restrictions shall be im-*
16 *posed on the covered party beyond*
17 *those included in the agreement.*

18 “(C) *CANDIDATE SPECIES.—The term ‘can-*
19 *didate species’ means a species—*

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

22 “(ii) *proposed to be listed pursuant to*
23 *section 4.*

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

1 “(i) party that conducts activities on
2 land administered by a Federal agency pur-
3 suant to a permit or lease issued to the
4 party;

5 “(ii) private property owner;

6 “(iii) county;

7 “(iv) State or State agency; or

8 “(v) Tribal government.

9 “(E) COVERED SPECIES.—The term ‘cov-
10 ered species’ means, with respect to an Agree-
11 ment, the species that is the subject of such
12 Agreement.

13 “(F) NET CONSERVATION BENEFIT.—The
14 term ‘net conservation benefit’ means the net ef-
15 fect of an Agreement, determined by comparing
16 the existing situation of the candidate species
17 without the Agreement in effect and a situation
18 in which the Agreement is in effect, on a can-
19 didate species, including—

20 “(i) the net effect on threats to such
21 species;

22 “(ii) the net effect on the number of in-
23 dividuals of such species; or

24 “(iii) the net effect on the habitat of
25 such species.

1 “(G) *PROGRAMMATIC CANDIDATE CON-*
2 *SERVATION AGREEMENT WITH ASSURANCES.—*
3 *The term ‘programmatically Candidate Conservation*
4 *Agreement with Assurances’ means a Candidate*
5 *Conservation Agreement with Assurances de-*
6 *scribed in paragraph (4)(A).”.*

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

8 (a) *PRIVATELY OWNED OR CONTROLLED LAND.—Sec-*
9 *tion 4(a)(3) of the Endangered Species Act of 1973 (16*
10 *U.S.C. 1533(a)(3)) is amended by adding at the end the*
11 *following:*

12 “(C) *PRIVATELY OWNED OR CONTROLLED*
13 *LAND.—The Secretary may not designate as crit-*
14 *ical habitat under subparagraph (A) any pri-*
15 *vately owned or controlled land or other geo-*
16 *graphical area that is subject to a land manage-*
17 *ment plan that—*

18 “(i) *the Secretary determines is simi-*
19 *lar in nature to an integrated natural re-*
20 *sources management plan described in sec-*
21 *tion 101 of the Sikes Act (16 U.S.C. 670a);*

22 “(ii) *(I) is prepared in cooperation*
23 *with the Secretary and the head of each ap-*
24 *plicable State fish and wildlife agency of*

1 *each State in which such land or other geo-*
2 *graphical area is located; or*

3 *“(II) is submitted to the Secretary in*
4 *a manner that is similar to the manner in*
5 *which an applicant submits a conservation*
6 *plan to the Secretary under section*
7 *10(a)(2)(A);*

8 *“(iii) includes an activity or a limita-*
9 *tion on an activity that the Secretary deter-*
10 *mines will likely conserve the species con-*
11 *cerned;*

12 *“(iv) the Secretary determines will re-*
13 *sult in—*

14 *“(I) an increase in the population*
15 *of the species concerned above the popu-*
16 *lation of such species on the date that*
17 *such species is listed as a threatened*
18 *species or an endangered species; or*

19 *“(II) maintaining the same popu-*
20 *lation of such species on the land or*
21 *other geographical area as the popu-*
22 *lation that would likely occur if such*
23 *land or other geographical area is des-*
24 *ignated as critical habitat; and*

1 “(v) to the maximum extent prac-
2 ticable, will minimize and mitigate the im-
3 pacts of any activity that will likely result
4 in an incidental taking of the species con-
5 cerned.”.

6 (b) *DESIGNATION CONSIDERATIONS*.—Section 4(b)(2)
7 of the Endangered Species Act of 1973 (16 U.S.C.
8 1533(b)(2)) is amended in the first sentence by inserting
9 “the impact on existing efforts of private landowners to con-
10 serve the species,” after “impact on national security,”.

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

14 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDANGERED**
15 **SPECIES ACT OF 1973.**

16 (a) *AMENDMENT TO DEFINITION*.—Section 3(3) of the
17 Endangered Species Act of 1973 (16 U.S.C. 1532(3)) is
18 amended by striking “and transplantation, and, in the ex-
19 traordinary case where population pressures within a given
20 ecosystem cannot be otherwise relieved, may include” and
21 inserting “transplantation, and, at the discretion of the
22 Secretary,”.

23 (b) *PROTECTIVE REGULATIONS*.—Section 4 of the En-
24 dangered Species Act of 1973 (16 U.S.C. 1533) is amend-
25 ed—

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

2 “(d) *PROTECTIVE REGULATIONS.—*

3 “(1) *IN GENERAL.—Whenever any species is list-*
4 *ed as a threatened species pursuant to subsection (c),*
5 *the Secretary shall issue such regulations as are nec-*
6 *essary and advisable to provide for the conservation*
7 *of that species.*

8 “(2) *RECOVERY GOALS.—If the Secretary issues*
9 *a regulation under paragraph (1) that prohibits an*
10 *act described in section 9(a), the Secretary shall, with*
11 *respect to the species that is the subject of such regula-*
12 *tion—*

13 “(A) *establish objective, incremental recov-*
14 *ery goals;*

15 “(B) *provide for the stringency of such reg-*
16 *ulation to decrease as such recovery goals are*
17 *met; and*

18 “(C) *provide for State management within*
19 *such State, if such State is willing to take on*
20 *such management, beginning on the date on*
21 *which the Secretary determines all such recovery*
22 *goals are met and, if such recovery goals remain*
23 *met, continuing until such species is removed*
24 *from the list of threatened species published pur-*
25 *suant to subsection (c).*

1 “(3) *COOPERATIVE AGREEMENT.*—A regulation
2 issued under paragraph (1) that prohibits an act de-
3 scribed in section 9(a) with respect to a resident spe-
4 cies shall apply with respect to a State that has en-
5 tered into a cooperative agreement with the Secretary
6 pursuant to section 6(c) only to the extent that such
7 regulation is adopted by such State.

8 “(4) *STATE RECOVERY STRATEGY.*—

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

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

20 “(i) approve such petition if the Sec-
21 retary determines the recovery strategy is
22 reasonably certain to be implemented by the
23 petitioning State and to be effective in con-
24 serving the species that is the subject of such
25 recovery strategy; or

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

3 “(C) PUBLICATION.—Not later than 30 days
4 after the date on which the Secretary approves or
5 denies a petition under subparagraph (B), the
6 Secretary shall publish such approval or denial
7 in the Federal Register.

8 “(D) DENIAL OF PETITION.—

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

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

19 “(E) USE IN PROTECTIVE REGULATIONS.—
20 If the Secretary approves a petition under sub-
21 paragraph (B), the Secretary shall—

22 “(i) issue a regulation under para-
23 graph (1) that adopts the recovery strategy
24 as such regulation with respect to the spe-

1 cies that is the subject of such recovery
2 strategy within the petitioning State; and

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

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

17 (2) in subsection (f)(1)(B)—

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

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

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

23 “(iv) with respect to an endangered species,
24 objective, incremental recovery goals in accord-
25 ance with subsection (d)(2)(A) for use under that

1 *subsection if such endangered species is changed*
2 *in status from an endangered species to a threat-*
3 *ened species under subsection (c)(2)(B)(ii).”.*

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

5 *Section 4(c) of the Endangered Species Act of 1973 (16*
6 *U.S.C. 1533(c)) is amended by adding at the end the fol-*
7 *lowing:*

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

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

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

16 *“(3) The removal of a species from a list published*
17 *under subsection (c)(1) is not subject to judicial review dur-*
18 *ing the period established under paragraph (1) with respect*
19 *to the species.”.*

20 **SEC. 304. CODIFICATION OF REGULATION.**

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

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

5 **SECTION 401. REQUIREMENT TO PUBLISH BASIS FOR LIST-**
6 **INGS ON INTERNET.**

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

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

15 *“(A) at the request of a Governor, State agency,*
16 *or legislature of a State, the Secretary may not make*
17 *such data available under this paragraph if such en-*
18 *tity determines that public disclosure of such data is*
19 *prohibited by a law or regulation of such State, in-*
20 *cluding any law or regulation requiring the protec-*
21 *tion of personal information; and*

22 *“(B) not later than 30 days after the date of the*
23 *enactment of this paragraph, the Secretary shall exe-*
24 *cute an agreement with the Secretary of Defense that*
25 *prevents the disclosure of classified information per-*

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

3 “(2) The term ‘best scientific and commercial data
4 available’ includes data submitted to the Secretary by a
5 State, Tribal, or county government.”.

6 (2) CONFORMING AMENDMENT.—Section 7(n) of
7 the Endangered Species Act of 1973 (16 U.S.C.
8 1536(n)) is amended by striking “section 3(13)” and
9 inserting “section 3(14)”.

10 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
11 **GERED SPECIES ACT OF 1973.**

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

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

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

18 “(1) not later than 90 days after the end of each
19 fiscal year, submit to the Committee on Natural Re-
20 sources of the House of Representatives and the Com-
21 mittee on Environment and Public Works of the Sen-
22 ate an annual report detailing Federal Government
23 expenditures for covered suits during the preceding
24 fiscal year (including the information described in
25 subsection (b)); and

1 “(2) make publicly available through the Inter-
2 net a searchable database, updated monthly, of the in-
3 formation described in subsection (b).

4 “(b) *INCLUDED INFORMATION.*—The report shall in-
5 clude—

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

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

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

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

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

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

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

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

18 “(d) *LIMITATION ON DISCLOSURE.*—Notwithstanding
19 any other provision of this section, this section shall not
20 affect any restriction in a consent decree or settlement
21 agreement on the disclosure of information that is not de-
22 scribed in subsection (b).

23 “(e) *DEFINITIONS.*—In this section:

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

- 1 “(A) *Department of the Interior*;
 2 “(B) *Forest Service*;
 3 “(C) *Environmental Protection Agency*;
 4 “(D) *National Marine Fisheries Service*;
 5 “(E) *Bonneville Power Administration*;
 6 “(F) *Western Area Power Administration*;
 7 “(G) *Southwestern Power Administration*;

8 *or*

- 9 “(H) *Southeastern Power Administration*.

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

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

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

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

 “*Sec. 13. Disclosure of expenditures.*”.

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

4 *Section 11(g)(4) of the Endangered Species Act of 1973*
 5 *(16 U.S.C. 1540(g)(4)) is amended by striking “to any*
 6 *party, whenever the court determines such award is appro-*
 7 *priate” and inserting “in accordance with section 2412 of*
 8 *title 28, United States Code and section 504 of title 5,*
 9 *United States Code”.*

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

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

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

17 *“(A) IN GENERAL.—The Secretary shall, concu-*
 18 *rently with making a determination under paragraph*
 19 *(1) that a species is a threatened species or an endan-*
 20 *gered species, prepare an analysis with respect to*
 21 *such determination of—*

22 *“(i) the economic effect;*

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

24 *“(iii) any other relevant effect.*

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

1 *paragraph (1) or change the criteria used by the Sec-*
2 *retary to make such a determination.”.*

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

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

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

Union Calendar No. 717

118TH CONGRESS
2^D SESSION

H. R. 9533

[Report No. 118-879]

A BILL

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

DECEMBER 16, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed