



Western Caucus ESA Modernization Package

1. The LIST Act, Rep. Greg Gianforte (MT-At Large) This legislation authorizes the Secretary of the Interior to de-list species when he receives objective, measurable scientific study demonstrating a species is recovered. Such measures will also facilitate states, academic researchers and outside groups in monitoring species recovery and notifying USFWS when recovery has occurred. Often, newly-discovered or poorly-understood species receive protections even though they later turn out to be ecologically abundant. This bill creates a straightforward mechanism for USFWS to promptly act on the information they receive that demonstrates a species was wrongfully listed in this manner, rather than letting the problem gather dust on the bureaucratic backburner as often happens now. Finally, the bill allows for those who are demonstrated in a civil lawsuit to have intentionally submitted false or fraudulent species data in order to cause a species listing to be prevented from submitting petitions for ten years.

Click [here](#) to see the draft text of the bill.

With questions or to cosponsor, contact Will Carraco (will.carraco@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

2. The EMPOWERS Act, Rep. Jason Smith (MO-08). The Ensuring Meaningful Petition Outreach While Enhancing Rights of States Act, also known as the EMPOWERS Act, aims to improve consultation between state and federal decision makers by 1) Ensuring that agencies making decisions about Endangered Species Act listings consult States before listing species, and; 2) Requiring decision-making agencies to provide an explanation when their decisions diverge from the findings or advice of States. An identical bill passed the Resources Committee during the 115th Congress.

Click [here](#) to see the draft text of the bill.

With questions or to cosponsor, contact Hilary Pinegar (hilary.pinegar@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

3. The PETITION Act, Rep. Bruce Westerman (AR-04). The United States Fish and Wildlife Service (USFWS) is instructed by law to issue decisions on petitions within specific timeframes established in the Act. When they miss those timelines, they are vulnerable to lawsuits by petitioners. A crucial fact to note: Anyone can submit any number of petitions containing any amount of information – or misinformation. This bill reforms that petition process, allowing the Secretary to declare a ‘petition backlog’ when too many frivolous petitions stack up and USFWS becomes vulnerable to lawsuit. All necessary protections for legitimate species listing requests which contain sufficient, duly-collected scientific information remain in place under this bill. However, petitions designed to jam the system and secure unwarranted species listings are automatically discharged during a backlog. The legislation allows Congress to step in and

prevent illegitimate mass-listings of unqualified, understudied species as well as ensure more resources go to species that are actually threatened and endangered.

Click [here](#) to see the text of the bill that passed the Resources Committee during the 115th Congress.

With questions or to cosponsor, contact Will Layden (will.layden@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

4. HR 4483, The LAMP Act, Rep. Don Young (AK-At Large). Local governments, tribes and states have been successful players in species conservation and recovery since passage of the ESA. Despite their strong track record, the Act itself contains a relatively weak framework for facilitating interaction amongst these players and federal species conservation-responsible agencies. The LAMP Act permits the Secretary of the Interior to enter into cooperative management agreements with states, local governments, tribes and other non-federal persons in order to better manage species and improve habitat conservation. The bill empowers states with robust species conservation programs already in place to take the lead in managing and preserving such species when meeting certain qualifying conditions. Under the LAMP Act, the Secretary will finally have the authority to collaborate with local stakeholders to decide how best to make use of their talents, interest and expertise for the benefit of species recovery and habitat preservation.

Click [here](#) to see the text of the bill.

With questions or to cosponsor, contact Kayla Rillo (kayla.rillo@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

5. The WHOLE Act, Rep. Dan Newhouse (WA-04). This simple bill ensures that the totality of conservation measures underway will be considered before taking federal actions that impact species. The WHOLE Act reduces costs associated with consultation, allowing important projects to move forward while ensuring these actions don't negatively impact species, resulting in more private contributions that help recover endangered species in the process. In the 115th Congress, the House passed a nearly identical amendment (H.AMDT.631) with unanimous consent to the Farm Bill. Unfortunately, current practices do not allow conservation measures that take place outside of designated critical habitat to count in relation to federal actions. This arbitrary interpretation results in less conservation efforts for species and stifles private investment that would otherwise be encouraged if the totality of habitat conservation measures underway were allowed to be considered.

Click [here](#) to see the text of the bill that passed the Resources Committee during the 115th Congress.

With questions or to cosponsor, contact Sean O'Brien (seanv.obrien@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

6. The Endangered Species Transparency and Reasonableness Act, Rep. McClintock (CA-04). The bill requires data used by federal agencies for ESA listing decisions to be made publicly available and accessible through the Internet, allowing the American people to see what data is being used to make key listing decisions. The bill also requires the federal government to

disclose to affected states all data used prior to any ESA listing decisions. This legislation requires the U.S. Fish and Wildlife Service to track, report to Congress, and make available online: 1) funds expended to respond to ESA lawsuits; 2) the number of employees dedicated to litigation; and 3) attorney's fees awarded in the course of ESA litigation and settlement agreements. Finally, this bill prioritizes resources towards species protection by placing reasonable caps on attorney's fees and making the ESA consistent with the Equal Access to Justice Act which caps the hourly rate for prevailing attorney fees at \$125 per hour. A nearly identical bill passed the Resources Committee during the 115th Congress.

Click [here](#) to see the text of a nearly identical bill that passed the Resources Committee during the 115th Congress.

With questions or to cosponsor, contact Andrew Keyes (Andrew.keyes@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

7. H.R. 548, the Fish Act, Rep. Ken Calvert (CA-42). The legislation would consolidate the management and regulation of the Endangered Species Act (ESA) for anadromous species within the Fish and Wildlife Service. The ESA is currently administered by FWS and the Commerce Department's National Marine Fisheries Service (NMFS). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine wildlife such as whales and anadromous fish, such as salmon. The FISH Act would transfer all of the NMFS' ESA responsibilities related to anadromous species to the FWS. Making this change will ensure uniformity in enforcement of ESA cases across the biological spectrum.

Click [here](#) to see the text of the bill.

Current Cosponsors (6): LaMalfa, Simpson, Costa, McMorris Rodgers, McClintock, Gosar

With questions or to cosponsor, contact Richie O'Connell (Richie.o'connell@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

8. Listing Reform Act, Rep. Rep Pete Olson (TX-22). This legislation allows for the costs and significant economic effects associated with an ESA listing or designation of critical habitat to be analyzed and reported. This was bill passed the House Committee on Natural Resources during the 115th Congress. Click here to see Rep. Olson testimony on this bill.

Click [here](#) to see the draft text of the bill. Click [here](#) to see a one page summary.

With questions or to cosponsor, contact Richard England (Richard.england@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

9. H.R. 30, the SAVES Act, Rep. Louie Gohmert (TX-01). This legislation would effectively eliminate the duplicative requirement for CBW permits for nonnative species in the United States. Ease of transfer of species across State lines would enhance conservation and welfare of the species by allowing owners, breeders, and conservationists to ensure robust, and genetically diverse populations continue to exist in the United States. This bill would not increase the likelihood of international wildlife trafficking as such matters are regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, an international agreement between 183 member nations that protects endangered nonnative species from the perils of international wildlife trafficking.

Click [here](#) to see the text of the bill.

With questions or to cosponsor, contact Sean Griffin (sean.griffin@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

10. Threatened Species Protection Improvement Act, Rep. Ken Buck (CO-04). This bill would codify into federal law an August 27, 2019, [rule](#) from DOI regarding Section 4(d). The rule and bill rescind the blanket 4(d) rule, which applied all ESA protections in cases where FWS has not developed a species-specific 4(d) rule for a threatened species. This goes against the intent of the ESA, as threatened species are only supposed to be protected by species specific 4(d) rules and Congress never intended for threatened and endangered species to be treated exactly the same. For newly-listed threatened species under the rule, FWS will promulgate a species-specific rule establishing a take prohibition or protection if necessary. If a species-specific rule is not published, take of a newly listed threatened species after September 26, 2019, is authorized. These procedures are consistent with NMFS' longstanding practices that reduce regulatory burdens on property owners and allow more resources to go to truly threatened species. In 2016, the Department of the Interior (DOI) finalized the listing of the Kentucky arrow darter with a species-specific 4(d) rule that exempted take in exchange for in-stream habitat enhancement projects, maintenance of stream crossings, bridge and culvert replacements, and other activities that benefit the species.

Click [here](#) to see the draft text of the bill.

With questions or to cosponsor, contact James Hampson (james.hampson@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

11. Bring ESA Into the 21st Century Act, Rep. Paul Gosar (AZ-04). This bill would codify into federal law a two different [rules](#) from DOI regarding section 7 of the ESA and listing species and designating critical habitat under the ESA. The rule regarding section 7 of the ESA clarifies the process for consultations while increasing their efficiency. The rule and bill also establish important definitions for “consequences”, “destruction or adverse modification,” “effects of the action,” “reasonably certain to occur,” and “environmental baseline.” The rule regarding listing species and designating critical habitat aims to improve predictability and provide certainty for species listings and critical habitat designations. The rule and bill provide clarity by (1) requiring the Secretary to identify with specificity the individual elements of habitat that a species requires before making a designation; (2) requiring habitat designations to be *actual habitat* essential for the conservation of the species; and (3) requiring the Secretary to first exhaust all occupied areas for designations before targeting unoccupied areas. Click [here](#) to see the discussion draft text of the bill. The rule and bill also make clear that the Services have the authority to estimate the true economic impacts associated with listing decisions. The rule and bill define the term “foreseeable future” for threatened species listings, reducing speculation and use of bad science in the process. This new rule and bill also level the playing field and apply the same standards for listing and delisting species, ensuring it isn't harder to delist a species than it is to list a species, assuming the species has been recovered.

Click [here](#) to see the draft text of the bill regarding section 7. Click [here](#) to see the draft text of the bill regarding listing species and designating critical habitat. These two drafts will be combined into one bill.

With questions or to cosponsor, contact Doug Levine (doug.levine@mail.house.gov).

12. Property Rights Protection Act, Rep. Ralph Norman (SC-05). One of the core principals of the Western Caucus is the protection of private property rights. This legislation protects private property rights by not allowing privately-owned land to be designated critical habitat, unless the owner of the land gives written consent or the Secretary of the Interior certifies there is endangerment of extinction of the species without such designation. If the private land in question is designated critical habitat after such a finding by the Secretary, the Secretary shall pay the land owner 150 percent of the fair market value of the land. The provisions in this bill will help ensure that if a land owner's property rights are breached due to the need to protect an endangered species, they are properly compensated under a takings claim and the Fifth Amendment. The bill also protects private water rights, prevents trespassing on private property, and allows land owners to defend their property and loved ones from violent species that are a recurring threat to their life and property.

Click [here](#) to see the draft text of the bill.

With questions or to cosponsor, contact Jake Hilkin (jake.hilkin@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

13. Increasing Access and Multiple Use Act, Rep. Liz Cheney (WY-At Large). Throughout our country's history, federal lands have been available for a variety of activities, from recreation and grazing to mining, energy development and forestry. The Federal Land Policy and Management Act (FLPMA) requires "multiple use" on public lands and states that the resources and uses on federal land must occur through a balanced combination that best meets the needs of the American people. Essentially, the multiple use mandate requires campers, hikers, sportsmen, and other recreational enthusiasts to benefit from the same lands utilized by producers including ranchers, farmers, miners, sawmills and energy producers. Ensuring multiple use of public lands is critical to the environmental and economic health of the West. This legislation will provide certainty for permit and lease holders on public lands. The bill ensures no net loss due to new critical habitat designations or listings of species under the ESA and ensures their mere presence is not the sole reason for preventing multiple use activities. The bill will result in new opportunities for recreation hunting and fishing on federal lands. This legislation also explicitly protects recreational fishing and hunting access as well off-road vehicle and other public access. Under the bill, vacant grazing allotments would also be made available to grazing permit holders if their permit is made unusable because of certain circumstances, such as catastrophic wildlife. Also included in this legislation are provisions to ensure grazing permittees are adequately compensated for livestock depredation caused by reintroduced species.

Click [here](#) to see the discussion draft text.

With question or to cosponsor, contact Mike DeFilippis (Michael.defilippis@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

14. Improving Species Health Through Active Management Act, Rep. Doug LaMalfa (CA-01). This bill looks to improve the recovery of species through preventive measures and active management that reduces the risk of catastrophic wildfires. Included in this legislation are several measures that have passed the House in the past, such as active forest management proposals from last year's House passed Farm Bill as well as expanding existing authorities already in law. Instead of reactively fighting wildfires, this bill allows us to protect our communities and our invaluable national forests. The provisions in this bill will improve forest health and help prevent catastrophic wildfires, improving the health of species and their habitat in the process. The bill includes important provisions that would help prevent the devastation and loss of life that we saw in the Camp and Carr Fires. The Carr Fire in Northern California claimed eight lives and destroyed more than 1,600 structures. The Camp Fire was the costliest disaster in the world last year, costing more than \$12.5 billion in insured losses, claiming 88 lives and destroying nearly 19,000 structures, roughly 14,000 of which were homes. These two fires destroyed 8,900 homes and 329 businesses costing more than \$840 million in insured losses. Click [here](#) to see the discussion draft text.

For questions or to cosponsor, contact Katie Devlin (Kathleen.devlin@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

15. Critical Habitat Improvement Act, Rep. Mike Johnson (LA-04). This legislation aims to make several changes to the way critical habitat is designated for endangered and threatened species. The legislation requires the Secretary to make any designation of critical habitat of an endangered or threatened species when the species is listed or not later than one year after final approval of a recovery plan, whichever is earlier. The Secretary is also required to consult with state and local governments as the legislation sets out specific parameters to analyze the possible economic impacts associated with a critical habitat designation. This legislation requires publication of maps and specific coordinates associated with critical habitat listings in order to increase transparency. Finally, the bill nullifies three rules and policies from the previous administration that significantly expanded the Services' abilities to further encroach on private landowners and designate massive swaths of critical habitat without justification.

Click [here](#) to see the discussion draft text.

With questions or to cosponsor, contact Brad Morris (brad.morris@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

16. Critical Infrastructure Act, Rep. Chris Stewart (UT-02). This legislation is aimed at protecting the life blood of American economic and national security, our nation's critical infrastructure. Included in this legislation is language from the STORAGE Act, which was introduced during the 115th Congress, that would limit critical habitat designations on man-made water storage facilities and artificial water delivery systems. Such designations can have significant consequences as we saw with the Southwestern Willow Flycatcher on the Roosevelt Dam in Arizona. Such actions exacerbate drought conditions and reduce important water supplies that local communities rely on for their survival. The bill also includes the Environmental Compliance Cost Transparency Act, bipartisan legislation which requires federal agencies active in the wholesale power business to disclose the costs associated with environmental compliance to their customers. Since 1983, more than \$534 million dollars associated with environmental compliance and programs have been paid by Colorado River Storage Project Act power customers. For Bonneville Power Administration (BPA) customers,

these costs are even more significant, accounting for 30 percent of BPA power costs and more than \$15 billion since 1980. The bill would authorize a categorical exclusion to allow for transmission pole and power line access in order to provide water and power to rural communities. This provision stems from a rural electric cooperative in Utah having to spend over \$150,000 to airlift transmission poles over federal lands designated prairie dogs, despite private landowners being able to obtain permits to kill the same prairie dogs on nearby lands. A categorical exclusion is also made for species presence in project buffer zones, in order to prevent frivolous red tape from preventing the construction of critical infrastructure. This provision stems from a rural electric cooperative in Utah that sought to construct a power line primarily on private and state-owned lands and completed an extensive NEPA process, but was ordered to stop construction when it was determined that two acres of Utah Prairie Dog habitat were within a 350-foot buffer of the project's right-of-way. This resulted in a nine-month delay in order for the FWS to conduct a survey and the work was only re-started after the electric co-op agreed to pay \$20,000 to the National Wildlife Defense Fund and hire a biologist to monitor the impacts of the project on prairie dogs.

Click [here](#) to see the draft text.

With questions or to cosponsor, contact Celeste Maloy (celeste.maloy@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

17. American Sovereignty and Species Protection Act, Rep. Rep Andy Biggs (AZ-05). This bill seeks to focus scarce resources on land and species under U.S. jurisdiction. There are approximately 600 foreign species listed on the United States threatened or endangered species list. These include species in China, Kyrgyzstan, Pakistan, Afghanistan and India. The U.S. has no jurisdiction over these species. Once a foreign species is listed, the ESA allows the federal government to squander taxpayer money buying "land or water or interests therein" in foreign countries (16 U.S.C. § 1537.) However, once the land is bought, no one is quite sure who is responsible for managing the land and how much money this costs American taxpayers. One of the reasons typically used to justify listing foreign species under the ESA is stop the foreign import of listed species into the U.S., even if those species were legally hunted in the country from which they are being exported. A listing doesn't actually stop such imports, as an endangered goliath frog from West Africa was previously being sold on eBay for \$150.00.

Click [here](#) to see the draft text of the bill.

With questions or to cosponsor, contact Jeff Kuckuck (Jeffrey.kuckuck@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).

18. The LOCAL Act, Rep. Scott Tipton (CO-03). Despite the inflamed rhetoric of partisans on either side, robust, effective species conservation can readily coexist with project permitting and economic development. The bill seeks to allow States, Indian Tribes, units of local government, landowners, and other stakeholders to carryout and participate in agreements in order to improve species recovery, treat these participants as partners rather than criminals, and provide significant voluntary conservation activities for species that will improve recovery. [Testimony](#) from Brian Seasholes in 2015 revealed that "shoot, shovel and shut-up" is a practice utilized by some landowners when they discover a species out of fear what a listing of that species will do to their property value and land use if that species is listed. Days before the San Diego Mesa Mint was listed, a developer was planning to build 1,429 homes. To prevent the land the homes would be built on from being locked up, he bulldozed all the plants. Such actions are bad for species and

bad for landowners. The bill seeks to codify the use of Voluntary Wildlife Conservation Agreements, Candidate Conservation Agreements with Assurances (CCAA's) and Safe Harbor Agreements (SHA's) in order to bring local stakeholders to the table. CCAA's and SHA's are two existing programs established by federal agency handbooks that encourage voluntary species conservation and investment in exchange for certainty. This simple bill aims to reward the good behavior of public and private entities that faithfully uphold their agreements in order to help recover listed species.

Click [here](#) to see the draft text of the bill.

With questions or to cosponsor, contact Jackson Smith (Jackson.smith@mail.house.gov) and Doug Levine (doug.levine@mail.house.gov).