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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To amend the Endangered Species Act of 1973 to define petition backlogs and provide expedited means for discharging petitions during such a backlog.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Endangered Species Act of 1973 to define petition backlogs and provide expedited means for discharging petitions during such a backlog.

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.**

4 This Act may be cited as the “Providing ESA Timing
5 Improvements That Increase Opportunities for Nonlisting
6 Act of 2018” or the “PETITION Act of 2018”.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) The number and type of species-listing peti-
2 tions received by the United States Fish and Wild-
3 life Service (in this Act referred to as the “Service”)
4 during the last two decades under the Endangered
5 Species Act of 1973 (16 U.S.C. 1531 et seq.) rou-
6 tinely outstrip the capacity of the agency to process
7 all such petitions within the timeframes required by
8 that statute, constituting a petition backlog.

9 (2) A significant portion of petitions in the
10 backlog would ultimately be rejected as having failed
11 to contain substantial information, or containing
12 substantial information but not meriting a listing of
13 a species as an endangered species or threatened
14 species, if the Service were to issue findings on
15 them.

16 (3) The petition system has been overloaded
17 with influxes of petitions submitted by well-funded
18 petitioners with the express intention of creating a
19 backlog that causes the Service to fail to adhere to
20 timeframes established in the Endangered Species
21 Act of 1973.

22 (4) The deficit between total received petitions
23 and petitions processed within statutory timeframes
24 results in the Federal Government being exposed to

1 legal liability on the basis of such a backlog, in ac-
2 cordance with such intention of petitioners.

3 (5) Ensuing litigation initiated by such peti-
4 tioners results in the Service agreeing to or being
5 court-ordered to adhere to adverse timeframes, list-
6 ing decisions, and settlements.

7 (6) Such litigation secures listings for species
8 and habitat designations for which the Service would
9 otherwise not issue a positive finding on the basis of
10 its regular, procedural evaluation of a petition.

11 (7) Accordingly, such listings and designations
12 are agreed or adhered to contrary to the public in-
13 terest insofar as the public benefits from faithful
14 execution of duly passed laws.

15 (8) A statutory remedy is necessary to address
16 the backlog of the Service and to prevent such statu-
17 tory abuse while maintaining proper open channels
18 for qualifying species to be listed as threatened spe-
19 cies or endangered species.

20 (b) PURPOSES.—The purposes of this Act are the fol-
21 lowing:

22 (1) To maintain safeguards and pathways to
23 listing of species as endangered species or threat-
24 ened species, along with all corresponding protec-
25 tions thereof, for any imperiled species.

1 (2) To limit unnecessary legal liability of the
2 Federal Government arising from any backlog of pe-
3 titions received under the Endangered Species Act of
4 1973.

5 (3) To prevent adverse court orders and settle-
6 ments arising when such liability is exploited in liti-
7 gation.

8 (4) To accomplish all of the foregoing by reduc-
9 ing and eliminating the backlog of excess petitions
10 received by the Service under the Endangered Spe-
11 cies Act of 1973.

12 **SEC. 3. DEFINITIONS.**

13 Section 2 of the Endangered Species Act of 1973 (16
14 U.S.C. 1531) is amended—

15 (1) by inserting before the text the following:

16 “(a) IN GENERAL.—”; and

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

18 “(b) DEFINITIONS RELATED TO PETITIONS.—In this
19 Act:

20 “(1) 90-DAY PETITION BACKLOG.—The term
21 ‘90-day petition backlog’ means such a backlog de-
22 clared by the Secretary under section 4(b)(3)(E).

23 “(2) 12-MONTH PETITION BACKLOG.—The term
24 ‘12-month petition backlog’ means such a backlog
25 declared by the Secretary under section 4(b)(3)(E).

1 “(3) BACKLOG SCHEDULE.—The term ‘backlog
2 schedule’ means a comprehensive, regularly updated
3 compendium of petitioned-for species that are the
4 subject of a 90-day petition backlog or a 12-month
5 petition backlog—

6 “(A) that consists of—

7 “(i) a list of petitions to add a species
8 to a list of species under section 4(c), in-
9 cluding petitions to move a species from
10 the list of threatened species to the list of
11 endangered species; and

12 “(ii) a list of petitions to remove a
13 species from a list of species under section
14 4(c), including petitions to move a species
15 from the list of endangered species to the
16 list of threatened species; and

17 “(B) in which the petitions in each such
18 list appear in the order in which the petitions
19 were submitted to the Secretary.

20 “(4) BACKLOG PROCEDURES.—The term ‘back-
21 log procedures’ means the actions taken by the Sec-
22 retary—

23 “(A) under section 4(b)(3)(G) following
24 the declaration of a 90-day petition backlog; or

1 “(B) under section 4(b)(3)(H) following
2 the declaration of a 12-month petition backlog.

3 “(5) PETITIONED-FOR SPECIES.—The term ‘pe-
4 titioned-for species’ means a species that has been
5 identified in a petition presented under subpara-
6 graph (A) or (B) of section 4(b)(3).”.

7 **SEC. 4. BACKLOG DECLARATION AND PROCEDURES.**

8 (a) IN GENERAL.—Section 4(b)(3) of the Endan-
9 gered Species Act of 1973 (16 U.S.C. 1533(b)(3)) is
10 amended by adding at the end the following:

11 “(E)(i) The Secretary shall—

12 “(I) declare a 90-day petition backlog
13 at any time the total number of species for
14 which a petition is presented to the Sec-
15 retary under subparagraph (A) that has
16 not been the subject of a finding by the
17 Secretary within the timeframe established
18 under such subparagraph exceeds 5 per-
19 cent of the number of species for which
20 such petitions have been presented during
21 the preceding 15 years;

22 “(II) submit a backlog schedule for
23 such backlog to—

24 “(aa) the President;

1 “(bb) the Chairman and ranking
2 minority Member of the Committee on
3 Environment and Public Works of the
4 Senate; and

5 “(cc) the Chairman and ranking
6 minority Member of the Committee on
7 Natural Resources of the House of
8 Representatives; and

9 “(III) comply with backlog procedures
10 under subparagraph (G) during the period
11 such backlog is in effect.

12 “(ii) The Secretary shall—

13 “(I) declare a 12-month petition back-
14 log at any time the total number of species
15 for which a petition is being considered by
16 the Secretary under subparagraph (B) that
17 has not been the subject of a finding by
18 the Secretary within the timeframe estab-
19 lished under such subparagraph exceeds 5
20 percent of the number of species for which
21 such petitions have been presented during
22 the preceding 15 years;

23 “(II) submit a backlog schedule for
24 such backlog to—

25 “(aa) the President;

1 “(bb) the Chairman and ranking
2 minority Member of the Committee on
3 Environment and Public Works of the
4 Senate; and

5 “(cc) the Chairman and ranking
6 minority Member of the Committee on
7 Natural Resources of the House of
8 Representatives; and

9 “(III) comply with backlog procedures
10 under subparagraph (H) during the period
11 such declaration is in effect.

12 “(iii) Not later than 90 days after declar-
13 ing a 90-day petition backlog or 12-month peti-
14 tion backlog, and every 90 days thereafter dur-
15 ing the period such backlog is in effect, the Sec-
16 retary shall submit to the recipients under
17 clause (ii)(II) and (iii)(II), respectively, an up-
18 dated backlog schedule that contains—

19 “(I) a list of petitioned-for species for
20 which a finding had been made since the
21 last submission of the backlog schedule
22 under such clause;

23 “(II) the outcomes of findings for all
24 petitioned-for species for which a finding
25 has been made since the last submission of

1 the backlog schedule under such clause;
2 and

3 “(III) a summary of the bases of all
4 findings for any petitioned-for species for
5 which a finding has been made since the
6 preceding submission of the backlog.

7 “(F) The Secretary shall terminate a 90-
8 day petition backlog or 12-month petition back-
9 log at such time as the requirements for declar-
10 ing such backlog under subparagraph (E)(i) or
11 (E)(ii), respectively, are not fulfilled.

12 “(G) During the effective period of a 90-
13 day petition backlog—

14 “(i) the requirement under subpara-
15 graph (A) to make a finding within 90
16 days shall not apply with respect to any
17 species that is the subject of a petition in-
18 cluded in the list under section
19 2(b)(3)(A)(i);

20 “(ii) except as provided in clause (iii),
21 the Secretary shall not make any finding
22 under subparagraph (A) with respect to
23 any species included in the list under sec-
24 tion 2(b)(3)(A)(i) in the applicable backlog
25 schedule, until the earlier of—

1 “(I) the date the Secretary termi-
2 nates the backlog under subparagraph
3 (F);

4 “(II) the date the applicable
5 backlog schedule consists of only the
6 list under such section; or

7 “(III) the date the only peti-
8 tioned-for species in the backlog
9 schedule to which the Secretary has
10 not devoted sufficient resources so as
11 to issue such a finding within 90 days
12 are those in the list under such sec-
13 tion; and

14 “(iii) the Secretary is deemed to have
15 made finding under subparagraph (A) that
16 each petition for a species included in the
17 list under section 2(b)(3)(A)(i) in the ap-
18 plicable backlog schedule does not present
19 substantial scientific or commercial infor-
20 mation indicating that the petitioned ac-
21 tion may be warranted, effective upon the
22 expiration of the 180-day period beginning
23 on the date the petition was submitted.

24 “(H) Except as provided in subparagraph

25 (I)—

1 “(i) after declaring a 12-month peti-
2 tion backlog under subparagraph (E)(ii)
3 and before taking any actions under clause
4 (ii) of this subparagraph, the Secretary
5 shall assign each petition and petitioned-
6 for species to be considered under such
7 clause to one of the five priority bins re-
8 ferred to in the notice issued by the United
9 States Fish and Wildlife Service entitled
10 ‘Methodology for Prioritizing Status Re-
11 views and Accompanying 12-month find-
12 ings on Petitions for Listing Under the
13 Endangered Species Act (81 Fed. Reg.
14 49248 (July 27, 2016))’; and

15 “(ii) during the effective period of
16 such 12-month petition backlog under sub-
17 paragraph (E)(ii)—

18 “(I) the requirement under sub-
19 paragraph (B) to make a finding
20 within 12 months shall not apply with
21 respect to any species that is the sub-
22 ject of a petition included in the list
23 under section 2(b)(3)(A)(i);

24 “(II) the Secretary shall consider
25 under this paragraph only petitions

1 for species included in the list under
2 section 2(b)(3)(A)(ii) in the applicable
3 backlog schedule, that were submitted
4 more than 12 months before the es-
5 tablishment of the backlog;

6 “(III) except as provided in sub-
7 clause (IV), the Secretary shall not
8 make any finding under subparagraph
9 (B) with respect to any species in-
10 cluded in the list under section
11 2(b)(3)(A)(i) in the applicable backlog
12 schedule, until the earlier of—

13 “(aa) the date the Secretary
14 terminates the backlog under
15 subparagraph (F);

16 “(bb) the date the applicable
17 backlog schedule consists of only
18 the list under such section; or

19 “(cc) the date the only peti-
20 tioned-for species in the backlog
21 schedule to which the Secretary
22 has not devoted sufficient re-
23 sources so as to issue such a
24 finding within 12 months are

1 those in the list under such sec-
2 tion; and

3 “(IV) the Secretary is deemed to
4 have made a finding under subpara-
5 graph (B)(i) for each species included
6 in the list under section 2(b)(3)(A)(i)
7 that the petitioned action is not war-
8 ranted—

9 “(aa) effective upon the ex-
10 piration of the 18-month period
11 beginning on the date the peti-
12 tion was submitted, if the Sec-
13 retary has not assigned the spe-
14 cies to the ‘Highest Priority—
15 Critically Imperiled’, ‘Strong
16 Data Already Available on Sta-
17 tus’ priority bin or ‘New Science
18 Underway to Inform Key Uncer-
19 tainties’ priority bin referred to
20 in the notice referred to in clause
21 (i); or

22 “(bb) effective upon the ex-
23 piration of the 24-month period
24 beginning on the date the peti-
25 tion was submitted, if the Sec-

1 retary has assigned the species to
2 the ‘Strong Data Already Avail-
3 able on Status’ priority bin or
4 ‘New Science Underway to In-
5 form Key Uncertainties’ priority
6 bin referred to in the notice re-
7 ferred to in clause (i).

8 “(I)(i) In the case of the first 12-month
9 petition backlog under subparagraph (E)(ii)—

10 “(I) item (aa) of subparagraph
11 (H)(ii)(IV) shall be applied by substituting
12 ‘30-month’ for ‘18-month’; and

13 “(II) item (bb) of subparagraph
14 (H)(ii)(IV) shall be applied by substituting
15 ‘36-month’ for ‘24-month’.

16 “(ii) The Secretary may not under sub-
17 paragraph (H)(i) change the assignment of a
18 petition or petitioned-for species from one pri-
19 ority bin to another priority bin.

20 “(J) In the case of findings under sub-
21 paragraph (G)(iii) and (H)(ii)(IV), the publica-
22 tion under subparagraph (A) or (B)(i), respec-
23 tively, may consist solely of a notice of each
24 finding.

1 “(K)(i) Except as otherwise provided in
2 this Act, the Secretary shall regularly maintain
3 on the internet site of the United States Fish
4 and Wildlife Service a publically available data-
5 base of petitions referred to in this paragraph
6 and species otherwise evaluated under sub-
7 section (a).

8 “(ii) The database shall contain informa-
9 tion about each petitioned-for species includ-
10 ing—

11 “(I) the date a petition for such spe-
12 cies was submitted;

13 “(II) the person who submitted the
14 petition;

15 “(III) the current status of the peti-
16 tion within the statutory and agency proc-
17 ess, including the most recent agency ac-
18 tion taken;

19 “(IV) a web link to any documents re-
20 ceived under this paragraph that con-
21 stituted the petition for such species;

22 “(V) a web link to any materials the
23 Secretary has received from State or local
24 governments pertaining to petitions to list
25 such species; and

1 “(VI) the outcomes of all prior peti-
2 tioning or listing procedures for such spe-
3 cies;

4 “(VII) the outcomes of all prior litiga-
5 tion against the Federal Government on
6 the basis of a petition for or listing of such
7 species, including actions or agreements by
8 the Federal Government to—

9 “(aa) dispense monies to liti-
10 gating parties or counsel;

11 “(bb) promulgate rules as a di-
12 rect or indirect result of litigation out-
13 comes or agreements;

14 “(cc) resolve any matter related
15 to the petition or a petitioned-for spe-
16 cies by a certain date, or otherwise;

17 “(dd) conduct further research or
18 analysis related to the petition or peti-
19 tioned-for species; or

20 “(ee) engage in any other activity
21 as a result of the terms of litigation
22 settlements or court-orders related to
23 such petitions or petitioned-for spe-
24 cies.

1 “(L)(i) Except as provided in clauses (ii)
2 and (iii), any negative finding described in sub-
3 paragraph (A) and any finding described in
4 clause (i) or (ii) of subparagraph (B) shall be
5 subject to judicial review.

6 “(ii) A petition in the list under section
7 2(a)(3)(A)(i) of the backlog schedule for a 12-
8 month petition backlog is not subject to judicial
9 review—

10 “(I) on the basis of a negative finding
11 by the Secretary under subparagraph
12 (H)(ii)(IV); or

13 “(II) on the basis that the Secretary
14 has failed to make a finding within the 12-
15 month timeframe established under sub-
16 paragraph (B).

17 “(iii) Notwithstanding subparagraph
18 (C)(ii), a finding by the Secretary under sub-
19 paragraph (G)(iii), and any failure by the Sec-
20 retary in the effective period of a 90-day peti-
21 tion backlog to make a finding under subpara-
22 graph (A) with respect to any species included
23 in the list under section 2(b)(3)(A)(i) in the ap-
24 plicable backlog schedule, is not subject to judi-
25 cial review.”.

1 (b) CONFORMING AMENDMENT.—Section 4(b)(3)(C)
2 of the Endangered Species Act of 1973 (16 U.S.C.
3 1533(b)(3)(C)) is amended—
4 (1) by striking clause (ii); and
5 (2) by redesignating clause (iii) as clause (ii).