

117TH CONGRESS  
2D SESSION

# H. R. 9372

To facilitate pipeline construction and limit regulatory and litigation delays under the Federal Water Pollution Control Act, the National Environmental Policy Act of 1969, and the Endangered Species Act of 1973, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2022

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Natural Resources, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To facilitate pipeline construction and limit regulatory and litigation delays under the Federal Water Pollution Control Act, the National Environmental Policy Act of 1969, and the Endangered Species Act of 1973, and for other purposes.

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 “Pipeline Permitting  
5 for Energy Security Act”.

1 **SEC. 2. CLEAN WATER ACT PERMITTING.**

2 (a) STATE CERTIFICATION PROGRAMS.—Section 401  
3 of the Federal Water Pollution Control Act (33 U.S.C.  
4 1341) is amended—

5 (1) by striking the heading and section designa-  
6 tion and all that follows through “may be.” at the  
7 end of subsection (a)(1) and inserting the following:

8 **“SEC. 401. CERTIFICATION.**

9 “(a) STATE CERTIFICATIONS.—

10 “(1) CERTIFICATION REQUIRED.—

11 “(A) DEFINITIONS.—In this paragraph:

12 “(i) CERTIFICATION APPLICATION.—

13 The term ‘certification application’ means  
14 a request from an applicant for a certifi-  
15 cation described in subparagraph (B).

16 “(ii) CERTIFYING AUTHORITY.—The  
17 term ‘certifying authority’, with respect to  
18 a certification described in subparagraph  
19 (B), means the applicable entity described  
20 in subclause (I), (II), or (III) of subpara-  
21 graph (B)(i).

22 “(B) COMPLIANCE WITH LIMITATIONS.—

23 “(i) IN GENERAL.—Any applicant for  
24 a Federal license or permit to conduct an  
25 activity, including the construction or oper-  
26 ation of facilities, that may result in a dis-

1 charge from a point source into the waters  
2 of the United States shall provide the Fed-  
3 eral licensing or permitting agency a cer-  
4 tification that the discharge will comply  
5 with applicable water quality requirements  
6 from—

7 “(I) the State in which the dis-  
8 charge originates or will originate;

9 “(II) if appropriate, the inter-  
10 state water pollution control agency  
11 with jurisdiction over the waters of  
12 the United States at the point where  
13 the discharge originates or will origi-  
14 nate; or

15 “(III) if no State or interstate  
16 water pollution control agency has the  
17 authority to give such a certification,  
18 the Administrator.

19 “(ii) CERTIFICATION OF NO LIMITA-  
20 TION AND STANDARD.—

21 “(I) IN GENERAL.—In the case  
22 of any activity described in clause (i)  
23 for which there is not an applicable  
24 effluent limitation or other limitation  
25 under sections 301(b) and 302 and

1 for which there is not an applicable  
2 standard under sections 306 and 307,  
3 the certifying authority shall so cer-  
4 tify.

5 “(II) EFFECT.—A certification  
6 under subclause (I) does not satisfy  
7 section 511(c).

8 “(iii) CERTIFICATION REQUIRED.—

9 “(I) CONSTRUCTION PROHIBITED  
10 UNTIL CERTIFICATION.—Construction  
11 for which a certification is required  
12 under this subparagraph may not  
13 begin until the certification has been  
14 obtained, unless the requirement for  
15 the certification has been waived in  
16 accordance with this paragraph.

17 “(II) EFFECT OF DENIAL.—If a  
18 certifying authority denies a certifi-  
19 cation application, the Federal license  
20 or permit for which the certification  
21 application was made may not be  
22 granted.

23 “(iv) SCOPE OF CERTIFICATION.—In  
24 determining whether to issue a certification  
25 under this subparagraph and in deter-

1 mining what conditions to impose on a cer-  
2 tification under this subparagraph, a certi-  
3 fying authority may only consider whether  
4 the discharge for which the certification  
5 application was made complies with appli-  
6 cable water quality requirements.

7 “(C) REQUIRED PROCEDURES.—

8 “(i) NOTICE AND HEARINGS.—Each  
9 certifying authority shall establish proce-  
10 dures for—

11 “(I) public notice in the case of  
12 all certification applications;

13 “(II) to the extent the certifying  
14 authority determines to be appro-  
15 priate, public hearings in connection  
16 with specific certification applications;  
17 and

18 “(III) a prefiling meeting as de-  
19 scribed in clause (ii).

20 “(ii) PREFILING MEETING.—

21 “(I) REQUEST.—Before submit-  
22 ting a certification application, the  
23 prospective applicant may request a  
24 prefiling meeting with the certifying  
25 authority—

1 “(aa) to ensure that the cer-  
2 tifying authority receives early  
3 notification of projects for which  
4 a certification under subpara-  
5 graph (B) is necessary; and

6 “(bb) to discuss informa-  
7 tional needs with the certifying  
8 authority before submitting the  
9 application.

10 “(II) RESPONSE REQUIRED.—If  
11 a prospective applicant requests a pre-  
12 filing meeting with a certifying au-  
13 thority pursuant to subclause (I), the  
14 certifying authority shall—

15 “(aa) respond to the request  
16 not later than 30 days after the  
17 date on which the request is re-  
18 ceived; and

19 “(bb) hold the prefiling  
20 meeting with the prospective ap-  
21 plicant by not later than 60 days  
22 after the date on which the re-  
23 quest is received.

24 “(iii) DENIALS OF CERTIFICATION.—

1 “(I) INDIVIDUAL LICENSES AND  
2 PERMITS.—If a certifying authority  
3 denies a certification application for  
4 an individual license or permit, the  
5 certifying authority shall provide to  
6 the applicable Federal licensing or  
7 permitting agency—

8 “(aa) the specific applicable  
9 water quality requirements with  
10 which the discharge will not com-  
11 ply;

12 “(bb) a statement explaining  
13 why the discharge will not comply  
14 with the identified applicable  
15 water quality requirements; and

16 “(cc) if the denial is due to  
17 insufficient information, a de-  
18 scription of the specific water  
19 quality data or information, if  
20 any, that would be needed to en-  
21 sure that the discharge from the  
22 proposed project will comply with  
23 applicable water quality require-  
24 ments.

1                   “(II) GENERAL LICENSES OR  
2 PERMITS.—If a certifying authority  
3 denies a certification application for a  
4 general license or permit, the certi-  
5 fying authority shall provide to the  
6 applicable Federal licensing or permit-  
7 ting agency—

8                   “(aa) the specific applicable  
9 water quality requirements with  
10 which discharges that could be  
11 authorized by the general license  
12 or permit will not comply;

13                   “(bb) a statement explaining  
14 why discharges that could be au-  
15 thorized by the general license or  
16 permit will not comply with the  
17 identified applicable water quality  
18 requirements; and

19                   “(cc) if the denial is due to  
20 insufficient information, a de-  
21 scription of the specific water  
22 quality data or information, if  
23 any, that would be needed to as-  
24 sure that the range of discharges  
25 that could be authorized by the



1           general license or permit from  
2           potential projects will comply  
3           with applicable water quality re-  
4           quirements.

5           “(iv) REVIEW.—

6                   “(I) IN GENERAL.—Not later  
7           than 60 days after the date on which  
8           a Federal licensing or permitting  
9           agency receives a notice described in  
10          clause (iii) or a certification under  
11          subparagraph (B) that includes condi-  
12          tions to that certification, the Federal  
13          licensing or permitting agency shall  
14          complete a review of the process un-  
15          dertaken by the certifying authority in  
16          reviewing the applicable certification  
17          application to determine whether the  
18          certifying authority established a rea-  
19          sonable period of time within which to  
20          review that certification application in  
21          accordance with subparagraph (D)(ii).

22                   “(II) DENIALS.—If, after car-  
23          rying out a review under subclause (I)  
24          of the process undertaken by a certi-  
25          fying authority with respect to a de-

1 nial of a certification application, a  
2 Federal licensing or permitting agency  
3 determines that the certifying author-  
4 ity did not, in determining the reason-  
5 able period of time within which to re-  
6 view the certification application, con-  
7 sider all of the factors described in  
8 subclause (I), (II), or (III) of sub-  
9 paragraph (D)(ii), the Federal licens-  
10 ing or permitting agency shall—

11 “(aa) deem the certifying  
12 authority to have failed to act on  
13 the certification application; and

14 “(bb) pursuant to subpara-  
15 graph (D)(iii), consider the re-  
16 quirement for a certification  
17 under subparagraph (B) waived.

18 “(III) CONDITIONS.—If, after  
19 carrying out a review under subclause  
20 (I) of the process undertaken by a  
21 certifying authority with respect to in-  
22 cluding conditions to a certification  
23 under subparagraph (B), a Federal li-  
24 censing or permitting agency deter-  
25 mines that the certifying authority did

1 not, in determining the reasonable pe-  
2 riod of time within which to review  
3 the applicable certification application,  
4 consider all of the factors described in  
5 subclause (I), (II), or (III) of sub-  
6 paragraph (D)(ii), the Federal licens-  
7 ing or permitting agency shall con-  
8 sider the certification conditions void.

9 “(D) REVIEW PERIOD.—

10 “(i) IN GENERAL.—A certifying au-  
11 thority shall, subject to this subparagraph,  
12 issue to the applicable Federal licensing or  
13 permitting authority a final action on a  
14 certification application within a reason-  
15 able period of time, which—

16 “(I) shall be determined by the  
17 certifying authority by not later than  
18 60 days after the date on which the  
19 certification application is received by  
20 the certifying authority; but

21 “(II)(aa) shall begin on the date  
22 on which the certification application  
23 is received by the certifying authority;  
24 and

1 “(bb) shall not exceed 1 year  
2 from the date on which the certifying  
3 authority receives the certification ap-  
4 plication.

5 “(ii) DETERMINATION OF REASON-  
6 ABLE PERIOD.—In determining the reason-  
7 able period of time under clause (i)(I), a  
8 certifying authority shall consider—

9 “(I) the complexity of the project  
10 described in the certification applica-  
11 tion;

12 “(II) the nature of any potential  
13 discharge from that project; and

14 “(III) the potential need for ad-  
15 ditional study or evaluation of water  
16 quality effects from the discharge.

17 “(iii) FAILURE TO ACT WITHIN PE-  
18 RIOD.—If a certifying authority fails or re-  
19 fuses to issue a final action on a certifi-  
20 cation application by the end of the reason-  
21 able period of time established under this  
22 subparagraph, the requirement for a cer-  
23 tification under subparagraph (B) shall be  
24 waived.

1 “(iv) NO PAUSING OR TOLLING.—The  
2 reasonable period of time established for a  
3 certification application under this sub-  
4 paragraph may not be paused or tolled for  
5 any reason.

6 “(E) FINAL ACTION.—

7 “(i) IN GENERAL.—After completion  
8 of the reasonable period of time established  
9 under subparagraph (D) and any review  
10 that may be required under subparagraph  
11 (C)(iv) for a certification application, the  
12 certifying authority or Federal licensing or  
13 permitting authority, as applicable, shall  
14 apply only 1 of the following final actions  
15 to the certification application:

16 “(I) The certification application  
17 is granted.

18 “(II) The certification application  
19 is granted with conditions.

20 “(III) The certification applica-  
21 tion is denied.

22 “(IV) The certification require-  
23 ments under subparagraph (B) have  
24 been waived in accordance with this  
25 paragraph with respect to the activity

1                   for which the certification application  
2                   was submitted.

3                   “(ii) NO OTHER FINAL ACTIONS.—No  
4                   other final action may apply to a certifi-  
5                   cation application except as described in  
6                   clause (i).

7                   “(F) ENFORCEMENT OF CONDITIONS.—  
8                   The Federal licensing or permitting authority  
9                   to which a certification under this subsection  
10                  was issued shall be responsible for enforcing  
11                  any conditions included with that certification.

12                  “(G) TIMELINE FOR ACTION.—If a Fed-  
13                  eral court remands or vacates a certification  
14                  under this paragraph, the Federal court shall  
15                  set and enforce a reasonable schedule and dead-  
16                  line, not to exceed 180 days from the date on  
17                  which the Federal court remands or vacates the  
18                  certification, for the certifying agency to act on  
19                  the remand or vacatur.”;

20                  (2) in subsection (a) (as so amended)—

21                   (A) in paragraph (2), by striking “(2)  
22                   Upon receipt” and inserting the following:

23                   “(2) NOTICE TO ADMINISTRATOR; EFFECT ON  
24                   OTHER STATES.—On receipt”;

1 (B) in paragraph (3), by striking “(3) The  
2 certification” and inserting the following:

3 “(3) FULFILLMENT OF REQUIREMENTS.—The  
4 certification”;

5 (C) in paragraph (4), by striking “(4)  
6 Prior to” and inserting the following:

7 “(4) REVIEW FOR COMPLIANCE.—Prior to”;

8 (D) in paragraph (5), by striking “(5) Any  
9 Federal” and inserting the following:

10 “(5) SUSPENSION AND REVOCATION.—Any  
11 Federal”; and

12 (E) in paragraph (6), by striking “(6) Ex-  
13 cept with” and inserting the following:

14 “(6) APPLICABILITY TO CERTAIN FACILITIES.—  
15 Except with”;

16 (3) in subsection (b), by striking “(b) Nothing”  
17 and inserting the following:

18 “(b) COMPLIANCE WITH OTHER PROVISIONS OF  
19 LAW SETTING APPLICABLE WATER QUALITY REQUIRE-  
20 MENTS.—Nothing”;

21 (4) in subsection (c), by striking “(c) In order”  
22 and inserting the following:

23 “(c) AUTHORITY OF SECRETARY OF THE ARMY TO  
24 PERMIT USE OF SPOIL DISPOSAL AREAS BY FEDERAL  
25 LICENSEES OR PERMITTEES.—In order”;

1 (5) in subsection (d), by striking “(d) Any cer-  
 2 tification” and inserting the following:

3 “(d) LIMITATIONS AND MONITORING REQUIRE-  
 4 MENTS OF CERTIFICATION.—Any certification”; and

5 (6) by adding at the end the following:

6 “(e) DEFINITION OF APPLICABLE WATER QUALITY  
 7 REQUIREMENTS.—In this section, the term ‘applicable  
 8 water quality requirements’ means—

9 “(1) the applicable provisions of sections 301,  
 10 302, 303, 306, and 307; and

11 “(2) applicable State or Tribal regulatory re-  
 12 quirements for the discharge from point sources into  
 13 the waters of the United States.”.

14 (b) PERMITS FOR DREDGED OR FILL MATERIAL.—

15 (1) IN GENERAL.—Section 404 of the Federal  
 16 Water Pollution Control Act (33 U.S.C. 1344) is  
 17 amended—

18 (A) by striking the heading and section  
 19 designation and all that follows through “(a)  
 20 The Secretary” and inserting the following:

21 **“SEC. 404. PERMITS FOR DREDGED OR FILL MATERIAL.**

22 “(a) DISCHARGE INTO NAVIGABLE WATERS AT  
 23 SPECIFIED DISPOSAL SITES.—

24 “(1) IN GENERAL.—The Secretary”;



1 (B) in subsection (a)(1) (as so designated),  
2 in the second sentence—

3 (i) by striking “this subsection” each  
4 place it appears and inserting “paragraph  
5 (1)”; and

6 (ii) by striking “Not later than the fif-  
7 teenth day” and inserting the following:

8 “(2) NOTICE.—Not later than the 15th day”;

9 (C) in subsection (c)—

10 (i) in the third sentence—

11 (I) by striking “his finding and  
12 his reasons” and inserting “the find-  
13 ings and reasons of the Adminis-  
14 trator”; and

15 (II) by striking “The Adminis-  
16 trator” and inserting the following:

17 “(4) FINDINGS AND REASONING.—The Admin-  
18 istrator”;

19 (ii) in the second sentence, by striking  
20 “Before making such determination” and  
21 inserting the following:

22 “(3) CONSULTATION.—Before making a deter-  
23 mination under paragraph (1)”;

24 (iii) by striking “(c) The Adminis-  
25 trator” and inserting the following:

1 “(c) PROHIBITION OF SPECIFICATION OF AREAS AS  
2 DISPOSAL SITES.—

3 “(1) IN GENERAL.—Subject to paragraph (2),  
4 the Administrator”; and

5 (iv) by inserting after paragraph (1)  
6 (as so designated) the following:

7 “(2) LIMITATION.—The Administrator may not  
8 prohibit the specification of a defined area as a dis-  
9 posal site, or otherwise deny or restrict the use of  
10 a defined area as a disposal site after a permit  
11 under this section for the area has been issued by  
12 the Secretary.”;

13 (D) in subsection (e)—

14 (i) in paragraph (1), in the second  
15 sentence—

16 (I) by striking “subsection (b)(1)  
17 of this section, and (B) set forth” and  
18 inserting the following: “subsection  
19 (b)(1); and  
20 “(ii) set forth”;

21 (II) by striking “shall (A) be  
22 based” and inserting the following:  
23 “shall—  
24 “(i) be based”; and

1 (III) by striking “Any general”  
 2 and inserting the following:

3 “(B) REQUIREMENTS FOR ISSUANCE.—  
 4 Any general”;

5 (ii) by striking “(e)(1) In carrying”  
 6 and inserting the following:

7 “(e) GENERAL PERMITS ON STATE, REGIONAL, OR  
 8 NATIONWIDE BASIS.—

9 “(1) PERMITS AUTHORIZED.—

10 “(A) IN GENERAL.—In carrying”;

11 (iii) in paragraph (2), by striking “(2)  
 12 No general” and inserting the following:

13 “(2) TERM.—No general”; and

14 (iv) by adding at the end the fol-  
 15 lowing:

16 “(3) SINGLE AND COMPLETE PROJECTS.—

17 “(A) DEFINITION OF SINGLE AND COM-  
 18 PLETE PROJECT.—

19 “(i) IN GENERAL.—In this paragraph,  
 20 the term ‘single and complete project’, with  
 21 respect to a project for which the Secretary  
 22 is determining whether a general permit  
 23 issued under this subsection applies, means  
 24 that portion of the total project proposed  
 25 or accomplished by—

1 “(I) a single owner or developer;

2 “(II) a partnership of 1 or more  
3 owners or developers; or

4 “(III) an association of owners or  
5 developers.

6 “(ii) LINEAR PROJECTS.—

7 “(I) DEFINITION.—In this  
8 clause, the term ‘linear project’ means  
9 a project constructed for the purpose  
10 of getting people, goods, or services  
11 from a point of origin to a terminal  
12 point, which may involve multiple  
13 crossings of 1 or more waters of the  
14 United States at separate and distant  
15 locations.

16 “(II) GENERAL RULE.—For pur-  
17 poses of this paragraph, with respect  
18 to projects described in clause (i) that  
19 are linear projects—

20 “(aa) the crossings of sepa-  
21 rate waters of the United States  
22 at a specific location shall be con-  
23 sidered 1 single and complete  
24 project; but

1                   “(bb) each crossing of a sin-  
2                   gle water of the United States  
3                   shall be considered a separate  
4                   single and complete project if  
5                   those crossings are at separate  
6                   and distant locations.

7                   “(III)     ADDITIONAL     EXCLU-  
8                   SIONS.—For purposes of subclause  
9                   (II), individual channels in a braided  
10                  stream or river, individual arms of a  
11                  large, irregularly-shaped wetland or  
12                  lake, and other, similar bodies of  
13                  water shall not be considered to be  
14                  separate waters of the United States.

15               “(B)     REQUIREMENT.—In determining  
16               whether a general permit issued under this sub-  
17               section applies to an activity, the Secretary  
18               shall consider the estimated total of all losses of  
19               waters of the United States expected to result  
20               from the single and complete project.

21               “(C)     USE OF MULTIPLE PERMITS.—The  
22               Secretary may combine 2 or more general per-  
23               mits issued under this subsection to authorize a  
24               single and complete project, but the same gen-  
25               eral permit issued under this subsection may

1           not be used more than once for a single and  
2           complete project.

3           “(4) REISSUANCE OF NATIONWIDE PERMITS.—

4           In determining whether to reissue a general permit  
5           issued under this subsection on a nationwide basis—

6                   “(A) no consultation with an applicable  
7           State pursuant to section 6(a) of the Endan-  
8           gered Species Act of 1973 (16 U.S.C. 1535(a))  
9           is required;

10                   “(B) no consultation with a Federal agen-  
11           cy pursuant to section 7(a)(2) of that Act (16  
12           U.S.C. 1536(a)(2)) is required; and

13                   “(C) for purposes of carrying out the Na-  
14           tional Environmental Policy Act of 1969 (42  
15           U.S.C. 4321 et seq.) with respect to that  
16           reissuance, conducting an environmental assess-  
17           ment on a nationwide basis is sufficient for pur-  
18           poses of compliance with that Act.

19           “(5) NATIONWIDE PERMIT FOR OIL AND NAT-  
20           URAL GAS PIPELINES.—Notwithstanding any other  
21           provision of this section, the Secretary shall main-  
22           tain a nationwide permit for the activities required  
23           for the construction, maintenance, repair, operation,  
24           and removal of oil and natural gas pipelines and as-  
25           sociated facilities that result in the loss of, with re-

1 spect to waters of the United States, an area of  
2 more than 1/2 acre for each single and complete  
3 project (as defined in paragraph (3)(A)), which shall  
4 be known as ‘nationwide permit 12’.”;

5 (E) in subsection (h)—

6 (i) in paragraph (1), by adding at the  
7 end the following:

8 “(I) To issue permits not later than the  
9 date that is 1 year after the date on which the  
10 State receives an application for the permit,  
11 which may not be paused or tolled for any rea-  
12 son.

13 “(J) To ensure that, if the State does not  
14 issue a final action with respect to an applica-  
15 tion for a permit within the 1-year period de-  
16 scribed in subparagraph (I), the application is  
17 considered to be approved.

18 “(K) To carry out a programmatic review  
19 of the program annually to ensure that the pro-  
20 gram does not exceed the authority granted to  
21 the State under this section.”; and

22 (ii) by adding at the end the fol-  
23 lowing:

24 “(6) ACTION REQUIRED.—

1           “(A) IN GENERAL.—A State with a permit  
2           program approved under this subsection shall  
3           issue a final action with respect to an applica-  
4           tion for a permit described in subsection (g)(1)  
5           not later than 1 year after the date of receipt  
6           of the application.

7           “(B) FAILURE TO ACT.—An application  
8           for a permit described in subsection (g)(1) sub-  
9           mitted to a State with a permit program ap-  
10          proved under this subsection shall be considered  
11          to be approved if the State fails to issue a final  
12          action with respect to the application by the  
13          end of the 1-year period described in subpara-  
14          graph (A).

15          “(C) NO PAUSING OR TOLLING.—The 1-  
16          year period described in subparagraph (A) may  
17          not be paused or tolled for any reason.”;

18          (F) in subsection (s)(3), in the third sen-  
19          tence, by striking “acton” and inserting “ac-  
20          tion”;

21          (G) in subsection (t), by striking “(t)  
22          Nothing” and inserting the following:

23          “(u) SAVINGS PROVISION.—Nothing”; and

24          (H) by inserting after subsection (s) the  
25          following:



1 “(t) JUDICIAL REVIEW.—

2 “(1) STATUTE OF LIMITATIONS.—

3 “(A) IN GENERAL.—Notwithstanding any  
4 other provision of law, an action seeking judi-  
5 cial review of an individual or general permit  
6 issued under this section shall be filed not later  
7 than the date that is 60 days after the date on  
8 which the permit was issued.

9 “(B) SAVINGS PROVISION.—Nothing in  
10 subparagraph (A) authorizes an action seeking  
11 judicial review of the structure of or authoriza-  
12 tion for a State permit program approved pur-  
13 suant to this section.

14 “(2) TIMELINE TO ACT ON REMAND AND  
15 VACATUR.—If a Federal court remands or vacates a  
16 permit under this section, the Federal court shall set  
17 and enforce a reasonable schedule and deadline,  
18 which may not exceed 180 days from the date on  
19 which the Federal court remands or vacates the per-  
20 mit, for the issuer of the permit to act on that re-  
21 mand or vacatur.”.

22 (2) RATIFICATION OF CURRENT PERMITS.—  
23 Notwithstanding any other provision of law, each  
24 category of activities authorized by a general permit  
25 issued under section 404(e) of the Federal Water

1 Pollution Control Act (33 U.S.C. 1344(e)) (including  
2 nationwide permit 12) or under section 10 of the  
3 Act of March 3, 1899 (33 U.S.C. 403), that is in  
4 effect on the date of enactment of this Act shall,  
5 consistent with subparagraph (A) of section  
6 404(e)(1) of the Federal Water Pollution Control  
7 Act (33 U.S.C. 1344(e)(1)), be considered to  
8 cause—

9 (A) not more than minimal adverse envi-  
10 ronmental effects when actions authorized  
11 under those permits are carried out separately;  
12 and

13 (B) not more than minimal cumulative ad-  
14 verse effects on the environment.

15 (3) SAVINGS PROVISION.—Nothing in this sub-  
16 section or the amendments made by this subsection  
17 requires a State (including an Indian tribe that is  
18 treated as a State pursuant to section 518(e) of the  
19 Federal Water Pollution Control Act (33 U.S.C.  
20 1377(e))) for which the Administrator of the Envi-  
21 ronmental Protection Agency has approved a permit  
22 program pursuant to subsections (g) and (h) of sec-  
23 tion 404 of the Federal Water Pollution Control Act  
24 (33 U.S.C. 1344) to seek reapproval of the permit  
25 program in accordance with those subsections.

1 (c) DEFINITION OF NAVIGABLE WATERS.—Section  
2 502 of the Federal Water Pollution Control Act (33  
3 U.S.C. 1362) is amended—

4 (1) in each of paragraphs (1) through (20), by  
5 inserting a paragraph heading, the text of which  
6 comprises the term defined in that paragraph;

7 (2) by indenting paragraphs (1) through (20)  
8 appropriately; and

9 (3) by striking paragraph (7) and inserting the  
10 following:

11 “(7) NAVIGABLE WATERS; WATERS OF THE  
12 UNITED STATES.—

13 “(A) IN GENERAL.—The terms ‘navigable  
14 waters’ and ‘waters of the United States’  
15 mean—

16 “(i) the territorial seas and waters  
17 which are currently used, or were used in  
18 the past, or may be susceptible to use in  
19 interstate or foreign commerce, including  
20 waters that are subject to the ebb and flow  
21 of the tide;

22 “(ii) a tributary;

23 “(iii) a lake, pond, or impoundment of  
24 water from a body of water otherwise de-  
25 scribed in this subparagraph that—

1 “(I) contributes to surface water  
2 flow to a body of water described in  
3 clause (i) in a typical year; or

4 “(II) is inundated by flooding  
5 from a body of water otherwise de-  
6 scribed in this subparagraph during a  
7 typical year; and

8 “(iv) adjacent wetlands.

9 “(B) EXCLUSIONS.—The terms ‘navigable  
10 waters’ and ‘waters of the United States’ do not  
11 include—

12 “(i) an ephemeral feature, including  
13 an ephemeral stream, swale, gully, rill,  
14 pool, or tributary that is ephemeral during  
15 a typical year;

16 “(ii) groundwater, including ground-  
17 water drained through subsurface drainage  
18 systems;

19 “(iii) an artificially irrigated area that  
20 would revert to upland or dry land if that  
21 artificial irrigation ceased;

22 “(iv) an artificial lake or pond that—

23 “(I) is not an impoundment de-  
24 scribed in subparagraph (A)(iii); and

1 “(II) is constructed or excavated  
2 in upland or dry land;

3 “(v) a water-filled depression that  
4 is—

5 “(I) constructed or excavated in  
6 upland or dry land; and

7 “(II) incidental to mining or con-  
8 struction activity;

9 “(vi) a pit that is excavated in upland  
10 for the purpose of obtaining fill, sand, or  
11 gravel;

12 “(vii) a stormwater control feature  
13 that is constructed or excavated in upland  
14 or dry land to convey, treat, infiltrate, or  
15 store stormwater runoff;

16 “(viii) a groundwater recharge, water  
17 reuse, or wastewater treatment recycling  
18 structure that is constructed or excavated  
19 in upland or dryland;

20 “(ix) a waste treatment system;

21 “(x) prior converted cropland;

22 “(xi)(I) a ditch that is not a body of  
23 water described in clause (i) or (ii) of sub-  
24 paragraph (A); and

1 “(II) any portion of a ditch con-  
2 structed in adjacent wetlands that does not  
3 meet the requirements described in sub-  
4 paragraph (C)(i);

5 “(xii) diffuse stormwater runoff and  
6 directional sheet flow over upland; and

7 “(xiii) a water or water feature that is  
8 not identified in subparagraph (A).

9 “(C) ASSOCIATED DEFINITIONS.—For pur-  
10 poses of this paragraph:

11 “(i) ADJACENT WETLANDS.—The  
12 term ‘adjacent wetlands’ means wetlands  
13 that—

14 “(I) touch at least one point or  
15 side of a body of water described in  
16 clause (i), (ii), or (iii) of subparagraph  
17 (A);

18 “(II) are inundated by flooding  
19 from a body of water described in  
20 clause (i), (ii), or (iii) of subparagraph  
21 (A) during a typical year; or

22 “(III) are physically separated  
23 from a body of water described in  
24 clause (i), (ii), or (iii) of subparagraph  
25 (A) only by—

1                   “(aa) a natural berm, bank,  
2                   dune, or similar natural feature;  
3                   or

4                   “(bb) an artificial dike, bar-  
5                   rier, or similar artificial struc-  
6                   ture, if that structure allows for  
7                   a direct hydrological surface con-  
8                   nection to the body of water de-  
9                   scribed in that clause (i), (ii), or  
10                  (iii) in a typical year, such as  
11                  through a culvert, flood or tide  
12                  gate, pump, or similar artificial  
13                  feature.

14                 “(ii) DITCH.—The term ‘ditch’ means  
15                 a constructed or excavated channel used to  
16                 convey water.

17                 “(iii) EPHEMERAL.—The term  
18                 ‘ephemeral’, with respect to a surface  
19                 water, means flowing or pooling only in di-  
20                 rect response to precipitation (such as rain  
21                 or snowfall).

22                 “(iv) HIGH TIDE LINE.—

23                 “(I) IN GENERAL.—The term  
24                 ‘high tide line’ means the line of inter-  
25                 section of the land with the surface of

1 a body of water at the maximum  
2 height reached by a rising tide (in-  
3 cluding a spring high tide or another  
4 high tide that occurs with periodic fre-  
5 quency), which may, in the absence of  
6 actual data, be determined by a line  
7 of oil or scum along shore objects, a  
8 more or less continuous deposit of fine  
9 shell or debris on the foreshore or  
10 berm, vegetation lines, tidal gages,  
11 other physical markings or character-  
12 istics, or other suitable means that de-  
13 lineate the general height reached by  
14 a rising tide.

15 “(II) EXCLUSIONS.—The term  
16 ‘high tide line’ does not include the  
17 line of intersection described in sub-  
18 clause (I) at the maximum height  
19 reached by a storm surge in which  
20 there is a departure from the normal  
21 or predicted reach of a tide due to the  
22 piling up of water against a coast by  
23 strong winds, such as a surge accom-  
24 panying a hurricane or another in-  
25 tense storm.



1                   “(v)     INTERMITTENT.—The     term  
2                   ‘intermittent’, with respect to a surface  
3                   water, means flowing continuously during  
4                   certain times of the year and more than in  
5                   direct response to precipitation (such as  
6                   seasonally, when the groundwater table is  
7                   elevated, or when snowpack melts).

8                   “(vi)     ORDINARY     HIGH     WATER  
9                   MARK.—The term ‘ordinary high water  
10                  mark’ means the line on a shore estab-  
11                  lished by the fluctuations of water and in-  
12                  dicated by physical characteristics, such as  
13                  a clear, natural line impressed on the  
14                  bank, shelving, changes in the character of  
15                  the soil, destruction of terrestrial vegeta-  
16                  tion, the presence of litter and debris, or  
17                  another appropriate means that considers  
18                  the characteristics of the surrounding  
19                  areas.

20                  “(vii) PERENNIAL.—The term ‘peren-  
21                  nial’, with respect to a surface water,  
22                  means surface water that flows continu-  
23                  ously year round.

24                  “(viii)   PRIOR     CONVERTED   CROP-  
25                  LAND.—

1                   “(I) IN GENERAL.—The term  
2                   ‘prior converted cropland’ means any  
3                   area that, prior to December 23,  
4                   1985, was drained or otherwise ma-  
5                   nipulated for the purpose, or having  
6                   the effect, of making production of an  
7                   agricultural product possible.

8                   “(II) INCLUSION.—The term  
9                   ‘prior converted cropland’ includes  
10                  any designation of an area as prior  
11                  converted cropland made by the Sec-  
12                  retary of Agriculture.

13                  “(III) EXCLUSION.—The term  
14                  ‘prior converted cropland’ does not in-  
15                  clude any area described in subclause  
16                  (I) that is abandoned or has reverted  
17                  to wetlands.

18                  “(IV) ASSOCIATED DEFINI-  
19                  TION.—In this clause, the term ‘aban-  
20                  doned’, with respect to an area de-  
21                  scribed in subclause (I), means the  
22                  area has not been used for, or in sup-  
23                  port of, agricultural purposes at least  
24                  once during the 5-year period ending

1 on the date of determination, as de-  
2 termined by the Administrator.

3 “(ix) SNOWPACK.—The term  
4 ‘snowpack’ means layers of snow that ac-  
5 cumulate over extended periods of time in  
6 certain geographic regions or at high ele-  
7 vation (such as in northern climes or in  
8 mountainous regions).

9 “(x) TRIBUTARY.—The term ‘tribu-  
10 tary’ includes a river, stream, or similar  
11 naturally occurring surface water channel  
12 that—

13 “(I) contributes to surface water  
14 flow to a body of water described in  
15 subparagraph (A)(i); and

16 “(II) is perennial or intermittent  
17 in a typical year.

18 “(xi) TYPICAL YEAR.—The term ‘typ-  
19 ical year’ means a year in which precipita-  
20 tion and other climatic variables are within  
21 the normal periodic range (such as season-  
22 ally or annually) for the geographic area of  
23 the applicable body of water, based on a  
24 rolling 30-year period.

1                   “(xii) UPLAND.—The term ‘upland’  
2 means any land area that, under normal  
3 conditions—

4                   “(I) is not wetlands; and

5                   “(II) does not lie below the ordi-  
6 nary high water mark or the high tide  
7 line of a body of water described in  
8 subparagraph (A).

9                   “(xiii) WASTE TREATMENT SYSTEM.—  
10 The term ‘waste treatment system’ in-  
11 cludes all components, including lagoons  
12 and treatment ponds (such as settling or  
13 cooling ponds), designed to either convey  
14 or retain, concentrate, settle, reduce, or re-  
15 move pollutants, either actively or pas-  
16 sively, from wastewater prior to discharge  
17 (or eliminating any such discharge).

18                   “(xiv) WETLANDS.—The term ‘wet-  
19 lands’ means areas that are inundated or  
20 saturated by surface or ground water at a  
21 frequency and duration sufficient to sup-  
22 port, and that under normal circumstances  
23 do support, a prevalence of vegetation typi-  
24 cally adapted for life in saturated soil con-

1                   ditions, including swamps, marshes, bogs,  
2                   and similar areas.”.

3 **SEC. 3. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**  
4 **MODIFICATIONS.**

5       (a) DEFINITIONS.—The National Environmental Pol-  
6 icy Act of 1969 is amended by inserting after section 2  
7 (42 U.S.C. 4321) the following:

8 **“SEC. 3. DEFINITIONS.**

9       “In this Act:

10           “(1) CATEGORICAL EXCLUSION.—The term  
11       ‘categorical exclusion’ means a category of actions  
12       that a Federal agency determines, according to pro-  
13       cedures established by the Federal agency, do not  
14       normally have a significant effect on the human en-  
15       vironment.

16           “(2) EFFECTS.—

17           “(A) IN GENERAL.—The term ‘effects’  
18       means changes to the human environment as a  
19       result of a proposed action or alternative action  
20       to be carried out by a Federal agency that—

21                   “(i) are reasonably foreseeable and  
22                   not remote in time, geographically remote,  
23                   or the product of a lengthy causal chain;

24                   “(ii) have a reasonably close causal  
25                   relationship, as determined by the Federal

1                   agency, to the proposed action or alter-  
2                   native action, as applicable; and

3                   “(iii) the Federal agency has the abil-  
4                   ity to prevent and that would not occur ab-  
5                   sent the proposed action or alternative ac-  
6                   tion.

7                   “(B) REQUIREMENT.—For purposes of  
8                   subparagraph (A)(ii), a ‘but for’ causal rela-  
9                   tionship is insufficient to establish a reasonably  
10                  close causal relationship.

11                  “(3) ENVIRONMENTAL ASSESSMENT.—The  
12                  term ‘environmental assessment’ means a concise  
13                  public document prepared by a Federal agency to  
14                  determine whether to prepare an environmental im-  
15                  pact statement or a finding of no significant impact  
16                  for a proposed action.

17                  “(4) ENVIRONMENTAL IMPACT STATEMENT.—  
18                  The term ‘environmental impact statement’ means a  
19                  detailed statement required to be prepared for a pro-  
20                  posed major action in accordance with title I.

21                  “(5) MAJOR FEDERAL ACTION.—

22                         “(A) IN GENERAL.—The term ‘major Fed-  
23                         eral action’ means an activity or decision sub-  
24                         ject to Federal control and responsibility, as de-  
25                         termined by a Federal agency.

1           “(B) EXCLUSIONS.—The term ‘major Fed-  
2           eral action’ does not include—

3                   “(i)       a       nondiscretionary       or  
4                   extraterritorial activity or decision;

5                   “(ii) an action that does not result in  
6                   a final agency action under subchapter II  
7                   of chapter 5, and chapter 7, of title 5,  
8                   United States Code (commonly known as  
9                   the ‘Administrative Procedure Act’);

10                  “(iii) a judicial or administrative en-  
11                  forcement action;

12                  “(iv) an action involving funding, the  
13                  control of which is not maintained by the  
14                  Federal agency that was appropriated the  
15                  funds;

16                  “(v) a non-Federal project with mini-  
17                  mal Federal funding or involvement;

18                  “(vi) a loan, loan guarantee, or other  
19                  financial assistance where the Federal  
20                  agency does not exercise sufficient control  
21                  or responsibility over the funds; and

22                  “(vii) any action that was deemed to  
23                  not be a major Federal action by a Federal  
24                  court.

1           “(C) OTHER ACTIONS.—A Federal agency  
2           may determine whether any other action is a  
3           major Federal action for purposes of the re-  
4           quirements of this Act.”.

5           (b) NEPA THRESHOLDS.—Title I of the National En-  
6           vironmental Policy Act of 1969 (42 U.S.C. 4331 et seq.)  
7           is amended by adding at the end the following:

8           **“SEC. 106. THRESHOLDS.**

9           “Prior to carrying out the requirements of this title  
10          for a major Federal action, the Federal agency seeking  
11          to carry out the action shall determine whether—

12               “(1) the action is exempt from the requirements  
13               of this title by another Federal law (including regu-  
14               lations);

15               “(2) compliance with this title would—

16                       “(A) clearly and fundamentally conflict  
17                       with another Federal law (including regula-  
18                       tions); or

19                       “(B) be inconsistent with the congressional  
20                       intent of another Federal law;

21               “(3) the action is nondiscretionary, such that  
22               the Federal agency lacks authority to consider the  
23               environmental effects of the action; and



1           “(4) a review of the effects of the action under  
2           another Federal law (including regulations) would  
3           satisfy the requirements of this title.”.

4           (c) DETERMINING APPROPRIATE LEVEL OF NEPA  
5 REVIEW.—Title I of the National Environmental Policy  
6 Act of 1969 (42 U.S.C. 4331 et seq.) (as amended by sub-  
7 section (b)) is amended by adding at the end the following:  
8 **“SEC. 107. DETERMINING APPROPRIATE LEVEL OF NEPA**  
9 **REVIEW.**

10           “In assessing the appropriate level of review to be  
11 conducted by a Federal agency under this title for a major  
12 Federal action, the Federal agency shall determine wheth-  
13 er the proposed action—

14           “(1) normally does not have significant effects  
15 or qualifies as a categorical exclusion;

16           “(2) is likely to have insignificant effects or un-  
17 known effects; or

18           “(3) is likely to have significant effects.”.

19           (d) ENVIRONMENTAL IMPACT STATEMENTS.—

20           (1) IN GENERAL.—Title I of the National Envi-  
21 ronmental Policy Act of 1969 (42 U.S.C. 4331 et  
22 seq.) (as amended by subsection (c)) is amended by  
23 adding at the end the following:

1   **“SEC. 108. ENVIRONMENTAL IMPACT STATEMENT RE-**  
2                   **QUIREMENTS.**

3           “(a) STATEMENT OF PURPOSE AND NEED.—

4                   “(1) IN GENERAL.—An environmental impact  
5           statement shall briefly specify the underlying pur-  
6           pose and need to which a Federal agency is respond-  
7           ing.

8                   “(2) ALTERNATIVES ANALYSIS.—Any alter-  
9           natives analyzed by the Federal agency shall—

10                   “(A) meet the purpose and need for the  
11           proposed action; and

12                   “(B) where applicable, meet the goals of  
13           the applicant.

14           “(b) PAGE LIMITS FOR ENVIRONMENTAL IMPACT  
15   STATEMENTS.—The text of a final environmental impact  
16   statement shall be proportional to the potential effects,  
17   and size, of the proposed action, but shall not be longer  
18   than—

19                   “(1) 150 pages; or

20                   “(2) in the case of a proposed action of unusual  
21           complexity, as determined by the applicable Federal  
22           agency, 300 pages.

23           “(c) TIME LIMIT FOR PREPARING AN ENVIRON-  
24   MENTAL IMPACT STATEMENT.—

25                   “(1) IN GENERAL.—Not later than 2 years  
26           after the date on which a Federal agency issues a

1 notice of intent to carry out a proposed action, the  
2 Federal agency shall submit to the Environmental  
3 Protection Agency the environmental impact state-  
4 ment for that proposed action.

5 “(2) FAILURE TO ACT.—If a Federal agency  
6 does not submit an environmental impact statement  
7 in accordance with the timeline described in para-  
8 graph (1), the requirements of this title shall be  
9 deemed to have been fulfilled for the proposed ac-  
10 tion.

11 “(d) SPECIFICITY OF COMMENTS AND INFORMA-  
12 TION.—

13 “(1) COMMENTS ON DRAFT ENVIRONMENTAL  
14 IMPACT STATEMENTS.—Comments and objections of  
15 any kind relating to an environmental impact state-  
16 ment for a proposed action shall be raised within the  
17 comment period on the draft environmental impact  
18 statement provided by the applicable Federal agency,  
19 consistent with the requirements of section 1506.11  
20 of title 40, Code of Federal Regulations (as in effect  
21 on September 14, 2020).

22 “(2) COMMENTS ON FINAL ENVIRONMENTAL  
23 IMPACT STATEMENTS.—If the applicable Federal  
24 agency requests comments on a final environmental  
25 impact statement prepared for a major Federal ac-

tion before the final decision of the Federal agency, comments and objections of any kind shall be raised within the comment period provided by the Federal agency.

“(3) UNEXHAUSTED AND FORFEITED COMMENTS.—Comments and objections of any kind not provided within the comment periods described in paragraphs (1) and (2) shall be considered unexhausted and forfeited, consistent with section 1500.3(b) of title 40, Code of Federal Regulations (as in effect on September 14, 2020).

“(e) RECORD OF DECISION IN CASES REQUIRING ENVIRONMENTAL IMPACT STATEMENTS.—Each record of decision prepared by a Federal agency for a proposed action shall contain a statement certifying that the Federal agency considered all alternatives to, and information and analyses relating to, the proposed action submitted during the process of carrying out the requirements of this title.”.

(2) CONFORMING AMENDMENTS.—Section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) is amended—

(A) in subparagraph (C)—

(i) in the matter preceding clause (i),  
by striking “a detailed statement” and in-

1                   serting “an environmental impact state-  
2                   ment”; and

3                   (ii) in the undesignated matter fol-  
4                   lowing clause (v), in the first sentence, by  
5                   striking “Prior to making any detailed  
6                   statement” and inserting “Prior to pre-  
7                   paring an environmental impact state-  
8                   ment”; and

9                   (B) in subparagraph (D)—

10                   (i) in the matter preceding clause (i),  
11                   by striking “detailed statement” and in-  
12                   serting “environmental impact statement”;  
13                   and

14                   (ii) in clause (iv), by striking “detailed  
15                   statement” and inserting “environmental  
16                   impact statement”.

17           (e) TIME LIMIT FOR ENVIRONMENTAL ASSESSMENT  
18 COMPLETION.—Title I of the National Environmental  
19 Policy Act of 1969 (42 U.S.C. 4331 et seq.) (as amended  
20 by subsection (d)(1)) is amended by adding at the end  
21 the following:

22 **“SEC. 109. ENVIRONMENTAL ASSESSMENT REQUIREMENT.**

23           “Not later than 1 year after the date on which a Fed-  
24 eral agency decides to prepare an environmental assess-  
25 ment for a proposed action, the Federal agency shall sub-

1 mit to the Environmental Protection Agency that environ-  
 2 mental assessment.”.

3 (f) ADOPTION OF CERTAIN CATEGORICAL EXCLU-  
 4 SIONS.—Title I of the National Environmental Policy Act  
 5 of 1969 (42 U.S.C. 4331 et seq.) (as amended by sub-  
 6 section (e)) is amended by adding at the end the following:

7 **“SEC. 110. ADOPTION OF CERTAIN CATEGORICAL EXCLU-**  
 8 **SIONS.**

9 “A Federal agency may adopt the determination of  
 10 another Federal agency that a categorical exclusion ap-  
 11 plies to a proposed action if the action covered by the  
 12 original categorical exclusion determination and the pro-  
 13 posed action of the adopting Federal agency are substan-  
 14 tially the same, in the determination of the adopting Fed-  
 15 eral agency.”.

16 **SEC. 4. ENDANGERED SPECIES ACT OF 1973 MODIFICA-**  
 17 **TIONS.**

18 (a) DEFINITIONS.—Section 3 of the Endangered Spe-  
 19 cies Act of 1973 (16 U.S.C. 1532) is amended—

20 (1) by redesignating paragraphs (6), (7), (8),  
 21 (9), (10), (12), (13), (14), (15), (16), (17), (18),  
 22 (19), (20), and (21) as paragraphs (7), (8), (9),  
 23 (10), (12), (13), (14), (15), (16), (17), (18), (19),  
 24 (20), (21), and (22), respectively;

1           (2) by inserting after paragraph (5) the fol-  
2       lowing:

3           “(6) The term ‘destruction or adverse modifica-  
4       tion ’ means a direct or indirect alteration that ap-  
5       preciably diminishes the value of critical habitat as  
6       a whole for the conservation of a listed species.”;  
7       and

8           (3) by inserting after paragraph (10) (as so re-  
9       designated) the following:

10          “(11) The term ‘foreseeable future’ means an  
11       unspecific period of time in the future that is nec-  
12       essary for the Secretary to reasonably determine  
13       that future threats to a species, and the response of  
14       a species to those threats, are likely.”.

15       (b) CONSIDERATION OF ECONOMIC IMPACTS IN LIST-  
16   ING DECISIONS.—Section 4(a)(1) of the Endangered Spe-  
17   cies Act of 1973 (16 U.S.C. 1533(a)(1)) is amended—

18           (1) in subparagraph (A)—

19               (A) by striking “the” and inserting “The”;  
20       and

21               (B) by striking the semicolon at the end  
22       and inserting a period;

23           (2) in subparagraph (B)—

24               (A) by striking “overutilization” and in-  
25       serting “Overutilization”; and

1 (B) by striking the semicolon at the end  
 2 and inserting a period;

3 (3) in subparagraph (C)—

4 (A) by striking “disease” and inserting  
 5 “Disease”; and

6 (B) by striking the semicolon at the end  
 7 and inserting a period;

8 (4) in subparagraph (D)—

9 (A) by striking “the” and inserting “The”;  
 10 and

11 (B) by striking “; or” and inserting a pe-  
 12 riod;

13 (5) in subparagraph (E), by striking “other”  
 14 and inserting “Other”; and

15 (6) by adding at the end the following:

16 “(F) Whether listing the species as an en-  
 17 dangered species or a threatened species would  
 18 result in economic or other impacts on land-  
 19 owners.”.

20 (c) CRITERIA FOR DELISTING A SPECIES.—Section  
 21 4 of the Endangered Species Act of 1973 (16 U.S.C.  
 22 1533) is amended by adding at the end the following:

23 “(j) CRITERIA FOR DELISTING A SPECIES.—The Sec-  
 24 retary shall remove a species included on the list published  
 25 pursuant to subsection (c) if the Secretary determines,



1 after conducting a review of the status of the applicable  
2 endangered species or threatened species using the best  
3 scientific and commercial data available, that—

4 “(1) the listed species is extinct;

5 “(2) the listed species is no longer an endan-  
6 gered species or a threatened species; or

7 “(3) the listed species is not a species.”.

8 (d) RESTRICTIONS ON DESIGNATING CRITICAL HABI-  
9 TAT.—Section 4(a)(3) of the Endangered Species Act of  
10 1973 (16 U.S.C. 1533(a)(3)) is amended by adding at the  
11 end the following:

12 “(C) RESTRICTION ON DESIGNATING CRITICAL  
13 HABITAT.—The Secretary shall not designate habitat as  
14 critical habitat under this paragraph if—

15 “(i) a species is threatened by taking or other  
16 human activity and identification of critical habitat  
17 can be expected to increase the degree of that threat  
18 to the species;

19 “(ii) the present or threatened destruction,  
20 modification, or curtailment of the habitat or range  
21 of a species—

22 “(I) is not a threat to the species; or

23 “(II) is solely a result of causes that can-  
24 not be addressed through management actions;

1           “(iii) areas within the jurisdiction of the United  
2       States provide no more than negligible conservation  
3       value, if any, for a species occurring primarily out-  
4       side the jurisdiction of the United States;

5           “(iv) no areas of the habitat are critical habitat;  
6       or

7           “(v) the Secretary otherwise determines that  
8       designation of the habitat as critical habitat would  
9       not be prudent based on the best scientific data  
10      available.”.

11      (e) UNOCCUPIED AREAS.—Section 3(5)(A) of the  
12    Endangered Species Act of 1973 (16 U.S.C. 1532(5)(A))  
13    is amended by striking clause (ii) and inserting the fol-  
14    lowing:

15           “(ii) specific areas outside the geographical  
16      area occupied by the species at the time the species  
17      is listed in accordance with section 4, as described  
18      in clause (i), if the Secretary determines that—

19           “(I) the geographical area occupied by the  
20      species described in clause (i), at the time of  
21      the listing, is inadequate to ensure the con-  
22      servation of the species; and

23           “(II) it is reasonably certain that the spe-  
24      cific area outside the geographical area occu-  
25      pied by the species—

1 “(aa) will contribute to the conserva-  
2 tion of the species; and

3 “(bb) contains at least 1 physical or  
4 biological feature essential to the conserva-  
5 tion of the species.”.

6 (f) PROTECTIVE REGULATIONS FOR THREATENED  
7 SPECIES.—

8 (1) IN GENERAL.—Section 4(d) of the Endan-  
9 gered Species Act of 1973 (16 U.S.C. 1533(d)) is  
10 amended—

11 (A) in the first sentence, by striking  
12 “Whenever any species” and all that follows  
13 through the period at the end and inserting the  
14 following:

15 “(1) IN GENERAL.—Whenever any species is  
16 listed as a threatened species pursuant this section,  
17 the Secretary shall promulgate species-specific regu-  
18 lations that the Secretary determines are appro-  
19 priate to provide for the conservation of the threat-  
20 ened species.”;

21 (B) in the second sentence, by striking  
22 “The Secretary may by regulation” and insert-  
23 ing the following:

1           “(2) TAKING PROHIBITIONS.—Subject to para-  
2           graph (3), the Secretary, by species-specific regula-  
3           tion, may”; and

4                   (C) in paragraph (2) (as so designated)—

5                           (i) by inserting a comma after “sec-  
6                           tion 9(a)(2)”; and

7                           (ii) by striking “endangered species;”  
8                           and all that follows through the period at  
9                           the end and inserting the following: “en-  
10                           dangered species.

11           “(3) TAKING OF RESIDENT SPECIES.—With re-  
12           spect to the taking of resident species of fish or  
13           wildlife, a regulation promulgated under paragraph  
14           (2) shall apply in any State which has entered into  
15           a cooperative agreement pursuant to section 6(c)  
16           only to the extent that the regulation has also been  
17           adopted by that State.”.

18           (2) EFFECTIVE DATE.—The amendments made  
19           by paragraph (1) shall apply to species listed or re-  
20           classified as threatened species under section 4 of  
21           the Endangered Species Act of 1973 (16 U.S.C.  
22           1533) on, prior to, or after the date of enactment  
23           of this Act.

24           (g) CONSULTATIONS.—

1           (1) EXPEDITED CONSULTATIONS.—Section 7(a)  
2       of the Endangered Species Act of 1973 (16 U.S.C.  
3       1536(a)) is amended by adding at the end the fol-  
4       lowing:

5       “(5) EXPEDITED CONSULTATIONS.—

6           “(A) IN GENERAL.—On request of a Federal  
7       agency, and in cooperation with a prospective permit  
8       or license applicant, as applicable, the Secretary and  
9       the Federal agency shall initiate an expedited con-  
10      sultation with respect to an agency action that has  
11      minimal or predictable effects on a listed species or  
12      a critical habitat based on prior consultations the  
13      Federal agency has conducted with the Secretary  
14      under this subsection.

15       “(B) TIMELINE.—

16           “(i) IN GENERAL.—Subject to clause (ii),  
17       if a Federal agency requests an expedited con-  
18       sultation under subparagraph (A) after deter-  
19       mining that the agency action to be carried out  
20       by the Federal agency has minimal or predict-  
21       able effects on a listed species or a critical habi-  
22       tat, the Secretary shall, not later than 30 days  
23       after the date on which the Secretary receives  
24       the determination of the Federal agency, ap-

1           prove or deny the request for an expedited con-  
2           sultation.

3           “(ii) EXTENDED TIMELINE.—On mutual  
4           agreement between the Secretary and the Fed-  
5           eral agency, the Secretary may extend the  
6           timeline described in clause (i) to a period of  
7           not more 60 days after the date on which the  
8           Federal agency requests an expedited consulta-  
9           tion under subparagraph (A).”.

10          (2) CONSULTATIONS NOT REQUIRED FOR PER-  
11          MITS FOR DREDGED OR FILL MATERIAL.—Section  
12          7(a) of the Endangered Species Act of 1973 (16  
13          U.S.C. 1536(a)) (as amended by paragraph (1)) is  
14          amended by adding at the end the following:

15          “(6) NONAPPLICABILITY TO NATIONWIDE PERMITS  
16          FOR DREDGED OR FILL MATERIAL.—The requirements of  
17          this subsection shall not apply to any agency action relat-  
18          ing to the reissuance of a general permit on a nationwide  
19          basis under section 404 of the Federal Water Pollution  
20          Control Act (33 U.S.C. 1343).”.

21          (h) TIMELINES FOR AGENCY ACTIONS.—Section  
22          7(b)(1) of the Endangered Species Act of 1973 (16 U.S.C.  
23          1536(b)(1)) is amended—

24                 (1) in subparagraph (A), by striking “90-day”  
25                 and inserting “60-day”; and

1 (2) in subparagraph (B)—

2 (A) in the matter preceding clause (i)—

3 (i) by striking “90 days” and insert-  
4 ing “60 days”; and

5 (ii) by striking “90th day” and insert-  
6 ing “60th day”;

7 (B) in clause (i), in the matter preceding  
8 subclause (I), by striking “150th day” and in-  
9 serting “100th day”; and

10 (C) in clause (ii), by striking “150” and  
11 inserting “100”.

12 (i) REQUIREMENTS FOR DESIGNATING CRITICAL  
13 HABITAT.—Section 4(a)(3) of the Endangered Species  
14 Act of 1973 (16 U.S.C. 1533(a)(3)) (as amended by sub-  
15 section (d)) is amended by adding at the end the following:

16 “(D) REQUIREMENTS FOR DESIGNATING CRITICAL  
17 HABITAT.—In designating habitat as critical habitat  
18 under this paragraph, the Secretary shall designate only  
19 the abiotic and biotic setting that currently or periodically  
20 contains the resources and conditions necessary to support  
21 1 or more life processes of a species.”.

22 (j) BIOLOGICAL OPINIONS.—Section 7 of the Endan-  
23 gered Species Act of 1973 (16 U.S.C. 1536) is amended  
24 by adding at the end the following:

25 “(q) BIOLOGICAL OPINIONS.—

1           “(1) DEFINITION OF BIOLOGICAL OPINION.—In  
2           this subsection, the term ‘biological opinion’ means  
3           the document that states the opinion of the Sec-  
4           retary as to whether or not an agency action is like-  
5           ly—

6                   “(A) to jeopardize the continued existence  
7                   of a listed species; or

8                   “(B) result in the destruction or adverse  
9                   modification of critical habitat of that species.

10           “(2) REQUIREMENTS.—A biological opinion  
11           shall include—

12                   “(A) a summary of the information on  
13                   which the biological opinion is based;

14                   “(B) a detailed discussion of the environ-  
15                   mental baseline of the listed species and critical  
16                   habitat;

17                   “(C) a detailed discussion of the effects of  
18                   the agency action on the listed species or crit-  
19                   ical habitat; and

20                   “(D) the opinion of the Secretary on  
21                   whether the agency action is—

22                           “(i) likely to jeopardize the continued  
23                           existence of a listed species or result in the  
24                           destruction or adverse modification of crit-



1                   ical habitat, which shall be known as a  
2                   ‘jeopardy’ biological opinion; or

3                   “(ii) not likely to jeopardize the con-  
4                   tinued existence of a listed species or result  
5                   in the destruction or adverse modification  
6                   of critical habitat, which shall be known as  
7                   a ‘no jeopardy’ biological opinion.

8                   “(3) ADOPTION OF ENTIRE INITIATION PACK-  
9                   AGE.—In a biological opinion, the Secretary may  
10                  adopt all or part of the initiation package of a Fed-  
11                  eral agency prepared in accordance with section  
12                  402.14(c) of title 50, Code of Federal Regulations  
13                  (as in effect on October 28, 2019).

14                  “(4) REASONABLE AND PRUDENT ALTER-  
15                  NATIVE MEASURES.—

16                  “(A) DEFINITION OF REASONABLE AND  
17                  PRUDENT ALTERNATIVE.—In this paragraph,  
18                  the term ‘reasonable and prudent alternative’  
19                  means an alternative action identified during a  
20                  formal consultation that—

21                         “(i) can be implemented in a manner  
22                         consistent with the intended purpose of the  
23                         action;

1 “(ii) can be implemented consistent  
 2 with the scope of the legal authority and  
 3 jurisdiction of a Federal agency; and

4 “(iii) is economically and techno-  
 5 logically feasible.

6 “(B) INCLUSION OF REASONABLE AND  
 7 PRUDENT ALTERNATIVES.—In preparing a bio-  
 8 logical opinion, the Secretary shall include rea-  
 9 sonable and prudent alternatives, as applicable.

10 “(C) NO REASONABLE AND PRUDENT AL-  
 11 TERNATIVES.—If the Secretary is unable to de-  
 12 velop reasonable and prudent alternatives to in-  
 13 clude in a biological opinion in accordance with  
 14 subparagraph (B), the Secretary shall indicate  
 15 that, to the knowledge of the Secretary, no rea-  
 16 sonable or prudent alternatives exist.”.

17 **SEC. 5. EXPEDITING COMPLETION OF THE MOUNTAIN VAL-**  
 18 **LEY PIPELINE.**

19 (a) DEFINITION OF MOUNTAIN VALLEY PIPELINE.—  
 20 In this section, the term “Mountain Valley Pipeline”  
 21 means the Mountain Valley Pipeline project, as generally  
 22 described and approved in Federal Energy Regulatory  
 23 Commission Docket Nos. CP16–10 and CP19–477.

24 (b) EXPEDITED APPROVAL.—Notwithstanding any  
 25 other provision of law, not later than 21 days after the

1 date of enactment of this Act and for the purpose of facili-  
2 tating the completion of the Mountain Valley Pipeline—

3 (1) the Secretary of the Army shall issue all  
4 permits or verifications necessary—

5 (A) to complete the construction of the  
6 Mountain Valley Pipeline across the waters of  
7 the United States; and

8 (B) to allow for the operation and mainte-  
9 nance of the Mountain Valley Pipeline;

10 (2) the Secretary of Agriculture shall amend  
11 the Land and Resource Management Plan for the  
12 Jefferson National Forest in a manner that is sub-  
13 stantively identical to the record of decision with re-  
14 spect to the Mountain Valley Pipeline issued on Jan-  
15 uary 11, 2021; and

16 (3) the Secretary of the Interior shall—

17 (A) reissue the biological opinion and inci-  
18 dental take statement for the Mountain Valley  
19 Pipeline in a manner that is substantively iden-  
20 tical to the biological opinion and incidental  
21 take statement previously issued on September  
22 4, 2020; and

23 (B) grant all necessary rights-of-way and  
24 temporary use permits in a manner that is sub-  
25 stantively identical to those permits approved in

1           the record of decision with respect to the Moun-  
2           tain Valley Pipeline issued on January 14,  
3           2021.

4           (c) JUDICIAL REVIEW.—No action taken by the Sec-  
5   retary of the Army, the Federal Energy Regulatory Com-  
6   mission, the Secretary of Agriculture, or the Secretary of  
7   the Interior that grants an authorization, permit,  
8   verification, biological opinion, incidental take statement,  
9   or any other approval related to the Mountain Valley Pipe-  
10  line, including the issuance of any authorization, permit,  
11  verification, authorization, biological opinion, incidental  
12  take statement, or other approval described in subsection  
13  (b), shall be subject to judicial review.

14          (d) EFFECT.—This section preempts any statute (in-  
15  cluding any other section of this Act), regulation, judicial  
16  decision, or agency guidance that is inconsistent with the  
17  issuance of any authorization, permit, verification, author-  
18  ization, biological opinion, incidental take statement, or  
19  other approval described in subsection (b).

○