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May 15, 2025

VIA EMAIL

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The Honorable Charles E. Schumer
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The Honorable Mike Johnson
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The Honorable Steve Scalise
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Re: H.R. 1897, “ESA Amendments Act of 2025” (Rep. Westerman, R-AR)

Dear Esteemed Congressional Leaders:

We, the undersigned Attorneys General, as chief legal officers of our states, respectfully request that you not bring H.R. 1897 (“Bill”), the “ESA Amendments Act of 2025,” to the floor for a vote. For the reasons detailed below, the Bill would remove key provisions in the Federal Endangered Species Act (“ESA”) which are essential for the protection of our nation’s critically important natural heritage. The Bill would also hinder our states’ efforts to work cooperatively to prevent the extinction of ESA-protected species.

President Richard Nixon signed the ESA into law in 1973 in response to the extinction crisis, creating “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”¹ The central purposes of the ESA are to provide a means for the conservation (*i.e.*, recovery) of ecosystems upon which both endangered and threatened species depend and to provide a program for such species’ recovery.²

For over 50 years, the ESA has provided significant benefits and recovery success stories

for imperiled and at-risk species, protecting our nation's priceless and irreplaceable natural heritage. Indeed, since its enactment over fifty years ago, 39 listed species have fully recovered, and the ESA has prevented the extinction of more than 99% of species under its protection.³ As but one example, our national bird and symbol, the bald eagle (*Haliaeetus leucocephalus*), once facing extinction across most of its range, has now recovered due to the protections of the ESA, and was delisted in 2007.

The ESA is quite flexible in providing many alternatives that allow economic growth while continuing to protect biodiversity, preventing the extinction of our nation's most vulnerable species, promoting the recovery of hundreds of species, and securing attendant economic benefits. In fact, the vast majority of proposed development projects under ESA review proceed without any required project changes.⁴ And when any project conditions or design modifications are required to avoid or mitigate harmful impacts to imperiled species or their habitat, proposed projects still may proceed, but without being unduly environmentally destructive, benefitting everyone.

Our states have important interests in the conservation of our natural resources and environment, including preventing and remedying harm to endangered and threatened fish, wildlife, and plant species within our borders. In some of our states, fish and wildlife resources are owned and held by the state for the benefit of all state residents, and many of our states have invested significant resources into protecting rare species. The ESA already specifically directs the U.S. Fish and Wildlife Service ("FWS") and the National Marine Fisheries Service ("NMFS") (collectively, the "Services"), which implement the ESA, to cooperate with the states, and gives the states a distinct role in ensuring faithful and informed implementation of the ESA's conservation mandates.⁵ As a result, our states have seen significant benefits and steps toward the recovery of at-risk species. For example, Massachusetts populations of the Atlantic Coast piping plover (*Charadrius melodus*), which is listed as a threatened species along most of the East Coast, have increased nearly tenfold since the population was federally listed in 1985 as a result of FWS's planning and cooperative efforts among federal, state, and local partners.⁶ In California, the ESA also has been instrumental in recovering the near-extinct California condor through a federal-state captive breeding program.⁷

The ESA's species and critical habitat protections also promote national economic benefits from tourism and recreation, including bird watching and whale watching. Indeed, wildlife tourism generates billions of dollars annually for all fifty states, while supporting thousands of private sector jobs.⁸ FWS reports that in 2022 alone, over 145 million people engaged in wildlife tourism in the United States, leading to increased jobs in both the private and public sectors.⁹ Residential land values are also higher when land is near protected nature preserves.¹⁰

A robust and effective ESA is essential to protecting our states' interests in conserving wildlife and habitat as well as continuing national progress toward the conservation of endangered and threatened species and the habitats upon which they depend for their survival and recovery. The Bill's amendments, however, would significantly weaken the critical substantive and procedural safeguards of the ESA and thereby adversely affect the fish, wildlife and plant resources of our states, and adversely affect our states' ability to cooperate in preventing federally listed species from sliding further toward extinction. With the weakening of federal protections, the burden of protecting vulnerable species and habitats would fall more heavily on our states, detracting from our efforts to carry out our own programs and increasing

state costs and burdens. Our states also are not able to wholly fill the resulting gaps in federal protections for species whose ranges fall partially outside of our state borders.

The Bill proposes to weaken the following key provisions of the ESA, among other provisions:

Species Listing and Critical Habitat Designation. The ESA achieves its overriding conservation purpose through many programs, including Section 4's requirement for the Services to list an imperiled species as "endangered" or "threatened" and to designate specified "critical habitat" for each listed species.¹¹ Among other changes, the Bill proposes to do the following:

- Require an analysis of economic impacts concurrently with any listing decision,¹² which is directly at odds with the ESA's current requirement that listing decisions "shall" be made "solely on the basis of the best scientific and commercial data available."¹³ The additional time and resources needed to compile and present such economic information, especially given recent cuts to federal staffing, will further delay the Services' backlog of listing decisions, harming at-risk species.
- Extend the deadline for the Services to respond to a listing petition, for some categories of species, from 12 months to 5 years or more.¹⁴ As time is of the essence in listing many species that are already declining and presently at risk of extinction, any unreasonable extension of the ESA's existing listing deadlines would result in further harm to imperiled species. Indeed, at least 47 species have gone extinct while awaiting an ESA listing decision.¹⁵
- Eliminate the application of the "take" prohibition to all newly listed threatened species by requiring the Services to only adopt species-specific 4(d) rules and imposing additional regulatory hurdles for such species-specific rules.¹⁶ But FWS simply does not have the capacity or resources to promulgate species-specific rules for such threatened species, and species would suffer while FWS worked through its backlog.¹⁷
- Weaken the protections for threatened species by defining the term "foreseeable future" to only include future threats that qualify as being "more likely than not," to occur, thereby reducing the Services' ability to consider the effects of significant future threats that are not reasonably quantifiable or predictable.¹⁸
- Prohibit the Services from designating critical habitat on privately-owned or controlled lands if they are subject to a land management plan.¹⁹
- Eliminate or delay judicial review for some listing and delisting decisions, making it more difficult to hold the Services accountable and to ensure necessary legal protections are actually implemented for vulnerable species.²⁰

Inter-Agency Consultation. Section 7 places an affirmative obligation on federal agencies to consult with the Services to ensure that any action they propose to authorize, fund, or carry out "is not likely to jeopardize the continued existence of any endangered...or threatened species or result in the destruction or adverse modification of" any designated critical habitat."²¹ Among other things, the Bill proposes to raise the jeopardy/adverse modification test to an impossibly high standard by limiting the Services to issuing a jeopardy opinion only when they determine that the *action itself*, standing alone, will cause jeopardy.²² The ESA currently requires a consideration of short-term, long-term, site-specific, regional, and cumulative effects.²³ Limiting the jeopardy/adverse modification analysis to only the action itself would in essence sanction a piecemeal evaluation of the action's adverse effects on listed species and critical habitat which will likely obscure or ignore many of the action's direct, indirect, and cumulative impacts.

Take Prohibition and Incidental Take Permitting. Section 9 makes it unlawful for any person to “take” endangered and threatened species, prohibiting harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting species, or attempting to engage in any such conduct.²⁴ Although the Services recently proposed to rescind their regulatory definitions of “harm,”²⁵ the ESA’s implementing regulations have long defined “harm” to include not only acts that directly kill or injure fish or wildlife, but also significant habitat modification or degradation that “actually kills or injures” fish or wildlife “by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”²⁶ Habitat loss is the primary cause of species decline, and species need habitat to survive as well as recover—both are mandatory goals of the ESA.²⁷ The Bill would weaken species protection by taking the following steps, among others:

- Amending the “incidental take” permit provisions in Section 10 to prohibit the Services from seeking additional mitigation measures through any federal, state, or local process, as well as exempting any incidental take permit from Section 7 consultation and National Environmental Policy Act (“NEPA”) review.²⁸ Section 7 consultation and NEPA review of incidental take permit applications serve both prospective permittees and any covered species by ensuring that potential impacts of the permitted action on listed species and their habitats are fully evaluated, and that additional mitigation measures necessary to protect these species and habitats in compliance with Section 10 are implemented.
- Preventing the Services from requiring in a Section 7 “incidental take statement” that an agency/applicant offset or mitigate impacts to listed species and critical habitat.²⁹ Offsetting and mitigating measures are important to ensure that federal agencies and their permittees fully minimize and mitigate the adverse impacts of any take of listed species that is authorized in an incidental take statement that accompanies a Section 7 biological opinion.

The provisions of the ESA that the Bill proposes to substantially amend have existed for decades, throughout numerous administrations, and have benefited our states’ and our nation’s most at-risk and imperiled species as well as our economies—striking a balance between conservation and economic interests. We accordingly respectfully urge you to not bring H.R. 1897 to the floor, so that we can continue to protect our natural heritage as a nation, including the many attendant benefits to our states’ and the nation’s environment and economy from a robust ESA. Thank you for your leadership and consideration of this important matter.

Sincerely,



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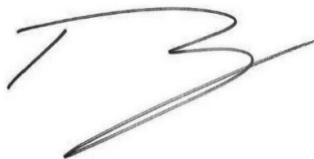
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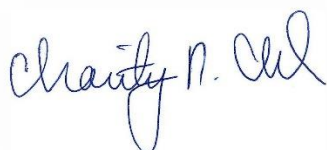
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Cc: The Honorable Bruce Westerman, U.S. House Chair, Committee on Natural Resources
The Honorable Jared Huffman, U.S. House Ranking Member, Committee on Natural Resources
The Honorable Harriet Hageman, U.S. House Chair, Natural Resources Subcommittee on Water, Wildlife and Fisheries
The Honorable Shelley Moore Capito, U.S. Senate Chair, Environment and Public Works
The Honorable Sheldon Whitehouse, U.S. Senate Ranking Member, Environment and Public Works

¹ *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).

² 16 U.S.C. §§ 1531(b), 1532(3); *Center for Native Ecosys. v. Cable*, 509 F.3d 1310, 1322 (10th Cir. 2007); *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004); *Sierra Club v. U.S. Fish & Wildlife Serv.*, 245 F.3d 434, 438 (5th Cir. 2001).

³ Noah Greenwald, et al., *Extinction and the U.S. Endangered Species Act*, PEERJ (2019), available at <https://peerj.com/articles/6803/>.

⁴ Jacob W. Malcolm & Ya-Wei Li, *Data Contradict Common Perceptions about a Controversial Provision of the US Endangered Species Act*, 112 PROC. NATL. ACAD. SCI. U.S.A., 15767, 15844 – 15849 (2015) (from 2008 – 2015, “no project [was] stopped or extensively altered as a result of FWS concluding either jeopardy or destruction/adverse modification of critical habitat”), available at <https://doi.org/10.1073/pnas.1516938112>.

⁵ 16 U.S.C. § 1535.

⁶ Recovery efforts have been particularly successful in Massachusetts, where the East Coast’s largest piping plover breeding population has rebounded from fewer than 140 pairs to nearly 1,200 pairs in 2024, increasing more than 1,100 percent since the species was listed in 1986. See *Piping Plover*, MASS. DIV. OF FISHERIES AND WILDLIFE (April 23, 2025), available at: <https://www.mass.gov/info-details/piping-plover> (last visited May 12, 2025).

⁷ See <https://www.fws.gov/media/2024-california-condor-population-status-report> and FWS California Condor Recovery Program, available at <https://www.fws.gov/cno/es/CalCondor/Condor.cfm>

⁸ U.S. FISH AND WILDLIFE SERVICE, 2022 ECONOMIC CONTRIBUTIONS OF WILDLIFE WATCHING IN THE UNITED

STATES (2024), available at <https://www.fws.gov/sites/default/files/documents/2024-06/2022-economic-contributions-of-wildlife-watching-in-the-united-states.pdf>.

⁹ *Id.*

¹⁰ See John Loomis et. al., *Ecosystem Service Values Provided by National Parks to Residential Property Owners*, 220 ECOLOGICAL ECONOMICS 108175 (2024) (estimating that house sale prices were on average 9.8% higher for houses within 2km of National Park boundaries), available at <https://www.sciencedirect.com/science/article/abs/pii/S0921800924000727>.

¹¹ 16 U.S.C. §§ 1533(a)(1)-(3), (b)(1).

¹² ESA Amendments Act of 2025, H.R. 1897, 119th Cong., § 405 (2025).

¹³ 16 U.S.C. § 1533(b)(1)(A) (emphasis added).

¹⁴ ESA Amendments Act of 2025, H.R. 1897, 119th Cong., § 101 (2025).

¹⁵ Greenwald, *supra* note 3.

¹⁶ ESA Amendments Act of 2025, H.R. 1897, 119th Cong., § 301 (2025).

¹⁷ While proponents of H.R. 1897 argue that NOAA, through NMFS, has promulgated species-specific rules for each new threatened species listing, NMFS has jurisdiction over fewer than 200 ESA-listed species. By contrast, FWS manages 1,684 ESA-listed species.

¹⁸ ESA Amendments Act of 2025, H.R. 1897, 119th Cong., § 2(a) (2025).

¹⁹ *Id.* § 305(a).

²⁰ *Id.* §§ 101(b), 303.

²¹ 16 U.S.C. § 1536(a)(2).

²² ESA Amendments Act of 2025, H.R. 1897, 119th Cong., § 504 (2025).

²³ 16 U.S.C. § 1536(b)(3)(A); see e.g., *Appalachian Voices v. U.S. Dep't of the Interior*, 25 F.4th 259, 271-76 (4th Cir. 2022); *Miccosukee Tribe of Indians of Fla. v. United States*, 566 F.3d 1257, 1270-71 (11th Cir. 2009); *Pac. Coast Fed'n of Fishermen's Ass'n v. U.S. Bureau of Reclam.*, 426 F.3d 1082, 1090-95 (9th Cir. 2005); *Pac. Coast Fed'n of Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028, 1034-38 (9th Cir. 2001), *Connor v. Burford*, 848 F.2d 1441, 1453-54, 1457 (9th Cir. 1988).

²⁴ 16 U.S.C. §§ 1538(a)(1)(B); 1532(19).

²⁵ 90 Fed.Reg. 16,102 (Apr. 17, 2025).

²⁶ 50 C.F.R. §§ 17.3 (FWS harm definition), see also *id.* 222.102 (NMFS harm definition); *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995). The protection of endangered and threatened species' habitat supports the broad purpose of the ESA – to “extend protection against activities that cause the precise harms Congress enacted the statute to avoid.” *Id.* at 698.

²⁷ 16 U.S.C. §§ 1531(b), (c), 1532(3), 1536(a)(1); Aaron Hogue & Kathryn Breon, *The Greatest Threat to Species*, CONSERVATION SCIENCE AND PRACTICE, May 19, 2022, at 12670, available at <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/csp2.12670>.

²⁸ ESA Amendments Act of 2025, H.R. 1897, 119th Cong., §§ 202(a), 203 (2025).

²⁹ *Id.* § 501.