

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO RULES COMMITTEE PRINT 117-47  
OFFERED BY MR. PERRY OF PENNSYLVANIA**

Strike the text of the print and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Endangered Species  
3 Management Self-Determination Act”.

**4 SEC. 2. DEFINITION OF ESA.**

5       In this Act, the term “ESA” means the Endangered  
6 Species Act of 1973 (16 U.S.C. 1531 et seq.).

**7 SEC. 3. FINDINGS.**

8       Congress finds that—

9           (1) the ESA was passed in 1973 as a means of  
10       protecting and recovering species and has not been  
11       substantially revised in over 25 years;

12           (2) the ESA has not achieved its stated goal of  
13       recovering threatened species or endangered species;

14           (3) of the species listed in accordance with the  
15       ESA, less than 1 percent of the total number of spe-  
16       cies in the United States have been recovered and  
17       removed from the list, largely due to data errors or  
18       other factors;

19           (4) there is—

1 (A) no comprehensive independent study of  
2 the costs or benefits of the ESA;

3 (B) no full accounting of how much the  
4 Federal Government and State and local gov-  
5 ernments spend to implement, enforce, and  
6 comply with the ESA; and

7 (C) no meaningful effort to account for the  
8 costs the ESA imposes on the private sector;

9 (5) the ESA effectively penalizes landowners for  
10 owning endangered species habitat by forcing them  
11 to bear the cost of conservation;

12 (6) the regulatory listing process under the  
13 ESA has become a tool for environmentalists to un-  
14 dermine, slow down, or halt construction of infra-  
15 structure projects, hampering economic growth and  
16 employment; and

17 (7) litigation stemming from the ESA and some  
18 resulting settlements between the litigants and the  
19 Federal Government have made the ESA even more  
20 unworkable, to the detriment of species.

21 **SEC. 4. AMENDMENTS TO THE ENDANGERED SPECIES ACT**  
22 **OF 1973.**

23 (a) DETERMINATIONS OF ENDANGERED SPECIES  
24 AND THREATENED SPECIES.—Section 4 of the Endan-  
25 gered Species Act of 1973 (16 U.S.C. 1533) is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (1), by inserting “, with  
3 the consent of the Governor of each State in  
4 which the endangered species or threatened spe-  
5 cies is present,” after “The Secretary”; and

6 (B) in paragraph (2)(A)(ii), by inserting “,  
7 with the consent of the Governor of each State  
8 in which the endangered species or threatened  
9 species is present,” after “, who”;

10 (2) in subsection (b)—

11 (A) by striking paragraph (3);

12 (B) by redesignating paragraphs (4)  
13 through (8) as paragraphs (3) through (7), re-  
14 spectively;

15 (C) in paragraph (3) (as so redesignated),  
16 by striking “paragraphs (5) and (6) of this sub-  
17 section” and inserting “paragraphs (4) and  
18 (5)”;

19 (D) in paragraph (5)(A) (as so redesign-  
20 ated), by striking “paragraph (5)(A)(i)” and  
21 inserting “paragraph (4)(A)(i)”;

22 (E) in paragraph (6) (as so redesignated),  
23 by striking “paragraph (4), (5), or (6) of this  
24 subsection” and inserting “paragraph (3), (4),  
25 or (5)”;

1 (F) by adding at the end the following:

2 “(8) DEFINITION OF BEST SCIENTIFIC AND  
3 COMMERCIAL DATA.—In this subsection, the term  
4 ‘best scientific and commercial data’ includes any  
5 scientific evidence made available to the Secretary by  
6 any State agency.”;

7 (3) by striking subsection (c) and inserting the  
8 following:

9 “(c) LISTS.—

10 “(1) DEFINITION OF JOINT RESOLUTION.—In  
11 this subsection, the term ‘joint resolution’ means  
12 only a joint resolution the matter after the resolving  
13 clause of which is as follows: ‘That Congress ap-  
14 proves the lists relating to endangered species and  
15 threatened species submitted by the Secretary of the  
16 Interior on \_\_\_\_\_.’ (the blank space being  
17 appropriately filled in).

18 “(2) LISTS SUBMITTED TO CONGRESS.—The  
19 Secretary of the Interior shall submit to Congress—

20 “(A) a list of all species determined by the  
21 Secretary of the Interior or the Secretary of  
22 Commerce to be endangered species; and

23 “(B) a list of all species determined by the  
24 Secretary of the Interior or the Secretary of  
25 Commerce to be threatened species.

1           “(3) CONGRESSIONAL APPROVAL.—The lists de-  
2           scribed in paragraph (2) shall not take effect until  
3           a joint resolution described in paragraph (1) is en-  
4           acted.

5           “(4) CONTENTS OF LISTS.—Each list described  
6           in paragraph (2) shall—

7                   “(A) refer to the species included on the  
8                   list by any scientific and common name; and

9                   “(B) specify—

10                           “(i) with respect to the species over  
11                           what portion of the range of the species  
12                           that the species is endangered or threat-  
13                           ened; and

14                           “(ii) any critical habitat within the  
15                           range.

16           “(5) PUBLICATION.—The Secretary of the Inte-  
17           rior shall publish in the Federal Register each list  
18           approved in accordance with paragraph (3).

19           “(6) AUTOMATIC REMOVAL.—

20                   “(A) IN GENERAL.—On the date that is 5  
21                   years after the date on which a joint resolution  
22                   is enacted in accordance with this subsection,  
23                   each species listed on a list approved by the  
24                   joint resolution shall be removed from the list.

25                   “(B) PETITION FOR RELISTING.—

1                   “(i) IN GENERAL.—The Secretary of  
2                   the Interior, in consultation with the Gov-  
3                   ernor of each State in which the endan-  
4                   gered species or threatened species is  
5                   present, may submit to Congress a list  
6                   that includes any species that was removed  
7                   under subparagraph (A).

8                   “(ii) CONGRESSIONAL APPROVAL.—  
9                   The list described in clause (i) shall not  
10                  take effect until a joint resolution de-  
11                  scribed in paragraph (1) is enacted.”;

12                  (4) in subsection (d)—

13                         (A) in the first sentence, by striking  
14                         “Whenever any species” and inserting “Except  
15                         as provided in subsection (j), whenever any spe-  
16                         cies”;

17                         (B) in the second sentence, by striking  
18                         “The Secretary may” and inserting “Except as  
19                         provided in subsection (j), the Secretary may”;

20                  (5) in subsection (f)(1), by striking “The Sec-  
21                  retary shall” and inserting “Except as provided in  
22                  subsection (j), the Secretary shall”;

23                  (6) in subsection (g)—

24                         (A) in paragraph (1), by striking “The  
25                         Secretary shall” and inserting “Except as pro-

1           vided in subsection (j), the Secretary shall”;  
2           and

3                   (B) in paragraph (2), by striking “para-  
4                   graph 7 of subsection (b) of this section” and  
5                   inserting “subsection (b)(6)”;

6           (7) in subsection (h)—

7                   (A) in the matter preceding paragraph (1),  
8                   by striking “The Secretary shall” and inserting  
9                   “Except as provided in subsection (j), the Sec-  
10                  retary shall”;

11                  (B) by striking paragraphs (1) and (2);  
12                  and

13                  (C) by redesignating paragraphs (3) and  
14                  (4) as paragraphs (1) and (2), respectively;  
15                  (8) in subsection (i)—

16                   (A) by striking “subsection (b)(5)(A)(ii) of  
17                   this section” and inserting “subsection  
18                   (b)(4)(A)(ii)”;

19                  (B) by striking “or if the Secretary fails to  
20                  adopt a regulation pursuant to an action peti-  
21                  tioned by a State agency under subsection  
22                  (b)(3),”; and

23                  (C) by striking “or petition”; and  
24                  (9) by adding at the end the following:

1           “(j) INTRASTATE ENDANGERED SPECIES OR  
2 THREATENED SPECIES.—

3           “(1) DEFINITIONS.—In this subsection:

4                   “(A) GOVERNOR OF A STATE.—The term  
5 ‘Governor of a State’ means the Governor of a  
6 State in which an intrastate endangered species  
7 or intrastate threatened species is present.

8                   “(B) INTRASTATE ENDANGERED SPE-  
9 CIES.—The term ‘intrastate endangered species’  
10 means an endangered species that the Governor  
11 of a State determines is present only within the  
12 State.

13                   “(C) INTRASTATE THREATENED SPE-  
14 CIES.—The term ‘intrastate threatened species’  
15 means a threatened species that the Governor  
16 of a State determines is present only within the  
17 State.

18           “(2) CURRENTLY LISTED SPECIES.—

19                   “(A) IN GENERAL.—The Governor of a  
20 State may regulate any intrastate endangered  
21 species or any intrastate threatened species list-  
22 ed under this section that is listed before the  
23 date of enactment of this subsection.

24                   “(B) AUTHORITY OF GOVERNOR.—If the  
25 Governor of a State elects to regulate an intra-



1 state endangered species or an intrastate  
2 threatened species under subparagraph (A), the  
3 Governor of the State shall, with respect to the  
4 management of the intrastate endangered spe-  
5 cies or intrastate threatened species on any  
6 land within the State, have the exclusive au-  
7 thority to, in accordance with the purposes and  
8 policy of this Act—

9 “(i) promulgate or enforce any regula-  
10 tion or guidance;

11 “(ii) designate a critical habitat;

12 “(iii) issue a permit or license;

13 “(iv) develop or implement a recovery  
14 plan; and

15 “(v) establish any goal with respect to  
16 the recovery plan.

17 “(C) APPLICABLE LAW.—The management  
18 described in subparagraph (B) shall be subject  
19 to the law of the State in which the land, in-  
20 cluding public lands (as defined in section 103  
21 of the Federal Land Policy and Management  
22 Act of 1976), is located.

23 “(3) NEWLY LISTED SPECIES.—

24 “(A) IN GENERAL.—The Governor of a  
25 State may, before the Secretary or any other

1 person, regulate any intrastate endangered spe-  
2 cies or any intrastate threatened species listed  
3 under this section that is listed on or after the  
4 date of enactment of this subsection.

5 “(B) APPLICABILITY.—If the Governor of  
6 a State elects to regulate an intrastate endan-  
7 gered species or an intrastate threatened spe-  
8 cies under subparagraph (A), subparagraphs  
9 (B) and (C) of paragraph (2) shall apply.

10 “(C) JUDICIAL REVIEW.—Any action by  
11 the Governor of a State under this subsection  
12 shall not be subject to judicial review in any  
13 court of the United States or in any State  
14 court.”.

15 (b) COST ACCOUNTING.—The Endangered Species  
16 Act of 1973 is amended by inserting after section 12 (16  
17 U.S.C. 1541) the following:

18 **“SEC. 12A. COST ACCOUNTING REPORT.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) DIRECT COSTS.—The term ‘direct costs’  
21 includes—

22 “(A) Federal agency obligations related to  
23 the cost of any study;

24 “(B) capital, operation, maintenance, and  
25 replacement costs; and

1                   “(C) staffing costs.

2                   “(2) INDIRECT COSTS.—The term ‘indirect  
3 costs’ includes foregone power generation costs and  
4 replacement power costs, including the net costs of  
5 any transmission of power.

6                   “(b) COST OF COMPLIANCE.—

7                   “(1) IN GENERAL.—Except with respect to  
8 intrastate endangered species or intrastate threat-  
9 ened species regulated by a Governor of a State  
10 under section 4(j), the Administrator of the Bonne-  
11 ville Power Administration, the Administrator of the  
12 Southeastern Power Administration, the Adminis-  
13 trator of the Southwestern Power Administration,  
14 and the Administrator of the Western Area Power  
15 Administration shall each include in a monthly bill-  
16 ing statement submitted to each customer of the re-  
17 spective Administration the share of the direct and  
18 indirect costs to the customer incurred by the Ad-  
19 ministration related to complying with this Act.

20                   “(2) ASSISTANCE IN IDENTIFYING COSTS.—The  
21 Director of the Bureau of Reclamation shall assist  
22 the administrators described in paragraph (1) with  
23 identifying the costs described in that paragraph.

24                   “(c) REPORT.—Not later than January 30 of each  
25 year, each of the administrators described in subsection

1 (b)(1), in coordination with the Director of the Bureau  
2 of Reclamation, shall submit to the Committee on Envi-  
3 ronment and Public Works of the Senate and the Com-  
4 mittee on Natural Resources of the House of Representa-  
5 tives a report estimating the costs described in subsection  
6 (b)(1)—

7           “(1) with respect to the Western Area Power  
8 Administration, on a project-by-project basis; and

9           “(2) with respect to each of the Administrations  
10 described in subsection (b)(1) (except the Western  
11 Power Administration), on a systemwide basis.

12 **“SEC. 12B. PROPERTY RIGHTS.**

13           “(a) DETERMINATION OF PROPOSED USE OF REAL  
14 PROPERTY.—

15           “(1) IN GENERAL.—Any owner or lessee of any  
16 real property may submit to the Secretary of the In-  
17 terior an application that includes any proposed use  
18 of the real property.

19           “(2) DETERMINATION.—

20           “(A) IN GENERAL.—Not later than 90  
21 days after the date on which the application de-  
22 scribed in paragraph (1) is submitted, the Sec-  
23 retary of the Interior shall submit to the owner  
24 or lessee in writing a determination as to

1           whether the proposed use will violate any provi-  
2           sion of this Act.

3           “(B) FAILURE TO RESPOND.—If the Sec-  
4           retary of the Interior fails to respond before the  
5           expiration of the 90-day period described in  
6           subparagraph (A), the proposed use shall be  
7           considered to not violate any provision of this  
8           Act.

9           “(3) EFFECT OF DETERMINATIONS.—

10           “(A) AFFIRMATIVE DEFENSE.—It is an af-  
11           firmative defense to any civil penalty assessed  
12           under section 11 or to any civil action, civil  
13           suit, or prosecution brought under that section  
14           that the owner or lessee of real property reason-  
15           ably relied on a determination, including a de-  
16           termination that resulted under paragraph  
17           (2)(B), that a proposed use will not violate any  
18           provision of this Act.

19           “(B) COMPENSATION FOR UNFAVORABLE  
20           DETERMINATIONS.—If the Secretary of the In-  
21           terior determines that a proposed use will vio-  
22           late a provision of this Act, the owner or lessee  
23           of the real property may seek compensation in  
24           accordance with subsection (b).

25           “(b) COMPENSATION FOR AGENCY ACTIONS.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) AGENCY ACTION.—

3 “(i) IN GENERAL.—The term ‘agency  
4 action’ means any action taken by the Di-  
5 rector of the United States Fish and Wild-  
6 life Service in accordance with this Act  
7 that diminishes the fair market value of  
8 any real property by not less than 50 per-  
9 cent with respect to the intended use of the  
10 real property.

11 “(ii) EXCLUSION.—The term ‘agency  
12 action’ does not include any action taken  
13 with respect to intrastate endangered spe-  
14 cies or intrastate threatened species regu-  
15 lated by a Governor of a State under sec-  
16 tion 4(j).

17 “(B) LESSEE.—The term ‘lessee’ means a  
18 lessee of any real property affected by an agen-  
19 cy action.

20 “(C) OWNER.—The term ‘owner’ means an  
21 owner of any real property affected by an agen-  
22 cy action.

23 “(2) COMPENSATION.—Except as provided in  
24 paragraph (3)(B), not later than 180 days after the  
25 date on which an agency action takes place, the Sec-

1       retary shall pay an owner or lessee an amount equal  
2       to 150 percent of the fair market value of the real  
3       property determined in accordance with paragraph  
4       (3).

5               “(3) DETERMINATION OF FAIR MARKET  
6       VALUE.—

7               “(A) IN GENERAL.—The fair market value  
8       described in paragraph (2) shall be determined  
9       by 2 licensed independent appraisers of whom—

10              “(i) one shall be chosen by the Sec-  
11       retary; and

12              “(ii) one shall be chosen by the owner  
13       or lessee.

14              “(B) FAILURE TO AGREE ON FAIR MARKET  
15       VALUE.—

16              “(i) IN GENERAL.—If the appraisers  
17       chosen under subparagraph (A) fail to  
18       agree on the same fair market value, the  
19       Secretary and the owner shall jointly select  
20       an additional licensed independent ap-  
21       praiser to determine the fair market value.

22              “(ii) EXTENSION OF TIME TO MAKE  
23       DETERMINATION.—The licensed indepen-  
24       dent appraiser described in clause (i) shall  
25       determine the fair market value not later

1                   than 270 days after the date on which the  
2                   agency action takes place.

3                   “(C) COSTS.—The Secretary shall be re-  
4                   sponsible for all costs relating to the determina-  
5                   tion of fair market value made under this para-  
6                   graph.”.

7           (c) PENALTIES AND ENFORCEMENT.—Section  
8 11(g)(4) of the Endangered Species Act (16 U.S.C.  
9 1540(g)(4)) is amended by striking “attorney and”.

10          (d) CONFORMING AMENDMENT.—Section 6(d)(1) of  
11 the Endangered Species Act (16 U.S.C. 1535(d)(1)) is  
12 amended by striking “the status of candidate species pur-  
13 suant to subparagraph (C) of section 4(b)(3) and”.

14 **SEC. 5. AMENDMENT TO THE MIGRATORY BIRD TREATY**  
15 **ACT.**

16          Section 2 of the Migratory Bird Treaty Act (16  
17 U.S.C. 703) is amended by adding at the end the fol-  
18 lowing:

19          “(c) EXCEPTION FOR BLACK VULTURES.—Sub-  
20 section (a) shall not apply to any black vulture (*Coragyps*  
21 *atratus*) that an individual reasonably believes to be en-  
22 dangering any real or personal property, including—

23                   “(1) livestock;

24                   “(2) a vehicle; and

25                   “(3) a building.



1           “(d) EXCEPTION FOR RAVENS.—Subsection (a) shall  
2 not apply to any action relating to the population control  
3 of the raven (*Corvus corax*) in any area in which predation  
4 by a raven poses a risk, as determined by the applicable  
5 State wildlife management agency, to an effort to recover  
6 a member of a species that is—

7                   “(1) listed by the Secretary of the Interior as  
8 an endangered species or a threatened species under  
9 section 4 of the Endangered Species Act of 1973 (16  
10 U.S.C. 1533); or

11                   “(2) a candidate for listing as an endangered  
12 species or a threatened species under section 4 of  
13 the Endangered Species Act of 1973 (16 U.S.C.  
14 1533).”.

