

H.R. 6346, the WHOLE Act

Rep. Mike Johnson (LA-04)

Incentivize Private Conservation of Habitat Under the Endangered Species Act

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Dear Colleague:

This simple bill ensures that the totality of conservation measures underway will be considered before taking federal actions that impact species. Further, this good governance and common sense legislation will reduce costs associated with consultation, allow important projects to move forward while ensuring these actions don't negatively impact species and result in more private contributions that help recover endangered species. In May, the House passed a nearly identical amendment (H.AMDT.631) to the Farm Bill.

In recent years, local landowners showed unprecedented support for Lesser Prairie Chicken conservation and committed approximately 4 million acres and more than \$26 million towards these efforts. Unfortunately, current practices do not allow conservation measures that take place outside of designated critical habitat to count in relation to federal actions. This arbitrary interpretation results in less conservation efforts for species and stifles private investment that would otherwise be encouraged if the totality of habitat conservation measures underway were allowed to be considered.

Specifically, Section 7 of the Endangered Species Act requires federal agencies to ensure that private projects they authorize, or public development they themselves undertake, is not likely to adversely impact land or water which has been designated as 'critical habitat' for a species under the Act.

As a consequence, and in order to pursue development of necessary or beneficial projects, federal and private entities looking to develop on or near such land and water often attempt to offset the effects of proposed actions which may modify critical habitat by acquiring and managing suitable habitat that can be substituted for habitat designated as 'critical'. This is land of equivalent size and habitat quality that is located within the species' habitat range – and also must contain any other characteristics which are required for a habitat to be designated 'critical' for that species. For all intents and purposes, it is habitat that is functionally equivalent to land previously designated as 'critical habitat' due to rehabilitating work performed by stakeholders or governments interested in developing on critical habitat-designated land.

Though such substitution has been demonstrated time and again to provide equivalent or better recovery and conservation opportunities for species while facilitating new economic or public development, technical interpretations of the provisions of the Act have found that such substitution is not explicitly authorized.

Property owners, states, and local communities should be encouraged to be a part of the solution, not pushed aside in favor of federal micromanagement.

Congress must clarify that critical habitat flexibility is key both to the long-term success of the Endangered Species Act – by encouraging private partnerships to engage in important conservation measures – as well as to commonsense economic and public development projects being allowed to go forward. We ask for your support with this technical clarification.

With questions or to cosponsor, contact brittany.walsh@mail.house.gov (Johnson) and jeff.small@mail.house.gov (Western Caucus).

Sincerely,

Mike Johnson
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress