

1 Title: To amend the Endangered Species Act of 1973 to increase transparency, to support
2 regulatory certainty, and to reauthorize that Act, and for other purposes.
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5 Be it enacted by the Senate and House of Representatives of the United States of America in
6 Congress assembled,

7 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

8 (a) Short Title.—This Act may be cited as the “Endangered Species Act Amendments of
9 2018”.

10 (b) Table of Contents.—The table of contents for this Act is as follows:

11 Sec.1.Short title; table of contents.

12 TITLE I—ENHANCING THE FEDERAL-STATE 13 CONSERVATION PARTNERSHIP

14 Sec.101.Definitions.

15 Sec.102.Recovery teams.

16 Sec.103.State-Federal consultation relating to conservation and recovery of wildlife.

17 Sec.104.Consultation with States regarding land acquisition.

18 Sec.105.Cooperation with States and Indian Tribes.

19 Sec.106.State consultation regarding experimental populations.

20 Sec.107.State participation in settlements.

21 Sec.108.Award system for State agencies.

22 Sec.109.State feedback regarding United States Fish and Wildlife Service employees.

23 TITLE II—ENCOURAGING CONSERVATION ACTIVITIES 24 THROUGH REGULATORY CERTAINTY

25 Sec.201.Sense of Congress regarding credit for conservation agreements and activities.

26 Sec.202.Conservation agreements as regulatory mechanisms.

27 Sec.203.Voluntary wildlife conservation agreements.

28 Sec.204.Candidate conservation agreements with assurances.

29 Sec.205.Safe harbor agreements.

30 TITLE III—STRENGTHENING CONSERVATION 31 DECISIONMAKING THROUGH INCREASED 32 TRANSPARENCY

- 1 Sec.301.Policy relating to best scientific and commercial data available.
- 2 Sec.302.Transparency of information.
- 3 Sec.303.Information provided to States.
- 4 Sec.304.Transparency in litigation.

5 **TITLE IV—OPTIMIZING CONSERVATION THROUGH**
6 **RESOURCE PRIORITIZATION**

- 7 Sec.401.Prioritization of listing petitions, reviews, and determinations.

8 **TITLE V—STUDIES TO IMPROVE CONSERVATION**

- 9 Sec.501.Definition of Secretaries.
- 10 Sec.502.Feasibility studies.
- 11 Sec.503.Studies on determinations to list.
- 12 Sec.504.Study and report on expenditures.
- 13 Sec.505.Study to quantify litigation expenses.

14 **TITLE VI—REAUTHORIZATION**

- 15 Sec.601.Reauthorization.

16 **TITLE I—ENHANCING THE FEDERAL-STATE**
17 **CONSERVATION PARTNERSHIP**

18 **SEC. 101. DEFINITIONS.**

19 (a) In General.—Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is
20 amended—

21 (1) by striking the section designation and heading and all that follows through “purposes
22 of this Act—” in the matter preceding paragraph (1) and inserting the following:

23 **“SEC. 3. DEFINITIONS.**

24 **“In this Act:”;**

25 (2) by redesignating paragraphs (15) through (21) as paragraphs (20) through (26),
26 respectively;

27 (3) by redesignating paragraphs (10), (12), (13), and (14) as paragraphs (14), (15), (16),
28 and (17), respectively;

29 (4) by redesignating paragraphs (5) through (9) as paragraphs (8) through (12),
30 respectively;

31 (5) by redesignating paragraphs (2) through (4) as paragraphs (4) through (6),
32 respectively;

1 (6) by redesignating paragraph (1) as paragraph (2);

2 (7) by inserting before paragraph (2) (as so redesignated) the following:

3 “(1) AFFECTED PARTY.—The term ‘affected party’ means any unit of State, Tribal, or
4 local government the rights of which may be affected by a determination made under
5 section 4(a) in an action brought under section 11(g)(1)(C), including property rights.”;

6 (8) by inserting after paragraph (2) (as so redesignated) the following:

7 “(3) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—

8 “(A) IN GENERAL.—The term ‘best scientific and commercial data available’
9 includes—

10 “(i) information provided by a unit of State, Tribal, or local government; and

11 “(ii) traditional knowledge provided by an Indian Tribe.

12 “(B) EXCLUSIONS.—The term ‘best scientific and commercial data available’ does
13 not include any information or knowledge described in subparagraph (A) that, as
14 determined by the Secretary in accordance with section 2(d)(3), is—

15 “(i) deficient in fact; and

16 “(ii) inconsistent with other credible scientific and commercial information.”;

17 (9) by inserting after paragraph (6) (as so redesignated) the following:

18 “(7) COVERED SETTLEMENT.—The term ‘covered settlement’ means a consent decree or a
19 settlement agreement in an action brought under section 11(g)(1)(C).”;

20 (10) by inserting after paragraph (12) (as so redesignated) the following:

21 “(13) IMPACTED STATE.—The term ‘impacted State’, with respect to a threatened species
22 or endangered species, means any State in which the threatened species or endangered
23 species, as applicable, is believed to occur.”; and

24 (11) by inserting after paragraph (17) (as so redesignated) the following:

25 “(18) RECOVERY PLAN.—The term ‘recovery plan’ means a plan for the conservation and
26 survival of a threatened species or an endangered species that—

27 “(A) incorporates the best scientific and commercial data available; and

28 “(B) includes a description of the criteria and measures that the recovery team for
29 the species will use to monitor implementation.

30 “(19) RECOVERY TEAM.—The term ‘recovery team’ means a recovery team established
31 by the Secretary under section 4(f)(1)(B)(ii) for the purpose of developing, implementing,
32 monitoring, and revising a recovery plan.”.

33 (b) Conforming Amendments.—

34 (1) Section 4(b) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is
35 amended—

36 (A) in paragraph (2), in the first sentence, by inserting “and commercial” after
37 “scientific”;

1 (B) in paragraph (3)(C)(iii), by striking “paragraph 7” and inserting “paragraph (7)”;
2 and

3 (C) in paragraph (7), in the third sentence of the undesignated matter following
4 subparagraph (B), by striking “best appropriate data available to him” and inserting
5 “best scientific and commercial data available”.

6 (2) Section 7(n) of the Endangered Species Act of 1973 (16 U.S.C. 1536(n)) is amended,
7 in the first sentence, by striking “, as defined by section 3(13) of this Act.”.

8 (3) Section 10(j)(2)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)(2)(B))
9 is amended by striking “best available information” and inserting “best scientific and
10 commercial data available”.

11 (c) Definition Regulations.—

12 (1) SENSE OF CONGRESS.—It is the sense of Congress that, for purposes of the
13 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)—

14 (A) any comment submitted to the Secretary of the Interior by a State (as defined in
15 section 3 of that Act (16 U.S.C. 1532)) should be afforded greater weight by the
16 Secretary than a comment received from any other individual or entity; and

17 (B) consultation with States to the maximum extent possible, as required by that Act
18 (as amended by this Act), should be subject to a higher standard than the “maximum
19 extent practicable” consultation standard in effect on the day before the date of
20 enactment of this Act.

21 (2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the
22 Secretary of the Interior shall initiate a rulemaking to define, for purposes of the
23 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)—

24 (A) the term “great weight”, in accordance with the sense of Congress expressed in
25 paragraph (1)(A); and

26 (B) the term “maximum extent possible”, with respect to consultation with States, in
27 accordance with the sense of Congress expressed in paragraph (1)(B).

28 **SEC. 102. RECOVERY TEAMS.**

29 (a) In General.—Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is
30 amended—

31 (1) in subsection (a)—

32 (A) by striking the subsection designation and heading and all that follows through
33 “The Secretary” in paragraph (1) and inserting the following:

34 “(a) Determination by Secretary.—

35 “(1) IN GENERAL.—The Secretary”;

36 (B) in paragraph (1)—

37 (i) in each of subparagraphs (A) through (C), by striking the semicolon at the
38 end of the subparagraph and inserting a period;

1 (ii) in subparagraph (A), by striking “(A) the” and inserting the following:

2 “(A) The”;

3 (iii) in subparagraph (B), by striking “(B) overutilization” and inserting the
4 following:

5 “(B) Overutilization”;

6 (iv) in subparagraph (C), by striking “(C) disease” and inserting the following:

7 “(C) Disease”;

8 (v) in subparagraph (D)—

9 (I) by striking “(D) the” and inserting the following:

10 “(D) The”; and

11 (II) by striking “; or” at the end and inserting a period; and

12 (vi) in subparagraph (E), by striking “(E) other” and inserting the following:

13 “(E) Other”; and

14 (C) by adding at the end the following:

15 “(4) RECOVERY GOALS, HABITAT OBJECTIVES, AND OTHER CRITERIA.—

16 “(A) IN GENERAL.—The regulation promulgated pursuant to paragraph (1)
17 determining whether a species is a threatened species or an endangered species shall
18 include recovery goals, habitat objectives, and other criteria established by the
19 Secretary, in consultation with impacted States, that, if achieved, would lead to the
20 delisting or downlisting, as applicable, of the species, in accordance with paragraph
21 (5).

22 “(B) REQUIREMENTS.—The recovery goals, habitat objectives, and other criteria
23 established under subparagraph (A) shall—

24 “(i) be based on the best scientific and commercial data available, including all
25 information taken into consideration in the determination to list an applicable
26 species; and

27 “(ii) to the maximum extent practicable, be expressed using objective and
28 measurable biological criteria.

29 “(C) MODIFICATIONS.—

30 “(i) IN GENERAL.—By unanimous vote of a recovery team, the recovery team
31 may propose to the Secretary a modification of a recovery goal, habitat objective,
32 or other criterion established under this paragraph based on new science, new
33 technology, new management practices, new resources, or any other development
34 that materially changes the underlying best scientific and commercial data
35 available based on which the goal, objective, or other criterion was established.

36 “(ii) APPROVAL BY SECRETARY.—Not later than 90 days after the Secretary
37 receives a proposed modification under clause (i), the Secretary shall—

1 “(I) approve the proposed modification; or

2 “(II) reject the proposed modification.

3 “(iii) EXPLANATION.—If the Secretary rejects a proposed modification under
4 clause (ii)(II), the Secretary shall provide a detailed, comprehensive, written
5 explanation of the rejection to—

6 “(I) the recovery team for the species;

7 “(II) each applicable State agency of an impacted State;

8 “(III) the Committees on Appropriations and Environment and Public
9 Works of the Senate; and

10 “(IV) the Committees on Appropriations and Natural Resources of the
11 House of Representatives.

12 “(iv) NO NOTICE AND COMMENT REQUIRED.—Section 553 of title 5, United
13 States Code, shall not apply to a modification approved by the Secretary under
14 clause (ii)(I).

15 “(v) REQUIREMENT.—The Secretary may only approve the modification of a
16 recovery goal, habitat objective, or other criterion based on a unanimous proposal
17 of the recovery team under clause (i).

18 “(5) DELISTING AND DOWNLISTING.—

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

20 “(i) DELIST.—The term ‘delist’ means to remove a species from the list of
21 threatened species or endangered species, as applicable, under this subsection.

22 “(ii) DOWNLIST.—The term ‘downlist’ means to move a species included on the
23 list of endangered species under this subsection to the list of threatened species
24 under this subsection.

25 “(B) DETERMINATION BY SECRETARY.—

26 “(i) STATUS REVIEW.—The Secretary shall conduct a review of the status of a
27 threatened species or endangered species in accordance with this subparagraph for
28 purposes of delisting or downlisting the species, as applicable, after the recovery
29 goals, habitat objectives, and other criteria for the species established under
30 paragraph (4) have been achieved.

31 “(ii) INITIATION.—The Secretary shall initiate a status review under clause (i)
32 by not later than 30 days after the earlier of—

33 “(I) the date on which the Secretary determines that the applicable
34 recovery goals, habitat objectives, and other criteria are achieved with
35 respect to the species; and

36 “(II) the date on which the Secretary receives from the recovery team for
37 the species a report that—

38 “(aa) describes the means by which the applicable criteria established
39 under paragraph (4) have been achieved with respect to the species; and

1 “(bb) recommends the delisting or downlisting of the species, as
2 applicable.

3 “(iii) DETERMINATION.—Not later than 90 days after the date on which a status
4 review is initiated pursuant to clause (i), the Secretary shall determine whether to
5 delist or downlist, as applicable, the species that is the subject of the status
6 review.

7 “(iv) ACTION ON POSITIVE DETERMINATION.—

8 “(I) IN GENERAL.—On determining to delist or downlist a species under
9 clause (iii), the Secretary shall publish in the Federal Register—

10 “(aa) by not later than 30 days after the date of the determination, a
11 notice of the determination;

12 “(bb) by not later than 180 days after the date of the determination, a
13 proposed regulation to delist or downlist the species that is the subject
14 of the determination; and

15 “(cc) by not later than 1 year after the date of the determination, a
16 final regulation to delist or downlist the species that is the subject of the
17 determination.

18 “(II) EFFECT ON MONITORING.—The monitoring requirements of
19 subsection (g) shall apply with respect to each species that is delisted or
20 downlisted pursuant to this subparagraph, subject to the condition that the 5-
21 year period described in that subsection shall begin on the date on which a
22 final regulation is published under subclause (I)(cc).

23 “(v) ACTION ON NEGATIVE DETERMINATION.—On determining not to delist or
24 downlist a species under clause (iii), the Secretary, by not later than 30 days after
25 the date of the determination, shall submit a detailed, comprehensive written
26 explanation of the determination to—

27 “(I) the recovery team for the species;

28 “(II) each applicable State agency of an impacted State;

29 “(III) the Committees on Appropriations and on Environment and Public
30 Works of the Senate; and

31 “(IV) the Committees on Appropriations and Natural Resources of the
32 House of Representatives.

33 “(C) JUDICIAL REVIEW.—Notwithstanding section 7(n), until the expiration of the
34 applicable monitoring period under subsection (g), in accordance with subparagraph
35 (B)(iv)(II)—

36 “(i) a determination of the Secretary to delist a species under subparagraph (B)
37 shall not be considered to be a final agency action for purposes of chapter 7 of
38 title 5, United States Code; and

39 “(ii) no judicial review of the determination may commence.”; and

40 (2) in subsection (f)—

1 (A) in paragraph (1)—

2 (i) in subparagraph (B), by redesignating clauses (i) through (iii) as subclauses
3 (I) through (III), respectively, and indenting the subclauses appropriately; and

4 (ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii),
5 respectively, and indenting the clauses appropriately;

6 (B) by striking the subsection designation and heading and all that follows through
7 “recovery plans”) and inserting the following:

8 “(f) Recovery Plans; Voluntary Wildlife Conservation Agreements; Candidate Conservation
9 Agreements With Assurances; Safe Harbor Agreements.—

10 “(1) RECOVERY PLANS.—

11 “(A) IN GENERAL.—The Secretary shall develop and implement recovery plans”;

12 (C) by striking paragraph (2);

13 (D) in paragraph (3), by striking “Committee on Merchant Marine and Fisheries”
14 and inserting “Committee on Natural Resources”;

15 (E) in paragraph (5), by striking “paragraph (4)” and inserting “subparagraph (E)”;

16 (F) by redesignating paragraphs (3) through (5) as subparagraphs (D) through (F),
17 respectively, and indenting the subparagraphs appropriately; and

18 (G) in paragraph (1), by adding at the end the following:

19 “(B) RECOVERY TEAMS.—

20 “(i) INITIAL INQUIRY.—

21 “(I) IN GENERAL.—Not later than 30 days after the date on which a species
22 is included on the list of threatened species or endangered species under this
23 section, the Secretary shall submit to the Governor of each impacted State a
24 notice that—

25 “(aa) describes the inclusion of the species on the applicable list;

26 “(bb) identifies the State as an impacted State with respect to the
27 species; and

28 “(cc) solicits from the impacted State a request to establish a recovery
29 team for the species.

30 “(II) RESPONSE OF IMPACTED STATE.—Not later than 30 days after the date
31 of receipt of a notice under subclause (I), an impacted State that elects to
32 request the establishment of a recovery team with respect to the applicable
33 threatened species or endangered species shall submit to the Secretary the
34 request.

35 “(ii) ESTABLISHMENT.—Not later than 1 year after the date on which a species
36 is included on the list of threatened species or endangered species under this
37 section, the Secretary shall establish a science-based recovery team for the
38 species, if—

1 “(I) an impacted State, acting alone or in conjunction with another
2 impacted State, submits to the Secretary a request to establish the recovery
3 team; or

4 “(II) in the case of such a species with respect to which more than 1
5 impacted State exists, the Secretary determines that establishing a recovery
6 team would promote the conservation and survival of the species.

7 “(iii) MEMBERSHIP.—

8 “(I) IN GENERAL.—The members of a recovery team shall be appointed by
9 the Secretary and shall include representatives of—

10 “(aa) the United States Fish and Wildlife Service or the National
11 Marine Fisheries Service, as applicable;

12 “(bb) other relevant Federal land and wildlife management agencies;

13 “(cc) relevant State and local land and wildlife management agencies
14 from each impacted State, nominated by the Governor of the applicable
15 State; and

16 “(dd) on the agreement of a majority of the members described in
17 items (aa) through (cc), appropriately qualified scientists with expertise
18 regarding—

19 “(AA) the species;

20 “(BB) closer relatives of the species; or

21 “(CC) the ecosystem on which the species depends.

22 “(II) NUMBER.—The Secretary, in consultation with impacted States, shall
23 determine the number of members of each recovery team on an individual
24 basis for each species.

25 “(III) LIMITATION.—The total number of members appointed to each
26 recovery team under items (aa) and (bb) of subclause (I) shall not exceed the
27 number of members appointed under item (cc) of that subclause.

28 “(IV) VACANCIES.—In the case of a vacancy on a recovery team, not later
29 than 60 days after the date on which the vacancy begins, the vacancy shall be
30 filled in the manner in which the original appointment was made.

31 “(V) LEADERSHIP.—

32 “(aa) INQUIRY.—Not later than 30 days after the date of
33 establishment of a recovery team under clause (ii), the Secretary shall
34 solicit from the Governor of each impacted State a request to lead the
35 recovery team.

36 “(bb) DESIGNATION.—Subject to item (cc), on receipt from an
37 impacted State of a request under item (aa), the Secretary shall
38 designate—

39 “(AA) the impacted State as the leader of the recovery team; and

1 “(BB) the representative of the impacted State under subclause
2 (I)(cc) as the executive director of the recovery team.

3 “(cc) MULTIPLE REQUESTS.—On receipt from 2 or more impacted
4 States of requests under item (aa), the Secretary shall designate—

5 “(AA) 1 such impacted State as the leader of the recovery team, in
6 accordance with such criteria for that selection as the Secretary, in
7 consultation with States, shall establish by not later than 180 days
8 after the date of enactment of this item; and

9 “(BB) the representative of the selected impacted State under
10 subclause (I)(cc) as the executive director of the recovery team.

11 “(dd) NO REQUESTS.—If no impacted State submits to the Secretary a
12 request to lead a recovery team under item (aa), the Secretary, in
13 consultation with all applicable impacted States, shall serve as executive
14 director of the recovery team.

15 “(iv) DUTIES.—

16 “(I) IN GENERAL.—A recovery team shall—

17 “(aa) develop and implement a recovery plan;

18 “(bb) propose modifications to the recovery plan in accordance with
19 subsection (a)(4)(C)(i), including associated recovery goals, habitat
20 objectives, and other criteria; and

21 “(cc) recommend delisting or downlisting (as those terms are defined
22 in subsection (a)(5)(A)) once the established recovery plan criteria for
23 the species have been satisfied, in accordance with subsection
24 (a)(5)(B)(ii)(II).

25 “(II) LIMITATION.—A recovery team may not carry out any duty under
26 subclause (I) if the total number of members appointed under items (aa) and
27 (bb) of clause (iii)(I) exceeds the number of members appointed under item
28 (cc) of that clause.

29 “(v) FACCA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not
30 apply to a recovery team.”.

31 (b) Conforming Amendments.—

32 (1) Section 7(n) of the Endangered Species Act of 1973 (16 U.S.C. 1536(n)) (as amended
33 by section 101(b)(2)) is amended, in the first sentence, by inserting “(except as provided in
34 section 4(a)(5)(C))” after “issuance of the decision”.

35 (2) Section 10(f)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)(5)) is
36 amended, in the undesignated matter following subparagraph (B), by striking the second
37 sentence.

38 **SEC. 103. STATE-FEDERAL CONSULTATION RELATING**
39 **TO CONSERVATION AND RECOVERY OF WILDLIFE.**

1 (a) Findings, Purposes, and Policy.—Section 2 of the Endangered Species Act of 1973 (16
2 U.S.C. 1531) is amended—

3 (1) in subsection (a)—

4 (A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively;
5 and

6 (B) by inserting after paragraph (3) the following:

7 “(4) the States possess broad police powers and authorities for the conservation and
8 management of fish and wildlife within State borders;”;

9 (2) in subsection (b), by inserting “by Federal and State agencies” after “conserved”; and

10 (3) in subsection (c)—

11 (A) by striking the subsection designation and heading and all that follows through
12 “that all Federal” in paragraph (1) and inserting the following:

13 “(c) Policy.—It is the policy of Congress that—

14 “(1) all Federal”;

15 (B) in paragraph (1), by striking the period at the end and inserting a semicolon;

16 (C) in paragraph (2)—

17 (i) by striking the period at the end and inserting “; and”; and

18 (ii) by striking the paragraph designation and all that follows through “that
19 Federal agencies” and inserting the following:

20 “(3) Federal agencies”;

21 (D) by inserting before paragraph (3) (as so redesignated) the following:

22 “(2) the Federal agency authority for conservation and management of fish and wildlife
23 authorized by this Act should be exercised in conjunction with the existing authorities of the
24 States for the conservation and management of fish and wildlife;”; and

25 (E) by adding at the end the following:

26 “(4) Congress supports State-led conservation actions to preclude the need to list species
27 as threatened species or endangered species under this Act.”.

28 (b) Action on Receipt of Petition to List.—Section 4(b)(3)(A) of the Endangered Species Act
29 of 1973 (16 U.S.C. 1533(b)(3)(A)) is amended—

30 (1) in the third sentence, by striking “The Secretary” and inserting the following:

31 “(iii) PUBLICATION OF FINDINGS.—The Secretary”;

32 (2) in the second sentence, by striking “If such a petition is found to present such
33 information” and inserting the following:

34 “(ii) REVIEW OF SPECIES STATUS.—If a petition under clause (i) is found to
35 present the information described in that clause”;

36 (3) by striking “(3)(A) To” and inserting the following:

1 “(3) PETITIONS FROM INTERESTED PERSONS.—

2 “(A) ACTION BY SECRETARY.—

3 “(i) IN GENERAL.—To”; and

4 (4) by adding at the end the following:

5 “(iv) NOTIFICATION TO STATES AND INDIAN TRIBES.—

6 “(I) IN GENERAL.—If a petition is filed under clause (i), the Secretary
7 shall—

8 “(aa) not later than 15 days after the date of receipt of the petition,
9 provide to the Governor and the State agency of each impacted State,
10 and to each Indian Tribe with jurisdiction over land in which the species
11 covered by the petition is believed to occur, a notification of receipt of
12 the petition and a copy of the petition; and

13 “(bb) solicit comments from the Governor, State agency, or Indian
14 Tribe, as applicable, to be submitted to the Secretary by not later than
15 the date that is 75 days after the date of receipt of the notification,
16 regarding whether the petitioned action may be warranted.

17 “(II) CONSIDERATION OF STATE COMMENTS.—Before the date of
18 publication under this subparagraph of a determination that a petitioned
19 action may be warranted, the Secretary shall take into consideration, and
20 give great weight to, any State or Tribal comments submitted by the deadline
21 described in subclause (I)(bb).”.

22 (c) State and Tribal Participation in Regulatory Process.—Section 4 of the Endangered
23 Species Act of 1973 (16 U.S.C. 1533) is amended—

24 (1) in subsection (b)—

25 (A) in paragraph (5)(A)—

26 (i) in clause (i), by striking “, and” at the end and inserting “; and”; and

27 (ii) by striking clause (ii) and inserting the following:

28 “(ii)(I) provide actual notice of the proposed regulation (including the complete text
29 of the regulation) to—

30 “(aa) the Governor and the State agency of each impacted State;

31 “(bb) each Indian Tribe with jurisdiction over land in which the species is
32 believed to occur; and

33 “(cc) each county or equivalent jurisdiction in which the species is believed to
34 occur; and

35 “(II) solicit comments from each such Governor, State agency, Indian Tribe, and
36 jurisdiction regarding the proposed regulation;”; and

37 (B) in paragraph (7)(B), by striking “the State agency in each State in which such
38 species” and inserting “the Governor and State agency of each impacted State, and to

1 each Indian Tribe with jurisdiction over land in which the species”; and

2 (2) by striking subsection (i) and inserting the following:

3 “(i) Jurisdiction.—If, in the case of any regulation proposed by the Secretary pursuant to this
4 section, a Governor, State agency, Indian Tribe, or county or equivalent jurisdiction to which a
5 notice of the proposed regulation was provided under subsection (b)(5)(A)(ii)(I) or section
6 6(a)(2)(C) submits to the Secretary comments disagreeing with all or part of the proposed
7 regulation, and the Secretary issues a final regulation that is in conflict with those comments, or
8 if the Secretary fails to adopt a regulation pursuant to an action petitioned by a Governor, State
9 agency, or Indian Tribe under subsection (b)(3), the Secretary shall submit to the Governor, State
10 agency, Indian Tribe, or county or equivalent jurisdiction a written justification for the failure to
11 adopt regulations consistent with the relevant comments or petition.”.

12 (d) State Participation in Recovery Plans.—Section 4(f)(1) of the Endangered Species Act of
13 1973 (16 U.S.C. 1533(f)(1)) (as amended by section 102(a)(2)) is amended—

14 (1) in subparagraph (A) (as so redesignated)—

15 (A) in subclause (III) of clause (ii), by striking the period at the end and inserting “;
16 and”;

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

18 “(iii) in accordance with subparagraph (C), provide to States the opportunity—

19 “(I) to lead recovery planning and implementation;

20 “(II) to expedite threatened species or endangered species recovery by
21 supporting State-level initiatives and partnerships; and

22 “(III) to increase flexibility and feasibility for the applicability of recovery
23 plans.”; and

24 (2) by inserting after subparagraph (B) the following:

25 “(C) STATE PARTICIPATION.—

26 “(i) DEFINITION OF ELIGIBLE STATE AGENCY.—In this subparagraph, the term
27 ‘eligible State agency’ means a State agency that—

28 “(I) represents—

29 “(aa) an impacted State that has entered into a cooperative agreement
30 with the Secretary under section 6(c); or

31 “(bb) 2 or more impacted States, acting jointly pursuant to an
32 agreement, each of which has entered into a cooperative agreement with
33 the Secretary under section 6(c); and

34 “(II) demonstrates adequate authority and capability to carry out the
35 applicable recovery plan under this subparagraph, as determined by the
36 Secretary in accordance with such criteria as the Secretary may establish, by
37 regulation, in consultation with States.

38 “(ii) CONSULTATION REQUIRED.—In carrying out this subsection, the Secretary
39 shall—

1 “(I) consult, to the maximum extent practicable, with impacted States,
2 including Governors, State agencies, and local land and wildlife management
3 agencies of impacted States; and

4 “(II) give great weight to any comments or recommendations received
5 from an impacted State.

6 “(iii) DEVELOPMENT.—

7 “(I) IN GENERAL.—In any case in which a recovery team is not established
8 for a threatened species or endangered species under subparagraph (B)—

9 “(aa) an eligible State agency may submit to the Secretary a request
10 to develop a recovery plan for the threatened species or endangered
11 species, as applicable, in accordance with this subparagraph; and

12 “(bb) the Secretary shall approve the request.

13 “(II) MULTIPLE REQUESTS.—On receipt from 2 or more eligible State
14 agencies of requests under subclause (I)(aa)—

15 “(aa) the Secretary shall designate 1 such eligible State agency as the
16 leader of the recovery plan development, in accordance with such
17 criteria for that selection as the Secretary, in consultation with States,
18 shall establish by not later than 180 days after the date of enactment of
19 this subclause; and

20 “(bb) the selected leader shall develop the recovery plan, in
21 consultation with all other impacted States.

22 “(III) NO REQUESTS.—If no eligible State agency submits to the Secretary
23 a request to develop a recovery plan under subclause (I)(aa), the Secretary, in
24 consultation with all applicable impacted States, shall develop the applicable
25 recovery plan.

26 “(IV) DRAFT RECOVERY PLANS.—

27 “(aa) PREPARATION.—An eligible State agency shall submit to the
28 Secretary a draft recovery plan in accordance with this paragraph by not
29 later than 1 year after the date on which the eligible State agency is
30 authorized to prepare the recovery plan under subclause (I)(bb) or
31 (II)(aa), as applicable.

32 “(bb) REVIEW.—As soon as practicable after the date of receipt of a
33 draft recovery plan under item (aa), the Secretary shall—

34 “(AA) review the draft recovery plan to determine whether the
35 draft meets applicable requirements; and

36 “(BB) if the Secretary approves the draft, notify the eligible State
37 agency and publish a notice of availability of the draft recovery plan,
38 or if the Secretary determines that the draft does not meet applicable
39 requirements, provide to the eligible State agency a notice identifying
40 each deficiency of the draft.

1 “(cc) CORRECTION OF DEFICIENCIES.—The Secretary shall—

2 “(AA) provide to an eligible State agency an opportunity to correct
3 any deficiencies in a draft recovery plan; and

4 “(BB) on request of the eligible State agency, provide consultation
5 regarding the development of a recovery plan that meets all
6 applicable requirements.

7 “(V) STATE RECOMMENDATIONS.—

8 “(aa) IN GENERAL.—On finalization of a recovery plan under this
9 clause, an impacted State may make recommendations to the lead
10 eligible State agency, or to the Secretary, as applicable, regarding the
11 species subject to the recovery plan, including recommendations
12 regarding—

13 “(AA) proposed modifications to the recovery plan in accordance
14 with subsection (a)(4)(C)(i), including associated recovery goals,
15 habitat objectives, and other relevant criteria; and

16 “(BB) delisting or downlisting (as those terms are defined in
17 subsection (a)(5)(A)) once the established recovery plan criteria for
18 the species have been satisfied, in accordance with subsection
19 (a)(5)(B)(ii)(II).

20 “(bb) TREATMENT.—A lead eligible State agency shall give great
21 weight to any recommendations received from an impacted State under
22 item (aa).

23 “(iv) IMPLEMENTATION.—

24 “(I) IN GENERAL.—In any case in which a recovery plan is finalized under
25 clause (iii) for a threatened species or endangered species for which no
26 recovery team is established under subparagraph (B)—

27 “(aa) an eligible State agency may submit to the Secretary a request
28 to implement the recovery plan, in accordance with this subparagraph;
29 and

30 “(bb) the Secretary shall approve the request.

31 “(II) MULTIPLE REQUESTS.—On receipt from 2 or more eligible State
32 agencies of requests under subclause (I)(aa)—

33 “(aa) the Secretary shall designate 1 such eligible State agency as the
34 leader of the recovery plan implementation, in accordance with such
35 criteria for that selection as the Secretary, in consultation with States,
36 shall establish by not later than 180 days after the date of enactment of
37 this subclause; and

38 “(bb) the selected leader shall implement the recovery plan, in
39 consultation with all other impacted States.

40 “(III) NO REQUESTS.—If no eligible State agency submits to the Secretary

1 a request to implement a recovery plan under subclause (I)(aa), the
2 Secretary, in consultation with all applicable impacted States, shall
3 implement the applicable recovery plan.

4 “(v) STANDARDS AND GUIDELINES.—The Secretary, in consultation with States,
5 shall establish standards and guidelines for the development and implementation
6 of recovery plans by eligible State agencies under this subparagraph, including
7 standards and guidelines relating to—

8 “(I) interstate cooperation; and

9 “(II) the provision and withdrawal of authorization by the Secretary for the
10 development or implementation, as applicable, of recovery plans by eligible
11 State agencies.

12 “(vi) WITHDRAWAL OF AUTHORIZATION.—The Secretary may withdraw the
13 authorization of an eligible State agency to develop or implement, as applicable, a
14 recovery plan under this subparagraph if the Secretary—

15 “(I) provides to the eligible State agency—

16 “(aa) a notice that the authorization of the eligible State agency is
17 under review by the Secretary; and

18 “(bb) an opportunity to submit comments regarding the review by not
19 later than 30 days after the date of receipt of the notice under item (aa)
20 prior to any consideration by the Secretary of the review; and

21 “(II) in the case of an eligible State agency authorized to develop a
22 recovery plan under clause (iii), determines that the eligible State agency
23 failed—

24 “(aa) to correct a deficiency in the draft recovery plan identified
25 under clause (iii)(IV)(bb)(BB) by the date that is 60 days after the date
26 of receipt of the notice under that clause;

27 “(bb) to comply with all applicable requirements in preparing or
28 carrying out the recovery plan; or

29 “(cc) otherwise to adequately respond to the notice from the
30 Secretary under subclause (I)(aa).

31 “(vii) ACTION BY SECRETARY.—

32 “(I) DEVELOPMENT.—On withdrawal under clause (vi) of the authorization
33 of an eligible State agency designated as the leader of recovery plan
34 development under clause (iii), the Secretary shall—

35 “(aa) designate another eligible State agency that submitted to the
36 Secretary a request under clause (iii)(II) to be the leader of recovery
37 plan development, in accordance with such criteria for that selection as
38 the Secretary, in consultation with States, shall establish by not later
39 than 180 days after the date of enactment of this subclause; or

40 “(bb) if no additional eligible State agency submitted to the Secretary

1 such a request—

2 “(AA) publish a draft recovery plan applicable to each State
3 represented by the eligible State agency by not later than the date that
4 is 18 months after the date of the withdrawal; and

5 “(BB) publish a final recovery plan applicable to each State
6 represented by the eligible State agency by not later than the date that
7 is 1 year after the date of publication of the draft recovery plan under
8 subitem (AA).

9 “(II) IMPLEMENTATION.—On withdrawal under clause (vi) of the
10 authorization of an eligible State agency designated as the leader of recovery
11 plan implementation under clause (iv), the Secretary shall—

12 “(aa) designate another eligible State agency that submitted to the
13 Secretary a request under clause (iv)(II) to be the leader of the recovery
14 plan implementation, in accordance with such criteria for that selection
15 as the Secretary, in consultation with States, shall establish by not later
16 than 180 days after the date of enactment of this subclause; or

17 “(bb) if no additional eligible State agency submitted to the Secretary
18 such a request, implement the applicable recovery plan, in consultation
19 with all applicable impacted States.”.

20 SEC. 104. CONSULTATION WITH STATES REGARDING 21 LAND ACQUISITION.

22 Section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) is amended—

23 (1) in subsection (a)—

24 (A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B),
25 respectively, and indenting the subparagraphs appropriately;

26 (B) in the second sentence, by striking “To carry out such a program” and inserting
27 the following:

28 “(2) REQUIREMENTS.—Subject to subsection (c), in carrying out the program under this
29 subsection”; and

30 (C) by striking the subsection designation and heading and all that follows through
31 “The Secretary” and inserting the following:

32 “(a) Program.—

33 “(1) ESTABLISHMENT.—The Secretary”; and

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

35 “(c) Consultation With States.—Before acquiring land under the program under subsection (a)
36 or any other provision of this Act, the Secretary of the Interior, the Secretary of Commerce, or
37 the Secretary of Agriculture, as applicable, shall—

38 “(1) provide to each State within the borders of which the acquisition is proposed to

1 occur a notice of the proposed acquisition;

2 “(2) consult with each such State to the maximum extent possible regarding the proposed
3 acquisition, including prior to the proposal of the acquisition; and

4 “(3) give great weight to any comments received from each such State in determining
5 whether to carry out the proposed acquisition.”.

6 SEC. 105. COOPERATION WITH STATES AND INDIAN 7 TRIBES.

8 Section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

9 (1) in subsection (a)—

10 (A) in the second sentence, by striking “Such cooperation shall include consultation
11 with the States concerned” and inserting the following:

12 “(2) INCLUSIONS.—The consultation required under this subsection shall—

13 “(A) be based on the best scientific and commercial data available;

14 “(B) include consultation with each impacted State”; and

15 (B) by striking the subsection designation and heading and all that follows through
16 the first sentence and inserting the following:

17 “(a) Requirement.—

18 “(1) IN GENERAL.—In carrying out this Act, the Secretary shall—

19 “(A) consult to the maximum extent possible with the States; and

20 “(B) acknowledge and respect the primary authority of State agencies to manage fish
21 and wildlife within State borders, except as otherwise provided in this Act with respect
22 to an exercise by the Secretary of specific authority to manage a threatened species or
23 an endangered species.”;

24 (2) in subsection (b), in the first sentence, by striking “may” and inserting “shall offer
25 to”;

26 (3) in subsection (c)—

27 (A) in paragraph (2), by striking “(2) In furtherance of the purposes of this Act, the
28 Secretary is authorized” and inserting the following:

29 “(3) PLANTS.—In furtherance of the purposes of this Act, the Secretary shall offer”;

30 (B) in paragraph (3) (as so redesignated)—

31 (i) in subparagraph (D), by indenting clauses (i) and (ii) appropriately; and

32 (ii) by indenting subparagraphs (A) through (D) appropriately;

33 (C) by striking the subsection designation and heading and all that follows through
34 “authorized” in the first sentence of paragraph (1) and inserting the following:

35 “(c) Cooperative Agreements.—

1 “(1) DEFINITION OF STATE.—In this subsection, the term ‘State’ includes—

2 “(A) an Indian tribe (as defined in section 4 of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 5304)); and

4 “(B) a Native Corporation (as defined in section 3 of the Alaska Native Claims
5 Settlement Act (43 U.S.C. 1602)).

6 “(2) AUTHORIZATION.—In furtherance of the purposes of this Act, the Secretary shall
7 offer”; and

8 (D) in paragraph (2) (as so redesignated)—

9 (i) in subparagraph (E), by indenting clauses (i) and (ii) appropriately; and

10 (ii) by indenting subparagraphs (A) through (E) appropriately;

11 (4) in subsection (h), by striking “relating to financial assistance” and inserting the
12 following: “relating to—

13 “(1) fulfilling the obligation of the Secretary to carry out this Act in consultation with the
14 States; and

15 “(2) the provision of financial assistance”; and

16 (5) in subsection (i)(1), by striking “the Sport Fishing Restoration Account established
17 under 1016 of the Act of July 18, 1984” and inserting “the Sport Fish Restoration and
18 Boating Trust Fund established by section 9504(a) of the Internal Revenue Code of 1986”.

19 SEC. 106. STATE CONSULTATION REGARDING 20 EXPERIMENTAL POPULATIONS.

21 Section 10(j) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)) is amended—

22 (1) in paragraph (1), by striking “(1) For purposes of” and inserting the following:

23 “(1) DEFINITION OF EXPERIMENTAL POPULATION.—In”; and

24 (2) in paragraph (2)—

25 (A) by striking “(2)(A) The Secretary” and inserting the following:

26 “(2) AUTHORIZATION OF RELEASES.—

27 “(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary”;

28 (B) in subparagraph (C)—

29 (i) by striking “subparagraph (B)” each place it appears and inserting
30 “subparagraph (C)”;

31 (ii) by indenting clauses (i) and (ii) appropriately; and

32 (iii) by striking “(C) For the purposes” and inserting the following:

33 “(D) TREATMENT AS THREATENED SPECIES.—For the purposes”; and

34 (C) in subparagraph (B) (as amended by section 101(b)(3)), by striking “(B) Before”
35 and inserting the following:

1 “(B) REQUIREMENTS.—The Secretary shall—

2 “(i) determine through an agreement with the State agency of each impacted
3 State the boundaries of the area in each State in which an experimental population
4 is authorized to be released under this paragraph; and

5 “(ii) comply with the applicable permitting requirements of the State agency of
6 each impacted State in authorizing a release under this paragraph.

7 “(C) IDENTIFICATION AND DETERMINATION.—Before”.

8 SEC. 107. STATE PARTICIPATION IN SETTLEMENTS.

9 Section 11(g)(2)(C) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)(2)(C)) is
10 amended—

11 (1) by striking “(C) No action may be commenced under subparagraph (1)(C) of this
12 section prior to sixty” and inserting the following:

13 “(C) SETTLEMENT ACTIONS.—

14 “(i) TIMING.—

15 “(I) IN GENERAL.—Except as provided in subclause (II), no action may be
16 commenced under paragraph (1)(C) before the date that is 60”;

17 (2) by striking “Secretary; except that such action may be brought” and inserting the
18 following: “Secretary.

19 “(II) EXCEPTION FOR EMERGENCIES.—Notwithstanding subclause (I), an
20 action may be commenced under paragraph (1)(C)”;

21 (3) by adding at the end the following:

22 “(ii) PARTICIPATION BY STATES.—In preparing or entering into a settlement
23 (including a covered settlement) or other agreement relating to an action under
24 paragraph (1)(C), the Secretary shall provide notice to, consult with, and
25 otherwise take appropriate actions to include, each impacted State and each unit
26 of local government in an impacted State.”.

27 SEC. 108. AWARD SYSTEM FOR STATE AGENCIES.

28 Section 6(e) of the Endangered Species Act of 1973 (16 U.S.C. 1535(e)) is amended—

29 (1) by striking “Any action” and inserting the following:

30 “(1) IN GENERAL.—Any action”; and

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

32 “(2) AWARD SYSTEM FOR STATE AGENCIES.—

33 “(A) IN GENERAL.—The Secretary shall establish an award system under which the
34 Secretary may publicly commend not more than 5 State agencies each year for
35 outstanding performance in conserving and recovering wildlife.

36 “(B) CRITERIA.—The Secretary shall develop criteria for the award system under

1 subparagraph (A) in consultation with—

2 “(i) the Association of State Fish and Wildlife Agencies; and

3 “(ii) other representatives of State fish and wildlife agencies, including—

4 “(I) regional groups; and

5 “(II) State fish and wildlife agencies; and

6 “(III) other applicable State agencies.”.

7 SEC. 109. STATE FEEDBACK REGARDING UNITED 8 STATES FISH AND WILDLIFE SERVICE EMPLOYEES.

9 (a) Definitions.—In this section:

10 (1) APPROPRIATE STATE AGENCY.—The term “appropriate State agency” means—

11 (A) a State wildlife agency; and

12 (B) any other State department or agency with duties that result in interaction
13 between the agency and the Service (including any employee of the Service) relating
14 to—

15 (i) the conservation or management of a species;

16 (ii) the recovery of a species listed as a threatened species or an endangered
17 species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533);
18 or

19 (iii) the implementation of that Act (16 U.S.C. 1531 et seq.).

20 (2) DIRECTOR.—The term “Director” means the Director of the Service.

21 (3) SERVICE.—The term “Service” means the United States Fish and Wildlife Service.

22 (b) Annual Feedback.—The Director shall solicit the Governor of each State for annual
23 feedback, to be provided by each appropriate State agency, regarding the performance of the
24 Service, including employees of the Service, in carrying out the duties of the Service under the
25 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) within the borders of the State.

26 (c) Contents.—

27 (1) IN GENERAL.—The Director shall request that the feedback provided under subsection
28 (b) include, with respect to each employee of the Service who carries out duties within the
29 borders of the State relating to species conservation, species management, the recovery of
30 threatened species and endangered species, or the implementation of the Endangered
31 Species Act of 1973 (16 U.S.C. 1531 et seq.), feedback on—

32 (A) the responsiveness of the employee to State government authorities, local
33 government authorities, and stakeholders who are legal residents of the State
34 (including private individuals, industry trade groups, nonprofit organizations, and other
35 entities representing farming, ranching, home building, transportation infrastructure,
36 energy development, tourism, sportsmen, wildlife conservation, environmental groups,
37 and outdoor recreation); and

1 (B) the effectiveness of the employee in working with the entities described in
2 subparagraph (A) to fulfill the mission of the Service relating to species conservation,
3 species management, the recovery of threatened species and endangered species, and
4 the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

5 (2) CRITERIA.—Not later than 1 year after the date of enactment of this Act, the Director,
6 in consultation with the States, shall develop, and as soon as practicable issue, criteria for
7 each Service region that quantify the responsiveness and effectiveness, as described in
8 subparagraphs (A) and (B), respectively, of paragraph (1), of employees of the Service.

9 (d) Commendation.—

10 (1) IN GENERAL.—The Governor of each State, acting on recommendation of an
11 appropriate State agency, may petition the Director to publicly commend any employee of
12 the Service for outstanding performance in carrying out duties relating to species
13 conservation, species management, the recovery of threatened species and endangered
14 species, and the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et
15 seq.) within the borders of the State.

16 (2) EXPLANATION REQUIRED.—In petitioning the Director under paragraph (1), the
17 Governor of the State shall provide an explanation of the reasons for commending the
18 employee.

19 (3) RESPONSE REQUIRED.—Not later than 90 days after receiving a petition under
20 paragraph (1), the Director shall respond to the petition.

21 TITLE II—ENCOURAGING CONSERVATION ACTIVITIES 22 THROUGH REGULATORY CERTAINTY

23 SEC. 201. SENSE OF CONGRESS REGARDING CREDIT 24 FOR CONSERVATION AGREEMENTS AND ACTIVITIES.

25 It is the sense of Congress that—

26 (1) States, Indian Tribes, units of local government, landowners, and other stakeholders
27 should receive credit for—

28 (A) enrolling in, and performing obligations under, conservation agreements; and

29 (B) investing in, and carrying out, conservation activities, generally; and

30 (2) the Secretary of the Interior, acting through the Director of the United States Fish and
31 Wildlife Service, should consider the enrollment in, and performance of obligations under,
32 conservation agreements and investment in, and carrying out of, general conservation
33 activities by States, Indian Tribes, units of local government, landowners, and other
34 stakeholders in making determinations under the Endangered Species Act of 1973 (16
35 U.S.C. 1531 et seq.).

36 SEC. 202. CONSERVATION AGREEMENTS AS 37 REGULATORY MECHANISMS.

1 Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

2 (1) in subsection (c)—

3 (A) in paragraph (1)—

4 (i) in the third sentence, by striking “The Secretary” and inserting the
5 following:

6 “(C) REVISION.—The Secretary”;

7 (ii) in the second sentence, by striking “Each list” and inserting the following:

8 “(B) CONTENTS.—Each list”; and

9 (iii) in the first sentence, by striking “(1) The Secretary” and inserting the
10 following:

11 “(1) REQUIREMENTS.—

12 “(A) PUBLICATION.—The Secretary”; and

13 (B) in paragraph (2)—

14 (i) by striking “(2) The Secretary” and inserting the following:

15 “(2) REVIEW.—The Secretary”;

16 (ii) in subparagraph (B), in the matter preceding clause (i), by inserting “in
17 accordance with subsections (a) and (b),” before “determine”; and

18 (iii) by striking the undesignated matter following subparagraph (B);

19 (2) in subsection (f) (as amended by section 102(a)(2)), by adding at the end the
20 following:

21 “(2) TREATMENT.—

22 “(A) IN GENERAL.—A conservation agreement (including any agreement described
23 in subparagraph (B)) entered into or endorsed by the Secretary shall be considered to
24 be a regulatory mechanism for purposes of determining whether to include a species on
25 the list of threatened species or endangered species pursuant to this section.

26 “(B) DESCRIPTION OF AGREEMENTS.—An agreement referred to in subparagraph (A)
27 includes—

28 “(i) a voluntary wildlife conservation agreement under paragraph (3);

29 “(ii) a candidate conservation agreement with assurances under paragraph (4);

30 “(iii) a candidate conservation agreement; and

31 “(iv) a plan that—

32 “(I) relates to the conservation of a species;

33 “(II) affects the viability of the species; and

34 “(III) is implemented, or proposed to be implemented, by—

35 “(aa) a State;

1 “(bb) 2 or more States;
2 “(cc) a unit of local government; or
3 “(dd) 2 or more units of local government.”; and

4 (3) in subsection (g)(2), by striking “paragraph 7 of subsection (b) of this section” and
5 inserting “subsection (b)(7)”.

6 SEC. 203. VOLUNTARY WILDLIFE CONSERVATION 7 AGREEMENTS.

8 Section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)) (as amended by
9 section 202(2)) is amended by adding at the end the following:

10 “(3) VOLUNTARY WILDLIFE CONSERVATION AGREEMENTS.—

11 “(A) ESTABLISHMENT.—The Secretary shall establish procedures for developing and
12 entering into voluntary wildlife conservation agreements, including by establishing
13 conservation goals and other criteria for the agreements, with 1 or more entities,
14 including—

15 “(i) a State or local government;

16 “(ii) a private landowner;

17 “(iii) a lessee; and

18 “(iv) a private third-party conservation organization.

19 “(B) INCLUSIONS.—A voluntary wildlife conservation agreement entered into under
20 this paragraph shall include provisions establishing that—

21 “(i) a party to the agreement that is in compliance with the agreement shall not
22 be required to carry out any additional mitigation measure for a species covered
23 by the agreement, if the additional measure would require—

24 “(I) any additional expenditure of resources by the party to the agreement;

25 or

26 “(II) the adoption of any additional use, development, or management
27 restriction on land, water, or a water-related right of the party to the
28 agreement that would otherwise be available under the agreement; and

29 “(ii) a conservation agreement or an activity proposed to be carried out under
30 such an agreement may be modified only—

31 “(I) under extraordinary circumstances; and

32 “(II) with the consent of all parties to the agreement.

33 “(C) STREAMLINING REQUIREMENTS.—To reduce the time and expense required to
34 enter into a voluntary wildlife conservation agreement under this paragraph, the
35 Secretary shall, to the maximum extent practicable—

36 “(i) implement standard procedures and encourage widespread use of templates
37 in developing the agreements;

- 1 “(ii) simplify the application and approval processes relating to the agreements;
2 “(iii) reduce the burdens associated with reporting and monitoring under the
3 agreements; and
4 “(iv) provide for the protection of sensitive personal and business-related
5 information of any party to the agreements.”.

6 SEC. 204. CANDIDATE CONSERVATION AGREEMENTS 7 WITH ASSURANCES.

8 (a) In General.—Section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)) (as
9 amended by section 203) is amended by adding at the end the following:

10 “(4) CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.—Notwithstanding any
11 other provision of law (including regulations), in entering into, or carrying out, any
12 candidate conservation agreement with assurances under this Act, the Secretary—

13 “(A) shall honor the terms of the agreement, as in existence before March 21, 2017;

14 “(B) shall promulgate regulations—

15 “(i) to expedite the process for entering into those agreements; and

16 “(ii) to protect sensitive personal and business-related information of each party
17 to the agreement;

18 “(C)(i) shall not take into consideration whether the implementation of the
19 agreement is reasonably expected to provide a net conservation benefit to a species
20 covered by the agreement; but

21 “(ii) shall take into consideration whether the implementation of the agreement is
22 reasonably expected to preclude or remove any need to list a species covered by the
23 agreement as a threatened species or an endangered species under this section; and

24 “(D) shall not preclude a party to the agreement from receiving Federal funds under
25 any other conservation program.”.

26 (b) Effect on Regulations.—Notwithstanding any other provision of law, on and after the date
27 of enactment of this Act—

28 (1) the amendments to part 17 of title 50, Code of Federal Regulations, made by the final
29 rule promulgated by the Secretary of the Interior entitled “Endangered and Threatened
30 Wildlife and Plants; Revisions to the Regulations for Candidate Conservation Agreements
31 With Assurances” (81 Fed. Reg. 95053 (December 27, 2016)) are void;

32 (2) that part shall be in effect as if those amendments had not been made; and

33 (3) the Secretary of Commerce and the Secretary of the Interior shall not make any
34 amendments to that part that are substantially similar to the amendments made by the final
35 rule described in paragraph (1), unless specifically authorized to do so by Act of Congress.

36 SEC. 205. SAFE HARBOR AGREEMENTS.

37 Section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)) (as amended by

1 section 204(a) is amended by adding at the end the following:

2 “(5) SAFE HARBOR AGREEMENTS.—The Secretary may offer to enter into an agreement, to
3 be known as a ‘safe harbor agreement’, with 1 or more entities, including a State or local
4 government, a private landowner, a lessee, or a private third-party conservation
5 organization, that—

6 “(A) shall provide for the taking of any additional threatened species or endangered
7 species that—

8 “(i) is not covered under another agreement under this subsection; and

9 “(ii) is drawn to the property covered by that agreement due to the improved
10 conditions on that property generated by recovery activities for the benefit of the
11 species covered by the agreement; and

12 “(B) may provide for the taking of any threatened species or endangered species
13 covered under another agreement under this subsection and any additional threatened
14 species or endangered species not covered under that agreement that is drawn to an
15 adjacent property not covered by the agreement due to the improved conditions on the
16 property covered by the agreement generated by recovery activities for the benefit of
17 the species covered by the agreement.”.

18 **TITLE III—STRENGTHENING CONSERVATION**
19 **DECISIONMAKING THROUGH INCREASED**
20 **TRANSPARENCY**

21 **SEC. 301. POLICY RELATING TO BEST SCIENTIFIC AND**
22 **COMMERCIAL DATA AVAILABLE.**

23 Section 2 of the Endangered Species Act of 1973 (16 U.S.C. 1531) (as amended by section
24 103(a)) is amended by adding at the end the following:

25 “(d) Policy Relating to Best Scientific and Commercial Data Available.—For purposes of this
26 Act—

27 “(1) the Secretary shall not disclose any information provided to the Secretary pursuant to
28 section 552 of title 5, United States Code (commonly known as the ‘Freedom of
29 Information Act’), that, as determined by the Secretary—

30 “(A) includes sensitive information regarding a species;

31 “(B) identifies the property of a specific landowner; or

32 “(C) includes sensitive personal or business-related information;

33 “(2) in any case in which the Secretary is required to use the best scientific and
34 commercial data available, the Secretary, in evaluating comparable data, shall give greater
35 weight to scientific or commercial data that—

36 “(A) is empirical; or

37 “(B) has been—

- 1 “(i) field tested; or
2 “(ii) independently peer reviewed; and
3 “(3) in any case in which the Secretary determines under section 3(3)(B) that information
4 (including traditional knowledge) provided by a unit of State, Tribal, or local government as
5 described in section 3(3)(A) is deficient in fact and inconsistent with other credible
6 scientific and commercial information, the Secretary shall—
7 “(A) provide a detailed, comprehensive, written explanation of that determination
8 to—
9 “(i) the applicable unit of State, Tribal, or local government;
10 “(ii) the Committees on Appropriations and Environment and Public Works of
11 the Senate; and
12 “(iii) the Committees on Appropriations and Natural Resources of the House of
13 Representatives; and
14 “(B) include in the administrative record of the applicable listing, critical habitat, or
15 other designation—
16 “(i) the information that is the subject of the determination; and
17 “(ii) the written explanation under subparagraph (A).”.

18 SEC. 302. TRANSPARENCY OF INFORMATION.

19 Section 4(b) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is amended by
20 adding at the end the following:

21 “(9) PUBLICATION ON INTERNET OF BASIS FOR LISTINGS.—

22 “(A) IN GENERAL.—Except as provided in subparagraph (D) and subject to
23 subparagraph (C), the Secretary shall make publicly available on the internet the best
24 scientific and commercial data available that are the basis for each regulation
25 (including each proposed regulation) promulgated pursuant to this section.

26 “(B) INCLUSIONS.—The information required to be made available under
27 subparagraph (A) includes any applicable—

28 “(i) status review, including all information—

29 “(I) cited in the review; or

30 “(II) submitted for the review by a third party;

31 “(ii) list of threatened species or endangered species under subsection (c),
32 including—

33 “(I) any final or proposed regulations relating to such a list; and

34 “(II) the results of any 5-year review of such a list;

35 “(iii) draft or final recovery plan;

36 “(iv) information relating to the economic impacts of a critical habitat

1 designation, especially with respect to the impacts on State and local governments
2 and private persons; and

3 “(v) required report or other data.

4 “(C) CONCURRENCE.—

5 “(i) STATE OR LOCAL INFORMATION.—If any information to be published under
6 subparagraph (A) was derived from or provided by a State or a local government
7 in the State, the Secretary shall obtain concurrence from the State or local
8 government before publishing the information.

9 “(ii) COPYRIGHTED MATERIAL.—If any information to be published under
10 subparagraph (A) includes copyrighted material, the Secretary shall obtain
11 consent from the copyright holder before publishing the information.

12 “(D) EXCEPTIONS.—The Secretary shall not make available under subparagraph
13 (A)—

14 “(i) at the request of the Governor or legislature of a State, any information
15 regarding which the State has determined public disclosure is prohibited by a law
16 of the State relating to the protection of personal information;

17 “(ii) any information that may be withheld under section 552 of title 5, United
18 States Code (commonly known as the ‘Freedom of Information Act’); or

19 “(iii) any information that would violate the policy relating to best scientific
20 and commercial data available under section 2(d).”.

21 SEC. 303. INFORMATION PROVIDED TO STATES.

22 (a) In General.—Paragraph (2) of section 6(a) of the Endangered Species Act of 1973 (16
23 U.S.C. 1535(a)) (as amended by section 105(1)(A)) is amended—

24 (1) in subparagraph (B), by striking the period at the end and inserting a semicolon; and

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

26 “(C) in any case in which the Secretary has not received a petition described in
27 section 4(b)(3)(A) relating to a species and the Secretary is considering proposing to
28 list the species as a threatened species or an endangered species under section 4(a)—

29 “(i) providing to the Governor and the State agency of each impacted State a
30 notification of the consideration;

31 “(ii) soliciting comments from the Governor and the State agency, to be
32 submitted to the Secretary by not later than the date that is 60 days after the date
33 of receipt of the notification, regarding whether the listing is in accordance with
34 section 4(a); and

35 “(iii) taking into consideration, and giving great weight to, any comments
36 submitted by the deadline described in clause (ii) before publication of a draft,
37 proposed, final, or emergency regulation to list the species;

38 “(D) before making any determination under section 4(a), providing to each
39 impacted State all information on which the determination is based;

1 “(E) taking into consideration, giving great weight to, and using State data, analyses,
2 and comments in all decisionmaking under this Act; and

3 “(F) accepting comments from the Governor and State agency of, and any affected
4 unit of local government within, an impacted State regarding any proposed regulation
5 under this Act.”.

6 (b) Concurrence.—Section 6(a) of the Endangered Species Act of 1973 (16 U.S.C. 1535(a))
7 (as amended by section 105(1)(A)) is amended by adding at the end the following:

8 “(3) CONCURRENCE.—

9 “(A) STATE OR LOCAL INFORMATION.—If any information to be provided to a State
10 under paragraph (2)(C) was derived from or provided by a different State or a local
11 government in that State, the Secretary shall obtain concurrence from that State or
12 local government before publishing the information.

13 “(B) COPYRIGHTED MATERIAL.—If any information to be provided to a State under
14 paragraph (2)(C) includes copyrighted material, the Secretary shall—

15 “(i) obtain consent from the copyright holder before publishing the information;
16 or

17 “(ii) if the Secretary fails to obtain consent under clause (i), provide
18 bibliographic information relating to the material sufficient to ensure that
19 stakeholders can obtain the information independently.”.

20 SEC. 304. TRANSPARENCY IN LITIGATION.

21 Section 11(g) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)) is amended—

22 (1) in paragraph (3), by adding at the end the following:

23 “(C) PUBLICATION OF COMPLAINT; INTERVENTION.—

24 “(i) PUBLICATION OF COMPLAINT.—

25 “(I) IN GENERAL.—Not later than 30 days after the date on which the
26 plaintiff serves the defendant with the complaint in an action brought under
27 paragraph (1)(C) in accordance with Rule 4 of the Federal Rules of Civil
28 Procedure, the Secretary shall publish the complaint in a readily accessible
29 manner, including electronically.

30 “(II) FAILURE TO MEET DEADLINE.—The failure of the Secretary to meet
31 the 30-day deadline described in subclause (I) shall not be the basis for an
32 action under paragraph (1)(C).

33 “(ii) INTERVENTION.—

34 “(I) IN GENERAL.—After the end of the 30-day period described in clause
35 (i), each affected party shall be given a reasonable opportunity to move to
36 intervene in the action described in clause (i), until the end of which action a
37 party may not file a motion for a consent decree or to dismiss the case
38 pursuant to a settlement agreement.

39 “(II) REBUTTABLE PRESUMPTION.—In considering a motion to intervene

1 by any affected party, the court shall presume, subject to rebuttal, that the
2 interests of that party would not be represented adequately by the parties to
3 the action described in clause (i).

4 “(III) PARTIES INCLUDED IN SETTLEMENT DISCUSSIONS.—Any settlement
5 discussion relating to an action described in clause (i) shall include each—

6 “(aa) plaintiff;

7 “(bb) defendant agency; and

8 “(cc) intervenor that is an affected party.”; and

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

10 “(6) NOTICE OF PROPOSED COVERED SETTLEMENT REQUIRED.—

11 “(A) DEFINITION OF SPECIES.—In this paragraph, the term ‘species’ means a species
12 that is the subject of an action brought under paragraph (1)(C).

13 “(B) NOTICE.—The Secretary shall provide each impacted State and each county in
14 which a species is believed to occur notice of a proposed covered settlement.

15 “(7) DISCLOSURE REQUIRED FOR ATTORNEY FEES.—The head of any Federal agency that
16 pays to any person an amount for attorney fees in connection with an action brought under
17 paragraph (1)(C) relating to a determination made under section 4(a) shall disclose to the
18 Attorney General for publication under paragraph (8) the amount paid.

19 “(8) PUBLICATION OF AMOUNTS PAID.—The Attorney General shall publish annually in
20 the Federal Register a report that—

21 “(A) with respect to each action brought under paragraph (1)(C) relating to a
22 determination made under section 4(a), describes the amounts paid in the action
23 (including amounts paid for attorney fees as disclosed under paragraph (7), the hourly
24 rate charged by the legal services entity on which attorney fees are based, any other
25 amounts awarded by a judge, and amounts paid pursuant to a covered settlement)
26 during the year covered by the report to any—

27 “(i) litigant;

28 “(ii) law firm; or

29 “(iii) expert witness; and

30 “(B) identifies—

31 “(i) each payee to whom the amounts referred to in subparagraph (A) were
32 paid; and

33 “(ii) each civil action in connection with which the amounts were paid.”.

34 **TITLE IV—OPTIMIZING CONSERVATION THROUGH**
35 **RESOURCE PRIORITIZATION**

36 **SEC. 401. PRIORITIZATION OF LISTING PETITIONS,**

1 REVIEWS, AND DETERMINATIONS.

2 Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding at
3 the end the following:

4 “(j) National Listing Work Plan.—

5 “(1) IN GENERAL.—Not later than the date described in paragraph (2), the Secretary shall
6 submit to Congress a national listing work plan that establishes, for each species included in
7 the plan in accordance with paragraph (3), a schedule for the completion during the 7-fiscal
8 year period beginning on October 1 of the first fiscal year after the date of submission of the
9 work plan of—

10 “(A) status reviews and accompanying 12-month findings regarding petitions for
11 listing the species under this Act;

12 “(B) status reviews relating to the species listings initiated by the Secretary;

13 “(C) proposed and final determinations regarding listing the species under this
14 section; and

15 “(D) proposed and final critical habitat designations under subsection (a)(3) relating
16 to the species.

17 “(2) SUBMISSION TO CONGRESS.—

18 “(A) IN GENERAL.—The Secretary shall submit to Congress—

19 “(i) the initial work plan required under paragraph (1) together with the budget
20 request of the Secretary for the first fiscal year beginning after the date of
21 enactment of this subsection; and

22 “(ii) an updated work plan under paragraph (1) together with the budget request
23 of the Secretary for each fiscal year thereafter.

24 “(B) ADDITIONAL INCLUSIONS.—The Secretary shall also include with each budget
25 request referred to in subparagraph (A) a description of the amounts to be requested to
26 carry out the work plan for each fiscal year covered by the work plan, including any
27 amounts requested to resolve emergency petitions not addressed in the work plan.

28 “(3) PRIORITY.—

29 “(A) IN GENERAL.—In developing the work plan under this subsection, the Secretary
30 shall assign to each species covered by the work plan a priority classification of
31 Priority 1 through Priority 5, such that, as determined by the Secretary—

32 “(i) Priority 1 represents species of the highest priority, to be designated as
33 critically imperiled and in need of immediate action;

34 “(ii) Priority 2 represents species with respect to which the best scientific and
35 commercial data available support the need for a clear decision regarding the
36 status of the species for purposes of this Act;

37 “(iii) Priority 3 represents species with respect to which studies regarding the
38 status of the species for purposes of this Act are being carried out—

1 “(I) to answer key questions that may influence the findings of a petition
2 under this Act relating to the species; and

3 “(II) to resolve any uncertainty regarding the status of the species within a
4 reasonable timeframe;

5 “(iv) Priority 4 represents species for which proactive conservation efforts
6 likely to reduce threats to the species are being developed or carried out, within a
7 reasonable timeframe and in an organized manner, by States, landowners, and
8 other stakeholders; and

9 “(v) Priority 5 represents species—

10 “(I) for which there exists little information regarding—

11 “(aa) threats to the species; or

12 “(bb) the status of the species for purposes of this Act; or

13 “(II) that the Secretary determines would receive limited conservation
14 benefit in the foreseeable future by listing the species as a threatened species
15 or endangered species under this section.

16 “(B) USE OF METHODOLOGY.—The Secretary shall establish and assign priority
17 classifications under subparagraph (A) in accordance with the notice of the Director of
18 the United States Fish and Wildlife Service entitled ‘Methodology for Prioritizing
19 Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under
20 the Endangered Species Act’ (81 Fed. Reg. 49248 (July 27, 2016)).

21 “(C) EXTENSIONS FOR CERTAIN PRIORITY CLASSIFICATIONS.—

22 “(i) PRIORITY 3.—In the case of a species classified as Priority 3 under
23 subparagraph (A)(iii), if the Secretary determines that additional time would
24 allow for more complete data collection or the completion of studies relating to
25 the species, the Secretary may retain the species under the work plan for a period
26 of not more than 5 years after the deadline under paragraph (5) with respect to the
27 species.

28 “(ii) PRIORITY 4.—In the case of a species classified as Priority 4 under
29 subparagraph (A)(iv), if the Secretary determines that existing conservation
30 efforts continue to meet the conservation needs of the species, the Secretary may
31 retain the species under the work plan for a period of not more than 5 years after
32 the deadline under paragraph (5) with respect to the species.

33 “(iii) PRIORITY 5.—In the case of a species classified as Priority 5 under
34 subparagraph (A)(v), the Secretary may retain the species under the work plan for
35 a period of not more than 5 years after the deadline under paragraph (5) with
36 respect to the species.

37 “(4) REQUIREMENT.—

38 “(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall carry out this
39 section only in accordance with the applicable work plan.

40 “(B) MODIFICATIONS.—The Secretary may modify a work plan under this

1 subsection only on an emergency basis, as determined by the Secretary, in consultation
2 with each State that may be affected by the modification or emergency.

3 “(5) APPLICABILITY OF DEADLINES.—Except as provided in paragraph (3)(C) and
4 notwithstanding any deadline that would otherwise apply under any other provision of this
5 Act to the review of a petition or the completion of a 12-month status review for a petition
6 relating to a species for which a priority classification is assigned by a work plan under this
7 subsection, the Secretary shall not be required to act on such a petition or review until the
8 last day of the 7-fiscal year period beginning on October 1 of the first fiscal year beginning
9 after the date of submission of the work plan to which the species that is the subject of the
10 petition is assigned.”.

11 TITLE V—STUDIES TO IMPROVE CONSERVATION

12 SEC. 501. DEFINITION OF SECRETARIES.

13 In this title, the term “Secretaries” means—

14 (1) the Secretary of Commerce, acting through the Director of the National Marine
15 Fisheries Service; and

16 (2) the Secretary of the Interior, acting through the Director of the United States Fish and
17 Wildlife Service.

18 SEC. 502. FEASIBILITY STUDIES.

19 Not later than 1 year after the date of enactment of this Act, the Secretaries shall conduct, and
20 submit to the Committees on Appropriations and Environment and Public Works of the Senate
21 and the Committees on Appropriations and Natural Resources of the House of Representatives a
22 report describing the results of—

23 (1) a study of the feasibility of providing Federal assistance to a non-Federal individual or
24 entity to invest in protecting a habitat located outside of the United States to promote the
25 conservation of a threatened species or endangered species in the United States; and

26 (2) a study of the feasibility of providing regulatory flexibility—

27 (A) to incentivize States, units of local government, and private landowners to stock
28 threatened species or endangered species into unoccupied habitat; and

29 (B) to allow for a multi-species approach to planning, conservation, and recovery,
30 including through the development and implementation of multi-species habitat
31 conservation and recovery plans, to improve coordination with respect to multiple
32 species with competing requirements relating to habitat and other natural resources.

33 SEC. 503. STUDIES ON DETERMINATIONS TO LIST.

34 (a) In General.—The Secretaries shall carry out a study—

35 (1) to analyze the extent to which the Secretaries account for factors such as disease,
36 predation, and invasive species when deciding to list a species as a threatened species or an
37 endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

38 (2) to review any factors that threaten or endanger a species for which a listing under the

1 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) would not improve the population
2 of the species;

3 (3) to examine and present findings regarding the weight given to the factors referred to
4 in paragraphs (1) and (2) by the Secretaries in making a listing decision under the
5 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), including an analysis of how the
6 factors are included in the best scientific and commercial data available analysis; and

7 (4) to make recommendations on ways to improve inclusion of, and give appropriate
8 weight to, the factors referred to in paragraphs (1) and (2) in the best scientific and
9 commercial data available analysis relating to a listing decision under the Endangered
10 Species Act of 1973 (16 U.S.C. 1531 et seq.).

11 (b) Report.—Not later than 1 year after the date of enactment of this Act, the Secretaries shall
12 submit to the Committees on Appropriations and Environment and Public Works of the Senate
13 and the Committees on Appropriations and Natural Resources of the House of Representatives
14 and make publicly available a report on the results of the study under subsection (a).

15 SEC. 504. STUDY AND REPORT ON EXPENDITURES.

16 (a) GAO Study.—The Comptroller General of the United States shall conduct, and submit to
17 the Committees on Appropriations and Environment and Public Works of the Senate and the
18 Committees on Appropriations and Natural Resources of the House of Representatives a report
19 describing the results of, a study regarding the amounts expended or disbursed (including
20 through loans, loan guarantees, grants, or any other financing mechanism) by the Federal
21 Government for each of fiscal years 2014 through 2018 as a direct result of any provision of the
22 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including any regulation promulgated
23 pursuant to that Act).

24 (b) Reports.—

25 (1) FEDERAL DEPARTMENTS AND AGENCIES.—

26 (A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the
27 head of each Federal department and agency shall submit to the Secretaries a report
28 that describes the amounts expended or disbursed (including through loans, loan
29 guarantees, grants, or any other financing mechanism) by the department or agency
30 during the period of fiscal years 2014 through 2018 as a direct result of any provision
31 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (including any
32 regulation promulgated pursuant to that Act).

33 (B) REQUIREMENTS.—Each report submitted under subparagraph (A) shall describe,
34 with respect to the amounts covered by the report—

35 (i) the programmatic office of the department or agency on behalf of which
36 each amount was expended or disbursed;

37 (ii) the provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 et
38 seq.) (or regulation promulgated pursuant to that Act) pursuant to which each
39 amount was expended or disbursed; and

40 (iii) the project or activity carried out using each amount, in detail sufficient to
41 reflect the breadth, scope, and purpose of the project or activity.

1 (2) SECRETARIES.—

2 (A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act,
3 the Secretaries shall submit to the Committees on Appropriations, Commerce, Science,
4 and Transportation, and Environment and Public Works of the Senate and the
5 Committee on Appropriations and Natural Resources of the House of Representatives
6 a report that describes—

7 (i) the aggregate amount expended or disbursed by all Federal departments and
8 agencies during the period of fiscal years 2014 through 2018 as a direct result of
9 any provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
10 (including any regulation promulgated pursuant to that Act);

11 (ii) the provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 et
12 seq.) (or regulation promulgated pursuant to that Act) pursuant to which each
13 such amount was expended or disbursed; and

14 (iii) with respect to each relevant department or agency—

15 (I) the total amount expended or disbursed by the department or agency as
16 described in clause (i); and

17 (II) the information described in clauses (i) and (ii) of paragraph (1)(B).

18 (B) UPDATES.—Not later than 90 days after the initial date of the first session of
19 each Congress, the Secretaries shall submit to the committees described in
20 subparagraph (A) an updated report in accordance with that clause, with respect to the
21 preceding 2-fiscal year period.

22 **SEC. 505. STUDY TO QUANTIFY LITIGATION**
23 **EXPENSES.**

24 Section 11(g) of the Endangered Species Act of 1973 (16 U.S.C. 1540(g)) (as amended by
25 section 304(2)) is amended by adding at the end the following:

26 “(9) STUDY TO QUANTIFY LITIGATION EXPENSES.—Not later than 1 year after the date of
27 enactment of this paragraph, the Comptroller General of the United States shall conduct,
28 and submit to the Committees on Appropriations and Environment and Public Works of the
29 Senate and the Committees on Appropriations and Natural Resources of the House of
30 Representatives a report describing the results of, a study that quantifies the amount of
31 Federal funds expended before that date of enactment in connection with any litigation
32 (including any consent decree or a settlement agreement in an action brought under
33 paragraph (1)(C)) relating to a determination made under section 4(a).”.

34 **TITLE VI—REAUTHORIZATION**

35 **SEC. 601. REAUTHORIZATION.**

36 Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

37 (1) in subsection (a)—

38 (A) in paragraph (1), by striking “\$35,000,000 for fiscal year 1988, \$36,500,000 for

1 fiscal year 1989, \$38,000,000 for fiscal year 1990, \$39,500,000 for fiscal year 1991,
2 and \$41,500,000 for fiscal year 1992” and inserting “\$[] for [the period of] fiscal
3 years 2018 through 2022”;

4 (B) in paragraph (2), by striking “\$5,750,000 for fiscal year 1988, \$6,250,000 for
5 each of fiscal years 1989 and 1990, and \$6,750,000 for each of fiscal years 1991 and
6 1992” and inserting “\$[] for [the period of] fiscal years 2018 through 2022”; and

7 (C) in paragraph (3), by striking “\$2,200,000 for fiscal year 1988, \$2,400,000 for
8 each of fiscal years 1989 and 1990, and \$2,600,000 for each of fiscal years 1991 and
9 1992,” and inserting “\$[] for [the period of] fiscal years 2018 through 2022”; and

10 (2) in subsection (b), by striking “to assist him and the Endangered Species Committee in
11 carrying out their functions under sections 7 (e), (g), and (h)” and inserting “to assist the
12 Secretary and the Endangered Species Committee in carrying out subsections (e), (g), and
13 (h) of section 7”.