Title: To amend the Endangered Species Act of 1973 to increase transparency, to support regulatory certainty, and to reauthorize that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

TITLE I—ENHANCING THE FEDERAL-STATE CONSERVATION PARTNERSHIP

Sec.101. Definitions.
Sec.102. Recovery teams.
Sec.103. State-Federal consultation relating to conservation and recovery of wildlife.
Sec.104. Consultation with States regarding land acquisition.
Sec.105. Cooperation with States and Indian Tribes.
Sec.106. State consultation regarding experimental populations.
Sec.107. State participation in settlements.
Sec.108. Award system for State agencies.
Sec.109. State feedback regarding United States Fish and Wildlife Service employees.

TITLE II—ENCOURAGING CONSERVATION ACTIVITIES THROUGH REGULATORY CERTAINTY

Sec.201. Sense of Congress regarding credit for conservation agreements and activities.
Sec.203. Voluntary wildlife conservation agreements.
Sec.204. Candidate conservation agreements with assurances.
Sec.205. Safe harbor agreements.

TITLE III—STRENGTHENING CONSERVATION DECISIONMAKING THROUGH INCREASED TRANSPARENCY
Title I—Enhancing the Federal-State Conservation Partnership

Sec. 101. Definitions.

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

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

“Sec. 3. Definitions.

“In this Act:”;  

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

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

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

(5) by redesignating paragraphs (2) through (4) as paragraphs (4) through (6), respectively;
(6) by redesignating paragraph (1) as paragraph (2);

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

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

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

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

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

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

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

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

“(i) deficient in fact; and

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

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

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

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

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

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

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

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

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

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

(b) Conforming Amendments.—

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

(A) in paragraph (2), in the first sentence, by inserting “and commercial” after “scientific”;
(B) in paragraph (3)(C)(iii), by striking “paragraph 7” and inserting “paragraph (7)”; and

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

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


(c) Definition Regulations.—

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

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

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

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

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

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

SEC. 102. RECOVERY TEAMS.

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

(1) in subsection (a)—

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

“(a) Determination by Secretary.—

“(1) IN GENERAL.—The Secretary”;

(B) in paragraph (1)—

(i) in each of subparagraphs (A) through (C), by striking the semicolon at the end of the subparagraph and inserting a period;
(ii) in subparagraph (A), by striking “(A) the” and inserting the following:

“(A) The”;  

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

“(B) Overutilization”; 

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

“(C) Disease”; 

(v) in subparagraph (D)—

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

“(D) The”; and 

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

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

“(E) Other”; and

(C) by adding at the end the following:

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

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

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

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

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

“(C) MODIFICATIONS.—

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

“(ii) APPROVAL BY SECRETARY.—Not later than 90 days after the Secretary receives a proposed modification under clause (i), the Secretary shall—
“(I) approve the proposed modification; or
“(II) reject the proposed modification.

“(iii) EXPLANATION.—If the Secretary rejects a proposed modification under clause (ii)(II), the Secretary shall provide a detailed, comprehensive, written explanation of the rejection to—
“(I) the recovery team for the species;
“(II) each applicable State agency of an impacted State;
“(III) the Committees on Appropriations and Environment and Public Works of the Senate; and
“(IV) the Committees on Appropriations and Natural Resources of the House of Representatives.

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

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

“(5) DELISTING AND DOWNLISTING.—

“(A) DEFINITIONS.—In this paragraph:
“(i) DELIST.—The term ‘delist’ means to remove a species from the list of threatened species or endangered species, as applicable, under this subsection.
“(ii) DOWNLIST.—The term ‘downlist’ means to move a species included on the list of endangered species under this subsection to the list of threatened species under this subsection.

“(B) DETERMINATION BY SECRETARY.—
“(i) STATUS REVIEW.—The Secretary shall conduct a review of the status of a threatened species or endangered species in accordance with this subparagraph for purposes of delisting or downlisting the species, as applicable, after the recovery goals, habitat objectives, and other criteria for the species established under paragraph (4) have been achieved.
“(ii) INITIATION.—The Secretary shall initiate a status review under clause (i) by not later than 30 days after the earlier of—
“(I) the date on which the Secretary determines that the applicable recovery goals, habitat objectives, and other criteria are achieved with respect to the species; and
“(II) the date on which the Secretary receives from the recovery team for the species a report that—
“(aa) describes the means by which the applicable criteria established under paragraph (4) have been achieved with respect to the species; and
“(bb) recommends the delisting or downlisting of the species, as applicable.

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

“(iv) ACTION ON POSITIVE DETERMINATION.—

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

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

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

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

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

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

“(I) the recovery team for the species;

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

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

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

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

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

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

(2) in subsection (f)—
(A) in paragraph (1)—
(i) in subparagraph (B), by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting the subclauses appropriately; and
(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting the clauses appropriately;
(B) by striking the subsection designation and heading and all that follows through “recovery plans’”) and inserting the following:
“(f) Recovery Plans; Voluntary Wildlife Conservation Agreements; Candidate Conservation Agreements With Assurances; Safe Harbor Agreements.—
“(I) RECOVERY PLANS.—
“(A) IN GENERAL.—The Secretary shall develop and implement recovery plans”;
(C) by striking paragraph (2);
(D) in paragraph (3), by striking “Committee on Merchant Marine and Fisheries” and inserting “Committee on Natural Resources”;
(E) in paragraph (5), by striking “paragraph (4)” and inserting “subparagraph (E)”;
(F) by redesignating paragraphs (3) through (5) as subparagraphs (D) through (F), respectively, and indenting the subparagraphs appropriately; and
(G) in paragraph (1), by adding at the end the following:
“(B) RECOVERY TEAMS.—
“(i) INITI AL INQUIRY.—
“(I) IN GENERAL.—Not later than 30 days after the date on which a species is included on the list of threatened species or endangered species under this section, the Secretary shall submit to the Governor of each impacted State a notice that—
“(aa) describes the inclusion of the species on the applicable list;
“(bb) identifies the State as an impacted State with respect to the species; and
“(cc) solicits from the impacted State a request to establish a recovery team for the species.
“(II) RESPONSE OF IMPACTED STATE.—Not later than 30 days after the date of receipt of a notice under subclause (I), an impacted State that elects to request the establishment of a recovery team with respect to the applicable threatened species or endangered species shall submit to the Secretary the request.
“(ii) ESTABLISHMENT.—Not later than 1 year after the date on which a species is included on the list of threatened species or endangered species under this section, the Secretary shall establish a science-based recovery team for the species, if—

6/25/2018 4:48 PM
“(I) an impacted State, acting alone or in conjunction with another
impacted State, submits to the Secretary a request to establish the recovery
team; or
“(II) in the case of such a species with respect to which more than 1
impacted State exists, the Secretary determines that establishing a recovery
team would promote the conservation and survival of the species.
“(iii) Membership.—
“(I) In general.—The members of a recovery team shall be appointed by
the Secretary and shall include representatives of—
“(aa) the United States Fish and Wildlife Service or the National
Marine Fisheries Service, as applicable;
“(bb) other relevant Federal land and wildlife management agencies;
“(cc) relevant State and local land and wildlife management agencies
from each impacted State, nominated by the Governor of the applicable
State; and
“(dd) on the agreement of a majority of the members described in
items (aa) through (cc), appropriately qualified scientists with expertise
regarding—
“(AA) the species;
“(BB) closer relatives of the species; or
“(CC) the ecosystem on which the species depends.
“(II) Number.—The Secretary, in consultation with impacted States, shall
determine the number of members of each recovery team on an individual
basis for each species.
“(III) Limitation.—The total number of members appointed to each
recovery team under items (aa) and (bb) of subclause (I) shall not exceed the
number of members appointed under item (cc) of that subclause.
“(IV) Vacancies.—In the case of a vacancy on a recovery team, not later
than 60 days after the date on which the vacancy begins, the vacancy shall be
filled in the manner in which the original appointment was made.
“(V) Leadership.—
“(aa) Inquiry.—Not later than 30 days after the date of
establishment of a recovery team under clause (ii), the Secretary shall
solicit from the Governor of each impacted State a request to lead the
recovery team.
“(bb) Designation.—Subject to item (cc), on receipt from an
impacted State of a request under item (aa), the Secretary shall
designate—
“(AA) the impacted State as the leader of the recovery team; and
“(BB) the representative of the impacted State under subclause (I)(cc) as the executive director of the recovery team.

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

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

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

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

“(iv) DUTIES.—

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

“(aa) develop and implement a recovery plan;

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

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

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

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

(b) Conforming Amendments.—

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

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

SEC. 103. STATE-FEDERAL CONSULTATION RELATING TO CONSERVATION AND RECOVERY OF WILDLIFE.
(a) Findings, Purposes, and Policy.—Section 2 of the Endangered Species Act of 1973 (16 U.S.C. 1531) is amended—

(1) in subsection (a)—

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

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

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

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

(3) in subsection (c)—

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

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

“(1) all Federal”;

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

(C) in paragraph (2)—

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

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

“(3) Federal agencies”;

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

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

(E) by adding at the end the following:

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


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

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

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

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

(3) by striking “(3)(A) To” and inserting the following:
“(3) PETITIONS FROM INTERESTED PERSONS.—

“(A) ACTION BY SECRETARY.—

“(i) IN GENERAL.—To”; and

(4) by adding at the end the following:

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

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

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

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

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

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

(1) in subsection (b)—

(A) in paragraph (5)(A)—

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

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

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

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

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

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

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

(B) in paragraph (7)(B), by striking “the State agency in each State in which such species” and inserting “the Governor and State agency of each impacted State, and to
each Indian Tribe with jurisdiction over land in which the species”; and

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

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

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

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

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

(B) by adding at the end the following:

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

“(I) to lead recovery planning and implementation;

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

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

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

“(C) STATE PARTICIPATION.—

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

“(I) represents—

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

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

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

“(ii) CONSULTATION REQUIRED.—In carrying out this subsection, the Secretary shall—
“(I) consult, to the maximum extent practicable, with impacted States, including Governors, State agencies, and local land and wildlife management agencies of impacted States; and

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

“(iii) DEVELOPMENT.—

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

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

“(bb) the Secretary shall approve the request.

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

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

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

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

“(IV) DRAFT RECOVERY PLANS.—

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

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

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

“(BB) if the Secretary approves the draft, notify the eligible State agency and publish a notice of availability of the draft recovery plan, or if the Secretary determines that the draft does not meet applicable requirements, provide to the eligible State agency a notice identifying each deficiency of the draft.
“(cc) CORRECTION OF DEFICIENCIES.—The Secretary shall—

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

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

“(V) STATE RECOMMENDATIONS.—

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

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

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

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

“(iv) IMPLEMENTATION.—

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

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

“(bb) the Secretary shall approve the request.

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

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

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

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

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

“(I) interstate cooperation; and

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

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

“(I) provides to the eligible State agency—

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

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

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

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

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

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

“(vii) ACTION BY SECRETARY.—

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

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

“(bb) if no additional eligible State agency submitted to the Secretary
such a request—

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

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

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

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

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

SEC. 104. CONSULTATION WITH STATES REGARDING LAND ACQUISITION.

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

(1) in subsection (a)—

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

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

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

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

“(a) Program.—

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

(2) by adding at the end the following:

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

“(1) provide to each State within the borders of which the acquisition is proposed to
occur a notice of the proposed acquisition;

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

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

SEC. 105. COOPERATION WITH STATES AND INDIAN TRIBES.

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

(1) in subsection (a)—

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

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

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

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

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

“(a) Requirement.—

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

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

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

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

(3) in subsection (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 106. STATE CONSULTATION REGARDING EXPERIMENTAL POPULATIONS.

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

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

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

(2) in paragraph (2)—

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

“(2) AUTHORIZATION OF RELEASES.—

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

(B) in subparagraph (C)—

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

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

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

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

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

"(B) Before"
“(B) REQUIREMENTS.—The Secretary shall—

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

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

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

SEC. 107. STATE PARTICIPATION IN SETTLEMENTS.

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

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

“(C) SETTLEMENT ACTIONS.—

“(i) TIMING.—

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

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

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

(3) by adding at the end the following:

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

SEC. 108. AWARD SYSTEM FOR STATE AGENCIES.

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

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

“(1) IN GENERAL.—Any action”; and

(2) by adding at the end the following:

“(2) AWARD SYSTEM FOR STATE AGENCIES.—

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

“(B) CRITERIA.—The Secretary shall develop criteria for the award system under
subparagraph (A) in consultation with—

“(i) the Association of State Fish and Wildlife Agencies; and
“(ii) other representatives of State fish and wildlife agencies, including—
“(I) regional groups; and
“(II) State fish and wildlife agencies; and
“(III) other applicable State agencies.”.

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

(a) Definitions.—In this section:

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

(A) a State wildlife agency; and
(B) any other State department or agency with duties that result in interaction between the agency and the Service (including any employee of the Service) relating to—

(i) the conservation or management of a species;
(ii) the recovery of a species listed as a threatened species or an endangered species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); or
(iii) the implementation of that Act (16 U.S.C. 1531 et seq.).

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

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

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

(c) Contents.—

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

(A) the responsiveness of the employee to State government authorities, local government authorities, and stakeholders who are legal residents of the State (including private individuals, industry trade groups, nonprofit organizations, and other entities representing farming, ranching, home building, transportation infrastructure, energy development, tourism, sportsmen, wildlife conservation, environmental groups, and outdoor recreation); and
(B) the effectiveness of the employee in working with the entities described in subparagraph (A) to fulfill the mission of the Service relating to species conservation, species management, the recovery of threatened species and endangered species, and the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

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

(d) Commendation.—

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

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

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

TITLE II—ENCOURAGING CONSERVATION ACTIVITIES THROUGH REGULATORY CERTAINTY

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

It is the sense of Congress that—

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

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

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

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

SEC. 202. CONSERVATION AGREEMENTS AS REGULATORY MECHANISMS.
Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

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

“(C) REVISION.—The Secretary”;

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

“(B) CONTENTS.—Each list”; and

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

“(1) REQUIREMENTS.—

“(A) PUBLICATION.—The Secretary”; and

(B) in paragraph (2)—

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

“(2) REVIEW.—The Secretary”;

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

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

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

“(2) TREATMENT.—

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

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

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

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

“(iii) a candidate conservation agreement; and

“(iv) a plan that—

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

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

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

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

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

SEC. 203. VOLUNTARY WILDLIFE CONSERVATION AGREEMENTS.

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

“(3) VOLUNTARY WILDLIFE CONSERVATION AGREEMENTS.—

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

“(i) a State or local government;
“(ii) a private landowner;
“(iii) a lessee; and
“(iv) a private third-party conservation organization.

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

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

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

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

“(I) under extraordinary circumstances; and
“(II) with the consent of all parties to the agreement.

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

“(i) implement standard procedures and encourage widespread use of templates in developing the agreements;
“(ii) simplify the application and approval processes relating to the agreements;
“(iii) reduce the burdens associated with reporting and monitoring under the agreements; and
“(iv) provide for the protection of sensitive personal and business-related information of any party to the agreements.”.

SEC. 204. CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES.

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

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

“(A) shall honor the terms of the agreement, as in existence before March 21, 2017;
“(B) shall promulgate regulations—

“(i) to expedite the process for entering into those agreements; and
“(ii) to protect sensitive personal and business-related information of each party to the agreement;

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

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

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

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

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

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

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

SEC. 205. SAFE HARBOR AGREEMENTS.

Section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)) (as amended by
section 204(a)) is amended by adding at the end the following:

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

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

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

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

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

TITLE III—STRENGTHENING CONSERVATION DECISIONMAKING THROUGH INCREASED TRANSPARENCY

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

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

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

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

“(A) includes sensitive information regarding a species;

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

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

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

“(A) is empirical; or

“(B) has been—
“(i) field tested; or

“(ii) independently peer reviewed; and

“(3) in any case in which the Secretary determines under section 3(3)(B) that information (including traditional knowledge) provided by a unit of State, Tribal, or local government as described in section 3(3)(A) is deficient in fact and inconsistent with other credible scientific and commercial information, the Secretary shall—

“(A) provide a detailed, comprehensive, written explanation of that determination to—

“(i) the applicable unit of State, Tribal, or local government;

“(ii) the Committees on Appropriations and Environment and Public Works of the Senate; and

“(iii) the Committees on Appropriations and Natural Resources of the House of Representatives; and

“(B) include in the administrative record of the applicable listing, critical habitat, or other designation—

“(i) the information that is the subject of the determination; and

“(ii) the written explanation under subparagraph (A).”.

SEC. 302. TRANSPARENCY OF INFORMATION.

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

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

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

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

“(i) status review, including all information—

“(I) cited in the review; or

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

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

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

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

“(iii) draft or final recovery plan;

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


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

“(v) required report or other data.

“(C) CONCURRENCE.—

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

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

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

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

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

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

SEC. 303. INFORMATION PROVIDED TO STATES.

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

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

(2) by adding at the end the following:

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

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

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

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

“(D) before making any determination under section 4(a), providing to each impacted State all information on which the determination is based;
“(E) taking into consideration, giving great weight to, and using State data, analyses, and comments in all decisionmaking under this Act; and

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

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

“(3) CONCURRENCE.—

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

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

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

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

SEC. 304. TRANSPARENCY IN LITIGATION.

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

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

“(C) PUBLICATION OF COMPLAINT; INTERVENTION.—

“(i) PUBLICATION OF COMPLAINT.—

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

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

“(ii) INTERVENTION.—

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

“(II) REBUTTABLE PRESUMPTION.—In considering a motion to intervene
by any affected party, the court shall presume, subject to rebuttal, that the
interests of that party would not be represented adequately by the parties to
the action described in clause (i).

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

“(aa) plaintiff;
“(bb) defendant agency; and
“(cc) intervenor that is an affected party.”; and

(2) by adding at the end the following:

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

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

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

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

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

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

“(i) litigant;
“(ii) law firm; or
“(iii) expert witness; and

“(B) identifies—

“(i) each payee to whom the amounts referred to in subparagraph (A) were
paid; and
“(ii) each civil action in connection with which the amounts were paid.”.

TITLE IV—OPTIMIZING CONSERVATION THROUGH
RESOURCE PRIORITIZATION

SEC. 401. PRIORITIZATION OF LISTING PETITIONS,
REVIEWS, AND DETERMINATIONS.

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

“(j) National Listing Work Plan.—

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

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

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

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

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

“(2) Submission to Congress.—

“(A) In general.—The Secretary shall submit to Congress—

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

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

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

“(3) Priority.—

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

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

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

“(iii) Priority 3 represents species with respect to which studies regarding the status of the species for purposes of this Act are being carried out—
“(I) to answer key questions that may influence the findings of a petition under this Act relating to the species; and

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

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

“(v) Priority 5 represents species—

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

“(aa) threats to the species; or

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

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

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

“(C) EXTENSIONS FOR CERTAIN PRIORITY CLASSIFICATIONS.—

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

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

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

“(4) REQUIREMENT.—

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

“(B) MODIFICATIONS.—The Secretary may modify a work plan under this
subsection only on an emergency basis, as determined by the Secretary, in consultation
with each State that may be affected by the modification or emergency.

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

TITLE V—STUDIES TO IMPROVE CONSERVATION

SEC. 501. DEFINITION OF SECRETARIES.

In this title, the term “Secretaries” means—

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

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

SEC. 502. FEASIBILITY STUDIES.

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

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

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

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

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

SEC. 503. STUDIES ON DETERMINATIONS TO LIST.

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

(1) to analyze the extent to which the Secretaries account for factors such as disease,
predation, and invasive species when deciding to list a species as a threatened species or an

(2) to review any factors that threaten or endanger a species for which a listing under the
Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) would not improve the population of the species;

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

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

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

SEC. 504. STUDY AND REPORT ON EXPENDITURES.

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

(b) Reports.—

(1) FEDERAL DEPARTMENTS AND AGENCIES.—

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 505. STUDY TO QUANTIFY LITIGATION EXPENSES.

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

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

TITLE VI—REAUTHORIZATION

SEC. 601. REAUTHORIZATION.

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

(1) in subsection (a)—

(A) in paragraph (1), by striking “$35,000,000 for fiscal year 1988, $36,500,000 for
fiscal year 1989, $38,000,000 for fiscal year 1990, $39,500,000 for fiscal year 1991, 
and $41,500,000 for fiscal year 1992” and inserting “[____] for [the period of] fiscal 
years 2018 through 2022”;

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

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

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