

116TH CONGRESS  
2D SESSION

# S. 4589

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2020

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Endangered Species Act Amendments of 2020”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—TECHNICAL CORRECTIONS OF GENDER-SPECIFIC  
PRONOUNS

Sec. 101. Technical corrections of gender-specific pronouns.

TITLE II—ENHANCING THE FEDERAL-STATE CONSERVATION  
PARTNERSHIP

Sec. 201. Definitions.

Sec. 202. State-Federal consultation relating to conservation and recovery of  
wildlife.

Sec. 203. Recovery of threatened and endangered species.

Sec. 204. Delisting, downlisting, and uplisting.

Sec. 205. Cooperation with States and Indian Tribes.

Sec. 206. State consultation regarding experimental populations.

Sec. 207. State participation in settlements.

TITLE III—ENCOURAGING CONSERVATION ACTIVITIES THROUGH  
REGULATORY CERTAINTY

Sec. 301. Sense of Congress regarding conservation agreements and activities.

Sec. 302. Conservation agreements as factors in listing decisions.

Sec. 303. Conservation efforts as regulatory mechanisms.

Sec. 304. Candidate conservation agreements with assurances.

Sec. 305. Safe harbor agreements.

Sec. 306. Conservation agreement templates.

TITLE IV—STRENGTHENING CONSERVATION DECISIONMAKING  
THROUGH INCREASED TRANSPARENCY

Sec. 401. Transparency of information.

Sec. 402. Transparency in litigation.

TITLE V—OPTIMIZING CONSERVATION THROUGH RESOURCE  
PRIORITIZATION

Sec. 501. Prioritization of listing petitions, reviews, and determinations.

TITLE VI—STUDIES TO IMPROVE CONSERVATION

Sec. 601. Definition of Secretaries.

Sec. 602. Study to review conservation factors.

Sec. 603. Study and report on expenditures.

Sec. 604. Study to quantify litigation expenses.

TITLE VII—REAUTHORIZATION

Sec. 701. Reauthorization.

TITLE VIII—MISCELLANEOUS

Sec. 801. Effect.

Sec. 802. Sense of the Senate.

1 **TITLE I—TECHNICAL CORREC-**  
2 **TIONS OF GENDER-SPECIFIC**  
3 **PRONOUNS**

4 **SEC. 101. TECHNICAL CORRECTIONS OF GENDER-SPECIFIC**  
5 **PRONOUNS.**

6 (a) DETERMINATION OF ENDANGERED SPECIES AND  
7 THREATENED SPECIES.—Section 4 of the Endangered  
8 Species Act of 1973 (16 U.S.C. 1533) is amended—

9 (1) in subsection (a)(2)—

10 (A) by striking subparagraphs (A) and (B)  
11 and inserting the following:

12 “(A) in any case in which the Secretary of  
13 Commerce determines that the species should  
14 be—

15 “(i) listed as an endangered species or  
16 a threatened species, or changed in status  
17 from a threatened species to an endan-  
18 gered species—

19 “(I) the Secretary of Commerce  
20 shall submit to the Secretary of the  
21 Interior a notice of the determination;  
22 and

23 “(II) the Secretary of the Inte-  
24 rior shall list the species in accordance  
25 with this section; or

1           “(ii) removed from any list published  
2           pursuant to subsection (c), or changed in  
3           status from an endangered species to a  
4           threatened species—

5                   “(I) the Secretary of Commerce  
6                   shall recommend that action to the  
7                   Secretary of the Interior; and

8                   “(II) the Secretary of the Inte-  
9                   rior, on concurrence with the rec-  
10                  ommendation, shall implement the ac-  
11                  tion; and”;

12                  (B) by redesignating subparagraph (C) as  
13                  subparagraph (B) and indenting the subpara-  
14                  graph appropriately;

15                  (2) in subsection (b)—

16                   (A) in paragraph (1)(A), by striking “to  
17                   him”;

18                   (B) in paragraph (2), in the second sen-  
19                   tence, by striking “he determines” each place it  
20                   appears and inserting “the Secretary deter-  
21                   mines”;

22                   (C) in paragraph (3)(D)(ii), by striking  
23                   “the Secretary shall” and all that follows  
24                   through the period at the end and inserting the  
25                   following: “the Secretary shall—

1                   “(I) determine the means by  
2                   which to proceed with the requested  
3                   revision; and

4                   “(II) promptly publish in the  
5                   Federal Register a notice of the deter-  
6                   mination.”;

7                   (D) in paragraph (5)(C), by striking “he  
8                   deems” and inserting “the Secretary determines  
9                   to be”;

10                  (E) in paragraph (6)(B)(ii), in the third  
11                  sentence, by striking “he determines” and in-  
12                  serting “the Secretary determines”; and

13                  (F) in paragraph (7), in the third sentence  
14                  of the undesignated matter following subpara-  
15                  graph (B), by striking “he shall withdraw it”  
16                  and inserting “the Secretary shall withdraw the  
17                  regulation”;

18                  (3) in subsection (c)(1), in the first sentence, by  
19                  striking “by him” each place it appears and insert-  
20                  ing “by the Secretary”;

21                  (4) in subsection (d), in the first sentence, by  
22                  striking “he deems” and inserting “the Secretary  
23                  determines to be”;

24                  (5) in subsection (e)—

1           (A) by redesignating subparagraphs (B)  
2           and (C) as paragraphs (2) and (3), respectively,  
3           and indenting the paragraphs appropriately;  
4           and

5           (B) by striking “and to the extent” in the  
6           matter preceding subparagraph (A) and all that  
7           follows through “(A) such species” and insert-  
8           ing the following: “to the extent the Secretary  
9           determines to be advisable, treat any species as  
10          an endangered species or threatened species, re-  
11          gardless of whether the species is listed pursu-  
12          ant to this section, if the Secretary finds that—  
13          “(1) the species”; and

14          (6) in subsection (f)(1), in the first sentence of  
15          the matter preceding subparagraph (A), by striking  
16          “he finds” and inserting “the Secretary finds”.

17          (b) LAND ACQUISITION.—Section 5(a)(2) of the En-  
18          dangered Species Act of 1973 (16 U.S.C. 1534(a)(2)) is  
19          amended by striking “in him” and inserting “in the Sec-  
20          retary”.

21          (c) COOPERATION WITH STATES.—Section 6 of the  
22          Endangered Species Act of 1973 (16 U.S.C. 1535) is  
23          amended—

24               (1) in subsection (c)—

1 (A) in paragraph (1), in the matter pre-  
 2 ceding subparagraph (A), by striking “he” each  
 3 place it appears and inserting “the Secretary”;  
 4 and

5 (B) in paragraph (2), in the matter pre-  
 6 ceding subparagraph (A), by striking “he” each  
 7 place it appears and inserting “the Secretary”;  
 8 (2) in subsection (d)(2)—

9 (A) by striking the paragraph designation  
 10 and all that follows through “agreement; and”  
 11 in clause (i) and inserting the following:

12 “(2) COOPERATIVE AGREEMENT REQUIRE-  
 13 MENTS.—

14 “(A) IN GENERAL.—A cooperative agree-  
 15 ment under this section shall include provisions  
 16 relating to—

17 “(i) the benefits expected to be de-  
 18 rived in connection with the conservation  
 19 of each applicable endangered species or  
 20 threatened species;

21 “(ii) the actions to be carried out  
 22 by—

23 “(I) the Secretary; and

24 “(II) each applicable State;

1 “(iii) the estimated cost of the actions  
2 described in clause (ii); and

3 “(iv) subject to subparagraph (B), the  
4 Federal and non-Federal shares of those  
5 costs.

6 “(B) FEDERAL SHARE.—In establishing  
7 the provisions required under subparagraph  
8 (A)(iv), the Secretary shall ensure that—

9 “(i) the Federal share of the applica-  
10 ble program costs shall not exceed 75 per-  
11 cent of the estimated program cost, as  
12 stated in the cooperative agreement; but”;  
13 and

14 (B) in the undesignated matter following  
15 clause (ii) of subparagraph (B) (as so des-  
16 ignated)—

17 (i) in the second sentence—

18 (I) by striking “Secretary, whose  
19 decision” and inserting the following:  
20 “Secretary.

21 “(II) TREATMENT OF DETER-  
22 MINATION.—A determination of the  
23 Secretary pursuant to subclause (I)”;  
24 and

1 (II) by striking “For the pur-  
2 poses” and inserting the following:

3 “(ii) FORM OF NON-FEDERAL  
4 SHARE.—

5 “(I) IN GENERAL.—For pur-  
6 poses”; and

7 (ii) in the first sentence, by striking  
8 “The Secretary may, in his discretion, and  
9 under such rules and regulations as he  
10 may prescribe, advance” and inserting the  
11 following:

12 “(C) NON-FEDERAL SHARE.—

13 “(i) IN GENERAL.—At the discretion  
14 of the Secretary, the Secretary, by regula-  
15 tion, may advance”;

16 (3) in subsection (e), by striking “his periodic  
17 review” and inserting “periodic review by the Sec-  
18 retary”; and

19 (4) in subsection (g)(2)(B)(ii), in the first sen-  
20 tence, by striking “applies such prohibition after he  
21 finds, and publishes his finding, that” and inserting  
22 “applies the prohibition after publishing a deter-  
23 mination by the Secretary that”.

1 (d) INTERAGENCY COOPERATION.—Section 7 of the  
2 Endangered Species Act of 1973 (16 U.S.C. 1536) is  
3 amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1), in the first sentence,  
6 by striking “administered by him and utilize  
7 such” and inserting “administered by the Sec-  
8 retary, and use those”; and

9 (B) in paragraph (3), by striking “his  
10 project” and inserting “the project of the appli-  
11 cant”;

12 (2) in subsection (b)(3)(A), in the second sen-  
13 tence, by striking “which he” and inserting “that  
14 the Secretary”; and

15 (3) in subsection (g)—

16 (A) in paragraph (4), by striking “require-  
17 ments set forth in paragraph (3)(A) (i), (ii) and  
18 (iii) he shall, in consultation with the Members  
19 of the Committee, hold” and inserting “require-  
20 ments under clauses (i), (ii), and (iii) of para-  
21 graph (3)(A), the Secretary, in consultation  
22 with the Committee, shall hold”; and

23 (B) in paragraph (7), by striking “such  
24 agency to the Secretary to assist him in car-  
25 rying out his duties under” and inserting “the

1 Federal agency to the Secretary to assist the  
2 Secretary in carrying out”.

3 (e) INTERNATIONAL COOPERATION.—Section 8 of  
4 the Endangered Species Act of 1973 (16 U.S.C. 1537)  
5 is amended—

6 (1) in subsection (a), in the second sentence, by  
7 striking “he deems” and inserting “the President  
8 determines to be”;

9 (2) in subsection (b)(3), by striking “as he”  
10 and inserting “as the Secretary”;

11 (3) in subsection (c)(1), by striking “his depart-  
12 ment” and inserting “the Department of the Sec-  
13 retary”; and

14 (4) in subsection (d), by striking “he deems”  
15 and inserting “the Secretary determines to be”.

16 (f) CONVENTION IMPLEMENTATION.—Section  
17 8A(c)(2) of the Endangered Species Act of 1973 (16  
18 U.S.C. 1537a(c)(2)) is amended by striking “by him” and  
19 inserting “by the Secretary”.

20 (g) PROHIBITED ACTS.—Section 9 of the Endan-  
21 gered Species Act of 1973 (16 U.S.C. 1538) is amended—

22 (1) in subsection (d)(2)—

23 (A) in subparagraph (A), by striking “by  
24 him” each place it appears and inserting “by  
25 the person”; and

1 (B) in subparagraph (B), by striking “his  
2 place of business, an opportunity to examine his  
3 inventory” and inserting “the place of business  
4 of the person, an opportunity to examine the in-  
5 ventory of the person”; and

6 (2) in subsection (f)(1), in the third sentence—

7 (A) by striking “as he” and inserting “as  
8 the Secretary”; and

9 (B) by striking “if, in his discretion, he  
10 deems it” and inserting “as the Secretary de-  
11 termines to be”.

12 (h) EXCEPTIONS.—Section 10 of the Endangered  
13 Species Act of 1973 (16 U.S.C. 1539) is amended—

14 (1) in subsection (a), by striking “he” each  
15 place it appears and inserting “the Secretary”;

16 (2) in subsection (b)—

17 (A) in paragraph (1), by striking “applies  
18 to him” and inserting “submits to the Secretary  
19 an application”; and

20 (B) in paragraph (3)—

21 (i) in the first sentence, by striking  
22 “as he deems fit” and inserting “as the  
23 Secretary determines to be appropriate”;  
24 and

1 (ii) in the second sentence, by striking  
2 “in his discretion”;

3 (3) in subsection (d)—

4 (A) by striking “such endangered species,  
5 and (3) will” and inserting the following: “an  
6 endangered species; and  
7 “(3) will”;

8 (B) by striking “faith, (2) if granted and  
9 exercised” and inserting the following: “faith;  
10 “(2) if granted and exercised,”; and

11 (C) by striking “and (b) of this section  
12 only if he finds and publishes his finding in the  
13 Federal Register that (1) such” and inserting  
14 the following: “and (b) only if the Secretary  
15 publishes in the Federal Register a determina-  
16 tion by the Secretary that—  
17 “(1) the”;

18 (4) in subsection (e)(4), in the first sentence—

19 (A) by striking “the provisions of para-  
20 graph (1) of this subsection, whenever” and in-  
21 serting “paragraph (1), in any case in which”;  
22 and

23 (B) by striking “he may” and inserting  
24 “the Secretary may”; and

1           (5) in subsection (f), by striking “he” each  
2           place it appears and inserting “the Secretary”.

3           (i) PENALTIES AND ENFORCEMENT.—Section 11 of  
4 the Endangered Species Act of 1973 (16 U.S.C. 1540)  
5 is amended—

6           (1) in subsection (a)—

7                 (A) in paragraph (1), in the eighth sen-  
8                 tence, by striking “his action” and inserting  
9                 “the action of the Secretary”; and

10                (B) in paragraph (3), by striking “that  
11                he” and inserting “that the defendant”;

12           (2) in subsection (b)(3), by striking “that he”  
13           and inserting “that the defendant”;

14           (3) in subsection (d), in the third sentence, by  
15           striking “his official duties” and inserting “an offi-  
16           cial duty”;

17           (4) in subsection (e)—

18                 (A) in paragraph (3), in the second sen-  
19                 tence, by striking “Such persons may make ar-  
20                 rests without a warrant for any violation of this  
21                 Act if he has reasonable grounds to believe that  
22                 the person to be arrested is committing the vio-  
23                 lation in his presence or view” and inserting  
24                 “An authorized person described in this para-  
25                 graph may make an arrest without a warrant

1 for any violation of this Act, if the authorized  
2 person has reasonable grounds to believe that  
3 the individual to be arrested is committing the  
4 violation in the presence or view of the author-  
5 ized person”; and

6 (B) in paragraph (5), by striking “the Sec-  
7 retary or by such persons as he may designate”  
8 and inserting “the Secretary (or a designee)”;  
9 and

10 (5) in subsection (g)(1), in the matter pre-  
11 ceding subparagraph (A), by striking “his own be-  
12 half” and inserting “behalf of the person”.

13 (j) EXEMPTIONS FROM ACT.—Section 15(b) of the  
14 Endangered Species Act of 1973 (16 U.S.C. 1542(b)) is  
15 amended by striking “to assist him and the Endangered  
16 Species Committee in carrying out their functions under  
17 sections 7 (e), (g), and (h)” and inserting “to assist the  
18 Secretary and the Endangered Species Committee in car-  
19 rying out subsections (e), (g), and (h) of section 7”.

20 **TITLE II—ENHANCING THE FED-**  
21 **ERAL-STATE CONSERVATION**  
22 **PARTNERSHIP**

23 **SEC. 201. DEFINITIONS.**

24 (a) IN GENERAL.—Section 3 of the Endangered Spe-  
25 cies Act of 1973 (16 U.S.C. 1532) is amended—

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

5 **“SEC. 3. DEFINITIONS.**

6           “In this Act:”;

7           (2) by redesignating paragraphs (1), (2)  
8 through (4), (5), (6) through (9), (10), (12) through  
9 (14), and (15) through (21) as paragraphs (2), (4)  
10 through (6), (8), (10) through (13), (15), (17)  
11 through (19), and (22) through (28), respectively;

12           (3) by inserting before paragraph (2) (as so re-  
13 designated) the following:

14           “(1) AFFECTED PARTY.—The term ‘affected  
15 party’ means any unit of State, Tribal, or local gov-  
16 ernment the rights of which may be affected by a  
17 determination made under section 4(a) in an action  
18 brought under section 11(g)(1)(C), including prop-  
19 erty rights.”;

20           (4) by inserting after paragraph (2) (as so re-  
21 designated) the following:

22           “(3) APPROPRIATELY QUALIFIED SCIENTIST OR  
23 OTHER QUALIFIED PERSON.—The term ‘appro-  
24 priately qualified scientist or other qualified per-  
25 son’—

1           “(A) has the meaning given the term by  
2           the Secretary in the rulemaking under section  
3           201(c)(2) of the Endangered Species Act  
4           Amendments of 2020; and

5           “(B) includes a person with, at a min-  
6           imum, expertise regarding a species, closer rel-  
7           atives of a species, or the ecosystem on which  
8           a species depends.”;

9           (5) by inserting after paragraph (6) (as so re-  
10          designated) the following:

11          “(7) COVERED SETTLEMENT.—The term ‘cov-  
12          ered settlement’ means a consent decree or a settle-  
13          ment agreement in an action brought under section  
14          11(g)(1)(C).”;

15          (6) by inserting after paragraph (8) (as so re-  
16          designated) the following:

17          “(9) ELIGIBLE STATE AGENCY.—The term ‘eli-  
18          gible State agency’—

19                 “(A) has the meaning given the term by  
20                 the Secretary in the rulemaking under section  
21                 201(c)(2) of the Endangered Species Act  
22                 Amendments of 2020; and

23                 “(B) means a State agency of an impacted  
24                 State that, at a minimum, demonstrates ade-  
25                 quate authority and capability to develop and

1           implement recovery plans and implementation  
2           plans, as applicable.”;

3           (7) by inserting after paragraph (13) (as so re-  
4           designated) the following:

5           “(14) IMPACTED STATE.—The term ‘impacted  
6           State’, with respect to a threatened species or en-  
7           dangered species, means any State in which the  
8           threatened species or endangered species, as applica-  
9           ble, is believed to occur.”;

10          (8) by inserting after paragraph (15) (as so re-  
11          designated) the following:

12          “(16) PARTY WITH A DIRECT INTEREST IN THE  
13          LAND IN WHICH THE RELEVANT SPECIES IS BE-  
14          LIEVED TO OCCUR.—The term ‘party with a direct  
15          interest in the land in which the relevant species is  
16          believed to occur’—

17                 “(A) has the meaning given the term by  
18                 the Secretary in the rulemaking under section  
19                 201(c)(2) of the Endangered Species Act  
20                 Amendments of 2020; and

21                 “(B) includes—

22                         “(i) if a recovery team is established,  
23                         each member of the recovery team;

24                         “(ii) if a recovery team is not estab-  
25                         lished, appropriately qualified scientists

1 and other qualified people who conduct the  
2 development of a recovery plan; and

3 “(iii) parties who—

4 “(I) own, lease, or otherwise hold  
5 a legal interest in land in which the  
6 relevant species is believed to occur;

7 “(II) operate agricultural, en-  
8 ergy, natural resource extraction, or  
9 other productive activities on the land  
10 in which the relevant species is be-  
11 lieved to occur; and

12 “(III) conduct land, habitat, and  
13 conservation activities on the land in  
14 which the relevant species is believed  
15 to occur.”; and

16 (9) by inserting after paragraph (19) (as so re-  
17 designated) the following:

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

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

1           “(B) includes a description of the criteria  
2           and measures that will be used to monitor im-  
3           plementation.

4           “(21) RECOVERY TEAM.—The term ‘recovery  
5           team’ means a team established by the Secretary  
6           under section 4(f)(5)(B) for the purpose of devel-  
7           oping, implementing, monitoring, and revising a re-  
8           covery plan.”.

9           (b) CONFORMING AMENDMENTS.—

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

12           (A) in paragraph (2), in the first sentence,  
13           by inserting “and commercial” after “sci-  
14           entific”; and

15           (B) in paragraph (7), in the third sentence  
16           of the undesignated matter following subpara-  
17           graph (B), by striking “best appropriate data  
18           available to him” and inserting “best scientific  
19           and commercial data available”.

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

24           (3) Section 10(j)(2)(B) of the Endangered Spe-  
25           cies Act of 1973 (16 U.S.C. 1539(j)(2)(B)) is

1 amended by striking “best available information”  
2 and inserting “best scientific and commercial data  
3 available”.

4 (c) DEFINITION REGULATIONS.—

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

8 (A) any comment submitted to the Sec-  
9 retary of the Interior by a State (as defined in  
10 section 3 of that Act (16 U.S.C. 1532)) should  
11 be afforded full and fair consideration by the  
12 Secretary; and

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

20 (2) REGULATIONS.—Not later than 180 days  
21 after the date of enactment of this Act, the Sec-  
22 retary of the Interior and the Secretary of Com-  
23 merce shall initiate a rulemaking to define, for pur-  
24 poses of the Endangered Species Act of 1973 (16  
25 U.S.C. 1531 et seq.)—

1 (A) the term “full and fair consideration”,  
2 in accordance with the sense of Congress ex-  
3 pressed in paragraph (1)(A);

4 (B) the term “maximum extent possible”,  
5 with respect to consultation with States, in ac-  
6 cordance with the sense of Congress expressed  
7 in paragraph (1)(B); and

8 (C) the terms “appropriately qualified sci-  
9 entist or other qualified person”, “eligible State  
10 agency”, and “party with a direct interest in  
11 the land in which the relevant species is be-  
12 lieved to occur”, in accordance with section 3 of  
13 that Act (16 U.S.C. 1532) (as amended by sub-  
14 section (a)).

15 **SEC. 202. STATE-FEDERAL CONSULTATION RELATING TO**  
16 **CONSERVATION AND RECOVERY OF WILD-**  
17 **LIFE.**

18 (a) FINDINGS, PURPOSES, AND POLICY.—Section 2  
19 of the Endangered Species Act of 1973 (16 U.S.C. 1531)  
20 is amended—

21 (1) in subsection (a)—

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

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

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

4           (2) in subsection (c)—

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

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

10           “(1) all Federal”;

11           (B) in paragraph (1), by striking the pe-  
12           riod at the end and inserting a semicolon;

13           (C) in paragraph (2)—

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

16           (ii) by striking the paragraph designa-  
17           tion and all that follows through “that  
18           Federal agencies” and inserting the fol-  
19           lowing:

20           “(3) Federal agencies”;

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

23           “(2) the Federal agency authority for conserva-  
24           tion and management of fish and wildlife authorized  
25           by this Act should be exercised in conjunction with

1 the existing authorities of the States for the con-  
2 servation and management of fish and wildlife;”;  
3 and

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

5 “(4) Congress supports conservation actions to  
6 preclude the need to list species as threatened spe-  
7 cies or endangered species under this Act.”.

8 (b) ACTION ON RECEIPT OF PETITION TO LIST.—  
9 Section 4(b)(3)(A) of the Endangered Species Act of 1973  
10 (16 U.S.C. 1533(b)(3)(A)) is amended—

11 (1) in the third sentence, by striking “The Sec-  
12 retary” and inserting the following:

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

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

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

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

24 “(3) PETITIONS FROM INTERESTED PER-  
25 SONS.—

1 “(A) ACTION BY SECRETARY.—

2 “(i) IN GENERAL.—To”; and

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

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

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

9 “(aa) not later than 15 days  
10 after the date of receipt of the  
11 petition—

12 “(AA) provide to the  
13 Governor and the State  
14 agency of each impacted  
15 State and to each Indian  
16 Tribe with jurisdiction over  
17 land in which the species  
18 covered by the petition is be-  
19 lieved to occur, a notification  
20 of receipt of the petition and  
21 a copy of the petition; and

22 “(BB) make a copy of  
23 the petition publicly avail-  
24 able on the internet; and

1                   “(bb) solicit comments from  
 2                   the Governor, State agency, and  
 3                   Indian Tribe, as applicable, to be  
 4                   submitted to the Secretary by not  
 5                   later than the date that is 60  
 6                   days after the date of receipt of  
 7                   the notification, regarding wheth-  
 8                   er the petitioned action may be  
 9                   warranted.

10                   “(II) CONSIDERATION OF STATE  
 11                   AND TRIBAL COMMENTS.—Before the  
 12                   date of publication under this sub-  
 13                   paragraph of a determination that a  
 14                   petitioned action may be warranted,  
 15                   the Secretary shall give full and fair  
 16                   consideration to any State or Tribal  
 17                   comments submitted by the deadline  
 18                   described in subclause (I)(bb).”.

19                   (c) STATE AND TRIBAL PARTICIPATION IN REGU-  
 20                   LATORY PROCESS.—Section 4 of the Endangered Species  
 21                   Act of 1973 (16 U.S.C. 1533) is amended—

22                   (1) in subsection (b)—

23                   (A) in paragraph (5)(A)—

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

1 (ii) in clause (ii)—

2 (I) by striking “give” and insert-  
3 ing “provide”;

4 (II) by striking “to the State  
5 agency in each State” and inserting  
6 the following: “to, and invite the com-  
7 ment of—

8 “(I) the Governor and the State  
9 agency of each impacted State;

10 “(II) each Indian Tribe with ju-  
11 risdiction over land”;

12 (III) in subclause (II) (as so des-  
13 igned), by striking “occur, and to  
14 each” and inserting the following:  
15 “occur; and

16 “(III) each”; and

17 (IV) in subclause (III) (as so  
18 designated), by striking “occur, and  
19 invite” and all that follows through  
20 the semicolon at the end and inserting  
21 “occur;”; and

22 (B) in paragraph (7)(B), by striking “the  
23 State agency in each State in which such spe-  
24 cies” and inserting “the Governor and State  
25 agency of each impacted State, and to each In-

1           dian Tribe with jurisdiction over land in which  
2           the species”; and

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

5                           “(i) JURISDICTION.—If, in the case of  
6                           any regulation proposed by the Secretary  
7                           pursuant to this section, a Governor, State  
8                           agency, or Indian Tribe to which a notice  
9                           of the proposed regulation was provided  
10                          under subsection (b)(5)(A)(ii) or section  
11                          6(a)(2)(C) submits to the Secretary com-  
12                          ments disagreeing with all or part of the  
13                          proposed regulation, and the Secretary  
14                          issues a final regulation that is in conflict  
15                          with those comments, or if the Secretary  
16                          fails to adopt a regulation pursuant to an  
17                          action petitioned by a Governor, State  
18                          agency, or Indian Tribe under subsection  
19                          (b)(3), the Secretary shall submit to the  
20                          Governor, State agency, or Indian Tribe a  
21                          written justification for the failure to adopt  
22                          regulations consistent with the relevant  
23                          comments or petition.”.

1 **SEC. 203. RECOVERY OF THREATENED AND ENDANGERED**  
2 **SPECIES.**

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

5 (1) by striking the subsection designation and  
6 heading and all that follows through “The Sec-  
7 retary” in paragraph (1) and inserting the following:

8 “(a) DETERMINATION BY SECRETARY.—

9 “(1) IN GENERAL.—The Secretary”;

10 (2) in paragraph (1)—

11 (A) in each of subparagraphs (A) through  
12 (C), by striking the semicolon at the end of the  
13 subparagraph and inserting a period;

14 (B) in subparagraph (A), by striking “(A)  
15 the” and inserting the following:

16 “(A) The”;

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

19 “(B) Overutilization”;

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

22 “(C) Disease”;

23 (E) in subparagraph (D)—

24 (i) by striking “(D) the” and inserting  
25 the following:

26 “(D) The”; and

1 (ii) by striking “; or” at the end and  
2 inserting a period; and

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

5 “(E) Other”; and

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

7 “(4) RECOVERY GOALS.—

8 “(A) IN GENERAL.—The Secretary shall  
9 initiate a status review to determine whether to  
10 delist or downlist, as applicable, a threatened  
11 species or endangered species in accordance  
12 with paragraph (5) if the species achieves the  
13 recovery goals described in the recovery plan for  
14 the species, which shall include criteria estab-  
15 lished by the Secretary, in consultation with im-  
16 pacted States.

17 “(B) REQUIREMENTS.—The recovery goals  
18 required under subparagraph (A) shall—

19 “(i) be based on the best scientific  
20 and commercial data available, including  
21 all information taken into consideration in  
22 the determination to list an applicable spe-  
23 cies; and

1           “(ii) to the maximum extent prac-  
2 ticable, be expressed using objective and  
3 measurable biological criteria.

4           “(C) MODIFICATIONS.—

5           “(i) IN GENERAL.—With the agree-  
6 ment of, at a minimum,  $\frac{3}{4}$  of the rep-  
7 resentatives of State agencies from each  
8 impacted State participating as members  
9 of a recovery team, the recovery team may  
10 propose to the Secretary a modification of  
11 a recovery goal required under this para-  
12 graph based on new science, new tech-  
13 nology, new management practices, new re-  
14 sources, or any other development that ma-  
15 terially changes the underlying best sci-  
16 entific and commercial data available based  
17 on which the goal was established.

18           “(ii) APPROVAL BY SECRETARY.—Not  
19 later than 90 days after the Secretary re-  
20 ceives a proposed modification under  
21 clause (i), the Secretary shall—

22                   “(I) approve the proposed modi-  
23 fication; or

24                   “(II) reject the proposed modi-  
25 fication.

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

6                   “(I) the recovery team for the  
7                   species, if applicable;

8                   “(II) each applicable State agen-  
9                   cy of an impacted State;

10                  “(III) the Committees on Appro-  
11                  priations and Environment and Public  
12                  Works of the Senate; and

13                  “(IV) the Committees on Appro-  
14                  priations and Natural Resources of  
15                  the House of Representatives.

16                  “(iv) NO NOTICE AND COMMENT RE-  
17                  QUIRED.—Section 553 of title 5, United  
18                  States Code, shall not apply to a modifica-  
19                  tion approved by the Secretary under  
20                  clause (ii)(I).

21                  “(v) MODIFICATIONS NOT PROPOSED  
22                  BY A RECOVERY TEAM.—

23                   “(I) MODIFICATIONS BY THE  
24                   SECRETARY.—Subject to subclauses  
25                   (II) and (III), if a recovery team for

1 a threatened species or endangered  
2 species does not propose a modifica-  
3 tion under this subparagraph, the  
4 Secretary may modify a recovery goal  
5 based on—

6 “(aa) new science;

7 “(bb) new technology;

8 “(cc) new management prac-  
9 tices;

10 “(dd) new resources; or

11 “(ee) any other development  
12 that materially changes the un-  
13 derlying best scientific and com-  
14 mercial data available under  
15 which the recovery goal was es-  
16 tablished.

17 “(II) EXPLANATION.—Before  
18 making a modification under sub-  
19 clause (I), the Secretary shall provide  
20 a detailed, comprehensive, written ex-  
21 planation of the proposal to—

22 “(aa) the recovery team for  
23 the species;

24 “(bb) each applicable State  
25 agency of an impacted State;

1           “(cc) the Committees on Ap-  
2           propriations and Environment  
3           and Public Works of the Senate;  
4           and

5           “(dd) the Committees on  
6           Appropriations and Natural Re-  
7           sources of the House of Rep-  
8           resentatives.

9           “(III) TIMING.—The Secretary  
10          may not make a modification under  
11          subclause (I) less than 30 days after  
12          the date on which the Secretary pro-  
13          vides the explanation under subclause  
14          (II).

15          “(IV) NO RECOVERY TEAM.—If  
16          there is no recovery team established  
17          for a threatened species or endan-  
18          gered species, the Secretary may mod-  
19          ify a recovery goal based on any of  
20          the factors described in items (aa)  
21          through (ee) of subclause (I).

22          “(D) EFFECT.—Nothing in this paragraph  
23          requires a recovery goal to be achieved in order  
24          for the Secretary to delist or downlist a threat-

1           ened species or endangered species under this  
2           section.”.

3           (b) RECOVERY AND IMPLEMENTATION.—Section 4(f)  
4 of the Endangered Species Act of 1973 (16 U.S.C.  
5 1533(f)) is amended—

6           (1) in paragraph (1)—

7                   (A) in subparagraph (B), by redesignating  
8 clauses (i) through (iii) as subclauses (I)  
9 through (III), respectively, and indenting the  
10 subclauses appropriately;

11                   (B) by redesignating subparagraphs (A)  
12 and (B) as clauses (i) and (ii), respectively, and  
13 indenting the clauses appropriately;

14                   (C) in the matter preceding clause (i) (as  
15 so redesignated), in the second sentence, by  
16 striking “in developing and implementing” and  
17 inserting “in ensuring the development of”; and

18                   (D) by adding at the end the following:

19                   “(B) PARTICIPANTS.—The Secretary shall  
20 ensure that the development of a recovery  
21 plan—

22                           “(i) is conducted by appropriately  
23 qualified scientists and other qualified peo-  
24 ple, including representatives of—

1                   “(I) the United States Fish and  
2                   Wildlife Service or the National Ma-  
3                   rine Fisheries Service, as applicable;

4                   “(II) other relevant Federal land  
5                   and wildlife management agencies;

6                   “(III) the State agency from  
7                   each impacted State;

8                   “(IV) other relevant State and  
9                   local land, natural resources, water,  
10                  and wildlife management agencies  
11                  from each impacted State; and

12                  “(V) relevant Indian Tribes, or  
13                  Tribal land, natural resources, water,  
14                  and wildlife management agencies,  
15                  that have management authority over  
16                  land in which the relevant species is  
17                  believed to occur; and

18                  “(ii) may be informed by feedback  
19                  from parties with a direct interest in the  
20                  land in which the relevant species is be-  
21                  lieved to occur, including, as applicable,  
22                  those parties described in paragraph  
23                  (2)(C), specifically with regard to any  
24                  practical consideration affecting the imple-  
25                  mentation of a recovery plan.”;

1           (2) by striking the subsection designation and  
2 heading and all that follows through “‘recovery  
3 plans’)” and inserting the following:

4           “(f) RECOVERY AND IMPLEMENTATION.—

5                 “(1) RECOVERY PLANS.—

6                     “(A) IN GENERAL.—The Secretary shall  
7 ensure the development of recovery plans”;

8                 (3) in paragraph (2)—

9                     (A) in the first sentence, by striking “in  
10 developing and implementing” and inserting “in  
11 ensuring the development of”; and

12                    (B) by striking the second sentence;

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

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

18                 (6) by redesignating paragraphs (2) through  
19 (5) as subparagraphs (C) through (F), respectively,  
20 and indenting the subparagraphs appropriately; and

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

22                 “(2) IMPLEMENTATION PLANS.—

23                     “(A) IN GENERAL.—The Secretary shall  
24 ensure the development of implementation plans  
25 for the purpose of implementing recovery plans

1 established under paragraph (1) for the con-  
2 servation and survival of endangered species  
3 and threatened species listed pursuant to this  
4 section, unless the Secretary finds that such an  
5 implementation plan will not promote the con-  
6 servation of the species.

7 “(B) REQUIREMENTS.—The Secretary, in  
8 ensuring the development of an implementation  
9 plan, shall, to the maximum extent prac-  
10 ticable—

11 “(i) give priority to the endangered  
12 species or threatened species, without re-  
13 gard to taxonomic classification, that are  
14 most likely to benefit from the implementa-  
15 tion plan, particularly species that are, or  
16 may be, in conflict with construction or  
17 other development projects or other forms  
18 of economic activity;

19 “(ii) incorporate into the implementa-  
20 tion plan—

21 “(I) a description of such site-  
22 specific management actions as may  
23 be necessary to achieve the goal of the  
24 implementation plan for the conserva-  
25 tion and survival of the species;

1                   “(II) a description of such re-  
2                   search, captive propagation, or experi-  
3                   mental actions as may be necessary to  
4                   achieve the goal of the implementation  
5                   plan for the conservation and survival  
6                   of the species;

7                   “(III) a description of such habi-  
8                   tat protection or conservation actions  
9                   as may be necessary to achieve the  
10                  goal of the implementation plan for  
11                  the conservation and survival of the  
12                  species; and

13                  “(IV) a description of any other  
14                  actions as may be necessary to achieve  
15                  the goal of the implementation plan  
16                  for the conservation and survival of  
17                  the species; and

18                  “(iii) provide estimates of the time re-  
19                  quired and the cost to carry out the meas-  
20                  ures needed to achieve the goal of the im-  
21                  plementation plan and to achieve inter-  
22                  mediate steps towards that goal.

23                  “(C) PARTICIPANTS.—The Secretary shall  
24                  ensure that the development of an implementa-  
25                  tion plan is conducted by parties with a direct

1 interest in the land in which the relevant spe-  
2 cies is believed to occur, including—

3 “(i) appropriately qualified scientists  
4 and other qualified people who conduct the  
5 development of a recovery plan under para-  
6 graph (1); and

7 “(ii) as applicable, representatives  
8 of—

9 “(I) private and public land-  
10 owners;

11 “(II) agricultural production;

12 “(III) energy production;

13 “(IV) natural resource com-  
14 modity groups and user industries;

15 “(V) homebuilders;

16 “(VI) water resources groups;

17 “(VII) outdoor recreation groups;

18 “(VIII) environmental groups;

19 and

20 “(IX) land, habitat, and wildlife  
21 conservation groups.

22 “(D) MODIFICATIONS.—The eligible State  
23 agency that is designated by the Secretary as  
24 the leader of the development of an implemen-  
25 tation plan shall amend or modify the imple-

1           mentation plan as frequently as appropriate to  
2           reflect changes in species conservation status,  
3           conservation opportunities, new research, and  
4           changes to the best scientific and commercial  
5           data available regarding conservation strategies.

6           “(E) NO NOTICE AND COMMENT RE-  
7           QUIRED.—Section 553 of title 5, United States  
8           Code, shall not apply to the development,  
9           amendment, or modification of an implementa-  
10          tion plan.

11          “(3) IMPLEMENTATION.—The Secretary shall  
12          ensure the timely implementation of, as applicable,  
13          a recovery plan established under paragraph (1) or  
14          an implementation plan established under paragraph  
15          (2).

16          “(4) STATE LEADERSHIP.—

17                 “(A) IN GENERAL.—In carrying out this  
18                 subsection—

19                         “(i) in accordance with subparagraphs  
20                         (B) and (C), the Secretary shall provide to  
21                         each impacted State the opportunity—

22                                 “(I) to lead recovery planning,  
23                                 implementation planning, and imple-  
24                                 mentation under paragraphs (1), (2),  
25                                 and (3), respectively;

1           “(II) to expedite threatened spe-  
2           cies or endangered species recovery by  
3           supporting State-level initiatives and  
4           partnerships; and

5           “(III) to increase flexibility and  
6           feasibility for the applicability of re-  
7           covery plans under paragraph (1) and  
8           implementation plans under para-  
9           graph (2); and

10          “(ii) the Secretary shall—

11                 “(I) consult, to the maximum ex-  
12                 tent possible, with impacted States,  
13                 including Governors, State agencies,  
14                 and local land, natural resources,  
15                 water, and wildlife management agen-  
16                 cies of impacted States; and

17                 “(II) give full and fair consider-  
18                 ation to any comments or rec-  
19                 ommendations received from an im-  
20                 pacted State.

21          “(B) NO RECOVERY TEAM OR IMPLEMEN-  
22          TATION TEAM ESTABLISHED.—

23                 “(i) IN GENERAL.—The Secretary, in  
24                 consultation with the States, shall promul-  
25                 gate regulations governing a process by

1           which, in a case in which a recovery team  
2           or implementation team is not established  
3           for a threatened species or endangered spe-  
4           cies under paragraph (5) or (6), respec-  
5           tively, the Secretary shall provide to an eli-  
6           gible State agency of an impacted State  
7           the opportunity—

8                     “(I) to develop a recovery plan  
9                     under paragraph (1) or an implemen-  
10                    tation plan under paragraph (2), as  
11                    applicable; and

12                    “(II) to implement that recovery  
13                    plan or implementation plan, as appli-  
14                    cable.

15                    “(ii) REQUIREMENTS.—The regula-  
16                    tions promulgated under clause (i) shall in-  
17                    clude guidelines, criteria, and a process  
18                    that—

19                    “(I) the Secretary shall follow  
20                    when determining that—

21                             “(aa) a State agency shall  
22                             be authorized as an eligible State  
23                             agency;

24                             “(bb) an eligible State agen-  
25                             cy shall be designated as the

1 leader of the development of a re-  
2 recovery plan or implementation  
3 plan, as applicable, including in  
4 cases in which 2 or more eligible  
5 State agencies request to serve as  
6 the leader;

7 “(cc) an eligible State agen-  
8 cy shall be designated as the  
9 leader of the implementation of a  
10 recovery plan or implementation  
11 plan, as applicable, including in  
12 cases in which 2 or more eligible  
13 State agencies request to serve as  
14 the leader; and

15 “(dd) the authorization of a  
16 State agency as an eligible State  
17 agency shall be withdrawn;

18 “(II) an eligible State agency  
19 that is designated as the leader of—

20 “(aa) the development of a  
21 recovery plan shall follow in  
22 order to cooperate with each im-  
23 pacted State and participant de-  
24 scribed in paragraph (1)(B);

1                   “(bb) the development of an  
2                   implementation plan shall follow  
3                   in order to cooperate with each  
4                   impacted State and participant  
5                   described in paragraph (2)(C); or

6                   “(cc) the implementation of  
7                   a recovery plan or implementa-  
8                   tion plan, as applicable, shall fol-  
9                   low in order to cooperate with  
10                  each impacted State and partici-  
11                  pant described in paragraph  
12                  (1)(B) or (2)(C), as applicable;

13                  “(III) the Secretary or a designee  
14                  of the Secretary, in consultation with  
15                  each impacted State, shall follow when  
16                  serving as the leader of the develop-  
17                  ment of a recovery plan or implemen-  
18                  tation plan, as applicable, in any case  
19                  in which—

20                         “(aa) no eligible State agen-  
21                         cy requests to serve as the leader;  
22                         or

23                         “(bb) no eligible State agen-  
24                         cy is designated by the Secretary  
25                         as the leader; and

1           “(IV) the Secretary or a designee  
2           of the Secretary, in consultation with  
3           each impacted State, shall follow when  
4           serving as the leader of the implemen-  
5           tation of a recovery plan or implemen-  
6           tation plan, as applicable, in any case  
7           in which—

8                   “(aa) no eligible State agen-  
9                   cy requests to serve as the leader;  
10                  or

11                  “(bb) no eligible State agen-  
12                  cy is designated by the Secretary  
13                  as the leader.

14           “(C) RECOVERY TEAM OR IMPLEMENTA-  
15           TION TEAM ESTABLISHED.—

16                   “(i) IN GENERAL.—In a case in which  
17                   a recovery team or implementation team is  
18                   established for a threatened species or en-  
19                   dangered species under paragraph (5) or  
20                   (6), as applicable, the Secretary shall pro-  
21                   vide to each impacted State the oppor-  
22                   tunity to lead the recovery team or imple-  
23                   mentation team, as applicable.

24                   “(ii) RESPONSIBILITIES.—An im-  
25                   pacted State that leads a recovery team or

1 implementation team under clause (i) shall  
2 be responsible for—

3 “(I) developing a recovery plan  
4 or implementation plan, as applicable;  
5 and

6 “(II) implementing a recovery  
7 plan or implementation plan, as appli-  
8 cable.

9 “(5) RECOVERY TEAMS.—

10 “(A) IN GENERAL.—If a species is in-  
11 cluded on the list of threatened species or en-  
12 dangered species under this section, an im-  
13 pacted State may request the establishment of  
14 a recovery team with respect to the applicable  
15 threatened species or endangered species and  
16 shall submit that request to the Secretary.

17 “(B) ESTABLISHMENT.—Not later than  
18 the deadline for the establishment of a recovery  
19 team in the schedule promulgated under para-  
20 graph (8)(A)(i), the Secretary shall establish a  
21 science-based recovery team for the species, if—

22 “(i) an impacted State, acting alone  
23 or in conjunction with another impacted  
24 State, submits to the Secretary a request  
25 to establish the recovery team; or

1           “(ii) in the case of such a species with  
2           respect to which more than 1 impacted  
3           State exists, the Secretary determines that  
4           establishing a recovery team would pro-  
5           mote the conservation and recovery of the  
6           species.

7           “(C) MEMBERSHIP.—

8           “(i) IN GENERAL.—The members of a  
9           recovery team—

10           “(I) shall be appointed by the  
11           Secretary;

12           “(II) shall be composed solely of  
13           appropriately qualified scientists and  
14           other qualified people; and

15           “(III) shall include representa-  
16           tives of—

17           “(aa) the United States  
18           Fish and Wildlife Service or the  
19           National Marine Fisheries Serv-  
20           ice, as applicable;

21           “(bb) other relevant Federal  
22           land and wildlife management  
23           agencies;

24           “(cc) the State agency from  
25           each impacted State, unless the

1 impacted State elects not to par-  
2 ticipate in the recovery team;

3 “(dd) other relevant State  
4 and local land, natural resources,  
5 water, and wildlife management  
6 agencies from each impacted  
7 State, nominated by the Gov-  
8 ernor of the impacted State, un-  
9 less the impacted State elects not  
10 to participate in the recovery  
11 team; and

12 “(ee) relevant Indian Tribes,  
13 or Tribal land, natural resources,  
14 and wildlife management agen-  
15 cies, that have management au-  
16 thority over land in which the rel-  
17 evant species is believed to occur,  
18 unless the Indian Tribe elects not  
19 to participate in the recovery  
20 team.

21 “(ii) COMPOSITION.—

22 “(I) IN GENERAL.—The Sec-  
23 retary, in consultation with the  
24 States, shall promulgate regulations

1 governing the composition of a recovery  
2 team, including—

3 “(aa) criteria that the Sec-  
4 retary shall follow when deter-  
5 mining the number of members  
6 of a recovery team, including the  
7 number of representatives of each  
8 of the Federal Government, par-  
9 ticipating State governments, and  
10 other appropriately qualified sci-  
11 entists and other qualified people,  
12 which shall be reasonably bal-  
13 anced;

14 “(bb) a process by which the  
15 Secretary shall fill a vacancy on  
16 the recovery team; and

17 “(cc) a quorum requirement  
18 that a recovery team shall meet  
19 in order to conduct business that  
20 requires, at a minimum, the pres-  
21 ence of  $\frac{1}{3}$  of the representatives  
22 of the State agencies from par-  
23 ticipating impacted States.

24 “(iii) LEADERSHIP.—The Secretary,  
25 in consultation with the States, shall pro-

1 mulgate regulations governing the leader-  
2 ship of a recovery team, including—

3 “(I) a process by which the Sec-  
4 retary shall provide to each impacted  
5 State the opportunity to lead a recov-  
6 ery team; and

7 “(II) a process by which the Sec-  
8 retary or a designee of the Secretary,  
9 in consultation with each impacted  
10 State, shall lead a recovery team if—

11 “(aa) no impacted State  
12 submits a request to lead a recov-  
13 ery team; or

14 “(bb) no impacted State is  
15 otherwise designated by the Sec-  
16 retary to lead a recovery team.

17 “(D) DUTIES.—A recovery team shall—

18 “(i) lead the development of a recov-  
19 ery plan;

20 “(ii) not later than the deadline for  
21 issuing a final recovery plan in the sched-  
22 ule promulgated under paragraph  
23 (8)(A)(ii), issue a final recovery plan;

1           “(iii) if an implementation team is not  
2           established to implement the final recovery  
3           plan, implement the final recovery plan;

4           “(iv) if an implementation team is es-  
5           tablished to implement the final recovery  
6           plan, lead the implementation team, in-  
7           cluding in the implementation of the final  
8           recovery plan;

9           “(v) propose modifications to the re-  
10          covery plan in accordance with subsection  
11          (a)(4)(C)(i), including associated recovery  
12          goals; and

13          “(vi) recommend delisting or  
14          downlisting (as those terms are defined in  
15          subsection (a)(5)(A)) once the established  
16          recovery plan criteria for the species have  
17          been satisfied, in accordance with sub-  
18          section (a)(5)(B)(ii)(II), or uplisting (as  
19          that term is defined in subsection  
20          (a)(5)(A)), as applicable.

21          “(E) ADMINISTRATION.—A recovery team  
22          shall be conducted in accordance with para-  
23          graph (7).

24          “(6) IMPLEMENTATION TEAMS.—

1           “(A) IN GENERAL.—If a species is in-  
2           cluded on the list of threatened species or en-  
3           dangered species under this section and the  
4           Secretary establishes a recovery team under  
5           paragraph (5), an impacted State may request  
6           the establishment of an implementation team  
7           with respect to the applicable threatened species  
8           or endangered species and shall submit that re-  
9           quest to the Secretary.

10           “(B) ESTABLISHMENT.—At the same time  
11           the Secretary establishes a recovery team under  
12           paragraph (5), the Secretary shall establish an  
13           implementation team for the species, if—

14                   “(i) an impacted State, acting alone  
15                   or in conjunction with another impacted  
16                   State, submits to the Secretary a request  
17                   to establish an implementation team; or

18                   “(ii) in the case of such a species with  
19                   respect to which more than 1 impacted  
20                   State exists, the Secretary determines that  
21                   establishing an implementation team would  
22                   promote the conservation and recovery of  
23                   the species.

24           “(C) MEMBERSHIP.—

1                   “(i) IN GENERAL.—The members of  
2                   an implementation team—

3                   “(I) shall be appointed by the  
4                   Secretary;

5                   “(II) shall be composed solely of  
6                   parties with a direct interest in the  
7                   land in which the species is believed to  
8                   occur;

9                   “(III) shall include each member  
10                  of a recovery team established under  
11                  paragraph (5); and

12                  “(IV) shall include, as applicable,  
13                  representatives of—

14                   “(aa) private and public  
15                   landowners;

16                   “(bb) agricultural produc-  
17                   tion;

18                   “(cc) energy production;

19                   “(dd) natural resource com-  
20                   modity groups and user indus-  
21                   tries;

22                   “(ee) homebuilders;

23                   “(ff) water resources groups;

24                   “(gg) outdoor recreation  
25                   groups;

1                   “(hh) environmental groups;  
2                   and

3                   “(ii) land, habitat, and wild-  
4                   life conservation groups.

5                   “(D) COMPOSITION.—The Secretary, in  
6                   consultation with the States, shall promulgate  
7                   regulations governing the composition of an im-  
8                   plementation team, including—

9                   “(i) criteria that the Secretary shall  
10                  follow when determining the number of  
11                  members of an implementation team, in-  
12                  cluding the number of representatives of  
13                  each of the landowners, regulated indus-  
14                  tries, environmental groups, wildlife con-  
15                  servation groups, and other parties with a  
16                  direct interest in the land in which the spe-  
17                  cies is believed to occur, which shall be rea-  
18                  sonably balanced;

19                  “(ii) a process by which the Secretary  
20                  shall fill a vacancy on the implementation  
21                  team; and

22                  “(iii) a quorum requirement that a re-  
23                  covery team shall meet in order to conduct  
24                  business that requires, at a minimum, the

1 presence of  $\frac{1}{3}$  of each of the representa-  
2 tives of—

3 “(I) the State agencies from par-  
4 ticipating impacted States; and

5 “(II) the parties with a direct in-  
6 terest in the land in which the species  
7 is believed to occur who are not mem-  
8 bers of a recovery team under para-  
9 graph (5).

10 “(E) LEADERSHIP.—The leader of an im-  
11 plementation team shall be the leader of the ap-  
12 plicable recovery team, as designated under  
13 paragraph (5)(C)(iii).

14 “(F) DUTIES.—An implementation team  
15 shall—

16 “(i) provide feedback solicited by the  
17 recovery team established under paragraph  
18 (5) in order to aid the recovery team in  
19 fulfilling the duties of the recovery team,  
20 including developing and implementing a  
21 recovery plan and associated recovery  
22 goals, specifically with regard to any prac-  
23 tical considerations affecting the imple-  
24 mentation of a recovery plan;

1                   “(ii) lead the development of an im-  
2                   plementation plan;

3                   “(iii) at the same time that a recovery  
4                   team issues a final recovery plan, issue a  
5                   final implementation plan;

6                   “(iv) amend or modify the implemen-  
7                   tation plan in accordance with paragraph  
8                   (2)(D); and

9                   “(v) lead the implementation of the  
10                  implementation plan, including the imple-  
11                  mentation of the final recovery plan.

12                  “(G) ADMINISTRATION.—An implementa-  
13                  tion team shall be conducted in accordance with  
14                  paragraph (7).

15                  “(7) ADMINISTRATION OF RECOVERY TEAMS  
16                  AND IMPLEMENTATION TEAMS.—

17                  “(A) REMOTE PARTICIPATION.—Any mem-  
18                  ber of a recovery team or an implementation  
19                  team may participate in a meeting of the recov-  
20                  ery team or implementation team, as applicable,  
21                  through the use of—

22                         “(i) teleconferencing; or

23                         “(ii) any other remote business tele-  
24                         communications method that allows each  
25                         participating member to simultaneously

1           hear each other participating member dur-  
2           ing the meeting.

3           “(B) EFFECT OF ELECTION NOT TO PAR-  
4           TICIPATE.—

5                   “(i) PERMISSIBLE ACTIVITIES.—An  
6           impacted State, or an Indian Tribe or a  
7           Tribal agency, that elects not to partici-  
8           pate in a recovery team or implementation  
9           team may provide to the recovery team or  
10          implementation team, as applicable, data,  
11          written comments, and other information  
12          to aid the recovery team or implementation  
13          team, as applicable, in carrying out the du-  
14          ties of the recovery team or implementa-  
15          tion team, as applicable.

16                   “(ii) PROHIBITED ACTIVITIES.—EX-  
17          cept as provided in clause (i), if an im-  
18          pacted State, or an Indian Tribe or a Trib-  
19          al agency, elects not to participate in a re-  
20          covery team or implementation team, the  
21          impacted State, Indian Tribe, or Tribal  
22          agency, as applicable, may not participate  
23          in the activities of the recovery team or im-  
24          plementation team, as applicable, in car-  
25          rying out the duties of the recovery team

1 or implementation team, as applicable, in-  
2 cluding for purposes of establishing a  
3 quorum or voting.

4 “(C) SAVINGS CLAUSE.—

5 “(i) IMPACTED STATES.—The partici-  
6 pation on or leadership of a recovery team  
7 or implementation team by an impacted  
8 State does not infringe on or otherwise  
9 limit the authority of the impacted State  
10 within the borders of that impacted State.

11 “(ii) INDIAN TRIBES.—The participa-  
12 tion on a recovery team or implementation  
13 team by an Indian Tribe or Tribal agency  
14 does not infringe on or otherwise limit the  
15 authority of the Indian Tribe or Tribal  
16 agency, as applicable, within the land over  
17 which the Indian Tribe or Tribal agency,  
18 as applicable, has management authority.

19 “(D) ADMINISTRATIVE COST REDUC-  
20 TION.—A recovery team or implementation  
21 team, as applicable, shall, to the maximum ex-  
22 tent practicable, minimize the administrative  
23 costs of the recovery team or implementation  
24 team, as applicable, including by encouraging  
25 the use of remotely participating in meetings of

1 the recovery team or implementation team, as  
2 applicable, as described in subparagraph (A) to  
3 reduce travel costs.

4 “(E) FACA.—The Federal Advisory Com-  
5 mittee Act (5 U.S.C. App.) shall not apply to  
6 a recovery team or an implementation team.

7 “(8) SCHEDULE.—

8 “(A) IN GENERAL.—As part of a rule-  
9 making to list a species as a threatened species  
10 or an endangered species under this section, the  
11 Secretary, in consultation with the States, shall  
12 promulgate a schedule that contains—

13 “(i) a date by which a recovery team  
14 or implementation team, as applicable, for  
15 the species shall be established under para-  
16 graph (5) or (6), as applicable, which shall  
17 be not later than 2 years after the date on  
18 which the final rule listing the species as  
19 threatened or endangered is published in  
20 the Federal Register; and

21 “(ii) a date by which a recovery plan  
22 or implementation plan, as applicable, for  
23 the species shall be established under para-  
24 graph (1) or (2), as applicable, which shall  
25 be not later than 5 years after the date on

1           which the final rule listing the species as  
2           threatened or endangered is published in  
3           the Federal Register.

4           “(B) TIMELINESS.—A schedule under sub-  
5           paragraph (A) shall ensure the establishment of  
6           a recovery team, implementation team, recovery  
7           plan, or implementation plan, as applicable, as  
8           expeditiously as possible.

9           “(C) EXTENSION OF THE SCHEDULE.—  
10          The Secretary may extend a date contained in  
11          a schedule under subparagraph (A) by not more  
12          than 30 months, in which case the Secretary  
13          shall publish a written explanation for the ex-  
14          tension in the Federal Register.”.

15 **SEC. 204. DELISTING, DOWNLISTING, AND UPLISTING.**

16          (a) IN GENERAL.—Section 4(a) of the Endangered  
17          Species Act of 1973 (16 U.S.C. 1533(a)) (as amended by  
18          section 203(a)(3)) is amended by adding at the end the  
19          following:

20                 “(5)       DELISTING,       DOWNLISTING,       AND  
21                 UPLISTING.—

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

23                         “(i)   DELIST.—The term ‘delist’  
24                         means to remove a species from the list of

1 threatened species or endangered species,  
2 as applicable, under this subsection.

3 “(ii) DOWNLIST.—The term ‘downlist’  
4 means to move a species included on the  
5 list of endangered species under this sub-  
6 section to the list of threatened species  
7 under this subsection.

8 “(iii) UPLIST.—The term ‘uplist’  
9 means to move a species included on the  
10 list of threatened species under this sub-  
11 section to the list of endangered species  
12 under this subsection.

13 “(B) DETERMINATION BY SECRETARY.—

14 “(i) STATUS REVIEW.—The Secretary  
15 shall conduct a review of the status of a  
16 threatened species or endangered species in  
17 accordance with this subparagraph and  
18 paragraph (4)(A) for purposes of delisting,  
19 downlisting, or uplisting the species, as ap-  
20 plicable.

21 “(ii) INITIATION.—

22 “(I) IN GENERAL.—The Sec-  
23 retary shall initiate a status review  
24 under clause (i) or paragraph (4)(A),

1 as applicable, by not later than 30  
2 days after the earlier of—

3 “(aa) the date on which the  
4 Secretary determines that the ap-  
5 plicable recovery goals required  
6 under paragraph (4)(A) are  
7 achieved with respect to the spe-  
8 cies;

9 “(bb) the date on which the  
10 Secretary receives from the re-  
11 covery team for the species a re-  
12 port that—

13 “(AA) describes the  
14 means by which the recovery  
15 goals required under para-  
16 graph (4)(A) have been  
17 achieved with respect to the  
18 species; and

19 “(BB) recommends the  
20 delisting or downlisting of  
21 the species, as applicable;  
22 and

23 “(cc) the date on which the  
24 Secretary receives from the re-  
25 covery team for the species a re-

1 port that recommends the  
2 uplisting of the species.

3 “(II) PETITIONS TO DELIST,  
4 DOWNLIST, OR UPLIST AND ACTING  
5 ON INITIATIVE OF THE SECRETARY.—

6 “(aa) IN GENERAL.—

7 “(AA) PETITION.—

8 Nothing in this subsection  
9 affects the ability of an in-  
10 terested person to submit to  
11 the Secretary a petition to  
12 delist, downlist, or uplist a  
13 threatened species or an en-  
14 dangered species in accord-  
15 ance with this subsection  
16 and subsection (b).

17 “(BB) SECRETARY’S  
18 INITIATIVE.—The Secretary  
19 may, on the initiative of the  
20 Secretary and in addition to  
21 the required status review  
22 under subclause (I), delist,  
23 downlist, or uplist a threat-  
24 ened species or endangered  
25 species in accordance with

1                   this subsection and sub-  
2                   section (b).

3                   “(bb) CRITERIA TO BE  
4                   USED.—If the Secretary initiates  
5                   a review to delist or downlist a  
6                   threatened species or endangered  
7                   species under item (aa), the de-  
8                   termination of the Secretary shall  
9                   be based on the factors identified  
10                  in paragraph (1), irrespective of  
11                  whether the recovery goals de-  
12                  scribed in paragraph (4)(A) have  
13                  been achieved.

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

21                  “(iv) ACTION ON DETERMINATION.—  
22                  “(I) POSITIVE DETERMINA-  
23                  TION.—On determining to delist,  
24                  downlist, or uplist a species under  
25                  clause (iii), the Secretary shall publish

1 in the Federal Register, by not later  
2 than 1 year after the date of the de-  
3 termination, a final regulation to  
4 delist, downlist, or uplist the species  
5 that is the subject of the determina-  
6 tion.

7 “(II) NEGATIVE DETERMINA-  
8 TION.—On determining not to delist,  
9 downlist, or uplist a species under  
10 clause (iii), the Secretary shall publish  
11 in the Federal Register, by not later  
12 than 90 days after the date of the de-  
13 termination, a detailed, comprehensive  
14 written explanation of the determina-  
15 tion.

16 “(v) MONITORING REQUIREMENTS.—  
17 If the Secretary delists a threatened spe-  
18 cies or an endangered species as described  
19 in this subparagraph, the monitoring pe-  
20 riod described in subsection (g) shall begin  
21 on the date on which a final regulation to  
22 delist the species is published in the Fed-  
23 eral Register.

24 “(C) JUDICIAL REVIEW.—Until the expira-  
25 tion of the applicable monitoring period under

1 subsection (g), in accordance with clause (ii)(II)  
2 or (iv)(I) of subparagraph (B)—

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

8 “(ii) no judicial review of the deter-  
9 mination may commence.”.

10 (b) CONFORMING AMENDMENT.—Section 10(f)(5) of  
11 the Endangered Species Act of 1973 (16 U.S.C.  
12 1539(f)(5)) is amended, in the undesignated matter fol-  
13 lowing subparagraph (B), by striking the second sentence.

14 **SEC. 205. COOPERATION WITH STATES AND INDIAN TRIBES.**

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

17 (1) in subsection (a)—

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

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

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

1           “(B) include consultation with each im-  
2           pacted State”; and

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

6           “(a) REQUIREMENT.—

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

9           “(A) consult to the maximum extent pos-  
10          sible with the States; and

11          “(B) acknowledge and respect the primary  
12          authority of State agencies to manage fish and  
13          wildlife within State borders, except as other-  
14          wise provided in this Act with respect to an ex-  
15          ercise by the Secretary of specific authority to  
16          manage a threatened species or an endangered  
17          species.”;

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

20          (3) in subsection (c)—

21                 (A) in paragraph (2), by striking “(2) In  
22                 furtherance of the purposes of this Act, the  
23                 Secretary is authorized” and inserting the fol-  
24                 lowing:

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

3           (B) in paragraph (3) (as so redesign-  
4 nated)—

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

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

9           (C) by striking the subsection designation  
10 and heading and all that follows through “au-  
11 thorized” in the first sentence of paragraph (1)  
12 and inserting the following:

13       “(c) COOPERATIVE AGREEMENTS.—

14           “(1) DEFINITION OF STATE.—In this sub-  
15 section, the term ‘State’ includes—

16           “(A) an Indian tribe (as defined in section  
17 4 of the Indian Self-Determination and Edu-  
18 cation Assistance Act (25 U.S.C. 5304)); and

19           “(B) a Native Corporation (as defined in  
20 section 3 of the Alaska Native Claims Settle-  
21 ment Act (43 U.S.C. 1602)).

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

24           (D) in paragraph (2) (as so redesign-  
25 nated)—

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

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

5 (4) in subsection (h), by striking “relating to fi-  
6 nancial assistance” and inserting the following: “re-  
7 lating to—

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

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

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

18 **SEC. 206. STATE CONSULTATION REGARDING EXPERI-**  
19 **MENTAL POPULATIONS.**

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

22 (1) in paragraph (1), by striking “(1) For pur-  
23 poses of” and inserting the following:

24 “(1) DEFINITION OF EXPERIMENTAL POPU-  
25 LATION.—In”; and

1 (2) in paragraph (2)—

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

4 “(2) AUTHORIZATION OF RELEASES.—

5 “(A) IN GENERAL.—Subject to subpara-  
6 graphs (B) and (C), the Secretary”;

7 (B) in subparagraph (C)—

8 (i) by striking “subparagraph (B)”  
9 each place it appears and inserting “sub-  
10 paragraph (C)”;

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

13 (iii) by striking “(C) For the pur-  
14 poses” and inserting the following:

15 “(D) TREATMENT AS THREATENED SPE-  
16 CIES.—For the purposes”; and

17 (C) in subparagraph (B) (as amended by  
18 section 201(b)(3)), by striking “(B) Before”  
19 and inserting the following:

20 “(B) REQUIREMENTS.—

21 “(i) IN GENERAL.—The Secretary  
22 shall in good faith negotiate with the State  
23 agency of each impacted State in which an  
24 experimental population is authorized to be  
25 released under this paragraph an agree-

1                   ment with respect to the management au-  
2                   thority of the experimental population, in-  
3                   cluding—

4                   “(I) the boundaries of the area in  
5                   which the experimental population is  
6                   authorized to be released;

7                   “(II) the ideal population size of  
8                   the experimental population;

9                   “(III) the processes related to  
10                  supplemental introductions of the ex-  
11                  perimental population;

12                  “(IV) circumstances in which  
13                  takings of the experimental population  
14                  are authorized;

15                  “(V) the role of the experimental  
16                  population with respect to the contin-  
17                  ued existence of an endangered spe-  
18                  cies or threatened species;

19                  “(VI) the conditions under which  
20                  the Secretary would authorize the re-  
21                  moval of an experimental population  
22                  from the impacted State;

23                  “(VII) controls to mitigate  
24                  against losses generated by the experi-  
25                  mental population, such as the reloca-

1 tion, translocation, removal, or taking  
2 of a member of the experimental pop-  
3 ulation that depredates on livestock;  
4 and

5 “(VIII) Federal compensation for  
6 losses generated by the experimental  
7 population, such as when a member of  
8 the experimental population dep-  
9 redates on livestock.

10 “(ii) MANAGEMENT PLAN.—

11 “(I) IN GENERAL.—If the Sec-  
12 retary cannot, after good faith nego-  
13 tiations, reach an agreement under  
14 clause (i) with a State agency, the  
15 Secretary shall develop a plan with re-  
16 spect to the management authority of  
17 the experimental population that ad-  
18 dresses each requirement described in  
19 subclauses (I) through (VIII) of that  
20 clause.

21 “(II) REQUIREMENT.—In devel-  
22 oping a plan under subclause (I), the  
23 Secretary shall—

24 “(aa) solicit input with re-  
25 spect to the plan from each im-

1                    impacted State and the State agen-  
2                    cy of each impacted State; and

3                    “(bb) give full and fair con-  
4                    sideration to any input with re-  
5                    spect to the plan from each im-  
6                    pacted State and the State agen-  
7                    cy of each impacted State.

8                    “(iii) AGREEMENT OR PLAN FOR  
9                    EACH IMPACTED STATE.—For each release  
10                   of an experimental population authorized  
11                   under this paragraph, the Secretary shall,  
12                   for each impacted State in which the ex-  
13                   perimental population is authorized to be  
14                   released, have a separate—

15                   “(I) agreement under clause (i);

16                   or

17                   “(II) management plan under  
18                   clause (ii)(I).

19                   “(C) IDENTIFICATION AND DETERMINA-  
20                   TION.—Before”.

21 **SEC. 207. STATE PARTICIPATION IN SETTLEMENTS.**

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

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

4                   “(C) SETTLEMENT ACTIONS.—

5                           “(i) TIMING.—

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

10           (2) by striking “Secretary; except that such ac-  
11           tion may be brought” and inserting the following:  
12           “Secretary.

13                           “(II) EXCEPTION FOR EMER-  
14                           GENCIES.—Notwithstanding subclause  
15                           (I), an action may be commenced  
16                           under paragraph (1)(C)”;

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

18                           “(ii) PARTICIPATION BY STATES.—

19                                   “(I) IN GENERAL.—In preparing  
20                                   or entering into a settlement (includ-  
21                                   ing a covered settlement) or other  
22                                   agreement relating to an action under  
23                                   paragraph (1)(C), the Secretary shall  
24                                   provide notice to, consult with, and

1 otherwise take appropriate actions to  
 2 include, each impacted State.

3 “(II) EFFECT OF CLAUSE.—  
 4 Nothing in this clause limits the abil-  
 5 ity of any other party to participate in  
 6 a settlement described in subclause  
 7 (I).”.

8 **TITLE III—ENCOURAGING CON-**  
 9 **SERVATION ACTIVITIES**  
 10 **THROUGH REGULATORY CER-**  
 11 **TAINTY**

12 **SEC. 301. SENSE OF CONGRESS REGARDING CONSERVA-**  
 13 **TION AGREEMENTS AND ACTIVITIES.**

14 It is the sense of Congress that—

15 (1) voluntary conservation agreements benefit  
 16 species and the habitats on which the species rely;

17 (2) States, Indian Tribes, units of local govern-  
 18 ment, landowners, and other stakeholders should be  
 19 encouraged to participate in voluntary conservation  
 20 agreements; and

21 (3) the Secretary of the Interior, acting through  
 22 the Director of the United States Fish and Wildlife  
 23 Service, and the Secretary of Commerce, acting  
 24 through the Assistant Administrator of the National  
 25 Marine Fisheries Service, should consider the enroll-

1       ment in, and performance of, conservation agree-  
 2       ments and investment in, and implementation of,  
 3       general conservation activities by States, Indian  
 4       Tribes, units of local government, landowners, and  
 5       other stakeholders in making determinations under  
 6       the Endangered Species Act of 1973 (16 U.S.C.  
 7       1531 et seq.).

8       **SEC. 302. CONSERVATION AGREEMENTS AS FACTORS IN**  
 9                                   **LISTING DECISIONS.**

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

12                   (1) in subsection (c)—

13                           (A) in paragraph (1)—

14                                   (i) in the third sentence, by striking  
 15                           “*The Secretary*” and inserting the fol-  
 16                           lowing:

17                                   “(C) REVISION.—*The Secretary*”;

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

20                                   “(B) CONTENTS.—*Each list*”; and

21                                   (iii) in the first sentence, by striking  
 22                           “(1) *The Secretary*” and inserting the fol-  
 23                           lowing:

24                                   “(1) REQUIREMENTS.—

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

1 (B) in paragraph (2)—

2 (i) by striking “(2) The Secretary”

3 and inserting the following:

4 “(2) REVIEW.—The Secretary”;

5 (ii) in subparagraph (B), in the mat-

6 ter preceding clause (i), by inserting “in

7 accordance with subsections (a) and (b),”

8 before “determine”; and

9 (iii) by striking the undesignated mat-

10 ter following subparagraph (B);

11 (2) in subsection (f) (as amended by section

12 203(b)(7)), by adding at the end the following:

13 “(9) TREATMENT.—

14 “(A) IN GENERAL.—A conservation agree-

15 ment (including any agreement described in

16 subparagraph (B)) entered into or endorsed by

17 the Secretary shall be considered under any of

18 the factors under subsection (a)(1) for purposes

19 of determining whether to include or maintain

20 a species on the list of threatened species or en-

21 dangered species pursuant to this section.

22 “(B) DESCRIPTION OF AGREEMENTS.—An

23 agreement referred to in subparagraph (A) in-

24 cludes—

25 “(i) a wildlife conservation agreement;

1                   “(ii) a candidate conservation agree-  
2                   ment with assurances;

3                   “(iii) a candidate conservation agree-  
4                   ment;

5                   “(iv) a safe harbor agreement;

6                   “(v) a habitat conservation plan under  
7                   section 10(a)(2)(A);

8                   “(vi) an interagency agreement ap-  
9                   proved by the Secretary; and

10                  “(vii) a plan that—

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

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

15                         “(III) is implemented, or pro-  
16                         posed to be implemented, by—

17                                 “(aa) a State;

18                                 “(bb) 2 or more States;

19                                 “(cc) a unit of local govern-  
20                                 ment; or

21                                 “(dd) 2 or more units of  
22                                 local government.”; and

23                  (3) in subsection (g)(2), by striking “paragraph  
24                  7 of subsection (b) of this section” and inserting  
25                  “subsection (b)(7)”.

1 **SEC. 303. CONSERVATION EFFORTS AS REGULATORY**  
2 **MECHANISMS.**

3 Section 4(f) of the Endangered Species Act of 1973  
4 (16 U.S.C. 1533(f)) (as amended by section 302(2)) is  
5 amended by adding at the end the following:

6 “(10) CONSERVATION EFFORTS.—

7 “(A) IN GENERAL.—Not later than 180  
8 days after the date of enactment of the Endan-  
9 gered Species Act Amendments of 2020, the  
10 Secretary shall establish a framework for the  
11 consideration of conservation efforts by States,  
12 Indian Tribes, local governments, private land-  
13 owners, lessees, or third-party organizations as  
14 regulatory mechanisms under subsection (a)(1).

15 “(B) EVALUATION; TREATMENT.—In car-  
16 rying out this section, the Secretary shall—

17 “(i) evaluate conservation efforts  
18 using the framework established under  
19 subparagraph (A); and

20 “(ii) if the Secretary determines that  
21 a conservation effort meets the applicable  
22 criteria under that framework, consider the  
23 conservation effort to be a regulatory  
24 mechanism under subsection (a)(1).”.

1 **SEC. 304. CANDIDATE CONSERVATION AGREEMENTS WITH**  
2 **ASSURANCES.**

3 (a) IN GENERAL.—Section 4(f) of the Endangered  
4 Species Act of 1973 (16 U.S.C. 1533(f)) (as amended by  
5 section 303) is amended by adding at the end the fol-  
6 lowing:

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

13 “(A) shall adhere to the terms of each can-  
14 didate conservation agreement with assurances  
15 entered into before March 21, 2017;

16 “(B) shall promulgate regulations or estab-  
17 lish policies—

18 “(i) to expedite the process for enter-  
19 ing into those agreements; and

20 “(ii) to protect sensitive personal and  
21 business-related information of each party  
22 to the agreement;

23 “(C) shall take into consideration whether  
24 the implementation of the agreement is reason-  
25 ably expected to contribute to a net conserva-

1           tion benefit for a species covered by the agree-  
2           ment; and

3                   “(D) shall not preclude a party to the  
4           agreement from enrolling applicable land, or  
5           otherwise participating, in any other Federal  
6           conservation program.”.

7           (b) EFFECT ON REGULATIONS.—The Secretary of  
8           the Interior shall amend part 17 of title 50, Code of Fed-  
9           eral Regulations (as in effect on the date of enactment  
10          of this Act), to ensure that part is in accordance with  
11          paragraph (11)(C) of section 4(f) of the Endangered Spe-  
12          cies Act of 1973 (16 U.S.C. 1533(f)).

13   **SEC. 305. SAFE HARBOR AGREEMENTS.**

14          Section 4(f) of the Endangered Species Act of 1973  
15          (16 U.S.C. 1533(f)) (as amended by section 304(a)) is  
16          amended by adding at the end the following:

17                   “(12) SAFE HARBOR AGREEMENTS.—The Sec-  
18          retary may enter into an agreement, to be known as  
19          a ‘safe harbor agreement’, with 1 or more entities,  
20          including a State or local government, a private  
21          landowner, a lessee, or a third-party organization,  
22          that—

23                           “(A) shall provide for the taking of any  
24          threatened species or endangered species con-  
25          sistent with the announcement of final policy

1 entitled ‘Announcement of Final Safe Harbor  
2 Policy’ (64 Fed. Reg. 32717 (June 17, 1999));  
3 and

4 “(B) may provide for the taking of any  
5 threatened species or endangered species that  
6 occupies an adjacent property due to the im-  
7 proved conditions on the property enrolled  
8 under the agreement.”.

9 **SEC. 306. CONSERVATION AGREEMENT TEMPLATES.**

10 Section 6(c) of the Endangered Species Act of 1973  
11 (16 U.S.C. 1535(c)) (as amended by section 205(3)) is  
12 amended by adding at the end the following:

13 “(4) TEMPLATES.—With respect to agreements  
14 described in section 4(f)(9)(B), the Secretary of the  
15 Interior shall, to the maximum extent practicable—

16 “(A) implement standard procedures, and  
17 encourage widespread use of templates, in de-  
18 veloping conservation agreements under this  
19 subsection;

20 “(B) simplify the application and approval  
21 processes relating to those agreements;

22 “(C) reduce the burdens associated with  
23 reporting and monitoring under the agreements;  
24 and

1           “(D) provide for the protection of sensitive  
 2           personal and business-related information of  
 3           any party to the agreements, in accordance  
 4           with—

5                       “(i) subsection (a)(3); and

6                       “(ii) section 4(b)(9)(C).”.

7   **TITLE           IV—STRENGTHENING**  
 8       **CONSERVATION    DECISION-**  
 9       **MAKING           THROUGH    IN-**  
 10      **CREASED TRANSPARENCY**

11 **SEC. 401. TRANSPARENCY OF INFORMATION.**

12       (a) PUBLICATION ON INTERNET OF BASIS FOR LIST-  
 13 INGS.—Section 4(b) of the Endangered Species Act of  
 14 1973 (16 U.S.C. 1533(b)) is amended by adding at the  
 15 end the following:

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

18                       “(A) IN GENERAL.—Except as provided in  
 19 subparagraph (C), the Secretary shall make  
 20 publicly available on the internet the best sci-  
 21 entific and commercial data available that are  
 22 the basis for each regulation (including each  
 23 proposed regulation) promulgated pursuant to  
 24 this section.

1           “(B) INCLUSIONS.—The information re-  
2           quired to be made available under subpara-  
3           graph (A) includes any applicable—

4                   “(i) status review, including all infor-  
5                   mation—

6                           “(I) cited in the review; or

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

9                   “(ii) list of threatened species or en-  
10                  dangered species under subsection (c), in-  
11                  cluding—

12                           “(I) any final or proposed regula-  
13                           tions relating to such a list; and

14                           “(II) the results of any 5-year re-  
15                           view of such a list;

16                           “(iii) draft or final recovery plan;

17                           “(iv) information relating to the eco-  
18                           nomic impacts of a critical habitat designa-  
19                           tion, especially with respect to the impacts  
20                           on State and local governments and pri-  
21                           vate persons; and

22                           “(v) required report or other data.

23           “(C) EXCEPTIONS.—For purposes of dis-  
24           closure under subparagraph (A)—

1 “(i) the Secretary shall not make  
2 available—

3 “(I) on receipt of a request from  
4 the Governor (or a designee) of an im-  
5 pacted State, any information the  
6 public disclosure of which is prohib-  
7 ited by applicable State law, as deter-  
8 mined by the impacted State; or

9 “(II) any information that may  
10 be withheld under section 552 of title  
11 5, United States Code (commonly  
12 known as the ‘Freedom of Informa-  
13 tion Act’); and

14 “(ii) in the case of any information  
15 that includes copyrighted material, the  
16 Secretary shall—

17 “(I) to the maximum extent prac-  
18 ticable, obtain consent from the copy-  
19 right holder to publish the informa-  
20 tion; and

21 “(II) publish the information  
22 only if that consent is granted.”.

23 (b) INFORMATION PROVIDED TO STATES AND INDIAN  
24 TRIBES.—

1           (1) IN GENERAL.—Paragraph (2) of section  
2           6(a) of the Endangered Species Act of 1973 (16  
3           U.S.C. 1535(a)) (as designated by section  
4           205(1)(A)) is amended by adding at the end the fol-  
5           lowing:

6                   “(C) in any case in which the Secretary  
7           has not received a petition described in section  
8           4(b)(3)(A) relating to a species and the Sec-  
9           retary is considering proposing to list the spe-  
10          cies as a threatened species or an endangered  
11          species under section 4(a), include—

12                   “(i) providing to the Governor and the  
13          State agency of each impacted State and  
14          each Indian Tribe in which the species is  
15          believed to occur a notification of the con-  
16          sideration, which shall be made publicly  
17          available on the internet;

18                   “(ii) soliciting comments from each  
19          Governor, State agency, and Indian Tribe  
20          described in clause (i) to be submitted to  
21          the Secretary by not later than the date  
22          that is 60 days after the date of receipt of  
23          the notification, regarding whether the list-  
24          ing is in accordance with section 4(a); and

1           “(iii) taking into consideration, and  
2           giving full and fair consideration to, any  
3           comments submitted by the deadline de-  
4           scribed in clause (ii) before publication of  
5           a proposed regulation to list the species;

6           “(D) before making any determination  
7           under section 4(a), include providing to each  
8           impacted State and Indian Tribe in which the  
9           species is believed to occur all information on  
10          which the determination is based, and making  
11          that information publicly available on the inter-  
12          net in accordance with section 4(b)(9);

13          “(E) include taking into consideration, giv-  
14          ing full and fair consideration to, and using  
15          State data, analyses, and comments in all deci-  
16          sionmaking under this Act; and

17          “(F) include accepting comments from the  
18          Governor and State agency of, and any Indian  
19          Tribe within, an impacted State regarding any  
20          proposed regulation under this Act.”.

21          (2) EXCEPTIONS.—Section 6(a) of the Endan-  
22          gered Species Act of 1973 (16 U.S.C. 1535(a)) (as  
23          amended by section 205(1)) is amended by adding  
24          at the end the following:

1           “(3) EXCEPTIONS.—For purposes of disclosure  
2 of any information under paragraph (2)—

3           “(A) the Secretary shall not make avail-  
4 able—

5           “(i) on receipt of a request from the  
6 Governor (or a designee) of an impacted  
7 State, any information the public disclo-  
8 sure of which is prohibited by applicable  
9 State law, as determined by the impacted  
10 State; or

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

15           “(B) in the case of any information that  
16 includes copyrighted material, the Secretary  
17 shall—

18           “(i) to the maximum extent prac-  
19 ticable, obtain consent from the copyright  
20 holder to publish the information; and

21           “(ii) publish the information only if  
22 that consent is granted.”.

23 **SEC. 402. TRANSPARENCY IN LITIGATION.**

24           Section 11(g) of the Endangered Species Act of 1973  
25 (16 U.S.C. 1540(g)) is amended—

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

3                   “(C) PUBLICATION OF COMPLAINT; INTER-  
4 VENTION.—

5                           “(i) PUBLICATION OF COMPLAINT.—

6                                   “(I) IN GENERAL.—Not later  
7 than 30 days after the date on which  
8 the plaintiff serves the defendant with  
9 the complaint in an action brought  
10 under paragraph (1)(C) in accordance  
11 with Rule 4 of the Federal Rules of  
12 Civil Procedure, the Secretary shall  
13 make the complaint publicly available  
14 on the internet.

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

20                           “(ii) INTERVENTION.—

21                                   “(I) OPPORTUNITY TO INTER-  
22 VENE.—

23                                   “(aa) IN GENERAL.—After  
24 the end of the 30-day period de-  
25 scribed in clause (i), each af-

1 affected party shall be given a rea-  
2 sonable opportunity to move to  
3 intervene in the action described  
4 in clause (i), until the end of  
5 which action a party may not file  
6 a motion for a consent decree or  
7 to dismiss the case pursuant to a  
8 settlement agreement.

9 “(bb) EFFECT OF SUB-  
10 CLAUSE.—Nothing in this sub-  
11 clause limits the ability of any  
12 other party to move to intervene  
13 in an action described in clause  
14 (i).

15 “(II) REBUTTABLE PRESUMP-  
16 TION.—In considering a motion to in-  
17 tervene by any affected party, the  
18 court shall presume, subject to rebut-  
19 tal, that the interests of that party  
20 would not be represented adequately  
21 by the parties to the action described  
22 in clause (i).

23 “(III) PARTIES INCLUDED IN  
24 SETTLEMENT DISCUSSIONS.—

1                   “(aa) IN GENERAL.—Any  
2 settlement discussion relating to  
3 an action described in clause (i)  
4 shall include each—

5                   “(AA) plaintiff;

6                   “(BB) defendant agen-  
7 cy; and

8                   “(CC) intervenor that  
9 is an affected party.

10                   “(bb) EFFECT OF SUB-  
11 CLAUSE.—Nothing in this sub-  
12 clause limits the ability of any  
13 other party to participate in a  
14 settlement discussion relating to  
15 an action described in clause  
16 (i).”; and

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

18                   “(6) NOTICE OF PROPOSED COVERED SETTLE-  
19 MENT REQUIRED.—

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

24                   “(B) NOTICE.—The Secretary shall pro-  
25 vide each impacted State and Indian Tribe in

1           which a species is believed to occur notice of a  
2           proposed covered settlement.

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

10           “(8) PUBLICATION OF AMOUNTS PAID.—The  
11 Attorney General shall publish annually in the Fed-  
12 eral Register a report that—

13           “(A) with respect to each action brought  
14 under paragraph (1)(C) relating to a deter-  
15 mination made under section 4(a), describes the  
16 amounts paid in the action (including amounts  
17 paid for attorney fees as disclosed under para-  
18 graph (7), the hourly rate charged by the legal  
19 services entity on which attorney fees are based,  
20 any other amounts awarded by a judge, and  
21 amounts paid pursuant to a covered settlement)  
22 during the year covered by the report to any—

23           “(i) litigant;

24           “(ii) law firm; or

25           “(iii) expert witness; and

1 “(B) identifies—

2 “(i) each party to whom the amounts  
3 referred to in subparagraph (A) were paid,  
4 as that party is identified in the order or  
5 other agency document making the award;  
6 and

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

9 **TITLE V—OPTIMIZING CON-**  
10 **SERVATION THROUGH RE-**  
11 **SOURCE PRIORITIZATION**

12 **SEC. 501. PRIORITIZATION OF LISTING PETITIONS, RE-**  
13 **VIEWS, AND DETERMINATIONS.**

14 (a) IN GENERAL.—Section 4 of the Endangered Spe-  
15 cies Act of 1973 (16 U.S.C. 1533) is amended by adding  
16 at the end the following:

17 “(j) NATIONAL LISTING WORK PLAN.—

18 “(1) IN GENERAL.—Not later than the date de-  
19 scribed in paragraph (2), the Secretary shall submit  
20 to Congress a national listing work plan that estab-  
21 lishes, for each species included in the plan in ac-  
22 cordance with paragraph (3), a schedule for the  
23 completion during the 7-fiscal year period beginning  
24 on October 1 of the first fiscal year after the date  
25 of submission of the work plan of—

1           “(A) status reviews regarding petitions for  
2 listing the species under this Act;

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

5           “(C) proposed and final determinations re-  
6 garding listing the species under this section;  
7 and

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

11           “(2) SUBMISSION TO CONGRESS.—

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

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

19           “(ii) an updated work plan under  
20 paragraph (1) together with the budget re-  
21 quest of the Secretary for each fiscal year  
22 thereafter.

23           “(B) ADDITIONAL INCLUSIONS.—The Sec-  
24 retary shall also include with each budget re-  
25 quest referred to in subparagraph (A) a de-

1 description of the amounts to be requested to  
2 carry out the work plan for each fiscal year cov-  
3 ered by the work plan, including any amounts  
4 requested to resolve emergency petitions not ad-  
5 dressed in the work plan.

6 “(3) PRIORITY.—

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

13 “(i) Priority 1 represents species of  
14 the highest priority, to be designated as  
15 critically imperiled and in need of imme-  
16 diate action;

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

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

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

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

8           “(iv) Priority 4 represents species for  
9           which proactive conservation efforts likely  
10          to reduce threats to the species are being  
11          developed or carried out, within a reason-  
12          able timeframe and in an organized man-  
13          ner, by Federal agencies, States, land-  
14          owners, and other stakeholders; and

15          “(v) Priority 5 represents species—

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

18                         “(aa) threats to the species;

19                         or

20                         “(bb) the status of the spe-  
21                         cies for purposes of this Act; or

22                         “(II) that the Secretary deter-  
23                         mines would receive limited conserva-  
24                         tion benefit in the foreseeable future  
25                         by listing the species as a threatened

1 species or endangered species under  
2 this section.

3 “(B) USE OF METHODOLOGY.—

4 “(i) IN GENERAL.—Except as pro-  
5 vided in clause (ii), the Secretary shall es-  
6 tablish and assign priority classifications  
7 under subparagraph (A) in accordance  
8 with the notice of the Director of the  
9 United States Fish and Wildlife Service  
10 entitled ‘Methodology for Prioritizing Sta-  
11 tus Reviews and Accompanying 12-Month  
12 Findings on Petitions for Listing Under  
13 the Endangered Species Act’ (81 Fed. Reg.  
14 49248 (July 27, 2016)).

15 “(ii) ADDITIONAL CONSIDERATION.—

16 In the case of a Priority 5 classification  
17 under clause (i), in addition to the notice  
18 described in that clause, the Secretary  
19 shall consider whether there would be lim-  
20 ited conservation benefit in the foreseeable  
21 future by listing the species as a threat-  
22 ened species or an endangered species.

23 “(C) EXTENSIONS FOR CERTAIN PRIORITY  
24 CLASSIFICATIONS.—

1           “(i) PRIORITY 3.—In the case of a  
2 species classified as Priority 3 under sub-  
3 paragraph (A)(iii), if the Secretary deter-  
4 mines that additional time would allow for  
5 more complete data collection or the com-  
6 pletion of studies relating to the species,  
7 the Secretary may retain the species under  
8 the work plan for a period of not more  
9 than 5 years after the deadline under para-  
10 graph (4) with respect to the species.

11           “(ii) PRIORITY 4.—In the case of a  
12 species classified as Priority 4 under sub-  
13 paragraph (A)(iv), if the Secretary deter-  
14 mines that existing conservation efforts  
15 continue to meet the conservation needs of  
16 the species, the Secretary may retain the  
17 species under the work plan for a period of  
18 not more than 5 years after the deadline  
19 under paragraph (4) with respect to the  
20 species.

21           “(iii) PRIORITY 5.—In the case of a  
22 species classified as Priority 5 under sub-  
23 paragraph (A)(v), the Secretary may retain  
24 the species under the work plan for a pe-  
25 riod of not more than 5 years after the

1 deadline under paragraph (4) with respect  
2 to the species.

3 “(D) REVISION OF PRIORITY CLASSIFICA-  
4 TION ASSIGNMENT.—The Secretary may revise,  
5 in accordance with subparagraph (A), the as-  
6 signment to a priority classification of a species  
7 included in the work plan under this subsection  
8 at any time during the fiscal year to which the  
9 work plan applies.

10 “(E) EFFECT OF ASSIGNMENT.—The as-  
11 signment to a priority classification of a species  
12 included in the work plan under this subsection  
13 shall not be a final agency action.

14 “(4) APPLICABILITY OF DEADLINES.—In the  
15 case of a species for which a priority classification  
16 is assigned by a work plan under this subsection, the  
17 following shall apply:

18 “(A) DEADLINE.—Except as provided in  
19 subparagraph (B), the Secretary shall act on  
20 the relevant action relating to the species in the  
21 work plan under this subsection to which the  
22 species was first assigned not later than the last  
23 day of the period of that work plan.

24 “(B) EXTENSION.—If the Secretary re-  
25 tains the species under the work plan for addi-

1           tional time under paragraph (3)(C), the dead-  
2           line under subparagraph (A) shall be extended  
3           accordingly.

4           “(5) INCLUSION OF PETITIONED SPECIES IN  
5           WORK PLAN.—On a finding by the Secretary under  
6           subsection (b)(3)(A) that a petitioned action to add  
7           a species to a list published under subsection (c)  
8           may be warranted, the Secretary shall include the  
9           species in the work plan under this subsection.

10           “(6) REGULATIONS.—The Secretary may pro-  
11           mulgate such regulations as the Secretary deter-  
12           mines to be appropriate to carry out this subsection.

13           “(7) EFFECT OF SUBSECTION.—Nothing in this  
14           subsection precludes the emergency listing authority  
15           of the Secretary under subsection (b)(7).”.

16           (b) CONFORMING AMENDMENTS.—

17           (1) Section 4(b)(3) of the Endangered Species  
18           Act of 1973 (16 U.S.C. 1533(b)(3)) is amended—

19           (A) in subparagraph (B)—

20           (i) by striking clause (iii);

21           (ii) by redesignating clauses (i) and  
22           (ii) as subclauses (I) and (II), respectively,  
23           and indenting appropriately;

24           (iii) in the undesignating matter fol-  
25           lowing subclause (II) (as so redesignated),

1 by striking “in which case” and inserting  
2 the following:

3 “(ii) PUBLICATION.—After making a  
4 finding under clause (i),”;

5 (iv) in the matter preceding subclause  
6 (I) (as so redesignated), by striking “(B)  
7 Within 12 months after” and inserting the  
8 following:

9 “(B) FINDINGS.—

10 “(i) IN GENERAL.—In accordance  
11 with the national listing work plan sub-  
12 mitted under subsection (j), after”;

13 (B) in subparagraph (C)—

14 (i) in clause (ii), by striking “or (iii)”;

15 (ii) by striking clause (iii); and

16 (iii) by striking the subparagraph des-  
17 ignation and all that follows through “Any  
18 negative” in clause (ii) and inserting the  
19 following:

20 “(C) JUDICIAL REVIEW.—Any negative”;

21 and

22 (C) in subparagraph (D)(ii) (as amended  
23 by section 101(a)(2)(C)), in the matter pre-  
24 ceding subclause (I), by striking “(ii) Within 12  
25 months after” and inserting the following:

1                   “(ii) ACTION ON POSITIVE FINDING.—

2                   In accordance with the national listing  
3                   work plan submitted under subsection (j),  
4                   after”.

5                   (2) Section 6(d)(1) of the Endangered Species  
6                   Act of 1973 (16 U.S.C. 1535(d)(1)) is amended, in  
7                   the matter preceding subparagraph (A), in the first  
8                   sentence, by striking “candidate species pursuant to  
9                   subparagraph (C) of section 4(b)(3)” and inserting  
10                  “species on the national listing work plan submitted  
11                  under section 4(j) (referred to in this paragraph as  
12                  ‘candidate species’)”.

13                  **TITLE VI—STUDIES TO IMPROVE**  
14                  **CONSERVATION**

15                  **SEC. 601. DEFINITION OF SECRETARIES.**

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

17                         (1) the Secretary of Agriculture;

18                         (2) the Secretary of Commerce, acting through  
19                         the Assistant Administrator of the National Marine  
20                         Fisheries Service; and

21                         (3) the Secretary of the Interior, acting through  
22                         the Director of the United States Fish and Wildlife  
23                         Service.

1 **SEC. 602. STUDY TO REVIEW CONSERVATION FACTORS.**

2 (a) IN GENERAL.—To assess factors affecting suc-  
3 cessful conservation activities under the Endangered Spe-  
4 cies Act of 1973 (16 U.S.C. 1531 et seq.), the Secretaries  
5 shall carry out a study—

6 (1) to review any factors that threaten or en-  
7 danger a species for which a listing under the En-  
8 dangered Species Act of 1973 (16 U.S.C. 1531 et  
9 seq.) would not contribute to the conservation of the  
10 species;

11 (2) to review any barriers to—

12 (A) the delivery of Federal, State, local, or  
13 private funds for those conservation activities,  
14 including statutory or regulatory impediments,  
15 staffing needs, and other relevant consider-  
16 ations; or

17 (B) the implementation of conservation  
18 agreements, plans, or other cooperative agree-  
19 ments, including agreements focused on vol-  
20 untary activities, multispecies efforts, and other  
21 relevant considerations;

22 (3) to review factors that impact the ability of  
23 the Federal Government to successfully implement  
24 the Endangered Species Act of 1973 (16 U.S.C.  
25 1531 et seq.);

1           (4) to develop recommendations regarding  
2 methods to address barriers identified under para-  
3 graph (2), if any;

4           (5) to review determinations under the Endan-  
5 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
6 in which a species is determined to be recovered by  
7 the Secretary of the Interior, acting through the Di-  
8 rector of the United States Fish and Wildlife Serv-  
9 ice, or the Secretary of Commerce, acting through  
10 the Assistant Administrator of the National Marine  
11 Fisheries Service, but remains listed under that Act,  
12 including—

13           (A) an explanation of the factors pre-  
14 venting a delisting or downlisting of the species;  
15 and

16           (B) recommendations regarding methods  
17 to address the factors described in subpara-  
18 graph (A); and

19           (6) to review any determinations under the En-  
20 dangered Species Act of 1973 (16 U.S.C. 1531 et  
21 seq.) in which a species has been identified as need-  
22 ing listing or uplisting under that Act but remains  
23 unlisted or listed as a threatened species, respec-  
24 tively, including—

1 (A) an explanation of the factors pre-  
2 venting a listing or uplisting of the species; and

3 (B) recommendations regarding methods  
4 to address the factors described in subpara-  
5 graph (A).

6 (b) REPORT.—Not later than 1 year after the date  
7 of enactment of this Act, the Secretaries shall submit to  
8 the Committees on Appropriations and Environment and  
9 Public Works of the Senate and the Committees on Appro-  
10 priations and Natural Resources of the House of Rep-  
11 resentatives and make publicly available a report describ-  
12 ing the results of the study under subsection (a).

13 **SEC. 603. STUDY AND REPORT ON EXPENDITURES.**

14 (a) REPORTS ON EXPENDITURES.—

15 (1) FEDERAL DEPARTMENTS AND AGENCIES.—

16 (A) IN GENERAL.—At the determination of  
17 the Comptroller General of the United States  
18 (referred to in this section as the “Comptroller  
19 General”), to facilitate the preparation of the  
20 reports from the Comptroller General under  
21 paragraph (2), the head of each Federal depart-  
22 ment and agency shall submit to the Comp-  
23 troller General data and other relevant informa-  
24 tion that describes the amounts expended or  
25 disbursed (including through loans, loan guar-

1           antees, grants, or any other financing mecha-  
2           nism) by the department or agency as a direct  
3           result of any provision of the Endangered Spe-  
4           cies Act of 1973 (16 U.S.C. 1531 et seq.) (in-  
5           cluding any regulation promulgated pursuant to  
6           that Act) during—

7                   (i) with respect to the first report  
8                   under paragraph (2), the 3 fiscal years  
9                   preceding the date of submission of the re-  
10                  port; and

11                  (ii) with respect to the second report  
12                  under paragraph (2), the 2 fiscal years  
13                  preceding the date of submission of the re-  
14                  port.

15           (B) REQUIREMENTS.—Data and other rel-  
16           evant information submitted under subpara-  
17           graph (A) shall describe, with respect to the ap-  
18           plicable amounts—

19                   (i) the programmatic office of the de-  
20                   partment or agency on behalf of which  
21                   each amount was expended or disbursed;

22                   (ii) the provision of the Endangered  
23                   Species Act of 1973 (16 U.S.C. 1531 et  
24                   seq.) (or regulation promulgated pursuant

1 to that Act) pursuant to which each  
2 amount was expended or disbursed; and

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

7 (2) COMPTROLLER GENERAL.—Not later than  
8 2 years and 4 years after the date of enactment of  
9 this Act, the Comptroller General shall submit to the  
10 Committees on Appropriations, Commerce, Science,  
11 and Transportation, and Environment and Public  
12 Works of the Senate and the Committee on Appro-  
13 priations and Natural Resources of the House of  
14 Representatives a report that describes—

15 (A) the aggregate amount expended or dis-  
16 bursed by all Federal departments and agencies  
17 as a direct result of any provision of the En-  
18 dangered Species Act of 1973 (16 U.S.C. 1531  
19 et seq.) (including any regulation promulgated  
20 pursuant to that Act) during—

21 (i) with respect to the first report, the  
22 3 fiscal years preceding the date of submis-  
23 sion of the report; and

1 (ii) with respect to the second report,  
2 the 2 fiscal years preceding the date of  
3 submission of the report;

4 (B) the provision of the Endangered Spe-  
5 cies Act of 1973 (16 U.S.C. 1531 et seq.) (or  
6 regulation promulgated pursuant to that Act)  
7 pursuant to which each such amount was ex-  
8 pended or disbursed; and

9 (C) with respect to each relevant depart-  
10 ment or agency—

11 (i) the total amount expended or dis-  
12 bursed by the department or agency as de-  
13 scribed in subparagraph (A); and

14 (ii) the information described in  
15 clauses (i) through (iii) of paragraph  
16 (1)(B).

17 (b) REPORT ON CONSERVATION ACTIVITIES.—

18 (1) FEDERAL DEPARTMENTS AND AGENCIES.—

19 At the determination of the Comptroller General, to  
20 facilitate the preparation of the report under para-  
21 graph (2), the head of each Federal department and  
22 agency shall submit to the Comptroller General data  
23 and other relevant information that describes the  
24 conservation activities by the Federal department or  
25 agency as a direct result of any provision of the En-

1       dangered Species Act of 1973 (16 U.S.C. 1531 et  
2       seq.) (including any regulation promulgated pursu-  
3       ant to that Act) during—

4               (A) with respect to the first report under  
5       paragraph (2), the 3 fiscal years preceding the  
6       date of submission of the report; and

7               (B) with respect to the second report  
8       under paragraph (2), the 2 fiscal years pre-  
9       ceding the date of submission of the report.

10       (2) COMPTROLLER GENERAL.—Not later than  
11       2 years and 4 years after the date of enactment of  
12       this Act, the Comptroller General shall submit to the  
13       Committees on Commerce, Science, and Transpor-  
14       tation and Environment and Public Works of the  
15       Senate and the Committee on Natural Resources of  
16       the House of Representatives a report that—

17               (A) describes the conservation activities by  
18       all Federal departments and agencies for spe-  
19       cies listed as a threatened species or endan-  
20       gered species under the Endangered Species  
21       Act of 1973 (16 U.S.C. 1531 et seq.), as re-  
22       ported under paragraph (1), during—

23               (i) with respect to the first report, the  
24       3 fiscal years preceding the date of submis-  
25       sion of the report; and

1 (ii) with respect to the second report,  
2 the 2 fiscal years preceding the date of  
3 submission of the report;

4 (B) is organized into categories with re-  
5 spect to whether a recovery plan for a species  
6 has been established;

7 (C) includes conservation outcomes associ-  
8 ated with the conservation activities; and

9 (D) as applicable, describes the conserva-  
10 tion activities that required interaction between  
11 Federal agencies and between Federal agencies  
12 and State and Tribal agencies and units of local  
13 government pursuant to the Endangered Spe-  
14 cies Act of 1973 (16 U.S.C. 1531 et seq.).

15 **SEC. 604. STUDY TO QUANTIFY LITIGATION EXPENSES.**

16 Section 11(g) of the Endangered Species Act of 1973  
17 (16 U.S.C. 1540(g)) (as amended by section 402(2)) is  
18 amended by adding at the end the following:

19 “(9) STUDY TO QUANTIFY LITIGATION EX-  
20 PENSES.—Not later than 1 year after the date of en-  
21 actment of this paragraph, the Comptroller General  
22 of the United States shall conduct, and submit to  
23 the Committees on Appropriations and Environment  
24 and Public Works of the Senate and the Committees  
25 on Appropriations and Natural Resources of the

1 House of Representatives a report describing the re-  
2 sults of, a study that quantifies the amount of Fed-  
3 eral funds expended before that date of enactment  
4 in connection with any litigation (including any con-  
5 sent decree or a settlement agreement in an action  
6 brought under paragraph (1)(C)) relating to a deter-  
7 mination made under section 4(a).”.

## 8 **TITLE VII—REAUTHORIZATION**

### 9 **SEC. 701. REAUTHORIZATION.**

10 Section 15 of the Endangered Species Act of 1973  
11 (16 U.S.C. 1542) is amended—

12 (1) in the matter preceding paragraph (1), by  
13 striking “subsection (b), (c), and (d)” and inserting  
14 “subsections (d) and (e)”;

15 (2) in subsection (a)—

16 (A) in paragraph (1), by striking  
17 “\$35,000,000 for fiscal year 1988, \$36,500,000  
18 for fiscal year 1989, \$38,000,000 for fiscal year  
19 1990, \$39,500,000 for fiscal year 1991, and  
20 \$41,500,000 for fiscal year 1992” and inserting  
21 “\$160,000,000 for fiscal year 2021,  
22 \$165,000,000 for fiscal year 2022,  
23 \$170,000,000 for fiscal year 2023,  
24 \$175,000,000 for fiscal year 2024, and  
25 \$180,000,000 for fiscal year 2025”;

1 (B) in paragraph (2), by striking “not to  
2 exceed \$5,750,000 for fiscal year 1988,  
3 \$6,250,000 for each of fiscal years 1989 and  
4 1990, and \$6,750,000 for each of fiscal years  
5 1991 and 1992” and inserting “for each of fis-  
6 cal years 2021 through 2025, not to exceed 10  
7 percent of the total amount appropriated for  
8 the fiscal year under paragraphs (1) and (3)  
9 and subsection (b)”;

10 (C) in paragraph (3), by striking  
11 “\$2,200,000 for fiscal year 1988, \$2,400,000  
12 for each of fiscal years 1989 and 1990, and  
13 \$2,600,000 for each of fiscal years 1991 and  
14 1992,” and inserting “\$4,000,000 for each of  
15 fiscal years 2021 through 2025”;

16 (3) by redesignating subsections (b) and (c) as  
17 subsections (d) and (e), respectively; and

18 (4) by inserting after subsection (a) the fol-  
19 lowing:

20 “(b) RECOVERY IMPLEMENTATION.—There are au-  
21 thorized to be appropriated to the Secretary to assist in  
22 the implementation of recovery plans developed under sec-  
23 tion 4(f)(1) \$214,000,000 for each of fiscal years 2021  
24 through 2025.

1       “(c) LIMITATION ON USE OF FUNDS.—Of the  
2 amounts appropriated under this section for a fiscal year,  
3 the Secretary shall use not less than 15 percent to support  
4 proactive, voluntary conservation activities, including  
5 those undertaken by private landowners, pursuant to—

6               “(1) a conservation agreement described in sec-  
7 tion 4(f)(9);

8               “(2) a conservation effort that meets the re-  
9 quirements of the framework established under sec-  
10 tion 4(f)(10);

11              “(3) a cooperative agreement entered into  
12 under section 6; and

13              “(4) any other Federal program that supports  
14 the conservation of species in the United States that  
15 are listed as threatened species or endangered spe-  
16 cies, candidate species, or at-risk species.”.

## 17       **TITLE VIII—MISCELLANEOUS**

### 18       **SEC. 801. EFFECT.**

19       Nothing in this Act or an amendment made by this  
20 Act—

21              (1) limits the legal rights under the Endan-  
22 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
23 or any other law of—

24                      (A) any regulated entity, including an in-  
25 dustry, agricultural producer, or landowner;

1 (B) any nongovernmental organization, in-  
2 cluding an environmental, conservation, or land-  
3 owner group; or

4 (C) any county or equivalent jurisdiction;  
5 or

6 (2) diminishes the value or credibility of infor-  
7 mation or comments provided under that Act by any  
8 regulated entity, nongovernmental organization, and  
9 county or equivalent jurisdiction described in para-  
10 graph (1) as compared to information or comments  
11 provided by any other source of information or com-  
12 ments based solely on the source.

13 **SEC. 802. SENSE OF THE SENATE.**

14 It is the sense of the Senate that each State is en-  
15 couraged—

16 (1) to collaborate with county or equivalent ju-  
17 risdictions and local governments in the State in car-  
18 rying out State responsibilities and authorities under  
19 the Endangered Species Act of 1973 (16 U.S.C.  
20 1531 et seq.);

21 (2) to give full and fair consideration to the  
22 input of county or equivalent jurisdictions and local  
23 governments in the State when exercising State obli-  
24 gations under that Act; and

1           (3) to provide notice, when practicable, to coun-  
2           ty or equivalent jurisdictions and local governments  
3           in the State of issues affecting those governments  
4           under that Act.

○